

II.

I also object to the allegations in the Part 3 Administrative Complaint and in the draft Part 2 Complaint that name Star as a co-conspirator in the alleged horizontal price-fixing of DIPF sold in the United States and the related, alleged DIFRA information exchange.⁸ I do not consider naming Star, along with McWane and Sigma, as a co-conspirator to be in the public interest. There are at least three reasons why this is so. First, although there may be reason to believe Star conspired with McWane and Sigma in this oligopolistic industry, Star seems much less culpable than the others. More specifically, I believe that we must be mindful of the consequences of public law enforcement in assessing whether the public interest favors joining Star as a co-conspirator.⁹ Second, I am concerned that a trier of fact may find it hard to believe that Star could be both a victim of McWane's alleged "threats" to deal exclusively with distributors, and at more or less the same time (the "exclusive dealing" program began in September 2009), a co-conspirator with McWane in a price-fixing conspiracy (June 2008 to February 2009). (This concern further explains why I do not have reason to believe that the exclusive dealing theory is a viable one.) Third, I am concerned that Star's alleged participation in the price-fixing

conspiracy and information exchange relies, in part, on treating communications to distributors as actionable signaling on prices or price levels.¹⁰ See, e.g., *Williamson Oil Co., Inc. v. Philip Morris USA*, 346 F.3d 1287, 1305–07 (11th Cir. 2003).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Child Care Development Fund (CCDF)—Reporting Improper Payments—Instructions for States.

OMB No.: 0970–0323.

Description: Section 2 of the Improper Payments Act of 2002 provides for estimates and reports of improper payments by Federal agencies. Subpart K of 45 CFR part 98 will require States to prepare and submit a report of errors occurring in the administration of CCDF grant funds once every three years.

The Office of Child Care (OCC) is completing the second 3-year cycle of

case record reviews to meet the requirements for reporting under IPIA. The OCC has conducted ongoing evaluation of the case record review process to determine if "improper authorizations for payment" remained a suitable proxy for actual "improper payments." It is OCC's determination that in some cases authorizations for payment represented the same figure as actual payments; in other cases authorizations for payment has represented a figure as much as 20% higher than actual payments. Many States reported errors found during the desk audit review process that were due to missing or insufficient documentation or other misapplication of policy, but found that families were determined to be eligible for services and that the actual payment authorized was correct. Other States reported regulatory barriers in State law which prohibits recovery of over-authorization or over-payment as the result of agency error. As such, this information collection will provide a methodology revision that will assess errors in eligibility determinations that will compare the amount authorized for payment with the actual payment.

Respondents: State grantees, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Sampling Decisions and Fieldwork Preparation Plan	17	1	106	1802
Record Review Worksheet	17	276	6.33	29,700.36
State Improper Authorizations for Payment Report	17	1	639	10,863
Corrective Action Plan	8	1	156	1248

Estimated Total Annual Burden Hours: 43,613.36.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant

Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

⁸ See *McWane/Star Part 3 Administrative Compl.* §§ 29–38, 64–65; *Sigma draft Part 2 Compl.* §§ 23B33.

⁹ See *Credit Suisse Secs. (USA) LLC v. Billing*, 551 U.S. 264, 281–84 (2007) (questioning the social

benefits of private antitrust lawsuits filed in numerous courts when the enforcement-related need is relatively small); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557–60 (2007) (expressing concern with the burdens and costs of antitrust discovery,

and the attendant *in terrorem* effect, associated with private antitrust lawsuits).

¹⁰ *McWane/Star Part 3 Administrative Compl.* § 34b; *Sigma draft Part 2 Compl.* § 29.

comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

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

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, email paperwork@hrsa.gov or call the HRSA Reports Clearance Office on (301) 443-1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: HIV Clinician Workforce Study (OMB No. 0915-NEW)

HRSA's HIV/AIDS Bureau (HAB) is planning to conduct a 24-month HIV clinician workforce study to provide HRSA and other state and federal agencies with national and state-level estimates of the number of primary care clinicians currently providing medical care to people living with HIV or AIDS

in the United States, as well as projections of the magnitude of the expected shortage or surplus of HIV related primary care clinicians through 2015. The study will focus on the supply and demand of health professionals who independently manage patients with HIV/AIDS. *The study will have two main components:*

- a. Design and implementation of a forecasting model to estimate and project the supply of and demand for HIV clinicians at the national and regional levels; and
- b. Implementation of two surveys to collect the information needed to develop HIV-specific input parameters for the forecasting model, as well as to help address other research questions of the study.

HRSA is requesting OMB approval to conduct a HIV clinician survey and a HIV practice survey. The HIV clinician survey will focus on the individual provider of care and will include questions related to:

- a. The clinician's age, gender, medical profession, and medical specialty;
- b. The number of hours spent in direct patient care;
- c. The size and characteristics of HIV patient load;
- d. The primary practice characteristics and patient management strategies; and
- e. The plans to increase or decrease number of hours spent in direct patient care, as well as plans for retirement.

The HIV practice survey will also focus on the practice site and will include questions related to type and size of clinic, clinic specialty and affiliation, number and acuity of patients, number and composition of staff, type of staffing model and patient management strategies, meaningful use

of electronic medical record systems, as well as appointment scheduling practices and policies. HRSA plans to administer the clinician survey using both web and paper modes, with computer-assisted telephone interviewing follow-up. HRSA plans to administer the practice survey using paper mode, with computer-assisted telephone interviewing follow-up.

HRSA will use claims data, supplemented with a list of members of HIV medical societies, and attendees at the 2010 HIV clinical conference, to identify the frame of clinicians (physicians, nurse practitioners, and physician assistants) in all 50 states and the District of Columbia who provide a significant amount of medical care to patients with HIV or AIDS. By using a national probability sampling strategy, the results of the clinician survey can be used to generate national and regional estimates of HIV clinician supply.

HRSA will use quantitative and qualitative methods to document and quantify the extent of the HIV clinician workforce surplus or shortage, predict the future requirements for and supply of HIV clinicians, and identify best practice models and strategies for expanding the capacity of HIV practices and providers to meet the growing demand for care.

The ultimate goal of the study will be to develop proposed action steps that HRSA and other federal and state agencies can use to enhance the capacity of the HIV clinician workforce to achieve the targets set forth in the 2010 White House Office of HIV/AIDS Policy's National HIV/AIDS Strategy and Implementation Plan.

The annual estimate of burden of the two surveys is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
HIV Clinician Survey	3,500	1	3,500	0.33	1,155
HIV Practice Survey	350	1	350	0.50	175
Total	3,850	3,850	1,330

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to OIRA_submission@omb.eop.gov or by fax to (202) 395-6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: December 30, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Criteria for Determining Priorities Among Correctional Facility Health Professional Shortage Areas

AGENCY: Health Resources and Services Administration, HHS.