

¹³ *Dep't of Justice & Fed. Trade Comm'n, Statements of Antitrust Enforcement Policy in Health Care (1996)* [hereinafter *Health Care Statements*], available at <http://www.ftc.gov/reports/hlth3s.pdf>.

¹⁴ *Id.*

¹⁵ *Id.* at 83–87, 110–11.

¹⁶ See, e.g., Christine A. Varney, Assistant Attorney Gen., Antitrust Div., U.S. Dep't of Justice, Antitrust and Healthcare at 12 (May 24, 2010), available at <http://www.justice.gov/atr/public/speeches/258898.pdf>.

¹⁷ See *Fed. Trade Comm'n, Advisory Opinions (1982–2010)*, available at <http://www.ftc.gov/Meb/hlth3s.p 0 aee>

information set forth in 28 CFR 50.6 (2010) (U.S. Department of Justice business review letters) and 16 CFR 1.1–1.4 (2010) (Federal Trade Commission advisory opinions) would generally apply to the expedited review process.

²⁵ For example, it has been standard practice for the Agencies to share with each other their proposed health care business review and staff advisory opinion letters before issuing them in final form to ensure application of consistent standards of antitrust review.

²⁶ For example, if two physician group practices form an ACO and each includes cardiologists and oncologists, cardiology and oncology would be common services. If, on the other hand, one physician group practice consists only of cardiologists and the other only of oncologists, then there are no common services and the ACO falls within the safety zone regardless of its share, subject to the dominant provider limitation, described below.

²⁷ Medicare Program: Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships (Phase II), 69 FR 16094 (Mar. 26, 2004).

²⁸ The ACO must be non-exclusive in fact and not just in name. The Health Care Statements explain the indicia of non-exclusivity that the Agencies consider relevant to this evaluation. *Health Care Statements, supra* note 9, at 66–67.

²⁹ While these services do not necessarily constitute relevant antitrust product markets, they nonetheless provide a useful tool for evaluating potential competitive effects.

³⁰ The definition and list of rural counties are available at <http://www.census.gov/geo/www/ua/2010urbanruralclass.html>.

³¹ For the purposes of this Policy Statement, a Rural Hospital is defined as a Sole Community Hospital or a Critical Access Hospital. A Sole Community Hospital is a hospital that is paid under ts only of





3. Determine the ACO's share in each of the relevant PSAs. In this example,

delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Agencies will consider all timely and responsive public comments, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov/os/comments/aco-comments/index.shtm>. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

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⁴⁶ *Id.*, preamble to proposed rule.

⁴⁷ Section 3022 of the Affordable Care Act amended Title XVIII of the Social Security Act (42 U.S.C. 1395 *et seq.*) by adding new section 1899 to establish "a shared savings program * * * that promotes accountability for a patient population and coordinates items and services under [Medicare] Parts A and B, and encourages investment in infrastructure and redesigned care processes for high quality and efficient service delivery." Patient Protection and Affordable Care Act, Public Law 111-48, section 3022 (2010) (codified at 42 U.S.C. 1395jjj(a)(1). Section 1899(b)(2)(D) (codified at 42 U.S.C. 1395jjj(b)(2)(D)) specifies the minimum number of beneficiaries per eligible program participant.

⁴⁸ A "collaboration" comprises a set of agreements, other than merger agreements, among otherwise independent entities jointly to engage in economic activity, and the resulting economic activity. *U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Guidelines for Collaborations Among Competitors* § 1.1 (2000), available at <http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf>.

⁴⁹ Merger transactions, including transactions that meet the criteria set forth in Section 1.3 of the *Competitor Collaboration Guidelines*, will be evaluated under the Agencies' *Horizontal Merger Guidelines*. See *U.S. Dep't of Justice & Fed. Trade Comm'n, Antitrust Guidelines for Collaborations Among Competitors* § 1.3 (2000), available at <http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf>; *U.S. Dep't of Justice & Fed. Trade Comm'n, Horizontal Merger Guidelines* (rev. ed. 2010), available at <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf>.

⁴³ The Patient Protection and Affordable Care Act provides: "Chapter 35 of title 44, United States Code [44 U.S.C. 3501 *et seq.*, the Paperwork Reduction Act] shall not apply to the [Medicare Shared Savings] program." Patient Protection and Affordable Care Act, Public Law 111-48, section 3022 (2010) (codified at 42 U.S.C. 1395jjj(e)).

⁴⁴ *Cf.* Paperwork Reduction Act, 44 U.S.C. 3501-3521.

⁴⁵ CMS NPRM on ACOs.

⁵⁰ See Section 7A of the Clayton Act, 15 U.S.C. 18a, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Public Law 94-435, 90 Stat. 1390.

⁵¹ See 16 CFR 801-803 (2010).

tasks involved in gathering and producing the responsive information, and has applied an average hourly wage of \$460/hour for their labor. Thus, the labor costs per applicant for expedited review should range from approximately \$13,800 to \$23,000.

Estimated Annual Capital or Other Non-Labor Costs

The capital or other non-labor costs associated with the information requests will be minimal. Industry members should already have in place the means to store information of the volume requested. In addition, respondents may have to purchase office supplies such as file folders, computer CDs or DVDs, photocopier toner, or paper in order to comply with the Commission's requests. The FTC estimates that such costs will be minimal.

For the Antitrust Division of the Department of Justice.

Sharis A. Pozen,

Chief of Staff and Deputy Assistant Attorney General.

For the Federal Trade Commission.

By direction of the Commission, Commissioner Rosch dissenting.

Donald S. Clark,

Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; Report of a New System of Records

AGENCY: Office of Grants and Acquisition Policy and Accountability (OGAPA), Assistant Secretary for Financial Resources (ASFR), Department of Health and Human Services (HHS).

ACTION: Notice of New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the HHS OGAPA is proposing to establish a new system titled, "HHS Consolidated Acquisition Solution (HCAS), System No. 09-90-0411." As an IT investment, HCAS is monitored by the HHS IT Investment Review Board (ITIRB). In addition to the ITIRB oversight, HCAS is monitored by the HHS/ASFR Office of Grants and Acquisition Policy and Accountability (OGAPA).

At HHS, there were seven different systems in place to support the people who make buying—procurement—possible. The HHS Consolidated

Acquisition System (HCAS) is an initiative to reduce the number of duplicative acquisition systems, thereby streamlining and standardizing our procurement processes and systems across the Department. The use of disparate systems complicates all interfaces to financial, inventory, and other systems that HHS has or will employ.

HCAS replaced varying Procurement Request Information System (PRISM) configurations that existed across HHS, and replaced legacy acquisition systems and manual processes necessary for capturing HHS acquisition transactions for integration with the Unified Financial Management System (UFMS). We are also proposing routine uses for this system of records.

DATES: Effective Dates: The HHS ASFR/OGAPA filed a new system report with the Chair of the House Committee on Oversight and Government Reform, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 8, 2011. To ensure that all parties have adequate time in which to comment, the new SOR, including routine uses, will become effective 40 days from the publication of the notice, or from the date it was submitted to OMB and the Congress, whichever is later, unless HHS/ASFR/OGAPA receives comments that require alterations to this notice. Although the Privacy Act requires only that the HHS/ASFR/OGAPA provide an opportunity for interested persons to comment on the proposed routine uses, the HHS/ASFR/OGAPA invites comments on all portions of this notice.

FOR FURTHER INFORMATION OR COMMENTS

CONTACT: The public should address comments to Kowanna Parran at HHS Office of the Secretary, Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Hubert H. Humphrey Building, 200 Independence Avenue, Washington, DC 20201. Ms. Parran can be reached by telephone at (202) 205-0722 1 Tft with the Cd(maTj/4D eW Assistanr8 5ACT)Tj9 05Y 5ACT strea ry foh 7.44andardizing our