

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AJ42

Financial Sanctions of Health Care Providers Participating in the Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to amend its regulations on administrative sanctions of health care providers participating in the Federal Employees Health Benefits Program (FEHBP). This proposed rule addresses the financial sanctions provisions of Section 2 of Public Law 105-266, the Federal Employees Health Care Protection Act of 1998, which authorize OPM to impose civil monetary penalties and financial assessments against health care providers who commit certain types of violations against the FEHBP. In concert with the previously-issued regulations on debarment and suspension authorities, this proposed rule will afford OPM a full range of administrative remedies to deter and rectify provider misconduct within FEHBP. The regulatory framework established by this issuance provides appropriate due process protections to assure that the amounts of financial sanctions are assessed through a consistent and equitable process, the Government's financial interests are fully protected, and financial sanctions are imposed only after an opportunity for an administrative hearing on all facts material to the basis for the sanctions.

DATES: Submit comments on or before April 11, 2003.

ADDRESSES: Send or deliver written comments to David Cope, U.S. Office of Personnel Management, 1900 E Street NW., Room 6400, Washington, DC 20415, or submit comments electronically to debar@opm.gov.

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

Section 2 of the Federal Employees Health Care Protection Act of 1998 (Pub. L. 105-266), enacted a comprehensive set of administrative sanctions authorities for OPM to use in combating health care provider fraud within the FEHBP. These authorities fall into two broad categories—exclusion, comprising suspension and debarment from participation in FEHBP, and financial sanctions, comprising civil monetary penalties and financial assessments.

On December 12, 2001, OPM published proposed regulations at 66 FR 64160 to implement the exclusion-based authorities. The current issuance contains proposed regulations for the financial sanctions authorities. When issued as final rules, the two regulatory packages shall fully implement all of the administrative sanctions enacted by Pub. L. 105-266.

Administrative sanctions enable an agency to protect its financial and program interests against individuals or entities that have committed certain types of actionable violations specified by statute. In addition, health care provider sanctions also protect the health care interests of persons covered through the FEHBP. Both of these interests are specifically recognized by the proposed regulations as principal objectives of sanctions activities.

Exclusion-related sanctions recognize past misconduct and protect against future violations by removing the subject of the sanction from further participation in FEHBP. (In the context of the FEHBP sanctions statute, "participation" means receiving funds. Thus, an excluded provider may treat FEHBP covered persons, but may not be paid FEHBP funds for any items or services provided after the effective date of the exclusion.)

Financial sanctions have similar "look back" and "look forward" purposes. Pub. L. 105-266 established two categories of financial sanctions—assessments and civil monetary penalties. As stated in § 890.1060(b) of the proposed rule, assessments are intended to recognize all of the losses, costs, and damages OPM incurred as the

result of a provider's wrongful conduct, although the amount assessed is not limited by the dollar value of those items. Civil monetary penalties are lump-sum amounts that, while computed by reference to improper claims, are intended principally to deter future violations.

Section 890.1060(e) states that financial sanctions may be imposed in addition to all other criminal, civil, and administrative remedies that any state or Federal agency may apply to the same conduct by a provider.

Bases for Financial Sanctions

Pub. L. 105-266 sets forth three bases for imposing financial sanctions. All relate in some degree either to claims actually filed with FEHBP carriers or to conduct associated with claims, even if no claim was filed. In contrast to exclusion-based sanctions, where the underlying violations need not have affected FEHBP, financial sanctions may be imposed only for violations that directly involve FEHBP enrollees, carriers, or funds.

As outlined in § 890.1061 of the proposed rule, the bases for financial sanctions are (1) fraudulent or improper claims; (2) false or misleading statements in or about claims; and (3) failure to provide claims-related information that is required by law to be disclosed.

Imposing Financial Sanctions

While some exclusion-based sanctions are mandatory (*i.e.*, OPM must debar a provider who commits certain types of violations), imposition of any financial sanction is always permissive with the debarring official. Sections 890.1062(b) through (d) identify the factors that the debarring official must consider in deciding whether to impose financial sanctions in a given case. Most of these factors are identified specifically by Pub. L. 105-266. We have added § 890.1062(d) to reflect the particular importance OPM attaches to protecting FEHBP covered persons from untrustworthy providers.

Amounts of Financial Sanctions

Section 890.1063 reflects the statutory limits on amounts of financial sanctions. Assessments may not exceed twice the amount claimed for each item or service "involved" in the claims on which the assessment is based. Civil monetary penalties may not exceed