

(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) *Hourly rate.* CMS will charge an hourly rate of \$220. Parties may request an estimate from CMS after submitting a complete request. Before issuing the advisory opinion, CMS will calculate the final fee for responding to the request.

(b) *Agreement to pay all costs.* (1) By submitting the request for an advisory opinion, the requestor agrees, except as indicated in paragraph (c)(3) of this section, to pay all costs the Department incurs in responding to the request for an advisory opinion.

(2) In its request for an advisory opinion, the requestor may designate a triggering dollar amount. If CMS estimates that the costs of processing the advisory opinion request have reached or are likely to exceed the designated triggering dollar amount, CMS notifies the requestor.

(3) If CMS notifies the requestor that the actual or estimated cost of processing the request has reached or is likely to exceed the triggering dollar amount, CMS stops processing the request until the requestor makes a written request for CMS to continue. If CMS is delayed in processing the request for an advisory opinion because of this procedure, the time within which CMS must issue an advisory opinion is suspended until the requestor asks CMS to continue working on the request.

(4) If the requestor chooses not to pay for CMS to complete an advisory opinion, or withdraws the request, the requestor is still obligated to pay for all costs CMS has identified as costs it incurred in processing the request for an advisory opinion, up to that point.

(5) If the costs CMS has incurred in responding to the request are greater than the amount the requestor has paid, CMS, before issuing the advisory opinion, notifies the requestor of any additional amount that is due. CMS does not issue an advisory opinion until the requestor has paid the full amount that is owed. Once the requestor has paid CMS the total amount due for the costs of processing the request, CMS issues the advisory opinion. The time period CMS has for issuing advisory opinions is suspended from the time CMS notifies the requestor of the amount owed until the time CMS receives full payment.

(c) *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.

[69 FR 57228, Sept. 24, 2004, as amended at 84 FR 63192, Nov. 15, 2019]

§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