emphasizes the context here (*i.e.* standard setting); however, it is not clear why the type of conduct that is targeted here (*i.e.* a breach of an allegedly implied contract term with no allegation of deception) would not be targeted by the Commission in any other context where the Commission believes consumer harm may result. If the Commission continues on the path begun in *N-Data* and extended here, we will be policing garden variety breach-of-contract and other business disputes between private parties. Mere breaches of FRAND commitments, including potentially the seeking of injunctions if proscribed by SSO rules,[22] are better addressed by the relevant SSOs or by the affected parties via contract and/or patent claims resolved by the courts or through arbitration.

It is important that government strive for transparency and predictability. Before invoking Section 5 to address business conduct not already covered by the antitrust laws (other than perhaps invitations to collude), the Commission should fully articulate its views about what constitutes an unfair method of competition, including the general parameters of unfair conduct and where Section 5 overlaps and does not overlap with the antitrust laws, and how the Commission will exercise its enforcement discretion under Section 5. Otherwise, the Commission runs a serious risk of failure in the courts [23] and a possible hostile legislative reaction,[24] both of which have accompanied previous FTC attempts to use Section 5 more expansively.

This consent does nothing either to legitimize the creative, yet questionable application of Section 5 to these types of cases or to provide guidance to standard-setting participants or the business community at large as to what does and does not constitute a Section 5 violation. Rather, it raises more questions about what limits the majority of the Commission would place on its expansive use of Section 5 authority.

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[22] The instant matter also raises concerns about the Commission imposing requirements on the respondent that go beyond those it agreed to as part of the SSO at issue here, which does not appear to ban the seeking of injunctions on SEPs included in its standards. *See* SAE International, Technical Standards Board Governance Policy § 1.14 (Nov. 2008), *available at http://www.sae.org/standardsdev/tsb/tsbpolicy.pdf.* Even more troublesome, it is an open question whether the patents at issue are even standard-essential. *See, e.g.,* Complaint ¶ 16 (''After the adoption of SAE J–2788, SPX Corporation sued certain competitors, including Bosch, for infringing patents that may be essential to the practice of SAE J–2788.'').

[23] *See Ethyl,* 729 F.2d 128; *Official Airline Guides, Inc.* v. *FTC,* 630 F.2d 920 (2d Cir. 1980); *Boise Cascade Corp.* v. *FTC,* 637 F.2d 573 (9th Cir. 1980); *Abbott Labs.,* 853 F. Supp. 526.

[24] *See* William E. Kovacic & Marc Winerman, *Competition Policy and the Application of Section 5 of the Federal Trade Commission Act,* 76 Antitrust L.J. 929, 943 (2010) (''In the 1950s and the 1970s, Commission efforts to use Section 5 litigation to reach beyond prevailing interpretations of Sections 1 and 2 of the Sherman Act elicited strong political backlash from the Congress.'').

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10143 and CMS–R–284]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection. *Title of Information Collection:* Monthly State File of Medicaid/Medicare Dual Eligible Enrollees. *Use:* The monthly data file is provided to CMS by states on dually eligible Medicaid and Medicare beneficiaries, listing the individuals on the Medicaid eligibility file, their Medicare status and other information needed to establish subsidy level, such as income and institutional status. The file will be used to count the exact number of individuals who should be included in the phased-down state contribution calculation that month. CMS will be able to merge the data with other data files and establish Part D enrollment for those individuals on the file. The file may be used by CMS partners to obtain accurate counts of duals on a current basis. *Form Number:* CMS–10143 (OCN 0938–0958). *Frequency:* Monthly. *Affected Public:* State, Local, or Tribal Governments. *Number of Respondents:* 51. *Total Annual Responses:* 612. *Total Annual Hours:* 6,120. (For policy questions regarding this collection contact Goldy Austen at 410–786–6450. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection. *Title of Information Collection:* Medicaid Statistical Information System (MSIS). *Use:* CMS requests OMB approval of the Medicaid Statistical Information System (MSIS, IBC Form R–284) and allow additional data collection of MSIS data for what CMS now refers to as the Transformed Medicaid Statistical Information System (T–MSIS) data collection. This approval would enable states to continue to fulfill their Medicaid data reporting requirements in parallel from 2013 through 2016 and reduce the burden on states by: eliminating multiple disparate requests for data, allowing states to have one consolidated reporting requirement, and to better perform its responsibilities of Medicaid and CHIP program oversight, administration, and program integrity.

Subsequent to the publication of the 60-day **Federal Register** notice (August 15, 2012; 77 FR 48987), T–MSIS has been added to the corresponding PRA package to offer CMS and state partners robust, up-to-date, and current information to be able to:

- View how each state and the district implements their programs.
- Compare the delivery of programs across authorities/states.
- Assess the impact of service options on beneficiary outcomes and expenditures.
- Examine the enrollment, service provision, and expenditure experience of providers who participate in our programs (as well as in Medicare).
- Examine beneficiary activity such as application and enrollment history, services received, appropriateness of services received based on enrollment status and applicable statutory authority.
- Use informatics to improve program oversight and inform future policy and operational decisions.
- Answer key Medicaid and CHIP program questions.

Importantly, there is no duplication of effort or information associated with this request. MSIS provides complete Medicaid and CHIP program statistics on a national scale and there is no other

similar information or report available. T–MSIS will remove current multiple reporting for similar data by the state to CMS.

Although T–MSIS will report more frequently, (monthly vs. quarterly) the amount of data collected through the expanded dataset will enable efficient processing to more efficiently satisfy data collection needs, thus eliminating additional similar duplicate current reporting processes.

Form Number: CMS–R–284 (OCN 0938–0345). *Frequency:* Quarterly (MSIS) and Monthly (T–MSIS). *Affected Public:* State, Local, or Tribal Governments. *Number of Respondents:* 51. *Total Annual Responses:* 816. *Total Annual Hours:* 8,160. (For policy questions regarding this collection contact Kay Spence. at 410–786–1617. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *January 2, 2013:* OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: November 27, 2012.

Martique Jones,

Director, Regulations Development Group, Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–29052 Filed 11–30–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4169–NC]

Medicare Program; Request for Information To Aid in the Design and Development of a Survey Regarding Patient Experiences With Emergency Department Care

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for information.

SUMMARY: This document is a request for information regarding consumer and patient experiences with emergency department care.

DATES: The information solicited in this notice must be received at the address provided below by February 1, 2013.

ADDRESSES: In responding to this solicitation, please reply via email to CMS *ED_Survey@cms.hhs.gov* or by postal mail at Centers for Medicare and Medicaid Services, Attention: Sai Ma, Mailstop C1–14–18, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Sai Ma (410) 786–1479.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 3011 of the Affordable Care Act, the Department of Health and Human Services (HHS) developed the National Quality Strategy to create national aims and priorities to guide local, state, and national efforts to improve the quality of health care. This strategy established three aims supported by six priorities that focus on better care, healthy people/healthy communities, and affordable care.[1] The six priorities include: (1) Making care safer by reducing harm caused by the delivery of care; (2) ensuring that each person and family are engaged as partners in their care; (3) promoting effective communication and coordination of care; (4) promoting the most effective prevention and treatment practices for the leading causes of mortality, starting with cardiovascular disease; (5) working with communities to promote wide use of best practices to enable healthy living; and (6) making quality care more affordable for individuals, families, employers, and governments by developing and spreading new health care delivery models Surveys focusing on the patient and caregiver experience, including those discussed later and the Emergency Department care survey under development, support the goals of the National Quality Strategy for providing better care.

The Centers for Medicare & Medicaid Services (CMS) has already implemented patient experience surveys for health and drug plans, inpatient hospitals, and home health agencies. While CMS and the Agency for Healthcare Research and Quality (AHRQ) have developed additional Consumer Assessment of Healthcare Providers and Systems (CAHPS®) surveys for in-center hemodialysis facilities, nursing homes, and clinician and group practices, none of these surveys address consumers' and patients' experiences with emergency department services. A patient's experience in an emergency department is an essential component of their overall healthcare experience in a hospital, and we believe that a patient survey evaluating such care will further support the HHS's goals and priorities.

The target population for the emergency department patient experience of care survey is consumers/patients and caregivers of patients who received emergency department care. The emergency department is a unique environment within the health care system, bridging the world of outpatient and inpatient care. This makes existing patient experience instruments designed for either outpatient care or inpatient care only partially relevant for capturing patient experiences (for example, none of the existing surveys addresses patients' experience regarding transitions from emergency room to inpatient care). Having a rigorous, well-designed emergency department survey will allow us to understand patients' perspectives on their experiences in emergency departments and how such experiences change over time. This information will ultimately be used to help improve the quality of care patients receive in emergency departments.

We are in the process of reviewing potential topic areas, as well as publicly available instruments and measures, for the purpose of developing a consumer and patient experience survey that will enable objective comparisons of emergency department experiences across the country. The principal focus is to develop a survey for consumers and patients 18 years of age and older. However, we are also interested in how a survey could also be developed for pediatric patients.

II. Solicitation of Information

We are soliciting the submission of suggested topic areas (such as ''communication with providers,'' ''pain control'' or ''waiting time'') as well as publicly available instruments for capturing patient experiences with emergency department care. We are interested in instruments and items that can measure quality of care from the patient's and caregiver's perspective, including pediatric patients, and track changes over time.

[1] Please see U.S. Department of Health and Human Services, *Report to Congress, National Strategy for Quality Improvement in Health Care,* (March 2011), available at *http://www.healthcare.gov/law/resources/reports/nationalqualitystrategy032011.pdf.*