

prejudicially labeling them.

Accordingly, we have accepted this aspect of the industry association's suggestion—including the one year recency criterion—and have reworded § 890.1045 to require FEHBP carriers to notify enrollees who have obtained items or services from a debarred provider within one year prior to the provider's debarment.

The insurance industry association further suggested that we create a website to provide FEHBP carriers and enrollees with up-to-date information on provider debarments, and that we reflect this action in the proposed § 890.1044. For nearly 2 years, OPM's Office of the Inspector General has used a secure Internet webpage to make debarment data available to FEHBP carriers. We update the page regularly, according to a schedule known to the carriers. Because of the extensive amount of Privacy Act-protected information about providers that we furnish to carriers, this webpage cannot be publicly accessible. However, the function of making debarment information from all agencies available to the public in an automated, searchable format is met by the General Services Administration's Governmentwide debarment list ("GSA List"), which is on the Internet at www.epls.com. There are links directly to the GSA List from OPM's website (www.opm.gov). In its present form, § 890.1044 accurately reflects OPM's responsibilities to make debarment-related information available both to carriers and to the GSA List. Therefore, while we will not be adopting this suggestion, information about OPM debarments is readily available online for both FEHBP carriers and the public.

Authority to Issue Suspensions

One of the professional associations commented that Public Law 105–266 did not appear to provide OPM the authority to suspend health care providers. Therefore, the commenter recommended that all of the proposed provisions regarding suspension (proposed §§ 890.1030–1041) be removed from the final rule.

While Public Law 105–266 does not contain the term "suspension," it does provide authority for OPM to issue the type of sanctions that are characterized as suspensions in the proposed 890.1030–1041. We designated these actions "suspensions" because that terminology is widely used among Federal agencies—including OPM under the common rule authority—to connote sanctions with certain effects. As used in these regulations, "suspension" connotes a short-term action with the

force of a debarment that is (1) effective immediately upon issuance of notice by OPM, (2) predicated on one or more of the bases for debarment identified in Public Law 105–266, and (3) necessitated by the existence of a sufficiently serious risk to warrant removing a provider from participating in FEHBP in the most expeditious manner possible. OPM's ability to regulate in this area is based on 5 U.S.C. 8902a(g)(1)(A), authorizing the agency to set reasonable conditions regarding notice to providers and effective dates of debarments, and 5 U.S.C. 8902a(g)(1)(B), authorizing OPM to establish effective dates in advance of process if warranted by the "health or safety of individuals receiving health care services."

In drafting the sections of these regulations implementing the provider suspension authority, we attempted to incorporate existing Governmentwide practices as extensively as possible. The two most frequently used suspension models are represented by the Federal Acquisition Regulation (FAR) and the common rule. However, the FAR approach, providing for automatic and immediate suspension upon issuance of every notice of proposed debarment, is clearly beyond the scope of the authority granted by 5 U.S.C. 8902a. In contrast, the common rule approach, selectively limiting suspension to situations where there is a tangible need to protect a program or program participants, closely tracks the provisions of the FEHBP sanctions statute that authorize suspension. Therefore, §§ 890.1030 through 1041 set forth procedures which generally mirror the corresponding common rule practices for suspensions. The administrative appeal provisions of §§ 890.1035–1041 offer greater procedural protections to affected providers than those contained in the common rule. Their purpose is to assure that all suspended providers have the right to contest the suspension promptly, as required by 5 U.S.C. 8902a(h)(1), including a personal appearance before the suspending official and a separate hearing on any facts material to the suspension that have not previously been adjudicated.

Based on the commenter's observations, we have also revised the wording of § 890.1031(c) to conform more closely to the terms of 5 U.S.C. 8902a(g)(1)(B), limiting suspensions to cases of risk to the health or safety of FEHBP enrollees. However, we will construe such risk to include not only physical harm resulting from a provider's maltreatment or abuse, but also the more generalized risks inherent in receiving health care from a provider

who has committed any sort of sanctionable violations that reflect on his or her trustworthiness.

Miscellaneous Provisions Addressed by Outside Commenters

The health care provider professional associations expressed concerns that several provisions of the proposed regulations broadened the reach of OPM's administrative sanctions authority in a manner that was unfair to health care providers. The commenters suggested that these provisions be deleted from the proposed regulations.

In fact, each of the proposed regulatory sections identified by the commenters is based directly on a provision of the FEHBP sanctions statute. Collectively, their placement in these regulations is necessary to assure full implementation of the statute. Therefore, we are retaining all of these sections in the final regulation. However, our overall rewriting of the regulatory text has substantially altered their wording and format. As they appeared in the proposed rule, each of the regulatory sections cited by the commenters comprised a restatement of a statutory provision. As rewritten in the final rule, each section simply provides a citation to the corresponding section of the statute. The regulatory provisions in question are as follows:

(1) Proposed § 890.1003(e)(4), defining "conviction" to include an individual's participation in first offender, pre-trial diversion, or other programs under which a formal adjudication of an offense is withheld. The commenters considered this definition to be "overly broad," so as to include any infraction, including an inadvertent billing error. As we have previously noted in this preamble, we intended the regulatory definition of "conviction" to correspond precisely to the statutory definition of that term set forth in 5 U.S.C. 8902a(a)(1)(C). As now rewritten, the definition of "conviction" appearing in § 890.1003 of the final rule simply cites to 5 U.S.C. 8902a(a)(1)(C). The exact wording identified as objectionable by the commenter is contained in 8902a(a)(1)(C)(iv). Further, as we have stated elsewhere in this preamble, we do not believe that a reasonable reading of the statutory definition of "conviction," or indeed any other provision of the FEHBP sanctions statute, would support the conclusion that a truly inadvertent provider error could be the basis of a sanctions action.

(2) Proposed § 890.1011(b)(1)(iii), authorizing permissive debarment of an entity based on an ownership or control interest by a provider who has been