

§ 890.1017

5 CFR Ch. I (1–1–05 Edition)

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.