

HR 810

Medicare Regulatory and Contracting Reform Act of 2003

Congress: 108 (2003–2005, Ended)

Chamber: House

Policy Area: Health

Introduced: Feb 13, 2003

Current Status: Placed on the Union Calendar, Calendar No. 43.

Latest Action: Placed on the Union Calendar, Calendar No. 43. (Apr 29, 2003)

Official Text: <https://www.congress.gov/bill/108th-congress/house-bill/810>

Sponsor

Name: Rep. Johnson, Nancy L. [R-CT-5]

Party: Republican • **State:** CT • **Chamber:** House

Cosponsors (54 total)

Cosponsor	Party / State	Role	Date Joined
Rep. Barton, Joe [R-TX-6]	R · TX		Feb 13, 2003
Rep. Bilirakis, Michael [R-FL-9]	R · FL		Feb 13, 2003
Rep. Brown, Sherrod [D-OH-13]	D · OH		Feb 13, 2003
Rep. Burr, Richard [R-NC-5]	R · NC		Feb 13, 2003
Rep. Buyer, Steve [R-IN-4]	R · IN		Feb 13, 2003
Rep. Camp, Dave [R-MI-4]	R · MI		Feb 13, 2003
Rep. Cantor, Eric [R-VA-7]	R · VA		Feb 13, 2003
Rep. Capps, Lois [D-CA-23]	D · CA		Feb 13, 2003
Rep. Cardin, Benjamin L. [D-MD-3]	D · MD		Feb 13, 2003
Rep. Crane, Philip M. [R-IL-8]	R · IL		Feb 13, 2003
Rep. Deutsch, Peter [D-FL-20]	D · FL		Feb 13, 2003
Rep. Dingell, John D. [D-MI-15]	D · MI		Feb 13, 2003
Rep. Doyle, Michael F. [D-PA-14]	D · PA		Feb 13, 2003
Rep. Dunn, Jennifer [R-WA-8]	R · WA		Feb 13, 2003
Rep. Engel, Eliot L. [D-NY-17]	D · NY		Feb 13, 2003
Rep. English, Phil [R-PA-3]	R · PA		Feb 13, 2003
Rep. Foley, Mark [R-FL-16]	R · FL		Feb 13, 2003
Rep. Gordon, Bart [D-TN-6]	D · TN		Feb 13, 2003
Rep. Greenwood, James C. [R-PA-8]	R · PA		Feb 13, 2003
Rep. Hall, Ralph M. [D-TX-4]	D · TX		Feb 13, 2003
Rep. Hayworth, J. D. [R-AZ-5]	R · AZ		Feb 13, 2003
Rep. Houghton, Amo [R-NY-29]	R · NY		Feb 13, 2003
Rep. Johnson, Sam [R-TX-3]	R · TX		Feb 13, 2003
Rep. Jones, Stephanie Tubbs [D-OH-11]	D · OH		Feb 13, 2003
Rep. Kleczka, Gerald D. [D-WI-4]	D · WI		Feb 13, 2003
Rep. Lewis, Ron [R-KY-2]	R · KY		Feb 13, 2003
Rep. McCrery, Jim [R-LA-4]	R · LA		Feb 13, 2003
Rep. McDermott, Jim [D-WA-7]	D · WA		Feb 13, 2003
Rep. McInnis, Scott [R-CO-3]	R · CO		Feb 13, 2003
Rep. McNulty, Michael R. [D-NY-21]	D · NY		Feb 13, 2003
Rep. Norwood, Charles W. [R-GA-9]	R · GA		Feb 13, 2003
Rep. Nussle, Jim [R-IA-1]	R · IA		Feb 13, 2003
Rep. Pallone, Frank, Jr. [D-NJ-6]	D · NJ		Feb 13, 2003
Rep. Pickering, Charles W. "Chip" [R-MS-3]	R · MS		Feb 13, 2003
Rep. Pomeroy, Earl [D-ND-At Large]	D · ND		Feb 13, 2003
Rep. Portman, Rob [R-OH-2]	R · OH		Feb 13, 2003
Rep. Ramstad, Jim [R-MN-3]	R · MN		Feb 13, 2003
Rep. Rangel, Charles B. [D-NY-15]	D · NY		Feb 13, 2003
Rep. Ryan, Paul [R-WI-1]	R · WI		Feb 13, 2003
Rep. Shaw, E. Clay, Jr. [R-FL-22]	R · FL		Feb 13, 2003
Rep. Stark, Fortney Pete [D-CA-13]	D · CA		Feb 13, 2003

Cosponsor	Party / State	Role	Date Joined
Rep. Tauzin, W. J. (Billy) [R-LA-3]	R · LA		Feb 13, 2003
Rep. Thomas, William M. [R-CA-22]	R · CA		Feb 13, 2003
Rep. Upton, Fred [R-MI-6]	R · MI		Feb 13, 2003
Rep. Waxman, Henry A. [D-CA-30]	D · CA		Feb 13, 2003
Rep. Weller, Jerry [R-IL-11]	R · IL		Feb 13, 2003
Rep. Cubin, Barbara [R-WY-At Large]	R · WY		Mar 31, 2003
Rep. Davis, Jim [D-FL-11]	D · FL		Mar 31, 2003
Rep. Kennedy, Mark R. [R-MN-6]	R · MN		Mar 31, 2003
Rep. Maloney, Carolyn B. [D-NY-14]	D · NY		Mar 31, 2003
Rep. McCarthy, Carolyn [D-NY-4]	D · NY		Mar 31, 2003
Rep. Rogers, Mike J. [R-MI-8]	R · MI		Mar 31, 2003
Rep. Toomey, Patrick J. [R-PA-15]	R · PA		Mar 31, 2003
Rep. Wynn, Albert Russell [D-MD-4]	D · MD		Mar 31, 2003

Committee Activity

Committee	Chamber	Activity	Date
Energy and Commerce Committee	House	Referred to	Mar 10, 2003
Ways and Means Committee	House	Reported by	Mar 20, 2003

Subjects & Policy Tags

Policy Area:

Health

Related Bills

No related bills are listed.

Medicare Regulatory and Contracting Reform Act of 2003 - **Title I: Regulatory Reform** - (Sec. 101) Amends part D (Miscellaneous) of title XVIII (Medicare) of the Social Security Act (SSA) to state that a provision in a final regulation that is not a logical outgrowth of a previously published notice of proposed rulemaking or interim final rule: (1) shall be treated as a proposed regulation; and (2) shall not take effect until there is the further opportunity for public comment and a publication of the provision again as a final regulation.

Prohibits retroactive application to items or services of a substantive change in regulations, manual instructions, interpretive rules, statements of policy, or general guidelines unless the Secretary of Health and Human Services determines that retroactive application is necessary to comply with statutory requirements or failure to apply the change retroactively would be contrary to the public interest.

Provides that a substantive change shall not become effective before 30 days after the change is issued or published unless the Secretary finds that waiver of such 30-day period is necessary to comply with statutory requirements or if the application of such 30-day period is contrary to the public interest.

States that a service provider or a supplier who reasonably relied on erroneous guidance shall not be subject to any sanction or penalty, provided certain conditions are met.

(Sec. 103) Directs the Comptroller General to conduct a study and report to Congress on the feasibility and appropriateness of establishing in the Secretary authority to provide legally binding advisory opinions on appropriate interpretation and application of regulations to carry out the Medicare program.

Amends SSA title VIII to direct the Secretary to report biennially to Congress on the administration of Medicare and areas of inconsistency or conflict among the various provisions under law and regulation.

Title II: Contracting Reform - (Sec. 201) Amends SSA title XVIII to revise and consolidate current law for the administration of the Medicare part A (Hospital Insurance) and B (Supplementary Medical Insurance) programs into a structure similar to that provided for Medicare Integrity Program (MIP) contractors.

Authorizes the Secretary to enter into contracts with any eligible entity to serve as a Medicare administrative contractor in lieu of using provider-nominated fiscal intermediaries and carriers. Requires the Secretary to use competitive procedures in awarding five-year contracts. Allows the Secretary to contract separately for all or parts of the contractor functions, as well as an expanded range of entities, in order to select the most efficient and effective contractor. Authorizes continuation of MIP functions under current contracts and agreements and under rollover contracts.

(Sec. 202) Requires each Medicare administrative contractor to implement a contractor-wide program to provide information security for its operation and assets. Requires annual independent audits to test the effectiveness of information security policies, procedures, and practices of contractor information systems. Applies audit requirements to fiscal intermediaries and carriers before the transition to Medicare administrative contractors becomes effective.

Title III: Education and Outreach - (Sec. 301) Directs the Secretary to: (1) coordinate the educational activities provided through Medicare contractors in order to maximize the effectiveness of Federal education efforts for service providers and suppliers; (2) use specific claims payment error rates or a similar methodology of Medicare administrative contractors in the processing or reviewing of Medicare claims in order to give contractors an incentive to implement effective education and outreach programs for service providers and suppliers; and (3) develop a strategy for communications with

individuals entitled to benefits under Medicare part A or enrolled under Medicare part B, or both, and with service providers and suppliers.

Prescribes requirements for Medicare administrative contractor responses to written inquiries of service providers, suppliers, and beneficiaries, including monitoring of such responses.

Directs the Secretary to ensure that each Medicare administrative contractor provides a toll-free telephone number at which Medicare claimants, service providers, and suppliers may obtain pertinent information.

Authorizes appropriations to the Secretary to increase the conduct by Medicare contractors of education and training of service providers and suppliers regarding billing, coding, and other appropriate items and to improve the accuracy, consistency, and timeliness of contractor responses.

Directs the Secretary and each Medicare contractor insofar as it provides services for service providers or suppliers to maintain an Internet site which: (1) provides answers in an easily accessible format to frequently asked questions; and (2) includes other published materials of the contractor that relate to service providers and suppliers.

(Sec. 302) Directs the Secretary to establish a demonstration program of technical assistance to small service providers or suppliers, upon request and on a voluntary basis, in order to improve compliance with applicable Medicare requirements.

(Sec. 303) Amends SSA title XVIII to direct the Secretary to appoint within the Department of Health and Human Services (HHS) a Medicare Provider Ombudsman to: (1) provide assistance, on a confidential basis, to service providers and suppliers with respect to complaints, grievances, requests for information, the resolution of unclear or conflicting guidance from the Secretary and Medicare contractors to such service providers and suppliers; and (2) submit recommendations to the Secretary for improvement in the administration of Medicare.

Requires the Secretary also to appoint a Medicare Beneficiary Ombudsman to: (1) receive complaints, grievances, and requests for information from beneficiaries with respect to any aspect of the Medicare program; and (2) provide assistance with respect to such complaints, grievances, and requests.

Requires the Secretary to provide, through the toll-free number 1-800-Medicare, a means by which individuals seeking information about, or assistance with, Medicare programs who phone such number are transferred to appropriate entities for the provision of such information or assistance. Requires this number to be the one listed for general information and assistance in the annual notice explaining Medicare benefits and limitations to coverage that is mailed to beneficiaries.

(Sec. 304) Directs the Secretary to: (1) establish a demonstration program under which Medicare specialists employed by HHS provide advice and assistance to beneficiaries at the location of existing local offices of the Social Security Administration; (2) provide that Medicare beneficiary notices about post-hospital extended care services include information on the number of days of coverage remaining for the beneficiary and spell of illness involved; and (3) provide public information that enables hospital discharge planners, Medicare beneficiaries, and the public to identify skilled nursing facilities participating in the Medicare program.

(Sec. 306) Amends SSA title XVIII to require hospital discharge plans to identify, for individuals who are likely to need post-hospital extended care services, the availability of participating facilities that serve the area in which the patient resides.

Title IV: Appeals and Recovery - (Sec. 401) Requires the Commissioner of Social Security and the Secretary, by

October 1, 2004, to develop (and transmit to Congress and the Comptroller General for evaluation) a plan under which the functions of administrative law judges responsible for hearing Medicare and related cases are transferred from the responsibility of the Commissioner and the Social Security Administration to the Secretary and HHS. Directs the Commissioner and the Secretary to implement the transition plan and transfer the administrative law judge functions from the Social Security Administration to the Secretary between July 1, 2005, and October 1, 2005.

Directs the Secretary to: (1) assure the independence of administrative law judges performing the administrative law judge functions transferred above from the Centers for Medicare and Medicaid Services and their contractors; and (2) provide for an appropriate geographic distribution of administrative law judges performing the transferred functions throughout the United States to ensure timely access to such judges.

Authorizes additional appropriations to the Secretary to: (1) increase the number of administrative law judges and their staffs; (2) improve their education and training opportunities; and (3) increase the staff of the Departmental Appeals Board.

(Sec. 402) Amends SSA title XVIII, as amended by the Benefits Improvement and Protection Act (BIPA), to direct the Secretary to establish a process for expedited access to judicial review for a service provider, supplier, or beneficiary who has filed a Medicare appeal to obtain such access when a review panel determines that no entity in the administrative appeals process has the authority to decide the relevant question of law or regulation and no material issue of fact is in dispute.

Provides that an agency or institution dissatisfied with a determination by the Secretary that it is not a service provider, or that it can no longer be a provider, shall have expedited access to judicial review, if it has filed for a hearing, in the same manner as provided for a provider, supplier, or beneficiary.

Directs the Secretary to develop and implement a process to expedite administrative appeals of provider agreement determinations in which participation is terminated or other sanctions against skilled nursing facilities applied on an immediate basis have been imposed. Gives priority under such process to cases of termination of provider agreements.

Authorizes increased appropriations from the Medicare trust funds to the Secretary for FY 2005 and each subsequent year to: (1) reduce by 50 percent the average time for administrative determinations on provider participation appeals; (2) increase the number of administrative law judges and their staffs and the appellate level staff at the Departmental Appeals Board of HHS; and (3) educate such judges and staffs on long-term care issues.

Directs the Secretary to develop and implement, for facilities certified to have remedied deficiencies, a process for reinstatement of approval of a nurse aide training program of a skilled nursing facility before the end of the mandatory two-year suspension period, if the only basis for mandatory disapproval was assessment of a civil monetary penalty of at least \$5,000.

(Sec. 403) Amends SSA title XVIII, as amended by BIPA, to revise the Medicare appeals process, requiring full and early presentation of evidence by providers, and revise requirements for use of patients' medical records, Medicare appeals notices, and the qualifications of independent determination reviewers.

(Sec. 404) Authorizes a Medicare administrative contractor to conduct a random prepayment review only to develop contractor-wide or program-wide claims payment error rates or under such additional circumstances as may be provided under regulations, developed in consultation with service providers and suppliers. Establishes limitations on non-random prepayment review.

(Sec. 405) Provides that, if the repayment by a service provider or supplier of an overpayment within 30 days would constitute a hardship, upon request the Secretary shall enter into a plan with the provider or supplier for the repayment (through offset or otherwise) over a period of between six months and three years (five years for extreme hardship). Requires interest to accrue on the balance through the period of repayment.

(Sec. 406) Directs the Secretary to establish by regulation: (1) a process for the enrollment of service providers and suppliers; and (2) procedures with deadlines for actions on applications for enrollment (or renewal of enrollment). Requires the Secretary to: (1) monitor the performance of Medicare administrative contractors in meeting such deadlines; and (2) consult with service providers and suppliers before making changes in the provider enrollment forms. Allows a service provider or a supplier whose application to enroll (or renew enrollment) is denied to have a hearing and judicial review of such denial.

(Sec. 407) Directs the Secretary to develop a process whereby, in the case of minor errors or omissions detected in the submission of Medicare claims, a service provider or supplier is given an opportunity to correct such an error or omission and resubmit the claim without the need to initiate an appeal.

Amends SSA title XVIII to permit the use of corrected and supplementary data, including permitting submittal and resubmittal of applications for changes involving applications of certain hospitals requesting that the Secretary change the hospital's geographic classification.

(Sec. 408) Directs the Secretary to establish a process: (1) under which physicians and beneficiaries may obtain determination of whether Medicare covers certain items and services before they are provided; and (2) for the collection of information on instances in which an advance beneficiary notice has been provided before items or services are furnished when a service provider believes that payment will not be made, and on instances in which a beneficiary indicates on such notice that he or she does not intend to seek to have the item or service furnished. Requires the Secretary to establish a program of outreach and education for beneficiaries, service providers, and other persons on the appropriate use of advance beneficiary notices and Medicare coverage policies.

Title V: Miscellaneous Provisions - (Sec. 501) Prohibits the Secretary from implementing any new documentation guidelines for, or clinical examples of, evaluation and management physician services under Medicare unless the Secretary: (1) has developed the guidelines in collaboration with practicing physicians (including both generalists and specialists) and provided for an assessment of the proposed guidelines by the physician community; (2) has established a plan that contains specific goals, including a schedule, for improving the use of such guidelines; (3) has conducted representative pilot projects under this title to test modifications to the evaluation and management documentation guidelines; (4) finds that the objectives specified for evaluation and management guidelines will be met in their implementation; and (5) has established a program to educate physicians on the use of such guidelines. Requires the Secretary to make changes to the manner in which existing evaluation and management documentation guidelines are implemented to reduce paperwork burdens on physicians.

Directs the Secretary to: (1) conduct representative pilot projects to test new evaluation and management documentation guidelines; and (2) study and report to Congress on the development of a simpler, alternative system of requirements for documentation accompanying claims for evaluation and management physician services, and consideration of systems other than current coding and documentation requirements for payment of such physician services. Directs the Medicare Payment Advisory Commission to analyze and report to Congress on the results of such study.

Requires the Secretary to study and report to Congress on the appropriateness of coding in cases of extended office

visits in which there is no diagnosis.

(Sec. 502) Amends SSA title XVIII to direct the Secretary to establish a Council for Technology and Innovation within the Centers for Medicare and Medicaid Services. Requires the Council to coordinate: (1) the activities of coverage, coding, and payment processes under Medicare with respect to new technologies and procedures, including new drug therapies; and (2) the exchange of information on new technology between CMS and other entities that make similar decisions.

Directs the Secretary to establish by regulation procedures for determining the basis for and amount of payment for any clinical diagnostic laboratory test with respect to which a new or substantially revised Health Care Procedure Coding System (HCPCS) code is assigned on or after January 1, 2005.

Directs the Comptroller General to analyze and report to Congress on which external data can be collected in a shorter time frame by the Centers for Medicare and Medicaid Services for use in computing payments for inpatient hospital services.

Amends SSA title XI to provide that, if the National Committee on Vital and Health Statistics has not made a recommendation to the Secretary before the enactment of this title with respect to the adoption of the International Classification of Diseases, 10th Revision, Procedure Coding System (ICD-10-PCS) and the International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM) as a standard under part C (Administrative Simplification) for the reporting of services, the Secretary may adopt ICD-10-PCS and ICD-10-CM as such a standard without receiving such a recommendation.

(Sec. 503) Prohibits the Secretary from requiring a hospital (including a critical access hospital) from asking a beneficiary questions (or obtaining information) on whether other insurance coverage is available (for Medicare secondary payor purposes) in the case of reference laboratory services if the Secretary does not impose such requirement in the case of such services furnished by an independent laboratory.

(Sec. 504) Provides that determination of emergency room services to screen and stabilize a Medicare beneficiary as reasonable and necessary shall be based on the information (including the patient's presenting symptoms or complaint) available to the treating physician or practitioner at the time the item or service was ordered or furnished (and not on the patient's principal diagnosis). Prohibits the Secretary, in making such a determination, from considering the frequency with which the time or service was provided to the patient before or after the time of the admission or visit.

Requires the Secretary to establish a procedure to notify hospitals and physicians when an investigation under the Emergency Medical Treatment and Labor Act (EMTALA) is closed. Requires the Secretary, except in the case in which a delay would jeopardize the health and safety of individuals, also to request a peer review organization to conduct a five-day review before making a compliance determination as part of the process of terminating a hospital's participation for EMTALA violations.

(Sec. 505) Directs the Secretary to establish a Technical Advisory Group to review issues related to EMTALA and its implementation.

(Sec. 506) Allows a hospice program to enter into arrangements with another hospice program to provide core hospice services in certain circumstances.

(Sec. 507) Requires public hospitals that are not otherwise subject to the Occupational Safety and Health Act of 1970 (OSHA) or a State occupational safety and health plan approved under that Act, to comply with the OSHA Bloodborne

Pathogens standard. Prescribes sanctions for violations of such requirement.

(Sec. 508) Amends SSA title XI authorize the Secretary to waive the exclusion of certain convicted felons (except those convicted of patient abuse or neglect) from a Federal health program upon request by the program's Administrator if the exclusion of a sole community physician or source of specialized services in a community would impose a hardship.

(Sec. 510) Prohibits group health plans providing supplemental or secondary coverage to individuals also entitled to Medicare services from requiring a Medicare claims determination for dental benefits specifically excluded from Medicare coverage as a condition of making a claims determination for such benefits under the group health plan. Allows a group health plan to require a Medicare claims determination in cases involving or appearing to involve inpatient dental hospital services or dental services expressly covered under Medicare pursuant to actions taken by the Secretary.

(Sec. 511) Directs the Secretary to furnish to disproportionate share hospitals the data necessary for such hospitals to compute the number of Medicaid patient days percentage used in computing the disproportionate patient percentage for that hospital. Requires such data to be furnished also to other hospitals which would qualify for additional payments under Medicare part A on the basis of such data.

(Sec. 512) Allows entities (such as physician staffing companies) to enroll in Medicare and to submit bills for services provided by a physician or other person when the entity has an arrangement with the physician or other person that includes joint and several liability for overpayment, and meets other program integrity safeguards as the Secretary determines appropriate.

(Sec. 513) Amends Medicare part C (Medicare+Choice) to allow specialized Medicare+Choice plans for special needs beneficiaries to be any type of coordinated care plan. Permits a specialized Medicare+Choice plan to restrict the enrollment of individuals under the plan to individuals who are within one or more classes of special needs beneficiaries.

(Sec. 514) Provides that during a specified period of suspension, the Secretary may not require, under the Balanced Budget Act of 1997 or otherwise under the Outcome and Assessment Information Set (OASIS), a home health agency to gather or submit information that relates to an individual who is not eligible for benefits under either SSA title XVIII or XIX (Medicaid) (non-Medicare/Medicaid OASIS information).

(Sec. 515) Directs the Comptroller General to report to Congress on: (1) the appropriateness of the updates in the conversion factor for determining payment for physicians' services for 1999 and 2000, including the appropriateness of the sustainable growth rate formula for 2002 and succeeding years; and (2) all aspects of physician compensation for services furnished under Medicare, and how those aspects interact and the effect on appropriate compensation for physician services.

Requires the Secretary to provide, in an appropriate annual publication available to the public, a list of national coverage determinations made under Medicare in the previous year and information on how to get more information with respect to such determinations.

Directs the Comptroller General to report to Congress on the implications if there were flexibility in the application of the Medicare conditions of participation for home health agencies with respect to groups or types of patients who are not Medicare beneficiaries.

Requires the Inspector General of HHS to report to Congress on notices relating to use of hospital lifetime reserve days.

Actions Timeline

- **Apr 29, 2003:** Reported (Amended) by the Committee on Energy and Commerce. H. Rept. 108-74, Part II.
- **Apr 29, 2003:** Reported (Amended) by the Committee on Energy and Commerce. H. Rept. 108-74, Part II.
- **Apr 29, 2003:** Placed on the Union Calendar, Calendar No. 43.
- **Apr 11, 2003:** Reported (Amended) by the Committee on Ways and Means. H. Rept. 108-74, Part I.
- **Apr 11, 2003:** Reported (Amended) by the Committee on Ways and Means. H. Rept. 108-74, Part I.
- **Apr 11, 2003:** House Committee on Energy and Commerce Granted an extension for further consideration ending not later than April 29, 2003.
- **Apr 2, 2003:** Committee Consideration and Mark-up Session Held.
- **Apr 2, 2003:** Ordered to be Reported in the Nature of a Substitute (Amended) by the Yeas and Nays: 19 - 13.
- **Mar 26, 2003:** Committee Consideration and Mark-up Session Held.
- **Mar 26, 2003:** Ordered to be Reported (Amended) by Voice Vote.
- **Mar 20, 2003:** Subcommittee Consideration and Mark-up Session Held.
- **Mar 20, 2003:** Forwarded by Subcommittee to Full Committee (Amended) by Voice Vote.
- **Mar 10, 2003:** Referred to the Subcommittee on Health, for a period to be subsequently determined by the Chairman.
- **Mar 3, 2003:** Referred to the Subcommittee on Health.
- **Feb 13, 2003:** Introduced in House
- **Feb 13, 2003:** Introduced in House
- **Feb 13, 2003:** Referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.
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