

103^D CONGRESS
2^D SESSION

H. R. 4028

To empower the Department of Health and Human Services to issue advisory opinions on whether certain arrangements for the delivery of health care services and supplies are in compliance with statutes and rules establishing acceptable health care billing and payment practices and with statutes and rules defining health care fraud and abuse.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1994

Mr. HOAGLAND (for himself, Mr. PORTER, Mr. BREWSTER, and Mr. THOMAS of California) introduced the following bill; which was referred jointly to the Committees on Ways and Means and Energy and Commerce

A BILL

To empower the Department of Health and Human Services to issue advisory opinions on whether certain arrangements for the delivery of health care services and supplies are in compliance with statutes and rules establishing acceptable health care billing and payment practices and with statutes and rules defining health care fraud and abuse.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; REFERENCES IN ACT.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Health Care Fraud and Abuse Advisory Opinion Act of
4 1994”.

5 (b) REFERENCES IN ACT.—Except as otherwise spe-
6 cifically provided, whenever an amendment herein is ex-
7 pressed in terms of an amendment to, or repeal of a sec-
8 tion or other provision, the reference shall be considered
9 to be made to that section or other provision of the Social
10 Security Act.

11 **SEC. 2. AUTHORIZING THE SECRETARY OF HEALTH AND**
12 **HUMAN SERVICES TO ISSUE ADVISORY OPIN-**
13 **IONS UNDER TITLE XI.**

14 (a) AUTHORIZATION.—Title XI, section 1128 (42
15 U.S.C. 1320a–7) is amended by the addition of the follow-
16 ing new paragraph:

17 “(j) The Secretary shall issue advisory opinions as
18 provided in this section.

19 “(1) MATTERS SUBJECT TO ADVISORY OPIN-
20 IONS.—The Secretary shall issue advisory opinions
21 as to the following matters:

22 “(i) What constitutes prohibited remunera-
23 tion within the meaning of section 1320a–7b(b)
24 of title 42, United States Code.

25 “(ii) Whether an arrangement or proposed
26 arrangement satisfies the criteria set forth in

1 section 1320a–7b(b)(3) of title 42, United
2 States Code as amended for activities which do
3 not result in prohibited remuneration.

4 “(iii) Whether an arrangement or proposed
5 arrangement satisfies the criteria which the
6 Secretary has established, or shall establish by
7 regulation for activities which do not result in
8 prohibited remuneration.

9 “(iv) What constitutes an inducement to
10 reduce or limit services to individuals entitled to
11 benefits under part A or part B of title XVIII
12 or title XIX within the meaning of section
13 1320a–7a(b) of title 42, United States Code.

14 “(v) Whether an arrangement, activity or
15 proposed arrangement or proposed activity vio-
16 lates any other provision of the Act.

17 “(2) MATTERS NOT SUBJECT TO ADVISORY
18 OPINIONS.—Such advisory opinions shall not address
19 the following matters:

20 “(i) Whether the fair market value shall
21 be, or was paid or received for any goods, serv-
22 ices or property.

23 “(ii) Whether an individual is a bona fide
24 employee within the requirements of section
25 3121(d)(2) of title 26, United States Code.

1 “(3) EFFECT OF ADVISORY OPINIONS.—

2 “(i) Each advisory opinion issued by the
3 Secretary shall be binding as to the Secretary
4 and the party or parties requesting the opinion.

5 “(ii) The failure of a party to seek an advi-
6 sory opinion may not be introduced into evi-
7 dence to prove that the party intended to vio-
8 late the provisions of sections 1320a-7, 1320a-
9 7(a), or 1320a-7(b) of title 42, United States
10 Code.

11 “(4) REGULATIONS.—The Secretary within one
12 hundred and eighty days of the date of enactment,
13 shall issue regulations establishing a system for the
14 issuance of advisory opinions. Such regulations shall
15 provide for—

16 “(i) the procedure to be followed by a
17 party applying for an advisory opinion;

18 “(ii) the procedure to be followed by the
19 Secretary in responding to a request for an ad-
20 visory opinion;

21 “(iii) the interval in which the Secretary
22 shall respond;

23 “(iv) the reasonable fee to be charged to
24 the party requesting an advisory opinion; and

1 “(v) the manner in which advisory opinions
2 will be made available to the public.

3 “(5) INTERVAL FOR ISSUANCE OF ADVISORY
4 OPINIONS.—Under no circumstances shall the inter-
5 val in which the Secretary shall respond to a party
6 requesting an advisory opinion exceed 30 days.”.

7 **SEC. 3. AUTHORIZING THE SECRETARY OF HEALTH AND**
8 **HUMAN SERVICES TO ISSUE ADVISORY OPIN-**
9 **IONS UNDER TITLE XVIII.**

10 (a) AUTHORIZATION.—Title XVIII, section 1877 (42
11 U.S.C. 1395nn) is amended by the addition of the follow-
12 ing new paragraph:

13 “(i)(1) ADVISORY OPINIONS.—The Secretary shall
14 issue advisory opinions on whether an arrangement or pro-
15 posed arrangement will result in a prohibited referral
16 within the meaning of section 1395nn of title 42, United
17 States Code, as amended.

18 “(2) EFFECT OF ADVISORY OPINIONS.—

19 “(i) Each advisory opinion issued by the Sec-
20 retary shall be binding as to the Secretary and the
21 party or parties requesting the opinion.

22 “(ii) The failure of a party to seek an advisory
23 opinion may not be introduced into evidence to prove
24 that the party intended to violate the provisions of
25 section 1395nn of title 42, United States Code.

1 “(3) REGULATIONS.—The Secretary within one hun-
2 dred and eighty days of the date of enactment, shall issue
3 regulations establishing a system for the issuance of advi-
4 sory opinions. Such regulations shall provide for—

5 “(i) the procedure to be followed by a party ap-
6 plying for an advisory opinion;

7 “(ii) the procedure to be followed by the Sec-
8 retary in responding to a request for an advisory
9 opinion;

10 “(iii) the interval in which the Secretary shall
11 respond;

12 “(iv) the reasonable fee to be charged to the
13 party requesting an advisory opinion; and

14 “(v) the manner in which advisory opinions will
15 be made available to the public.

16 “(4) INTERVAL FOR ISSUANCE OF ADVISORY OPIN-
17 IONS.—Under no circumstances shall the interval in which
18 the Secretary shall respond to a party requesting an advi-
19 sory opinion exceed thirty days.”.

20 **SEC. 4. EFFECTIVE DATE.**

21 Unless otherwise specified herein, the Health Care
22 Fraud and Abuse Advisory Opinion Act of 1994 shall be
23 effective upon enactment.

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