

**OFFICE OF PERSONNEL
MANAGEMENT****5 CFR Part 890**

RIN 3206-AD76

**Debarments and Suspensions of
Health Care Providers From the
Federal Employees Health Benefits
Program****AGENCY:** Office of Personnel
Management.**ACTION:** Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations regarding administrative sanctions of health care providers participating in the Federal Employees Health Benefits Program (FEHBP). These regulations implement the suspension and debarment provisions of section 2 of the Federal Employees Health Care Protection Act of 1998 (Pub. L. 105-266). That statute modified both the substantive and procedural requirements for FEHBP administrative sanctions. These regulations supersede interim final regulations issued in 1989 to implement the earlier sanctions legislation that was amended by Public Law 105-266. They will promote quicker, more uniform decisionmaking for suspensions and debarments, and will enhance protection against unfit providers for both the FEHBP and the individuals who receive health insurance coverage through the Program.

DATES: Effective February 3, 2003.

FOR FURTHER INFORMATION CONTACT: David Cope, by telephone at 202-606-2851; by FAX at 202-606-2153; or by e-mail at debar@opm.gov.

SUPPLEMENTARY INFORMATION:**Background**

This rule was issued as a notice of proposed rulemaking in the December 12, 2001, **Federal Register** (66 FR 64160). During the 60-day public comment period, OPM received written comments from two professional organizations representing health care providers, an industry association of health insurance plans, and an FEHBP carrier. Oral comments were received from an FEHBP carrier and from OPM employees. This regulatory preamble addresses all of the comments from each source, many of which were incorporated into the final rule.

After the public comment period closed, we rewrote the proposed rule to improve its clarity and to reduce what we, as well as some of the commenters, believed to be the unnecessary

wordiness associated with the “question and answer” format. This resulted in wording, formatting, and structural changes in virtually every section of the regulatory text. However, in no case has the meaning or effect of any regulatory material changed simply as a function of our rewriting. Because they do not reflect substantive modifications to the proposed rule, we have not identified each individual wording or format change. However, all such changes fall into one or more of the following categories:

(1) The proposed rule was written in a “question and answer” format in which the title of each section was phrased as a question and the body of the section constituted a response to that question. However, because the regulation is intended to apply to four different groups with divergent interests—the debarring official, the presiding official, health care providers, and health insurance carriers participating in FEHBP—in many passages the format created uncertainty as to the group or groups to which the regulatory material pertained. Therefore, we converted the regulation from “question and answer” to a third-person narrative format.

(2) In the proposed rule, the pronouns “we” or “us” were frequently used to denote the U.S. Office of Personnel Management, within the context of the “question and answer” regulatory format. We have since concluded that such references were not appropriate to denote a Federal agency, and may have created uncertainty among some readers about their meaning. As rewritten, the final rule refers to the agency solely as “OPM,” except in a very few instances where the context and antecedent unambiguously support use of the pronoun “it.”

(3) As part of the “question and answer” format, the proposed rule used the pronoun “you” to denote a health care provider(s). In narrative format of the final rule, we replaced those references with “health care provider” or “provider.”

(4) We have uniformly rendered references to the United States Code as (title number) U.S.C. (section number) and references to the Code of Federal Regulations as (title number) CFR (part number and/or letter designating subpart) (section number).

(5) In the definitions section (890.1003), we deleted subsection designations ((a), (b), *etc.*). The defined terms continue to be listed in alphabetic order.

(6) We replaced every passage that consisted of a direct restatement of a statutory provision with a citation to the

applicable statutory provision. In most cases, this eliminated an appreciable amount of text and substantially shortened the regulatory provision. Because such sections had been intended simply to restate a statutory passage, there was no change of regulatory effect. Further, this type of rewriting improved the precision of the regulatory content by making it clear that the regulation intends to apply the cited statutory language exactly as written.

(7) Several sections or passages in the proposed rule contained citations to other regulatory sections as an authority for taking regulatory action. In every case where the cited regulatory passage had a direct underlying statutory authority, we have replaced the regulatory citation with a citation to the applicable statutory provision as the authority for regulatory action.

(8) In addition to rewriting the proposed rule from “question and answer” to narrative format, we attempted to simplify and shorten both the language and structure of the regulation wherever possible. We made wording changes throughout the regulation to introduce nontechnical terminology, and we sought to insure that each paragraph addresses only a single concept. In this process, we noted that the proposed § 890.1009(b) contained two distinctly separate concepts (contesting the length of a proposed debarment and requesting a personal appearance before the debarring official). Therefore, we created a new § 890.1009(c) to address the personal appearance, leaving § 890.1009(b) to address only contests of proposed debarments. Similarly, we noted that §§ 890.1013(a) and 1016(a) and (b) contained both a list of decisional factors and a statement as to how the absence of a decisional factor would be treated. Therefore, we created new §§ 890.1013(b) and 1016(c) to address the impact of an absence of decisional factors, leaving §§ 890.1013(a) and 1016(a) and (b) to contain solely a list of factors. To accommodate pre-existing sections, we renumbered the former § 890.1013(b) as 1013(c).

**Purpose and Effect of Administrative
Sanctions**

Before analyzing the public comments that focused on specific sections of the proposed rule, we want to address several generalized concerns expressed by the professional organizations regarding the overall intent and possible effect of the FEHBP administrative sanctions program. Both of the organizations indicated that their