

Office of Personnel Management

§ 890.1016

provider a notice of proposed debarment within 6 years of the date he presented the claim for payment to the covered person's FEHBP carrier.

(d) *Failure to furnish requested information.* If the basis for the proposed debarment involves a provider's failure to furnish information requested by OPM or an FEHBP carrier, OPM shall send the notice of proposed debarment within 6 years of the date on which the carrier or OPM requested the provider to furnish the information in question.

§ 890.1013 Deciding whether to propose a permissive debarment.

(a) *Review factors.* The factors OPM shall consider in deciding whether to propose a provider's debarment under a permissive debarment authority are:

(1) The nature of any claims involved in the basis for the proposed debarment and the circumstances under which they were presented to FEHBP carriers;

(2) The improper conduct involved in the basis for the proposed debarment, and the provider's degree of culpability and history of prior offenses;

(3) The extent to which the provider poses or may pose a risk to the health and safety of FEHBP-covered individuals or to the integrity of FEHBP transactions; and

(4) Other factors specifically relevant to the provider's debarment that shall be considered in the interests of fairness.

(b) *Absence of a factor.* The absence of a factor shall be considered neutral, and shall have no effect on OPM's decision.

(c) *Specialized review in certain cases.* In determining whether to propose debarment under 5 U.S.C. 8902a(c)(4) for providing items or services substantially in excess of the needs of a covered individual or for providing items or services that fail to meet professionally-recognized quality standards, OPM shall obtain the input of trained reviewers, based on written medical protocols developed by physicians. If OPM cannot reach a decision on this basis, it shall consult with a physician in an appropriate specialty area.

§ 890.1014 Notice of proposed permissive debarment.

Notice of a proposed permissive debarment shall contain the information set forth in § 890.1006.

§ 890.1015 Minimum and maximum length of permissive debarments.

(a) *No mandatory minimum or upper limit on length of permissive debarment.* There is neither a mandatory minimum debarment period nor a limitation on the maximum length of a debarment under any permissive debarment authority.

(b) *Debarring official's process in setting period of permissive debarment.* The debarring official shall set the period of each debarment issued under a permissive debarment authority after considering the factors set forth in § 890.1016 and the factors set forth in the applicable section from among §§ 890.1017 through 890.1021.

§ 890.1016 Aggravating and mitigating factors used to determine the length of permissive debarments.

(a) *Aggravating factors.* The presence of aggravating circumstances may support an OPM determination to increase the length of a debarment beyond the nominal periods set forth in §§ 890.1017 through 890.1021. The factors that OPM considers as aggravating are:

(1) Whether the provider's actions underlying the basis for the debarment, or similar acts, had an adverse impact on the physical or mental health or well-being of one or more FEHBP-covered individuals or other persons.

(2) Whether the provider has a documented history of prior criminal wrongdoing; civil violations related to health care items or services; improper conduct; or administrative violations addressed by a Federal or State agency. OPM may consider matters involving violence, patient abuse, drug abuse, or controlled substances convictions or violations to be particularly serious.

(3) Whether the provider's actions underlying the basis for the debarment, or similar acts, resulted in financial loss to the FEHBP, FEHBP-covered individuals, or other persons. In determining whether, or to what extent, a financial loss occurred, OPM shall not

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consider any amounts of restitution that the provider may have paid.

(4) Whether the provider's false, wrongful, or improper claims to FEHBP carriers were numerous, submitted over a prolonged period of time, or part of an on-going pattern of wrongful acts.

(5) Whether the provider was specifically aware of or directly responsible for the acts constituting the basis for the debarment.

(6) Whether the provider attempted to obstruct, hinder, or impede official inquiries into the wrongful conduct underlying the debarment.

(b) *Mitigating factors.* The presence of mitigating circumstances may support an OPM determination to shorten the length of a debarment below the nominal periods set forth in §§ 890.1017 through 890.1021, respectively. The factors that OPM considers as mitigating are:

(1) Whether the provider's cooperation with Federal, State, or local authorities resulted in criminal convictions, civil recoveries, or administrative actions against other violators, or served as the basis for official determinations of program weaknesses or vulnerabilities. Restitution that the provider made for funds wrongfully, improperly, or illegally received from Federal or State programs may also be considered as a mitigating factor.

(2) Whether official records of judicial proceedings or the proceedings of State licensing authorities contain a formal determination that the provider had a physical, mental, or emotional condition that reduced his level of culpability before or during the period in which he committed the violations in question.

(c) *Absence of factors.* The absence of aggravating or mitigating factors shall have no effect to either increase or lower the nominal period of debarment.

§ 890.1017 Determining length of debarment based on revocation or suspension of a provider's professional licensure.

(a) *Indefinite term of debarment.* Subject to the exceptions set forth in paragraph (b) of this section, debarment under 5 U.S.C. 8902a(c)(1) shall be for an indefinite period coinciding with the

period during which the provider's license is revoked, suspended, restricted, surrendered, or otherwise not in effect in the State whose action formed the basis for OPM's debarment.

(b) *Aggravating circumstances.* If any of the aggravating circumstances set forth in § 890.1016 apply, OPM may debar the provider for an additional period beyond the duration of the licensure revocation or suspension.

§ 890.1018 Determining length of debarment for an entity owned or controlled by a sanctioned provider.

OPM shall determine the length of debarments of entities under 5 U.S.C. 8902a(c)(2) based on the type of violation committed by the person with an ownership or control interest. The types of violations actionable under this provision are:

(a) *Owner/controller's debarment.* The debarment of an entity based on debarment of an individual with an ownership or control interest shall be for a period concurrent with the individual's debarment. If any aggravating or mitigating circumstances set forth in § 890.1016 apply solely to the entity and were not considered in setting the period of the individual's debarment, OPM may debar the entity for a period longer or shorter than the individual's debarment.

(b) *Owner/controller's conviction.* The debarment of an entity based on the criminal conviction of a person with an ownership or control interest for an offense listed in 5 U.S.C. 8902a(b)(1)–(4) shall be for a period of not less than 3 years, subject to adjustment for any aggravating or mitigating circumstances set forth in § 890.1016 applying solely to the entity.

(c) *Owner/controller's civil monetary penalty.* The debarment of an entity based on a civil monetary penalty imposed on a person with an ownership or control interest, shall be for a period of not less than 3 years, subject to adjustment for any aggravating or mitigating circumstances set forth in § 890.1016 applying solely to the entity.