

2. On page 67784, § 1.409(a)(9)–1 is corrected as set out in the following table:

Section	Location	Incorrect language	Corrected language
1.409(a)(9)–1	Q&A D–7, column 1, paragraph (a) of A., line 4.	“(b)(4) of D–5A of this section for”.	“(b)(4) of D–5 of this section for”
1.409(a)(9)–1	Q&A D–7, column 1, paragraph (a) introductory text of A., last line of the paragraph.	“(2) of this D–7A:”	“(2) of this D–7:”
1.409(a)(9)–1	Q&A D–7, column 1, paragraph (a)(2)(ii) of A., line 5.	“and (3) of D–5A of this section are”.	“and (3) of D–5 of this section are”
1.409(a)(9)–1	Q&A D–7, column 1, paragraph (b)(1) of A., second line from the bottom of the column.	“paragraph (b)(1), (2), and (3) of D–5A of”.	“paragraph (b)(1), (2) and (3) of D–5 of”
1.409(a)(9)–1	Q&A D–7, column 2, paragraph (c)(1) of A., line 6.	“(a)(1), (a)(2), or (b) of this D–7A, a plan”.	“(a)(1), (a)(2), or (b) of this D–7, a plan”
1.409(a)(9)–1	Q&A D–7, column 2, paragraph (c)(1) of A., line 10 from the bottom of the paragraph.	“requirements of paragraph (b) of D–5A”.	“requirements of paragraph (b) of D–5”

Cynthia E. Grigsby,
Chief, Regulations Unit, Assistant Chief Counsel (Corporate).
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–5985–5]

Operating Permits Program; Notice of Availability of Draft Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: The EPA is allowing public review and comment on the draft preamble and sections of the draft revisions to the operating permits regulations in 40 CFR part 70. The regulatory sections available for comment include those dealing with definitions, applicability, permit programs, permit applications, and permit content, among others, but do not include those associated with permit revisions or permit review by EPA, affected States, and the public. The draft revised sections being made available for review are the same as those contained in the May 14, 1997 draft preamble and regulatory revisions, which were announced as available for review in a June 3, 1997 **Federal Register** notice. The EPA is making these sections available for comment now so that any public comments may be considered before the close of stakeholder discussions. Draft revisions to the sections on permit revisions and permit review by EPA, affected States, and the public will be made available in the future.

DATES: Comments on the draft preamble and regulatory revisions must be received by April 24, 1998.

ADDRESSES: The draft preamble and regulatory revisions are available in EPA’s Air Docket number A–93–50 as

items VI–A–4 and VI–A–5, respectively. This docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address listed below. A reasonable fee may be charged for copying. The address of the EPA air docket is: EPA Air Docket (6102), Attention: Docket Number A–93–50, Room M–1500, Waterside Mall, 401 M Street SW, Washington, DC, 20460.

The drafts may also be downloaded from the Internet at: <http://www.epa.gov/ttn/oarpg/t5pgm.html>.

Comments on the materials referenced in today’s notice must be mailed (in duplicate if possible) to: EPA Air Docket (6102), Attention: Docket No. A–93–50, at the above address. Please identify comments as concerning today’s notice of availability of items VI–A–4 and VI–A–5.

FOR FURTHER INFORMATION CONTACT: Ray Vogel (telephone 919–541–3153) or Roger Powell (telephone 919–541–5331), Mail Drop 12, EPA, Information Transfer and Program Integration Division, Research Triangle Park, North Carolina, 27711. Internet addresses are: vogel.ray@epa.gov and powell.roger@epa.gov.

SUPPLEMENTARY INFORMATION: The part 70 operating permits regulations were originally promulgated on July 21, 1992 (57 FR 32250). Revisions to part 70 were proposed on August 29, 1994 (59 FR 44460) and August 31, 1995 (60 FR 45530). On May 13, 1997, the Agency released a draft of the final preamble and regulatory revision rulemaking that would revise part 70 for purposes of considering any final comments from interested parties before final action. The draft rulemaking reflected EPA’s consideration of comments on the 1994 and 1995 proposals, and included additional regulatory changes that EPA

believed appropriate based on comments. Availability of the May 13, 1997 draft and a 30-day public comment period was announced in a June 3, 1997 **Federal Register** notice (62 FR 30289).

Subsequently, after discussing the draft rulemaking with industry, environmental, and State/local permitting agency representatives (“stakeholders”), EPA decided that additional changes were necessary, particularly to the section on permit revision procedures. Consequently, EPA announced in a July 3, 1997 notice (62 FR 36039) that the public should withhold comment on the May 1997 draft until a new draft was prepared.

Since May 1997, EPA has discussed with stakeholders alternative approaches to the permit revision system contained in the May draft. While the discussions with stakeholders to date have involved the provisions of §§ 70.7 and 70.8, EPA also wants to discuss with the stakeholders any concerns with the remaining sections. To prepare for those discussions, it is important to be aware of concerns from the public at large on the remaining sections. Therefore, this notice announces availability of the remaining sections of part 70 for public review. The preamble and regulatory revisions related to §§ 70.7 and 70.8 will be made available in a future **Federal Register** notice of availability.

Items VI–A–4 and VI–A–5 in docket A–93–50 contain the portions of the preamble and regulations for the revisions that may be made to §§ 70.2 through 70.6 and §§ 70.9 through 70.11 of the part 70 regulations. That material is also available on the Internet at the address noted above. As in the June 3, 1997 notice, EPA seeks comment only on regulatory revisions that have changed since the August 1994 and

August 1995 proposals. The changes since the proposals are addressed in the preamble discussions on the relevant sections of part 70 (e.g. § 70.2).

Please send comments directly to Docket A-93-50 at the address previously provided and specify that they are in response to this document. Comments will be forwarded from the Air Docket to the Operating Permits Group of EPA.

Dated: March 17, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1003, 1005 and 1006

RIN 0991-AA90

Health Care Programs: Fraud and Abuse; Revised OIG Civil Money Penalties Resulting From the Health Insurance Portability and Accountability Act of 1996

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise the OIG's civil money penalty (CMP) authorities, in conjunction with new and revised provisions set forth in the Health Insurance Portability and Accountability Act of 1996. Among other provisions, this proposed rulemaking would codify new CMPs for: Excluded individuals retaining ownership or control interest in an entity; upcoding and claims for medically unnecessary services; offering inducements to beneficiaries; and false certification of eligibility for home health services. This rule would also codify a number of technical and conforming changes consistent with the OIG's existing sanction authorities.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on May 26, 1998.

ADDRESSES: Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG-25-P, Room 5527 Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG-25-P.

Comments will be available for public inspection April 8, 1998 in Room 5524 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 8 a.m. to 4:30 p.m., (202) 619-0089.

FOR FURTHER INFORMATION CONTACT: Joel Schaefer, (202) 619-0089, OIG Regulations Officer.

SUPPLEMENTARY INFORMATION:

I. Background

A. Overview of the OIG Civil Money Penalty Authorities

In 1981, Congress enacted the civil money penalty (CMP) statute, section 1128A of the Social Security Act (the Act) (42 U.S.C. 1320a-7a), as one of several administrative remedies to combat increases in health care fraud and abuse. The CMP law authorized the Secretary and the inspector General to impose CMPs, assessment and program exclusions on individuals and entities whose wrongdoing caused injury to Department programs or their beneficiaries. The statutory penalty and assessment amounts under section 1128A generally provided for a penalty of no more than \$2,000 for each item or service at issue, and an assessment in lieu of damages of not more than twice the amount claimed.

Since 1981, Congress has greatly expanded the CMP provisions to apply to numerous types of fraudulent and abusive activities related to Medicare and State health care programs. Specifically, new statutory provisions provided the Secretary and the OIG with the authority to sanction such improper practices as: (1) Hospitals paying physicians to reduce or limit services provided to program beneficiaries; (2) health maintenance organizations (HMOs) failing to provide medically necessary items and services; (3) individuals and entities engaging in certain misleading or fraudulent practices with respect to the marketing and selling of supplemental (Medigap) insurance policies; and (4) hospitals failing to examine and treat, or to properly transfer, emergency room patients (patient dumping).

In 1987, the Medicare and Medicaid Patient and Program Protection Act (MMPPPA), Public Law 100-93, was enacted to improve the ability of the Department "to protect the Medicare and Medicaid programs from fraud and abuse, and to protect the beneficiaries of

these programs from incompetent practitioners and from inappropriate and inadequate care." The MMPPPA significantly revised and expanded the OIG's CMP and exclusion sanction authorities. Final OIG regulations addressing amendments to out exclusion and CMP authorities resulting from Public Law 100-93 were published in the **Federal Register** on January 29, 1992 (57 FR 3298).

B. The Health Insurance Portability and Accountability Act of 1996

In the first significant amendments to the OIG's sanction authorities since MMPPPA, the Health Insurance Portability and Accountability Act (HIPAA) of 1996, Public Law 104-191, sets forth a number of important improvements to the OIG's authorities intended to curtail and eliminate health care fraud and abuse. With regard to the sanction authorities, HIPAA expanded the scope of certain basic fraud authorities by extending the application of current CMP provisions beyond those funded by the Department to include all Federal health care programs. The HIPAA also significantly revised and strengthened the OIG's existing CMP authorities pertaining to violations under Medicare and the State health care programs.

Among other provisions related to our CMP authority, HIPAA (1) increases the maximum penalty amounts per false claim from \$2,000 to \$10,000; (2) allows CMPs to be assessed for incorrect coding, medically unnecessary services, and persons offering remuneration to induce a program beneficiary to order from a particular provider or supplier receiving Medicare or State health care funds; and (3) establishes a new CMP for the false certification of eligibility for Medicare-covered home health services.

While the majority of these revisions to the OIG's CMP authorities under section 1128A of the Act are effective on January 1, 1997,¹ these provisions do allow the Department some policy discretion in their implementation. As a result, we are developing this proposed rulemaking to address these HIPAA penalty provisions, along with other technical revisions and conforming policy changes to the OIG's sanction authorities codified in 42 CFR parts 1003, 1005, and 1006.

¹ Section 232 of HIPAA applies to certifications made on or after August 21, 1996, the enactment date of the statute.