

April 15, 1997

The Honorable Orrin G. Hatch
United States Senate
Washington, DC 20510

Dear Senator Hatch:

On behalf of the American Society of Internal Medicine (ASIM), I am pleased to respond to the question you raised during the March 5 hearing on Medicare Reform regarding the issuance of advisory opinions on compliance with fraud and abuse statutes. You specifically inquired why the advisory opinions are important and how they may provide greater choice for seniors as well as reduced costs.

ASIM strongly supported the provisions in the Health Insurance Accountability and Portability Act that mandates that HHS and the Justice Department issue advisory opinions on how to structure new and innovative delivery systems without violating fraud and abuse provisions. We commend you for your leadership in the 104th Congress in getting this requirement included in the law. ASIM also appreciates your continued support for maintaining the advisory opinion requirement in the face of an administration proposal to repeal it.

Congress' goal should be to *prevent* fraud and abuse from occurring whenever possible. If it can prevent a fraud and abuse violation from occurring, the government won't have to spend millions of dollars later on investigating, prosecuting, and sanctioning violations after they've occurred. The advisory opinions will help prevent violations of fraud and abuse laws, since physicians and other providers will be able to find out in advance how to structure financial arrangements so that they don't run afoul of the law.

Beneficiaries benefit when they have a wide choice of innovative delivery systems from which they can receive their medical care. Advisory opinions will help physicians, hospitals and other providers develop cost-effective, integrated delivery systems, such as provider-sponsored organizations (PSOs), without worrying that they will later be found to violate fraud and abuse laws. It's important to note that even if a proposed arrangement is initially structured to comply with the advisory opinion, the Office of Inspector General or the Justice Department would not be precluded from investigating and sanctioning an entity that later restructures the arrangement in a manner that could be in violation of the law.

When entering into any financial arrangement, physicians want to do what is the right. It is in everyone's interest--the government, beneficiaries, taxpayers and providers--to make advisory opinions available to help physicians and other providers make the right choices on how to structure financial arrangements without violating the law.

Please let me know if you require further information.

Sincerely,

Alan Nelson, MD
Executive Vice President