

(2) Whether an individual is a *bona fide* employee within the requirements of section 3121(d)(2) of the Internal Revenue Code of 1986.

(d) *Facts subject to advisory opinions.* CMS considers requests for advisory opinions that involve applying specific facts to the subject matter described in paragraph (b) of this section. Requestors must include in the advisory opinion request a complete description of the arrangement that the requestor is undertaking, or plans to undertake, as described in §411.372.

(e) *Requests that will not be accepted.* CMS does not accept an advisory opinion request or issue an advisory opinion if—

(1) The request is not related to a named individual or entity;

(2) CMS is aware that the same, or substantially the same, course of action is under investigation, or is or has been the subject of a proceeding involving the Department of Health and Human Services or another governmental agency; or

(3) CMS believes that it cannot make an informed opinion or could only make an informed opinion after extensive investigation, clinical study, testing, or collateral inquiry.

(f) *Effects of an advisory opinion on other Governmental authority.* Nothing in this part limits the investigatory or prosecutorial authority of the OIG, the Department of Justice, or any other agency of the Government. In addition, in connection with any request for an advisory opinion, CMS, the OIG, or the Department of Justice may conduct whatever independent investigation it believes appropriate.

[69 FR 57227, Sept. 24, 2004, as amended at 72 FR 51098, Sept. 5, 2007]

§411.372 Procedure for submitting a request.

(a) *Format for a request.* A party or parties must submit a request for an advisory opinion to CMS in writing, including an original request and 2 copies. The request must be addressed to: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Office of Financial Management, Division of Premium Billing and Collections, Mail Stop C3-09-27, Atten-

tion: Advisory Opinions, 7500 Security Boulevard, Baltimore, MD 21244-1850.

(b) *Information CMS requires with all submissions.* The request must include the following:

(1) The name, address, telephone number, and Taxpayer Identification Number of the requestor.

(2) The names and addresses, to the extent known, of all other actual and potential parties to the arrangement that is the subject of the request.

(3) The name, title, address, and daytime telephone number of a contact person who will be available to discuss the request with CMS on behalf of the requestor.

(4) A complete and specific description of all relevant information bearing on the arrangement, including—

(i) A complete description of the arrangement that the requestor is undertaking, or plans to undertake, including: the purpose of the arrangement; the nature of each party's (including each entity's) contribution to the arrangement; the direct or indirect relationships between the parties, with an emphasis on the relationships between physicians involved in the arrangement (or their immediate family members who are involved) and any entities that provide designated health services; the types of services for which a physician wishes to refer, and whether the referrals will involve Medicare or Medicaid patients;

(ii) Complete copies of all relevant documents or relevant portions of documents that affect or could affect the arrangement, such as personal services or employment contracts, leases, deeds, pension or insurance plans, financial statements, or stock certificates (or, if these relevant documents do not yet exist, a complete description, to the best of the requestor's knowledge, of what these documents are likely to contain);

(iii) Detailed statements of all collateral or oral understandings, if any; and

(iv) Descriptions of any other arrangements or relationships that could affect CMS's analysis.

(5) Complete information on the identity of all entities involved either directly or indirectly in the arrangement, including their names, addresses, legal form, ownership structure, nature

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of the business (products and services) and, if relevant, their Medicare and Medicaid provider numbers. The requestor must also include a brief description of any other entities that could affect the outcome of the opinion, including those with which the requestor, the other parties, or the immediate family members of involved physicians, have any financial relationships (either direct or indirect, and as defined in section 1877(a)(2) of the Act and § 411.351), or in which any of the parties holds an ownership or control interest as defined in section 1124(a)(3) of the Act.

(6) A discussion of the specific issues or questions the requestor would like CMS to address including, if possible, a description of why the requestor believes the referral prohibition in section 1877 of the Act might or might not be triggered by the arrangement and which, if any, exceptions to the prohibition the requestor believes might apply. The requestor should attempt to designate which facts are relevant to each issue or question raised in the request and should cite the provisions of law under which each issue or question arises.

(7) An indication of whether the parties involved in the request have also asked for or are planning to ask for an advisory opinion on the arrangement in question from the OIG under section 1128D(b) of the Act (42 U.S.C. 1320a-7d(b)) and whether the arrangement is or is not, to the best of the requestor's knowledge, the subject of an investigation.

(8) The certification(s) described in § 411.373. The certification(s) must be signed by—

(i) The requestor, if the requestor is an individual;

(ii) The chief executive officer, or comparable officer, of the requestor, if the requestor is a corporation;

(iii) The managing partner of the requestor, if the requestor is a partnership; or

(iv) A managing member, if the requestor is a limited liability company.

(9) A check or money order payable to CMS in the amount described in § 411.375(a).

(c) *Additional information CMS might require.* If the request does not contain

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all of the information required by paragraph (b) of this section, or, if either before or after accepting the request, CMS believes it needs more information in order to render an advisory opinion, it may request whatever additional information or documents it deems necessary. Additional information must be provided in writing, signed by the same person who signed the initial request (or by an individual in a comparable position), and be certified as described in § 411.373.

[69 FR 57227, Sept. 24, 2004]

§ 411.373 Certification.

(a) Every request must include the following signed certification: “With knowledge of the penalties for false statements provided by 18 U.S.C. 1001 and with knowledge that this request for an advisory opinion is being submitted to the Department of Health and Human Services, I certify that all of the information provided is true and correct, and constitutes a complete description of the facts regarding which an advisory opinion is sought, to the best of my knowledge and belief.”

(b) If the advisory opinion relates to a proposed arrangement, in addition to the certification required by paragraph (a) of this section, the following certification must be included and signed by the requestor: “The arrangement described in this request for an advisory opinion is one into which [the requestor], in good faith, plans to enter.” This statement may be made contingent on a favorable advisory opinion, in which case the requestor should add one of the following phrases to the certification:

(1) “if CMS issues a favorable advisory opinion.”

(2) “if CMS and the OIG issue favorable advisory opinions.”

[69 FR 57227, Sept. 24, 2004]

§ 411.375 Fees for the cost of advisory opinions.

(a) *Initial payment.* Parties must include with each request for an advisory opinion submitted through December 31, 1998, a check or money order payable to CMS for \$250. For requests submitted after this date, parties must include a check or money order in this