

The Complaint

The allegations of the complaint are summarized below.

PRAE is a nonprofit corporation, organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico ("Commonwealth" or "Puerto Rico"), with its office and principal place of business in San Juan, Puerto Rico.

PRAE has approximately 30 member endodontists, who are engaged in the business of providing professional services to patients throughout Puerto Rico. PRAE membership includes all or almost all of those professionals who are licensed practicing endodontists in the Commonwealth. Except to the extent that competition has been restrained, member endodontists of PRAE have been, and are now, in competition with each other for the provision of endodontic services.

In January 2003, PRAE formed a Pre-Payments Committee, which then began negotiating with payors on behalf of PRAE members in order to secure higher reimbursement rates for PRAE members. By March 2003, the PRAE Pre-Payments Committee had met with representatives of two payors and convinced those payors to increase the rates paid to PRAE members.

Also in March 2003, PRAE sent a letter to at least four insurance companies requesting a meeting "with the intention of revising the fees paid to Endodontists" that participate in the insurer's dental plan. Thereafter, the Pre-Payments Committee contacted these payors to urge them to raise their rates. In one such discussion, the payor representative informed the Committee member that the Committee's negotiation on behalf of PRAE members was illegal under the antitrust laws. In response, the PRAE representative informed the payor that other payors had been disinclined to accede to the rate increases proposed by the PRAE, and that those payors now were facing potential problems with their networks.

PRAE's efforts to negotiate higher rates from payors for its members succeeded. In response to the various efforts of PRAE's Pre-Payment Committee, in 2003 at least five payors raised the rates that they paid PRAE members.

In early 2004, PRAE's Pre-Payment Committee began a campaign to raise rates again, this time by seeking to end the payors' ban on balance billing.²

PRAE sought this change in contract terms to permit its members to raise the prices directly paid by patients and to avoid the cost-containment function of a ban on balance billing.

In furtherance of this plan, in early 2004, the PRAE Pre-Payments Committee contacted several payors to request that the payors waive their ban on balance billing. The Committee followed those discussions with a letter in June 2004, which the Committee sent to at least seven payors. The letter urges each payor to eliminate their ban on balance billing so that the payor did not have to absorb the price increase that the PRAE members desired. The letter states that waiver of the ban "could result in all Endodontists in Puerto Rico becoming dental participants of your Dental Plan since there would be no financial discrepancies. This could be of great usefulness in your marketing strategy." To emphasize the collective nature of the demand being made by the PRAE, and the potential risk to payors of failing to acquiesce to that demand, twenty-three members of PRAE co-signed the letter. The Pre-Payments Committee followed the letter with repeated phone calls to the payors urging an end to ban on balance billing. Thus far, the payors pressured by PRAE to end the ban on balance billing have resisted the coordinated action of PRAE.

PRAE engaged in no efficiency-enhancing integration sufficient to justify joint negotiation of fees or other terms. By the acts set forth in the Complaint, PRAE violated Section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and prevent its recurrence. The proposed order is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits PRAE from entering into or facilitating agreements among endodontists: (1) To negotiate on behalf of any endodontist with any payor; (2) to deal, refuse to deal, or threaten to refuse to deal with any payor; (3) regarding any term upon which any endodontist deals, or is willing to deal, with any payor; and (4) not to deal individually with any payor

or through any arrangement other than PRAE.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits PRAE from exchanging or facilitating the transfer of information among endodontists concerning any endodontist's willingness to deal with a payor, or the terms or conditions, including price terms, on which the endodontist is willing to deal. Paragraph II.C prohibits PRAE from attempting to engage in any action prohibited by Paragraphs II.A or II.B. Paragraph II.D prohibits PRAE from encouraging, pressuring or attempting to induce any person to engage in any action that would be prohibited by Paragraphs II.A through II.C.

Paragraphs III.A and B require PRAE to distribute the complaint and order to its members, payors with which it has been in contact since the beginning of 2001, and specified others.

Paragraphs IV, V, and VI of the proposed order impose various obligations on PRAE to report or provide access to information to the Commission to facilitate monitoring PRAE's compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-06-0513]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to omb@cdc.gov. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-6974. Written comments should be received within 30 days of this notice.

Proposed Project

The second Injury Control and Risk Survey (ICARIS-2)—Phase 2—

² Endodontists entering into contracts with payors often agree to accept, as payment in full for services rendered, an agreed upon fee from the payor and co-payment from the subscriber. Where such a term is included in the payor-endodontist contract, the

endodontist agrees not to "balance bill" the patient for any balance or difference between the agreed upon payments and the endodontist's desired rate. Agreements not to balance bill reduce the cost of endodontic care to patients.

Reinstatement with change—The National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Injuries are a major cause of premature death and disability with associated economic costs of over 150 billion dollars in lifetime costs for persons injured each year. This project will use data from a telephone survey to measure injury-related risk factors and guide injury prevention and control priorities including those identified as priorities in *Healthy People 2010* objectives for the nation. This project will build on previous efforts.

The first Injury Control and Risk Survey (ICARIS), conducted in 1994, was a random digit dial telephone survey that collected injury risk factor and demographic data on 5,238 English- and Spanish-speaking adults (greater than or equal to 18 years old) in the

United States. Proxy data were collected on 3,541 children <15 years old. More than a dozen peer-reviewed scientific reports have been published from the ICARIS data on subjects including dog bites, bicycle helmet use, residential smoke detector usage and fire escape practices, attitudes toward violence, suicidal ideation and behavior, and compliance with pediatric injury prevention counseling.

The ICARIS survey was followed by the ICARIS–2 Phase-1 survey, which was initiated as a means for monitoring the injury risk factor status of the nation at the start of the millennium. ICARIS–2 Phase-1 was also conducted as a national telephone survey. Data collection on almost 10,000 respondents was completed in early 2003, and analyses are still ongoing.

The planned ICARIS–2 Phase-2 survey will be implemented to expand knowledge in areas that investigators

were previously unable to explore fully. Data will be collected on new aspects of topics covered in Phase-1 (such as firearm ownership and access, and suicide), and new questions will be introduced in areas that were not previously addressed, such as older adult mobility, the supervision of children, injury and disability, and the incidence of traumatic brain injury. The Phase-2 data will be analyzed in conjunction with ICARIS–2 Phase-1 data and the data from the original baseline ICARIS survey to measure changes in risk factors and to gauge the impact of injury prevention policies. The ICARIS–2 Phase-2 survey may also serve as the only readily available source of data to measure several of the *Healthy People 2010* injury prevention objectives. There are no costs to respondents other than their time. The total estimated annualized burden is 620 hours.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Ineligible	Screening	500	1	1/60
Unknown or unverified eligibility	Screening	900	1	0.5/60
Eligible but unable to reach	Screening	200	4	6/60
Eligible non-respondent	Screening	450	1	1.5/60
Partial interview	Screening and CATI	75	1	10/60
Completed interview	Screening and CATI	2,000	1	15/60

Dated: July 13, 2006.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1530-N]

RIN 0938-AM46

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update—Notice

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

ACTION: Notice.

SUMMARY: This notice updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for

fiscal year (FY) 2007. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (the BBRA), the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (the BIPA), and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the MMA), relating to Medicare payments and consolidated billing for SNFs.

DATES: *Effective Date:* This notice is effective on October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Ellen Gay, (410) 786-4528 (for information related to the case-mix classification methodology).

Jeanette Kranacs, (410) 786-9385 (for information related to the development of the payment rates).

Bill Ullman, (410) 786-5667 (for information related to level of care determinations, consolidated billing, and general information).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

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