

Advisory Committee on Diversity for Communications in the Digital Age is holding its fourth meeting, which will be held by teleconference. The meeting is scheduled, on an expedited basis, for October 4, 2004. Under 41 CFR 102–3.150, the Commission is holding this meeting with less than 15 calendar days notice due to exceptional circumstances, specifically to address time-sensitive resolutions. Because of these special circumstances, the Committee took the step, even prior to the date of this Notice, of placing copies of the proposed resolutions on the FAC Web site and inviting Committee members by e-mail to submit comments for the public record. Any comments that are submitted will be made available on the Web site, which is accessible to the public.

The Committee also notes that, effective September 27, 2004, Linda Blair will serve as the Designated Federal Officer.

DATES: October 4, 2004, 3 p.m., to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Linda Blair, Designated Federal Officer of the Committee on Diversity, or Maureen C. McLaughlin, Alternate Designated Federal Officer of the Committee on Diversity, 202–418–2030, e-mail Linda.Blair@fcc.gov, Maureen.McLaughlin@fcc.gov. Press Contact, Audrey Spivak, Office of Public Affairs, 202–418–0512, aspivak@fcc.gov.

SUPPLEMENTARY INFORMATION: The Diversity Committee was established by the Federal Communications Commission to examine current opportunities and develop recommendations for policies and practices that will further enhance the ability of minorities and women to participate in telecommunications and related industries. The Diversity Committee will prepare periodic and final reports to aid the FCC in its oversight responsibilities and its regulatory reviews in this area. In conjunction with such reports and analyses, the Diversity Committee will make recommendations to the FCC concerning the need for any guidelines, incentives, regulations or other policy approaches to promote diversity of participation in the communications sector. The Diversity Committee will also develop a description of best practices within the communications sector for promoting diversity of participation.

Agenda

The purpose of the meeting is to discuss two proposals: (1) A resolution urging the FCC to enforce its existing Designated Entity rules, including the

rules setting aside certain C-Block broadband PCS spectrum for bidding only by “entrepreneurial” companies (*i.e.*, small, minority or women-owned companies whose gross revenues and total assets are less than \$125 million and \$500 million, respectively); and (2) a resolution urging the FCC to adopt an NPRM seeking comment on ways to foster ownership diversity in the commercial FM radio band (92.1–107.9 MHz). More details on these resolutions are available on the Advisory Committee’s Web site at <http://www.fcc.gov/DiversityFAC>. *Members of the Advisory Committee and the public may submit written comments at any time by following the instructions on the Web site.*

Public Participation

Interested persons may contact Kevin Venters, (202) 418–2030, to obtain a number to call to participate in the teleconference, or may join the teleconference at the Federal Communications Commission, Commission Meeting Room, Room TW–A402 and TW–A442, 445 12th St., SW., Washington, DC 20554. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. A live RealAudio feed will be available over the Internet; information on how to tune in can be found at the Commission’s Web site, <http://www.fcc.gov>.

Federal Communications Commission.

Jane E. Mago,
Designated Federal Officer.

[FR Doc. 04–21505 Filed 9–23–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary, Office of the General Counsel; Notice Regarding the Federal Tort Claims Act, the Federally Supported Health Centers Assistance Act, and the Indian Self-Determination and Education Assistance Act; Alternative Settlement Process for Certain Administrative Claims Under the Federal Tort Claims Act

AGENCY: Office of the General Counsel, Office of the Secretary.

ACTION: Notice of Pilot Program for an Alternative Settlement Process for Certain Administrative Claims Under the Federal Tort Claims Act.

SUMMARY: The Secretary of Health and Human Services is implementing a Pilot Program to study the effectiveness of an

Early Offers Alternative Dispute Resolution Process (“Early Offers”) for certain administrative tort claims under the Federal Tort Claims Act (“FTCA”). The Pilot Program becomes effective upon the publication of this Notice and will be applicable to administrative claims filed with the Department of Health and Human Services (“HHS” or “the Department”) on or after the publication date. The Pilot Program applies to all medical negligence tort claims cognizable under the FTCA and arising from the acts or omissions of HHS employees or deemed employees. The Pilot Program does not create new causes of action or change the requirements of the FTCA for the handling of administrative tort claims or the approval of administrative tort claim settlements. See 28 U.S.C. 2672 and 28 CFR Part 14.

DATES: This notice is effective upon publication in the **Federal Register**.
FOR FURTHER INFORMATION CONTACT: Richard Bergeron, Office of the General Counsel, (202) 619–0150, U.S. Department of Health and Human Services, 330 Independence Avenue, SW., Room 4760, Washington, DC 20201.

SUPPLEMENTARY INFORMATION

I. Introduction

The FTCA mandates that administrative tort claims arising out of the medical negligence of HHS employees and deemed employees must be submitted to HHS for investigation and potential resolution before a lawsuit can be filed against the United States. 28 U.S.C. 1346(b) and 2671, *et seq.* Medical negligence claims against HHS may arise from acts or omissions of HHS employees (*see, e.g.*, 42 U.S.C. 233(a)) or from the acts or omissions of deemed employees of HHS (*see, e.g.*, 42 U.S.C. 233(g); 25 U.S.C. 450f(d)). The resolution of those administrative claims requires the claimant and HHS to engage in negotiations that often include a number of offers and counteroffers, sometimes over the course of a number of months, and, then, if such negotiations are unsuccessful, the filing of a lawsuit against the United States.

The Early Offers Pilot Program is designed to determine whether there is a better, quicker, less expensive method for resolving medical negligence claims. The Pilot Program applies to all medical negligence tort claims asserted under the FTCA and arising from the acts or omissions of HHS employees or deemed employees. The Pilot Program is a voluntary program available to claimants who submit timely tort claims under the FTCA. If a claim is not settled

under the Early Offers program, it will continue to be processed under HHS's current procedures and may be resolved using traditional negotiating techniques.

II. Background

In its March 3, 2003 report entitled "Addressing the New Health Care Crisis: Reforming the Medical Litigation System to Improve the Quality of Health Care," the Department's Office of the Assistant Secretary for Planning and Evaluation (OASPE) outlined the litigation crisis facing the Nation's health care delivery system, the role of the litigation system in increasing medical malpractice insurance premiums, and the resulting reduction in the availability of quality, affordable health care. This report concluded that federal action is needed to address the impact of the medical litigation crisis on health care costs and quality of care, and emphasized the President's support for federal reforms to implement steps in improving our health care system, including the establishment of a fair, predictable, and timely process for resolving medical malpractice cases.

The report noted that delay in claims resolution is a significant problem in the current medical liability litigation process. Litigation delays prevent patients injured by negligence from receiving compensation quickly. The Early Offers Pilot Program being implemented by HHS is one promising approach for fairly and promptly compensating patients injured by negligence without requiring them to go through time-consuming and expensive litigation. If the Pilot Program demonstrates that Early Offers are an effective method for fairly and promptly compensating patients injured by alleged medical malpractice, this method could be adopted by other federal agencies for a variety of tort claims, including medical negligence claims, and by the private sector.

Like patients who bring claims against non-governmental health care providers, individuals who claim to be injured through the acts or omissions of HHS employees or deemed employees often face a lengthy, complicated, and expensive litigation process before their claims are adjudicated. This Pilot Program will evaluate whether the Early Offers mechanism described herein will encourage fair and speedy resolution of administrative claims in appropriate circumstances, to the benefit of both negligently injured patients and the United States.

Participation in an Early Offers system by claimants and the Department is entirely voluntary and confidential (to the extent permitted by federal law).

Under this program, a claimant can decide whether or not to submit an Early Offer to an independent third party (described below). Likewise, the Department will decide, with respect to each administrative tort claim within the scope of this program, whether or not to submit an Acceptance of Offer to the independent third party.

Through use of an independent third party as a Settlement Depository (SD), the Early Offers system overcomes the concern that a settlement offer will be viewed by the other party as an indication of litigation weakness. Both the Department and the claimant would make their submissions of Acceptances of Offer and Early Offers confidentially to the SD. By utilizing an independent SD, neither the claimant nor the Department will know whether the other has submitted an Early Offer or an Acceptance of Offer with the SD unless the claimant's Early Offer and the Department's Acceptance of Offer result in a settlement. Whether an Early Offer had been submitted by the claimant or an Acceptance of Offer had been submitted by the Department, the terms of any such Early Offer or Acceptance of Offer will ordinarily be inadmissible in any subsequent litigation concerning the alleged medical negligence, *see* Fed. R. Evid. 408, though such facts may be admissible in a proceeding concerning the enforcement of a settlement reached through this Pilot Program.

III. The Early Offers Pilot Program

A. Introduction

Under the FTCA, a person seeking money damages for injuries caused by the negligent or wrongful acts or omissions of a federal employee acting within the scope of employment must submit a claim to the responsible federal agency before filing a tort suit against the United States. 28 U.S.C. 2675. Medical malpractice claims arising out of the acts or omissions of HHS employees or deemed employees (*see, e.g.*, 42 U.S.C. 233(g) and 25 U.S.C. 450f(d)) must be submitted to HHS. Claims for medical negligence filed with HHS on or after the publication date of this Notice are eligible for inclusion in the Early Offers Pilot Program.

The Early Offers Pilot Program is a voluntary alternative method for resolving administrative tort claims that have been submitted to HHS for alleged medical malpractice. In the event that the claim is not settled through the system described in this notice, the claim will be processed following the normal procedures used for resolving administrative claims filed with HHS. All claimants who submit

administrative tort claims to HHS within the scope of this Pilot Program will be given detailed instructions on the procedures that must be followed and the terms and conditions of participation.

Any Early Offer by a claimant or Acceptance of Offer by HHS must be for a lump-sum cash amount only. As with all administrative tort claim settlements, all Early Offers and Acceptances of Offer under the Early Offers Pilot Program will be subject to the settlement authority requirements and limitations of the Federal Tort Claims Act. All Early Offers and Acceptances of Offer will be subject to the following conditions: (1) The claimant must obtain approval of the settlement by an appropriate court if HHS deems such court approval to be necessary; (2) any and all persons who have an interest in the claim, in addition to the claimant, must sign a release; and (3) the standard Department of Justice Stipulation for Compromise Settlement and Release for cash settlements must be utilized to consummate the settlement. In addition, payment of any settlement of claims arising from acts or omissions of community health center employees (and certain contractors) will be subject to the availability of funds, as is currently the case for all such claims. 42 U.S.C. 233(k). Set forth below in Part B is a summary of the steps and procedures that will be used in the Early Offers Pilot Program. HHS anticipates conducting an evaluation of the implementation of the Pilot Program, to ascertain whether the process worked as planned and claimants' views of the Pilot Program. At the conclusion of the Pilot Program or the resolution of claims made during the Pilot Program, research may also be conducted on such questions as whether Early Offers has an impact on the settlement rate, timing of settlement, and amount of settlement.

B. Summary of Steps and Procedures for Early Offers Pilot Program

1. Submission of Administrative Tort Claim

In order to be eligible for inclusion in the Early Offers Pilot Program, a claimant must first submit a timely administrative tort claim under the FTCA alleging medical negligence by an employee or deemed employee of the Department. 45 CFR Part 35, Tort Claims Against the Government. The claimant must also provide the documentation required by 45 CFR 35.4.

2. Notification to Claimants

The Department will notify all such claimants of this Pilot Program by

mailing to the claimant the notice described below and a form for use should the claimant decide to submit an Early Offer pursuant to this program. Provision of this notice and form to a claimant will not necessarily result in the Department's submission to the Settlement Depository (SD) of an Acceptance of Offer with respect to the claim filed by the claimant.

Pursuant to 44 U.S.C. 3518(c)(1), the information collected on the Early Offer form is not subject to the Paperwork Reduction Act because the collection takes place during the conduct of a civil action to which the United States or any official or agency is a party, or during the conduct of an administrative action involving an agency against specific individuals or entities.

The notice shall provide that, among other things:

(a) The Department may or may not submit an Acceptance of Offer agreeing to accept an Early Offer in a specified lump-sum amount to settle the claim at any time within 90 days of the date of mailing of such notice;

(b) Any Acceptance of Offer submitted by the Department will be sent to the independent third party the Department has designated as the SD for this program;

(c) Any Acceptance of Offer submitted by the Department, and any Early Offer submitted by the claimant, shall be confidential (except in the circumstances stated in Section 4 below); and

(d) At any time within the 90-day period after the date on which the Department mails the notice to the claimant notifying the claimant of the option of participating in this Pilot Program, the claimant may submit an Early Offer to the SD using the form provided with the notice. The Early Offer must specify the minimum lump-sum amount that the claimant will accept to settle the claim;

(e) If the claimant has submitted an Early Offer and the Department has submitted an Acceptance of Offer within this 90-day period, and if the amount of the claimant's Early Offer is less than or equal to the amount of the Department's Acceptance of Offer, the SD shall promptly notify the claimant and the Department that the claim has been settled for the amount specified in the claimant's Early Offer; and

(f) In the event of a settlement, the claimant will be responsible for the payment of any attorney fees. However, any attorney fees charged to the claimant may not exceed 20 percent of the settlement amount. 28 U.S.C. 2678.

3. Settlement of Claims

If the Department files an Acceptance of Offer and the claimant files an Early Offer with the SD within 90 days of the date of mailing of the notice described in section 2 above, and the amount of the claimant's Early Offer is less than or equal to the amount of the Department's Acceptance of Offer, the SD shall promptly notify the Department and the claimant that the claim has been settled in the amount indicated in the claimant's Early Offer. As indicated in the Early Offer Form provided by the Department, by submitting an Early Offer, the claimant thereby agrees that any settlement shall be subject to the following conditions: (1) The settlement must be for a lump-sum cash amount only; (2) the settlement must be consummated on the standard Department of Justice Stipulation for Compromise Settlement and Release ("Stipulation") for cash settlements, available for review by claimant through the SD; (3) the claimant must obtain approval of the settlement by an appropriate court if the Department deems such court approval to be necessary; and (4) any and all persons who have an interest in the claim, in addition to each claimant, must sign a release. The determination as to whether to require court approval or additional releases is within the sole discretion of the Department. The Department's Acceptance of Offer will state whether court approval and/or additional releases are required and, if so, will specify the terms applicable to those requirements (e.g., the identity or description of persons in addition to the claimant who must sign a release, or the person or persons on whose behalf court approval must be obtained). By submitting an Early Offer, the claimant agrees to such conditions relating to court approval and additional releases as the Department may state in its Acceptance of Offer. Any Acceptance of Offer made by the Department in excess of \$200,000.00 will have been approved by the Department of Justice prior to its submission to the SD.

4. Confidentiality

If a settlement is not reached through this Pilot Program, the SD shall not disclose to the Department or to the claimant, or to any other person (except to the extent required by federal law), whether or not the Department has submitted an Acceptance of Offer or whether or not the claimant has submitted an Early Offer. However, information held by the SD may be made available for research purposes after settlement of the claim or final

disposition of any litigation with respect to the claim.

5. Consummation of Settlement

In the event the SD advises HHS and the claimant that a settlement has been reached, HHS will prepare and submit to the claimant or claimant's counsel (if the claimant is represented by counsel) a Stipulation for signature by the claimant(s) and counsel, if any, using the standard Department of Justice form for cash settlements. The Stipulation may require the execution of releases by other persons and/or approval by a court, in accordance with the terms of the Acceptance of Offer submitted by the Department as stated in Section 3 above. The Stipulation may be released to the public, including the amount of the settlement.

6. Admissibility in Subsequent Proceedings

Any Early Offer or Acceptance of Offer shall be considered to be made pursuant to settlement negotiations and as such neither the fact that such an Early Offer or Acceptance of Offer was or was not made, nor the terms of any such Early Offer or Acceptance of Offer, will ordinarily be admissible in any subsequent litigation concerning the alleged medical malpractice. Fed. R. Civ. P. 408.

7. Examples

Three examples follow on how the Early Offers Pilot Program might function in practice:

(i) Claimant files original claim (with supporting documentation), as required by 45 CFR Part 35 in the amount of \$250,000. Claimant submits separate Early Offer to the SD in the amount of \$50,000. Department reviews initial claim and background submitted by claimant under 45 CFR Part 35 and submits Acceptance of Offer of \$55,000 to the SD. SD reviews the Early Offer and Acceptance of Offer and finds a match. The claim settles for \$50,000.

(ii) Claimant files original claim (with supporting documentation), as required by 45 CFR Part 35 in the amount of \$100,000. Department reviews initial claim and background submitted by claimant under 45 CFR Part 35 and submits Acceptance of Offer of \$10,000 to the SD. Claimant submits separate Early Offer to the SD in the amount of \$50,000. SD reviews the Acceptance of Offer and Early Offer and finds no match, and therefore no settlement. Neither party is informed that the Acceptance of Offer or the Early Offer was submitted to the SD.

(iii) Claimant has sustained a potentially life-threatening injury due to alleged medical negligence. Claimant is married and has two minor children. Claimant files original administrative tort claim with Department, but claimant's spouse and children do not file administrative tort claims. Department reviews initial claim and background

submitted by claimant under 45 CFR Part 35 and submits Acceptance of Offer of \$300,000. In order to ensure that any personal injury settlement with claimant is binding and final and resolves all potential claims arising out of the alleged negligence, Department in its sole discretion determines that, in the event of a settlement, claimant's spouse and children will be required to execute the standard Stipulation, thereby waiving and releasing all past, present, and future claims, including any future claims for wrongful death. Because the children are minors, Department in its sole discretion determines that in the event of a settlement, claimant will be required to obtain, at claimant's expense, appropriate court approval of any settlement on behalf of the minor children to ensure that the waivers and releases by the children are enforceable. Department includes these conditions in its Acceptance of Offer submitted to SD. Claimant submits separate Early Offer of \$250,000. SD finds the Early Offer is equal to or less than the Acceptance of Offer and informs claimant and Department that the claim has settled for \$250,000, subject to claimant's fulfillment of the conditions stated by Department in its Acceptance of Offer.

(a) Claimant obtains, at claimant's expense, court approval of the settlement on behalf of the minor children, and claimant's spouse and children execute the standard Stipulation. The settlement becomes binding and final and is consummated.

(b) Claimant informs Department that she cannot obtain concurrence of her spouse or minor children, or that she cannot obtain court approval on behalf of the minor children. Because claimant cannot satisfy conditions of the settlement, the settlement does not become binding or final. Department may continue to process claimant's claim under Department's traditional procedures, and claimant may file lawsuit if appropriate under 28 U.S.C. 2675(a). The existence and terms of the unconsummated settlement will ordinarily be inadmissible in a subsequent lawsuit for the alleged medical negligence. *See* Fed. R. Evid. 408.

IV. Further Information

This notice is not intended to constitute, and does not constitute, a comprehensive notice pertaining to any provision of the FTCA except to the extent that procedures governing the Department's settlement of claims brought pursuant to the FTCA are described above. The decisions regarding whether to file an Acceptance of Offer, and the terms of any such Acceptance of Offer, are within the sole discretion of the United States. In particular, the determinations whether to require releases from persons in addition to the claimant or claimants, and whether to require court approval on behalf of any such persons, are within the sole discretion of the Department. This program gives rise to no cause of action, and claimants have

no right to require the Department to make an Acceptance of Offer. Claimants' rights shall be determined solely by the terms of any settlement reached hereunder and applicable law.

Dated: September 20, 2004.

Alex M. Azar II,
General Counsel.

[FR Doc. 04-21450 Filed 9-21-04; 11:43 am]

BILLING CODE 4150-26-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: "AHRQ-HRSA Chemical, Biological, Radiological, Nuclear and Explosive (All Hazards) Preparedness Questionnaire for Healthcare Facilities for 2004 (CBRNE)". In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ is submitting to OMB a request for Emergency Review.

This emergency review is requested because collection of this information is urgently needed. The information that will be generated by this survey is critical to the preparedness of the nation with respect to chemical, biological, radiological, nuclear and explosive hazards.

It is crucial for national security that we obtain a baseline assessment of the level of preparedness of our hospitals and health care facilities in order to plan Government program priorities, and to offer current and timely information to the Department of Health and Human Services, the Congress, and to the President in order to inform policy decisions relevant to emergency preparedness.

There has been extensive interest by Federal, State, and Local government offices in obtaining this information and frequent requests from Congress, the Congressional Research Service, Office of Management and Budget, Government Accounting Office, and Department of Homeland Security in order to monitor hospital(s) all hazards

preparedness program, and the current level of preparedness in the nation, in order to plan for future all hazards preparedness program(s) and policymaking.

DATES: AHRQ is requesting that OMB provide a seven-day review for public comment period on these requirements.

ADDRESSES: Written comments for the proposed information collection should be submitted to the OMB Desk Officer at the following address: John Kraemer, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235, Washington, DC.

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427-1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Chemical, Biological, Radiological, Nuclear and Explosive (All Hazards) Preparedness Questionnaire for Healthcare Facilities for 2004 (CBRNE)"

The Preparedness Questionnaire is an inventory of all U.S. hospitals, designed to measure national levels of preparedness for a chemical, biological, radiological, nuclear and explosive (CBRNE) event. One point of contact will be designated in each hospital to provide information on a range of topics that have been deemed essential by a panel of nationally-recognized experts on issues related to hospital preparedness for a CBRNE, i.e., an all-hazards event. These topics include facility planning and administration; training and education; communication and notification; patient capacity; staffing and support; isolation and decontamination; supplies, pharmaceuticals and laboratory support; and surveillance.

The inventory, which will be administered in 2004 and again in 2005, will provide national, state, and regional levels of preparedness by type of hospital, as well as estimates of bed capacity and emergency increase (surge) capacity. This information will establish a baseline measure of preparedness and readiness for a CBRNE event in hospitals, and will be used to assess the current national level of preparedness.

It will also be useful for national planning, program planning, setting priority areas in addressing current and future needs, as well as ensuring that scarce resources are being used in a way that achieves the most impact in preparedness. Future studies will be conducted to assess advances in preparedness levels.