

§411.377

42 CFR Ch. IV (10–1–02 Edition)

(d) *Fees for outside experts.* (1) In addition to the fees identified in this section, the requestor also must pay any required fees for expert opinions, if any, from outside sources, as described in §411.377.

(2) The time period for issuing an advisory opinion is suspended from the time that CMS notifies the requestor that it needs an outside expert opinion until the time CMS receives that opinion.

[63 FR 1656, Jan. 9, 1998]

§411.377 Expert opinions from outside sources.

(a) CMS may request expert advice from qualified sources if CMS believes that the advice is necessary to respond to a request for an advisory opinion. For example, CMS may require the use of accountants or business experts to assess the structure of a complex business arrangement or to ascertain a physician's or immediate family member's financial relationship with entities that provide designated health services.

(b) If CMS determines that it needs to obtain expert advice in order to issue a requested advisory opinion, CMS notifies the requestor of that fact and provides the identity of the appropriate expert and an estimate of the costs of the expert advice. As indicated in §411.375(d), the requestor must pay the estimated cost of the expert advice.

(c) Once CMS has received payment for the estimated cost of the expert advice, CMS arranges for the expert to provide a prompt review of the issue or issues in question. CMS considers any additional expenses for the expert advice, beyond the estimated amount, as part of the costs CMS has incurred in responding to the request, and the responsibility of the requestor, as described in §411.375(c).

[63 FR 1657, Jan. 9, 1998]

§411.378 Withdrawing a request.

The party requesting an advisory opinion may withdraw the request before CMS issues a formal advisory opinion. This party must submit the withdrawal in writing to the same address as the request, as indicated in §411.372(a). Even if the party withdraws

the request, the party must pay the costs the Department has expended in processing the request, as discussed in §411.375. CMS reserves the right to keep any request for an advisory opinion and any accompanying documents and information, and to use them for any governmental purposes permitted by law.

[63 FR 1657, Jan. 9, 1998]

§411.379 When CMS accepts a request.

(a) Upon receiving a request for an advisory opinion, CMS promptly makes an initial determination of whether the request includes all of the information it will need to process the request.

(b) Within 15 working days of receiving the request, CMS—

(1) Formally accepts the request for an advisory opinion;

(2) Notifies the requestor about the additional information it needs, or

(3) Declines to formally accept the request.

(c) If the requestor provides the additional information CMS has requested, or otherwise resubmits the request, CMS processes the resubmission in accordance with paragraphs (a) and (b) of this section as if it were an initial request for an advisory opinion.

(d) Upon accepting the request, CMS notifies the requestor by regular U.S. mail of the date that CMS formally accepted the request.

(e) The 90-day period that CMS has to issue an advisory opinion set forth in §411.380(c) does not begin until CMS has formally accepted the request for an advisory opinion.

[63 FR 1657, Jan. 9, 1998]

§411.380 When CMS issues a formal advisory opinion.

(a) CMS considers an advisory opinion to be issued once it has received payment and once the opinion has been dated, numbered, and signed by an authorized CMS official.

(b) An advisory opinion contains a description of the material facts known to CMS that relate to the arrangement that is the subject of the advisory opinion, and states CMS's opinion about the subject matter of the request based on those facts. If necessary, CMS includes in the advisory opinion material