

**Before the
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES
Baltimore, MD 21244**

In the Matter of)
)
Medicare Program: Policy and Technical Changes) File Code CMS-4085-P
to the Medicare Advantage and the Medicare)
Prescription Drug Benefit Programs)

**COMMENTS OF THE
FEDERAL TRADE COMMISSION**

I. Introduction

The Federal Trade Commission (FTC) appreciates this opportunity to respond to the Department of Health and Human Services, Centers for Medicare & Medicaid Services' (HHS or CMS) Proposed Rule that, among other things, improves the plan information that enrollees in Medicare Advantage (MA) plans (Part C) and Medicare prescription drug benefit (PDP) plans (Part D) use to identify and select the plan that best suits their needs.¹ We commend efforts to provide enrollees with consumer-tested, standardized information about plan choices. We also support CMS's proposal to require plan sponsors that offer multiple MA or PDP plans to ensure their different plans contain more than just trivial differences in features and benefits. These two policy changes are likely to further competition among MA and PDP plans by reducing enrollee confusion and facilitating their ability to compare plans. Finally, we encourage CMS to explore ways to permit third parties to use plan sponsor claim and performance data to develop quality metrics that further facilitate consumer choice and competition.

The FTC is an independent administrative agency charged with promoting consumer protection, competition, and the efficient functioning of the marketplace. The keystone of the FTC's law enforcement mission is Section 5 of the FTC Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce."² The scope of Section 5 encompasses a wide range of business practices, including advertising and marketing. Section 5 also authorizes the FTC to challenge "unfair methods of competition," as well as violations of other antitrust laws. This

¹ DEP'T OF HEALTH & HUMAN SERVICES, CENTERS FOR MEDICARE & MEDICAID SERVICES, *Medicare Program: Policy and Technical Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs*, 74 FEDERAL REGISTER 54656-57 (Oct. 22, 2009) [hereinafter CMS Federal Register Notice].

² 15 U.S.C. § 45(a).

comment is based on the FTC's extensive experience with consumer marketing, as well as the experience in promoting competition issues in health care markets through cases,³ reports,⁴ workshops,⁵ and studies.⁶

II. Information That Empowers Consumers to Comparison Shop Facilitates a Robust and Competitive Marketplace

In competitive markets, consumers compare products and services among providers and weigh the different terms being offered when making decisions about what to purchase. Where search and other transaction costs (both in terms of time and money) are relatively low, consumers are more likely to rely on such comparisons to satisfy their preferences. By contrast, where search and other transaction costs are relatively high, the information necessary to make these comparisons may be too costly to collect, preventing the markets from operating efficiently to meet consumers' needs.⁷ Research suggests that reductions in the perceived cost of obtaining relevant information increases consumers' participation in health insurance markets.⁸

³ See, e.g., *FTC v. American Medical Association*, 94 F.T.C. 701 (1979), aff'd as modified, 638 F.2d 443 (2d Cir. 1980), aff'd by an equally divided Court, 455 U.S. 676 (1982) (order modified 99 F.T.C. 440 (1982), 100 F.T.C. 572 (1982), and 114 F.T.C. 575 (1991)) (the complaint charged the AMA with violations of Section 5 of the FTC Act by agreeing to restrict its members' ability to advertise and solicit patients, and engage in price competition and other competitive practices); Markus Meier, Bradley Albert, & Saralisa Brau, Overview of FTC Antitrust Actions in Health Care Services and Products (June 2009) (150 page document providing an overview of FTC activities in the health care industry), available at <http://www.ftc.gov/bc/0906hcupdate.pdf>.

⁴ See Fed. Trade Comm'n & U.S. Dep't of Justice, *IMPROVING HEALTH CARE: A DOSE OF COMPETITION* (2004), [hereinafter, *A DOSE OF COMPETITION*]; U.S. Dep't of Justice & Fed. Trade Comm'n, *Statements of Antitrust Enforcement Policy In Health Care* (1996), available at <http://www.ftc.gov/bc/healthcare/industryguide/policy/index.htm> [hereinafter *Health Care Statements*].

⁵ See Federal Trade Comm'n Workshop, *Innovations in Health Care Delivery* (Apr. 24, 2008), available at <http://www.ftc.gov/bc/healthcare/hcd>; FTC Workshop, *Clinical Integration in Health Care: A Check-Up* (May 29, 2008), available at <http://www.ftc.gov/bc/healthcare/checkup>; and FTC Roundtable, *The Competitive Significance of Healthcare Provider Quality Information* (Oct. 30, 2008), available at <http://www.ftc.gov/bc/workshops/hcbio/index.shtml>.

⁶ See Federal Trade Comm'n, *Generic Drug Entry Prior to Patent Expiration: An FTC Study* (2002), available at <http://www.ftc.gov/os/2002/07/genericdrugstudy.pdf>; Federal Trade Comm'n, *Pharmacy Benefit Managers: Ownership of Mail-Order Pharmacies* (2005), available at <http://www.ftc.gov/reports/pharmbenefit05/050906pharmbenefitrpt.pdf>; Aileen Thompson, *The Effect of Hospital Mergers on Inpatient Prices: A Case Study of the New Hanover-Cape Fear Transaction*, FTC Bureau of Economics Working Paper 295, January 2009, available at <http://www.ftc.gov/be/econwork.shtm>; Deborah Haas-Wilson and Christopher Garmon, *Two Hospital Mergers on Chicago's North Shore: A Retrospective Study*, FTC Bureau of Economics Working Paper 294, January 2009, available at <http://www.ftc.gov/be/econwork.shtm>; and Steven Tenn, *The Price Effects of Hospital Mergers: A Case Study of the Sutter-Summit Transaction*, FTC Bureau of Economics Working Paper 293, November 2008, available at <http://www.ftc.gov/be/econwork.shtm>.

⁷ See generally Dennis W. Carlton & Jeffrey M. Perloff, *MODERN INDUSTRIAL ORGANIZATION* 471-96 (4th ed. 2005).

⁸ See Susan Marquis, *Consumer Decision Making in the Individual Health Insurance Market*, HEALTH AFF. (May 2006), available at <http://content.healthaffairs.org/cgi/content/full/hlthaff.25.w226v1/DC1>. [Hereinafter Marquis, *Consumer Decision Making*].

CMS currently provides standardized templates to MA and PDP plan sponsors for optional use in marketing materials.⁹ CMS’s proposed changes include requiring MA and PDP plan sponsors to use these standardized templates without modification. CMS noted that “this change would ensure beneficiaries receive more accurate and comparable information to make informed decisions about their health care options.”¹⁰ CMS also plans to review MA and PDP plan sponsors’ bid submissions to eliminate multiple plan designs by the same sponsor that have only trivial differences in benefits.¹¹ In addition, CMS is proposing that MA and PDP plans “collect, analyze, and report” certain quality performance data, and contract with approved vendors to conduct the Medicare Consumer Assessment of Healthcare Providers and Systems (CAHPS) survey.¹²

Program changes that make plans more accessible and less burdensome to understand and use are likely to benefit consumers. The Commonwealth Fund recently found that these changes were necessary “because plans vary along a great many dimensions, and because critical information is sometimes missing or incomplete, it is practically impossible for beneficiaries to assess accurately the value of competing plans – specifically, to evaluate and compare their out-of-pocket cost risks.”¹³ In addition, the cost to consumers of obtaining information has been shown to play an important role in the low rates of participation in the individual insurance market.¹⁴ Policies that reduce the cost of information searches and the burden of the application process are likely to help spur the demand for the product.

A. Standardized Templates of the Terms and Features of Health Plans Reduce Search Costs and Facilitate Competition.

FTC and independent research have demonstrated that well-designed standardized templates or disclosures – ones that address the terms and features that matter most to consumers

⁹ See CMS Federal Register Notice at 54656. In the Federal Register Notice, CMS notes that it provides standardized language and formatting. For ease of reference throughout this Comment, we refer to all of these standardized marketing materials as standardized templates.

¹⁰ CMS Federal Register Notice at 54656.

¹¹ CMS Federal Register Notice at 54670 discussing proposed changes to 42 C.F.R. § 422.256 (Part C) and § 423.272 (Part D).

¹² CMS Federal Register Notice at 54679-82, discussing proposed changes to 42 C.F.R. § 422.152 (Part C) and § 423.156 (Part D).

¹³ Ellen O’Brien & Jack Hoadley, Issue Brief: *Medicare Advantage: Options for Standardizing Benefits and Information to Improve Consumer Choice 2*, THE COMMONWEALTH FUND (Apr. 2008).

¹⁴ See Marquis, *Consumer Decision Making*, *supra* note 8; Michael Wroblewski, *Uniform Health Insurance Information Can Help Consumers Make Informed Purchase Decisions*, 26 J. INS. REG. 21-22, 36 (2007) (reporting on consumer research concerning the purchase of individual private health insurance, noting that “as the number of choices grows” the task of carefully examining and weighing alternatives becomes increasingly difficult, and that consumers instead rely on recommendations from friends and family to choose an insurer and then focus their decision on cost and doctor restrictions). [Hereinafter Wroblewski, *Uniform Health Insurance Information*].

– can improve consumer understanding and facilitate greater competition on the merits. For example, standardized disclosures for individual health insurance policies, mortgage products, student loans, and school choice have been shown to facilitate consumer comparison shopping and choice and permit consumers to select products and services that meet their preferences.¹⁵ By contrast, when consumers do not understand the costs and terms of their mortgages, “they may pay more for their mortgage than necessary, obtain inappropriate loan terms, fall prey to deceptive lending practices, and experience unpleasant surprises and financial difficulties during the course of their loans.”¹⁶ Similar harms can occur with respect to the complex and multi-dimensional products and services found in the health care sector.¹⁷

The research also demonstrates that disclosures must be developed carefully. Even well-intentioned disclosures potentially can harm consumers by creating misleading or erroneous impressions.

CMS has invited comment on the type of research that might be undertaken to improve the Medicare program and support the ability of consumers to enroll in the best possible plan for their particular circumstances.¹⁸ The FTC suggests that to be most effective, standardized templates should be developed, and regularly updated, based on controlled, quantitative, objective tests of consumer understanding.¹⁹ We encourage the use of consumer research and testing to determine the terms and features consumers want and the best ways to disclose that information to make it easier for consumers to comparison shop.

An added complexity with respect to health insurance is that consumers may purchase health insurance for different purposes.²⁰ For example, like other forms of insurance, health

¹⁵ See Consumers Union, HEALTH POLICY BRIEF: SIMPLIFYING HEALTH INSURANCE CHOICES at 5 (June 2009) (noting that studies have found that standardized benefits in Medigap policed reduced consumer confusion), available at www.consumersunion.org; James M. Lacko & Janis K. Pappalardo, Federal Trade Commission, Bureau of Economics Staff Report, IMPROVING CONSUMER MORTGAGE DISCLOSURES: AN EMPIRICAL ASSESSMENT OF CURRENT AND PROTOTYPE DISCLOSURE FORMS (June 2007), available at <http://www.ftc.gov/os/2007/06/P025505mortgagedisclosurereport.pdf> [hereinafter Lacko & Pappalardo, IMPROVING CONSUMER MORTGAGE DISCLOSURES]; Consumers Union, HELPING FAMILIES FINANCE COLLEGE: IMPROVED STUDENT LOAN DISCLOSURES AND COUNSELING (July 2007), available at <http://www.consumersunion.org/pdf/CU-College.pdf>; Justine Hastings et al., Nat’l Bureau of Economic Research, *Preferences, Information, and Parental Choice Behavior in Public School Choice* (2007) (NBER Working Paper 12995).

¹⁶ Lacko & Pappalardo, IMPROVING CONSUMER MORTGAGE DISCLOSURES, *supra* note 17, at ES-12.

¹⁷ Standardized privacy disclosures also have been found to assist consumer understanding of a company’s privacy policy. See FINANCIAL PRIVACY RULE: INTERAGENCY NOTICE RESEARCH PROJECT, reports and data, available at http://www.ftc.gov/privacy/privacyinitiatives/financial_rule_inrp.html.

¹⁸ See CMS Federal Register Notice at 54638.

¹⁹ See James M. Lacko & Janis K. Pappalardo, Federal Trade Commission, Bureau of Economics Staff Report, THE EFFECT OF MORTGAGE BROKER COMPENSATION DISCLOSURES ON CONSUMERS AND COMPETITION: A CONTROLLED EXPERIMENT (Feb. 2004), available at <http://www.ftc.gov/os/2004/01/030123mortgagefullrpt.pdf>; LACKO & PAPPALARDO, IMPROVING CONSUMER MORTGAGE DISCLOSURES, *supra* note 17, at ES-13.

²⁰ See Mark Smith, AHIP 2008 National Policy Forum – Day 2, Making Tough Choices About Health Care, America’s Health Insurance Plans, Tr. at 6-8 (Mar. 5, 2008).

insurance can lessen the financial burden from a catastrophic accident or treatment for a chronic condition, thus allowing consumers to preserve their assets and avoid bankruptcy. Unlike most other forms of insurance, however, consumers may purchase health insurance to facilitate their access to prepaid preventative care and/or negotiated discounts on the price of physician office visits, diagnostic testing, hospital stays, prescription drugs, etc.²¹ Thus, we encourage further consumer research on these purposes as part of the development of standardized templates for use by MA and PDP plan sponsors.

Providing consumers with standardized information about the terms and features, however, is only one part of the recipe for empowering consumers to make informed health plan choices. Some researchers have suggested that too many choices and too much information can make it more difficult for consumers to assimilate the information and make informed decisions.²² As a result, some consumers may make suboptimal choices because it is too difficult or time consuming for them to reach a decision or to focus on, and understand, the most critical information for their particular situation.²³ Some researchers have noted that, with respect to MA plans, “the proliferation of private plans and the dimensions along which they differ has made it increasingly difficult for beneficiaries to become informed about, understand, and compare the available alternatives.”²⁴

In fact, CMS has recognized this problem, noting in the Federal Register notice that “with so many plans to choose from many beneficiaries reportedly find the annual task of selecting one plan from so many overwhelming, and confusing.”²⁵ CMS has stated that it plans to review MA and PDP plan sponsors’ bid submissions to eliminate multiple plan designs by the same company if they provide only trivial differences in benefits. We thus support CMS’s proposals “to ensure

²¹ *Id.*

²² See O’Brien & Hoadley, *supra* note 13; Judith Hibbard, et al., *An Assessment of Beneficiary Knowledge of Medicare Coverage Options and the Prescription Drug Benefit*, at 20 & 31, AARP PUBLIC POLICY INSTITUTE (May 2006) (noting with respect to Part D that “the complexity of the program and the plethora of choices appear to be a barrier to enrollment” and that over a third of the survey respondents stated “there were too many choices” and that they “wished the government would ‘simplify, simplify, simplify’”); Marsha Gold & Maria Cupples Hudson, *Medicare Advantage Benefit Design: What Does It Provide, What Doesn’t It Provide, and Should Standards Apply?*, at 21, AARP PUBLIC POLICY INSTITUTE (March 2009) (agreeing with O’Brien and Hoadley “that there are some incremental ways of changing MA benefit requirements and the way they are communicated that could strengthen MA as a product and make it much easier for beneficiaries to compare plans”).

²³ See Consumers Union, HEALTH POLICY BRIEF: SIMPLIFYING HEALTH INSURANCE CHOICES at 2-3 (June 2009) (noting that an insurance industry-sponsored study found that less than 25 percent of consumers understood their health policy terminology and “there is emerging evidence that consumers would actually prefer fewer choices of insurance policies in exchange for meaningful distinctions between plans and lower prices”), *available at* www.consumersunion.org; Joseph P. Mulholland, SUMMARY REPORT ON THE FTC BEHAVIORAL ECONOMICS CONFERENCE (Apr. 20, 2007) at 20 (discussing the “debate over whether consumers are getting “overloaded” with too much information”), *available at* <http://www.ftc.gov/be/consumerbehavior/docs/agenda.shtm>.

²⁴ O’Brien & Hoadley, *supra* note 13 at 2.

²⁵ CMS Federal Register Notice at 54637-38.

that when [sponsors] provide multiple plan offerings, those offerings sufficiently differ and thereby provide beneficiaries meaningful options.”²⁶

The appropriate timing of information disclosures also is critical in order to have the greatest pro-competitive and pro-consumer impact. For example, in the context of private student loans, Congress recently required lenders to provide borrowers with a uniform disclosure once they were approved for the loan and to keep the offer open for 30 days.²⁷ Previously, the borrower did not receive the necessary disclosure until he or she consummated the loan. By that time, it was too late for the consumer to comparison-shop, so the disclosure did little to facilitate consumer choice and foster market competition.

Similarly, we encourage CMS to require plan sponsors to make standardized information about plan features and other tools available to consumers before they must choose a plan.²⁸ It is too late to provide meaningful disclosures after consumers choose a particular plan; at this point, consumers can no longer be expected to comparison shop and such late disclosures will do nothing to facilitate robust market competition. Moreover, such information should be based on the most recent data that is feasibly available. If information is out-dated, consumers may discount its utility to their current decisions.

B. CMS Can Facilitate Competition on Plan Performance and Quality by Allowing Third Parties Access to Claims and Plan Performance Data.

Various groups and organizations, including CMS, have experimented with a number of approaches for communicating health care performance and quality information to consumers.²⁹ There is mixed evidence on the effectiveness of the current communication strategies.³⁰ To address this issue, we encourage CMS to explore ways in which it can release timely, plan-specific data to third parties to allow them to experiment with different ways to analyze claims and performance data to assist consumers with the identification, selection, and use of their MA or PDP plans based on plan performance or quality attributes. Because different consumers have

²⁶ CMS Federal Register Notice at 54638.

²⁷ S. REP. NO. 110-327, at 2 (2008) (Private Student Loan Transparency and Improvement Act of 2008).

²⁸ Wroblewski, *Uniform Health Insurance Information*, *supra* note 14, at 36 (noting that Consumers Union’s research showed that in the private individual health insurance market, “the details consumers needed to fully evaluate plans were not provided until after the purchase of the plan had been made”).

²⁹ See, e.g., CMS, Medicare prescription drug plan finder, *available at* <http://www.medicare.gov/MPDPF/Public/Include/DataSection/Questions/MPDPFIntro.asp>; CMS, Medicare health plan finder and comparison tool, *available at* <http://www.medicare.gov/default.asp>; CMS, Hospital Compare, *available at* [http://www.hospitalcompare.hhs.gov/Hospital/Static/About-Overview.asp?dest=NAV](http://www.hospitalcompare.hhs.gov/Hospital/Static/About-Overview.asp?dest=NAV;); the Massachusetts Health Quality Partners website, *available at* <http://www.mhqp.org/default.asp?nav=010000>; the Wisconsin Collaborative for Health Care Quality website, *available at* <http://www.wchq.org/Other/state/regionalcollaboratives>; Consumers Union Health Care website, *available at* <http://www.consumerreports.org/health/home.htm>.

³⁰ Constance Fung, et al., *Systematic Review: The Evidence That Publishing Patient Care Performance Data Improves Quality of Care*, 148 ANNALS OF INTERNAL MED. 111 (2008).

different health care needs and may require different types of information to find the plans that best fit those needs, allowing various entities to try different approaches may allow for a broader dissemination of important and helpful information to consumers.

For example, among the different approaches that have been used, some researchers have found that consumers respond favorably to health quality information that is relevant to their decision making and uses:

- Symbols they can easily recognize and interpret;
- Simple messages with as few caveats as possible; and
- Synthesized results across measures with drill down to details for those interested.³¹

Another approach is the use of “patient activation measures” (PAM).³² The goal of PAM “is to build on an individual’s capacity to manage her own health care by assigning discrete tasks that lead to successful outcomes and build consumer confidence.”³³ Patient activation requires “that the consumer audience be clearly defined. It also requires understanding the health care decisions the audience is facing and the context and type of support the decisions require. [It emphasizes] the importance of helping consumers understand and use comparative information about providers and plans.”³⁴

Other researchers have discussed six overarching design principles to support effective consumer engagement. These six principles are: 1) know your audience (*e.g.*, education, socio-economic, age, etc.); 2) tailor messages to promote specific engagement behaviors; 3) create tools that enable and persuade (notion that people are more receptive to information that they help create; 4) if they build it, they will come (referring to web-based information sharing models, although cannot rely solely on this because of the “digital divide” facing many older

³¹ See FTC Roundtable, *The Competitive Significance of Healthcare Provider Quality Information* (Oct. 30, 2008), Barbara Rabson, Tr. at 24 and Presentation at 6, *available at* <http://www.ftc.gov/bc/workshops/hcbio/index.shtml> [hereinafter *FTC Quality Roundtable*]; *see also* *FTC Quality Roundtable*, Beth Nash, Tr. at 38.

³² See Judith Hibbard, et al., *Development of the Patient Activation Measure (PAM): Conceptualizing and Measuring Activation in Patients and Consumers*, 39 *HEALTH SERVICES RESEARCH* 1005 (Aug. 2004) [hereinafter *Hibbard, et al., Development of the PAM*]; Judith Hibbard, et al., *Development and Testing of a Short Form of the Patient Activation Measure*, 40 *HEALTH SERVICES RESEARCH* 1918 (Dec. 2005).

³³ Shoshanna Sofaer, et al., *From Patients to Partners: A Consensus Framework for Engaging Californians in Their Health and Health Care*, UNDER CONTRACT TO THE CALIFORNIA OFFICE OF THE PATIENT ADVOCATE 3 (July 14, 2009), referring to Judith’s Hibbard’s and Peter Cunningham’s views on consumer requirements for choosing health plans and providers through PAM; *see, e.g.*, Judith Hibbard & Peter Cunningham, *How Engaged Are Consumers in Their Health and Health Care, and Why Does It Matter?* CENTER FOR STUDYING HEALTH SYSTEM CHANGE RESEARCH BRIEF (Oct. 2008) (the authors explain that activation has 4 stages: “(1) believing the patient role is important, (2) having the confidence and knowledge necessary to take action, (3) actually taking action to maintain and improve one’s health, and (4) staying the course even under stress.”).

³⁴ See Sofaer, et al., *supra* note 33, at 3.

adults); 5) build on the existing health care system to create and support engaged health consumers; and 6) focus on activating patients and consumers.³⁵

Still others have noted that consumers value information on other patients' experience with particular plans or providers and use that information to help in their own decision making.³⁶ Some researchers have noted that the use of patient stories can help to "create a compelling consumer "voice" and personal narratives to underscore the performance report statistics. Patient stories can highlight problems and offer action plans to solve problems."³⁷

Given these various approaches and their potential to increase consumer understanding and to facilitate competition, we encourage efforts by CMS to allow third parties to obtain Part C and Part D plan sponsor-specific claims data as well as the underlying plan performance data. CMS already has proposed to release claims data by specific PDP plan sponsor (under limited conditions) to government grantees conducting studies of the Part D program.³⁸ We support this effort and suggest that further efforts could help facilitate competition among plans.

For example, organizations dedicated to specific diseases may be able to analyze claims data about specific plans and inform consumers of those plans that provide the benefits that are most relevant to enrollees with those particular health conditions. Similarly, consumer organizations may be able to organize and/or present health plan performance data in ways that best appeal to specific target audiences. Organizations such as these that have developed a "brand" image over many years may be seen as a trusted source for obtaining objective information and thus can facilitate competition not only on the features of plans, but on unique performance attributes that matter to their constituents.³⁹ Moreover, nongovernmental groups may have more flexibility to experiment and quickly adjust the presentation of plan performance data as they better understand the information needs of Medicare enrollees. By allowing various entities to try different approaches, CMS is likely to facilitate a broader dissemination of important and helpful information to consumers.

³⁵ Sofaer, et al., *supra* note 33, at 8-10; *id.* at 12 (also discussed some of the issues with report cards, noting that different report cards use different performance measures, which can create more confusion than clarity).

³⁶ FTC Quality Roundtable, Peter V. Lee, Tr. at 40; *id.*, Beth Nash, Tr. at 35; *id.*, Barbara Rabson, Tr. at 29. See also MHQP, *Quality Insights: 2007 Patient Experiences in Primary Care* ("Patient experience data can focus on how well doctors communicate with patients; how well doctors coordinate patient care, etc.); Picker Institute, About, available at <http://www.pickerinstitute.org/about/about.html>; Consumer Reports, *Get better care from your doctor*, at 32-36 (Feb. 2007) (discussing results of a survey of 39,090 patients about their doctor visits, including satisfaction with the physician and whether the physician provided information about the side effects of prescribed drugs or the costs of treatments and tests).

³⁷ Sofaer, et al., *supra* note 33, at Appendix B. I.

³⁸ CMS Federal Register Notice at 54679, 54684.

³⁹ See, e.g., CENTER FOR ADVANCING HEALTH, GETTING TOOLS USED: LESSONS FOR HEALTH CARE FROM SUCCESSFUL CONSUMER DECISION AIDS (2009) (discussing various communication strategies and discussing the success of other consumer decision aids that have developed strong brand images and are perceived as trusted sources of information, such as U.S. News & World Report: America's Best Colleges; Consumer Reports: Car Buying Guide; eBay.com; and Nutrition Facts Panels), available at www.cfah.org.

III. Conclusion

The FTC applauds HHS's efforts to improve consumers' access to relevant information about the health and prescription drug plans in which they are considering enrollment. Because customers have different preferences and needs, information provided via marketing or other sources plays a critical role in informing consumers about the variety of choices and plans. If consumers can easily access the information they need to make informed decisions, their purchase decisions will better reflect their needs and competition on the merits will be enhanced.