

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10137 and CMS–R–262]

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

**AGENCY:** Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by February 3, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

2. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Solicitation for Applications for Medicare Prescription Drug Plan 2022 Contracts; *Use:* Coverage for the prescription drug benefit is provided through contracted prescription drug plans (PDPs) or through Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage (MA–PD plans). Cost Plans that are regulated under Section 1876 of the Social Security Act, and Employer Group Waiver Plans (EGWP) may also provide a Part D benefit. Organizations wishing to provide services under the Prescription Drug Benefit Program must complete an application, negotiate rates, and receive final approval from CMS. Existing Part D Sponsors may also expand their contracted service area by completing the Service Area Expansion (SAE) application.

Collection of this information is mandated in Part D of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) in Subpart 3. The application requirements are codified in Subpart K of 42 CFR 423 entitled "Application Procedures and Contracts with PDP Sponsors."

The information will be collected under the solicitation of proposals from PDP, MA–PD, Cost Plan, Program of All Inclusive Care for the Elderly (PACE), and EGWP applicants. The collected

information will be used by CMS to: (1) Ensure that applicants meet CMS requirements for offering Part D plans (including network adequacy, contracting requirements, and compliance program requirements, as described in the application), (2) support the determination of contract awards. *Form Number:* CMS–10137 (OMB control number: 0938–0936); *Frequency:* Yearly; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions and State, Local or Tribal Governments; *Number of Respondents:* 658; *Total Annual Responses:* 331; *Total Annual Hours:* 1,550. (For policy questions regarding this collection, contact Arianne Spaccarelli at 410–786–5715.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CMS Plan Benefit Package (PBP) and Formulary CY 2022; *Use:* Under the Medicare Modernization Act (MMA), Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations are required to submit plan benefit packages for all Medicare beneficiaries residing in their service area. The plan benefit package submission consists of the Plan Benefit Package (PBP) software, formulary file, and supporting documentation, as necessary. MA and PDP organizations use the PBP software to describe their organization's plan benefit packages, including information on premiums, cost sharing, authorization rules, and supplemental benefits. They also generate a formulary to describe their list of drugs, including information on prior authorization, step therapy, tiering, and quantity limits.

CMS requires that MA and PDP organizations submit a completed PBP and formulary as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to CMS for review and approval. CMS uses this data to review and approve the benefit packages that the plans will offer to Medicare beneficiaries. This allows CMS to review the benefit packages in a consistent way across all submitted bids during with incredibly tight timeframes. This data is also used to populate data on Medicare Plan Finder, which allows beneficiaries to access and compare Medicare Advantage and Prescription Drug plans. *Form Number:* CMS–R–262 (OMB control number: 0938–0763); *Frequency:* Yearly; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions and State, Local or Tribal Governments; *Number of Respondents:* 753; *Total*

*Annual Responses: 8,090; Total Annual Hours: 74,038.* (For policy questions regarding this collection, contact Kristy Holtje at 410-786-2209.)

Dated: December 29, 2020.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2020-N-1415]

#### Sunrise Lee: Final Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debaring Sunrise Lee from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Lee was convicted of a felony under Federal law for conduct that relates to the regulation of a drug product under the FD&C Act. Ms. Lee was given notice of the proposed permanent debarment and an opportunity to request a hearing to show why she should not be debarred. As of October 8, 2020 (30 days after receipt of the notice), Ms. Lee had not responded. Ms. Lee's failure to respond and request a hearing constitutes a waiver of her right to a hearing concerning this action.

**DATES:** This order is applicable January 4, 2021.

**ADDRESSES:** Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500, or at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jaime Espinosa, (ELEM-4029) Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240-402-8743, or at [debarments@fda.hhs.gov](mailto:debarments@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)) requires

debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act. On January 22, 2020, Ms. Lee was convicted as defined in section 306(J)(1) of the FD&C Act when judgment was entered against her in the U.S. District Court for the District of Massachusetts, after a jury verdict, on one count of Racketeering Conspiracy in violation of 18 U.S.C. 1962(d). The pattern of racketeering activity she was convicted of included engaging in multiple acts of mail fraud (18 U.S.C. 1341) and wire fraud (18 U.S.C. 1343).

The factual basis for this conviction is as follows: Ms. Lee held executive management positions, to include Regional Sales Manager for the Mid-Atlantic Region, Regional Director for the Central Region, and Regional Director for the West Region, of Insys Therapeutics Inc. (Insys), a Delaware Corporation, with headquarters in Chandler, Arizona. Insys developed and owned a drug called SUBSYS, a liquid formulation of fentanyl to be applied under the tongue. FDA approved SUBSYS for the management of breakthrough pain in adult cancer patients who are already receiving and are already tolerant to opioid therapy for their underlying persistent cancer pain. From 2012 and continuing through 2015, Ms. Lee participated in a conspiracy whereby employees of Insys bribed medical practitioners in various states to get those practitioners to increase prescribing SUBSYS to their patients, many of whom did not have cancer. Ms. Lee, along with her co-conspirators, measured the effect of these bribes on each practitioner's prescribing habits and on the revenue that each bribed practitioner generated for Insys. Ms. Lee, along with her co-conspirators, reduced or eliminated bribes paid to those practitioners who failed to meet the minimum prescription requirements or failed to generate enough revenue to justify additional bribes. To further this conspiracy, Ms. Lee's co-conspirators misled and defrauded health insurance providers to ensure those providers approved payment for SUBSYS. Insys achieved this goal by establishing the "Insys Reimbursement Center," which was designed to shift the burden of seeking prior authorization for SUBSYS from practitioners to Insys. This allowed Insys to determine what medical information was presented to insurers.

Ms. Lee's co-conspirators directed Insys employees to mislead insurers to obtain payment authorization.

As a result of this conviction, FDA sent Ms. Lee by certified mail on August 3, 2020, a notice proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the FD&C Act, that Ms. Lee was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. The proposal also offered Ms. Lee an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted an election not to use the opportunity for a hearing and a waiver of any contentions concerning this action. Ms. Lee received the proposal on September 8, 2020. She did not request a hearing within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and any contentions concerning her debarment (21 CFR part 12).

##### II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Ms. Sunrise Lee has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing finding, Ms. Lee is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(B) and (c)(2)(A)(ii) of the FD&C Act). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Ms. Lee in any capacity during her debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Ms. Lee provides services in any capacity to a person with an approved or pending drug product application during her period of debarment, she will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug application from Ms. Lee during her period of debarment, other than in connection with an audit under section