

Office of Personnel Management,

Kay Coles James,

Director.

Accordingly, OPM proposes to amend part 890 of title 5, Code of Federal Regulations as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for Part 890 continues to read as follows:

Authority: 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403(p), 22 U.S.C. 4069c and 4069c-1; subpart L also issued under sec 599C of Pub. L. 101-513, 104 Stat. 2064, as amended; § 890.102 also issued under sections 11202(f), 11232(e), 11246(b) and (c) of Pub. L. 105-33, 111 Stat 251; and section 721 of Pub. L. 105-261, 112 Stat. 2061.

2. In Subpart J, §§ 890.1060 through 1073 are added to read as follows:

Subpart J—Administrative Sanctions Imposed Against Health Care Providers

Sec.

Civil Monetary Penalties and Financial Assessments

- 890.1060 Purpose and scope of civil monetary penalties and assessments.
- 890.1061 Bases for penalties and assessments.
- 890.1062 Deciding whether to impose penalties and assessments.
- 890.1063 Maximum amounts of penalties and assessments.
- 890.1064 Determining the amounts of penalties and assessments to be imposed on a provider.
- 890.1065 Deciding whether to suspend or debar a provider in a case that also involves penalties and assessments.
- 890.1066 Notice of proposed penalties and assessments.
- 890.1067 Provider contests of proposed penalties and assessments.
- 890.1068 Effect of not contesting proposed penalties and assessments.
- 890.1069 Information the debarring official shall consider in deciding a provider's contest of proposed penalties and assessments.
- 890.1070 Burdens of proof and standards of evidence in contests of proposed penalties and assessments.
- 890.1071 Deciding contests of proposed penalties and assessments.
- 890.1072 Further appeal rights after final decision on penalties and assessments.
- 890.1073 Collecting penalties and assessments.

Civil Monetary Penalties and Financial Assessments

§ 890.1060 Purpose and scope of civil monetary penalties and assessments.

(a) *Civil monetary penalty.* A civil monetary penalty is an amount that OPM may impose on a health care

provider who commits one of the violations listed in § 890.1061. Penalties are intended to protect the integrity of FEHBP by deterring repeat violations by the same provider and by reducing the likelihood of future violations by other providers.

(b) *Assessment.* An assessment is an amount that OPM may impose on a provider, calculated by reference to the claims involved in the underlying violations. Assessments are intended to recognize monetary losses, costs, and damages sustained by OPM as the result of a provider's violations.

(c) *Use of terminology.* In §§ 890.1060 through 1072

Penalty means "civil monetary penalty;" and

Penalties and assessments may connote the singular or plural forms of either of those terms, and may represent them in either the conjunctive or disjunctive sense.

(d) *Relationship to debarment and suspension.* In addition to imposing penalties and assessments, OPM may concurrently debar or suspend a provider from participating in FEHBP on the basis of the same violations.

(e) *Relationship to other penalties provided by law.* The penalties, assessments, debarment, and suspension imposed by OPM are in addition to any other penalties that may be prescribed by law or regulation administered by an agency of the Federal Government or any State.

§ 890.1061 Bases for penalties and assessments.

(a) *Improper claims.* OPM may impose penalties and assessments on a provider if a claim presented by that provider for payment from FEHBP funds meets the criteria set forth in 5 U.S.C. 8902a(d)(1).

(b) *False or misleading statements.* OPM may impose penalties and assessments on a provider who makes a false statement or misrepresentation as set forth in 5 U.S.C. 8902a(d)(2).

(c) *Failing to provide claims-related information.* OPM may impose penalties and assessments on a provider who knowingly fails to provide claims-related information as otherwise required by law.

§ 890.1062 Deciding whether to impose penalties and assessments.

(a) *Authority of debarring official.* The debarring official has discretionary authority to impose penalties and assessments in accordance with 5 U.S.C. 8902a and this subpart.

(b) *Factors to be considered.* In deciding whether to impose penalties and assessments against a provider that

has committed one of the violations identified in § 890.1061, OPM shall consider:

(1) The number and frequency of the provider's violations;

(2) The period of time over which the violations were committed;

(3) The provider's culpability for the specific conduct underlying the violations;

(4) The nature of any claims involved in the violations and the circumstances under which the claims were presented to FEHBP carriers;

(5) The provider's history of prior offenses or improper conduct, including any actions that could have constituted a basis for a suspension, debarment, penalty, or assessment by any Federal or State agency, whether or not any sanction was actually imposed;

(6) Any monetary damages, losses, and costs, as described in § 890.1064(c), attributable to the provider's violations; and

(7) Such other factors as justice may require.

(c) *Additional factors when penalty or assessment is based on § 890.1061(b) or (c).* In the case of violations involving false or misleading statements or the failure to provide claims-related information, OPM shall also consider:

(1) The nature and circumstances of the provider's failure to properly report information; and

(2) The materiality and significance of the false statements or misrepresentations the provider made or caused to be made, or the information that the provider knowingly did not report.

§ 890.1063 Maximum amounts of penalties and assessments.

OPM may impose penalties and assessments in amounts not to exceed those set forth in 5 U.S.C. 8902a(d).

§ 890.1064 Determining the amounts of penalties and assessments to be imposed on a provider.

(a) *Authority of debarring official.* The debarring official has discretionary authority to set the amounts of penalties and assessments in accordance with law and this subpart.

(b) *Objectives of penalties and assessments.* In setting the amounts of penalties and assessments to be imposed on a provider, the debarring official shall be guided by the overall objectives of:

(1) Assuring that the United States is fully compensated for all damages, losses, and costs associated with a provider's violations; and

(2) Deterring future violations by the provider on whom the penalties and