



Highlights of [GAO-05-129](#), a report to congressional committees

MEDICARE

Advisory Opinions as a Means of Clarifying Program Requirements

Why GAO Did This Study

Health care providers are concerned about the quality of Medicare guidance issued by the Centers for Medicare & Medicaid Services (CMS), an agency within the Department of Health and Human Services (HHS). Specifically, they have reported that (1) they receive unclear guidance on program requirements and (2) because policies and procedures change frequently, they may rely on obsolete guidance, resulting in billing errors.

Some government agencies issue advisory opinions in response to specific questions from requesters. These opinions permit agencies to apply law and regulation to a particular set of facts and provide requesters with specific guidance.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 directed GAO to determine the appropriateness and feasibility of establishing in the Secretary of Health and Human Services authority to issue legally binding advisory opinions to interpret Medicare regulations. GAO (1) identified factors relevant in establishing an advisory opinion process and (2) assessed the role such a process could play in clarifying program requirements. GAO examined four federal agencies' advisory opinion processes and interviewed officials from organizations representing Medicare stakeholders to learn how such a process might address their concerns.

www.gao.gov/cgi-bin/getrpt?GAO-05-129.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Leslie G. Aronovitz at (312) 220-7600.

What GAO Found

GAO identified five common elements in the way four agencies—CMS, the Employee Benefits Security Administration (EBSA) of the Department of Labor, the Internal Revenue Service (IRS), and HHS's Office of Inspector General (HHS-OIG)—set up their advisory opinion processes. While the processes at the four agencies reflected differences in the agencies' respective constituencies and responsibilities, each agency cited five key factors as critical. These were (1) establishing criteria for submitting advisory opinion requests, to define the scope of their processes, (2) developing alternative ways of responding to advisory opinion requests, such as providing other forms of written communication, (3) determining the time frame for issuing advisory opinions, (4) considering anticipated workload, staffing requirements, and user fees as a means of offsetting expenses incurred by the government, and (5) creating internal review and external coordination procedures with other federal agencies with a stake in the outcome of an issued opinion. These five factors and lessons learned from other agencies that issue advisory opinions may be useful in structuring a process for Medicare.

Most of the representatives of provider organizations GAO contacted agreed that an advisory opinion process would partially address their concerns, for example, by providing them with reliable, written responses to their Medicare-related questions. However, they recognized that an advisory opinion process would not address all their concerns and that it is one of several approaches that could improve Medicare guidance. For example, refining existing forms of guidance would also be of value.

In commenting on a draft of this report, HHS stated that a more formal advisory opinion process for Medicare would be costly to implement, not provide quick answers to providers' questions, and have limited applicability. HHS acknowledged that the Medicare program and its implementing regulations are inherently complex and underscored its efforts to improve stakeholders' understanding of the program's complexities.

Advisory Opinion User Fees at Four Agencies in Fiscal Year 2004

Agency	User fee	Charges per opinion
CMS	\$75 per hour for staff costs, with a \$250 nonrefundable deposit required when the request is made	\$250 ^a
EBSA	Not applicable	No charge
HHS-OIG	\$86 per hour for staff costs, with a \$250 nonrefundable deposit required when the request is made	Ranged from \$301 to \$3,784
IRS	\$6,000, based on average cost to agency, with special rate for qualifying requesters	\$6,000 ^b

Sources: Interviews with CMS, EBSA, HHS-OIG, and IRS officials.

^aIn fiscal year 2004 CMS issued four advisory opinions for which it charged \$250 for each opinion. CMS anticipates that charges for future advisory opinions could be higher.

^bSome taxpayers may be eligible for reduced user fees, depending on the issues involved and the taxpayers' specific circumstances.