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physicians and the Medicare Nonparticipating Physician Fee Schedule for Medicare nonparticipating physicians.

[60 FR 26668, May 18, 1995]

§ 890.907 Effective dates.

(a) The limitation specified in this subpart applies to inpatient hospital admissions commencing on or after January 1, 1992.

(b) The limitation specified in this subpart applies to physician services supplied on or after January 1, 1995.

[60 FR 26668, May 18, 1995]

§ 890.908 Notification of HHS.

An FEHB plan, under the oversight of OPM, will notify the Secretary of HHS, or the Secretary's designee, if the plan finds that:

(a) A hospital knowingly and willfully collects, on a repeated basis, more than the amount determined to be equivalent to the Medicare part A payment under the DRG-based PPS.

(b) A Medicare participating physician or supplier knowingly and willfully collects, on a repeated basis, more than the amount determined to be equivalent to the Medicare part B payment under the Medicare Participating Physician Fee Schedule.

(c) A Medicare nonparticipating physician or supplier knowingly and willfully charges, on a repeated basis, more than the amount determined to be equivalent to the Medicare limiting charge amount.

[60 FR 26668, May 18, 1995]

§ 890.909 End-of-year settlements.

Neither OPM, nor the FEHB plans, will perform end-of-year settlements with, or make retroactive adjustments as a result of retroactive changes in the Medicare payment calculation information to, hospital providers who have received FEHB benefit payments under this subpart.

[57 FR 10610, Mar. 27, 1992. Redesignated at 60 FR 26668, May 18, 1995]

§ 890.910 Provider information.

The hospital provider information used to calculate the amount equivalent to the Medicare part A payment will be updated on an annual basis.

[57 FR 10610, Mar. 27, 1992. Redesignated at 60 FR 26668, May 18, 1995]

Subpart J—Debarments, Civil Monetary Penalties and Assessments Imposed Against Providers

SOURCE: 54 FR 43940, Oct. 30, 1989, unless otherwise noted.

§ 890.1001 [Reserved]

§ 890.1002 Definitions.

(a) For the purposes of this subpart, the terms *convicted* and *provider* have the meanings set forth in section 8902a of title 5, United States Code.

(b) *Debarment* means that services or supplies furnished by a specific provider will no longer be reimbursed by the various carriers or health plans under title 5, United States Code, or this part.

(c) *Sanction* means any of the three penalties provided by section 8902a of title 5, United States Code, for the offenses cited therein. The three penalties are debarment, civil monetary penalties of not more than $10,000 for any item or service involved, and assessments of not more than twice the amount claimed for each such item or service.

§ 890.1003 Standards for OPM determinations of excessive charges, overprescribing, and services or supplies of a poor quality in connection with claims presented under this chapter.

(a) *Basis for sanctions.* Section 8902a(c) of title 5, United States Code, provides OPM the authority to impose sanctions against health care providers for cited offenses against the FEHB Program.

(b) *Standards.* (1) In making a determination that a provider has charged for health care services or supplies in an amount substantially in excess of such provider's customary charges for such services or supplies, OPM may rely, in part, upon a statistical sampling of previous claims and requests for payment filed by that provider and obtained either from FEHB carrier

files, other Government programs, private sector insurance sources or from the provider's own records. OPM shall take into consideration whether such charges deemed to be excessive are justified by unusual circumstances or medical complications requiring additional time, effort, or expense in localities in which it is acceptable medical practice to make an extra charge in such case.

(2) In making a determination that a provider has charged for health care services or supplies which are substantially in excess of the needs of the insured or which are of a quality that fails to meet professionally recognized standards for such services or supplies, OPM may rely, in part, upon reports, including sanction reports, from the following sources:

(i) The Professional Standards Review Organization or the Peer Review Organization for the area served by the provider;

(ii) State or local licensing or certification authorities;

(iii) Peer review committees of health plan carriers;

(iv) State or local professional societies; or

(v) Other sources deemed appropriate by OPM.

§890.1004 Standards for determining either the period of debarment or the amount of civil monetary penalties or assessments.

(a) In determining either the period of debarment or the amount of any civil monetary penalty or assessment, OPM shall take into account the specifics of section 8902a(e) of title 5, United States Code; i.e., the nature of any claims involved and the circumstances under which they were presented; the degree of culpability, history of prior offenses or improper conduct of the provider involved, and such other matters as justice may require.

(b) The following standards will be used when taking into account the factors listed in paragraph (a) of this section:

(1) *Criminal convictions.* The nature of the offense, the severity and magnitude of the crime, the extent of the provider's involvement and the provider's previous record, if any, will be of paramount importance in determining the period of debarment under 8902a(b) of title 5, United States Code.

(2) *Nature and circumstances of claims.* It shall be considered a mitigating circumstance if all the items or services subject to a determination under 8902a(c) of title 5, United States Code, included in the action brought under this part were of the same type and occurred within a short period of time, or were few in number and the total amount claimed was less than $1,000. It shall be considered an aggravating circumstance if such items or services were of several types, occurred over a lengthy period of time, were numerous (or the nature and circumstances indicate a pattern of claims for such items or services), or the amount claimed for such items or services was substantial.

(3) *Degree of culpability*. It shall be considered a mitigating circumstance if the claim was the result of an unintentional and unrecognized error in the process the provider followed in presenting claims, and corrective steps were taken promptly after the error was discovered. It shall be considered an aggravating circumstance if, for example, the provider knew or should have known he or she had previously been suspended from participation and such suspension was still in effect.

(4) *Prior offenses.* It shall be considered an aggravating circumstance if at any time prior to the presentation of the claim at issue in the debarment deliberations the provider was held liable for criminal, civil, or administrative sanctions in connection with the program covered by this part or any other public or private program of reimbursement for medical services.

(5) If there are substantial or several mitigating circumstances, OPM shall set any period of debarment at a minimum period of at least two years. If there are substantial or several mitigating circumstances, OPM shall set the aggregate amount of any civil monetary penalty and assessment at an amount equivalent to at least 25% of the maximums allowed by 8902a(c) of title 5, United States Code. However, unless there are extraordinary mitigating circumstances, the aggregate amount of the civil monetary penalty and assessment must be at least double

the estimated amount of damages sustained by the FEHB Program as a result of the claim(s) in question.

(6) If there are substantial or several aggravating circumstances, OPM shall set a period of debarment at a minimum period of at least 4 years. If there are substantial or several aggravating circumstances, OPM shall set the aggregate amount of any civil monetary penalty and assessment at an amount equivalent to at least 75% of the maximum allowed by 8902a(c) of title 5, United States Code.

§ 890.1005 Effective dates and notices.

(a) If OPM proposes to invoke any sanctions under section 8902a (b) or (c) of title 5, United States Code, OPM will send written notice of its intent, including the reasons for the proposed sanction(s), the proposed duration of the debarment, if any, and the proposed amount of any civil monetary penalty or assessment to the provider and advise the provider of the right to a reconsideration within OPM.

(b) Within 30 days of the date of the notice, the provider may submit:

(1) Documentary evidence and written argument against the proposed sanction; or

(2) A written request to present evidence or argument orally to an OPM official.

(c) For good cause shown by the provider, OPM may extend the 30-day period.

(d) If, after the provider has exhausted the reconsideration rights within OPM or failed to exercise his or her right to reconsideration within OPM, OPM decides to invoke any sanctions, it will send written notice of its decision to the provider at least 30 days before the proposed effective date of the sanction(s). The written notice will set forth:

(1) The basis for the sanction;

(2) The duration of the debarment, if any, and the factors used in determining the duration;

(3) The requirements and procedures for reinstatement, if applicable;

(4) The amount of the civil monetary penalty or assessment, if any, and how such penalty and/or assessment was determined;

(5) The right to a hearing.

(e) If the right to a hearing is waived, OPM will implement the effective date of the sanction(s) as provided in the notice required by paragraph (d) of this section. If the right to a hearing is exhausted and OPM is upheld by the hearing officer, OPM shall set the date of the sanction(s) to become effective within 31 days of the final decision of the hearing officer.

§ 890.1006 Payment of claims for service or supplies furnished by debarred providers.

Health plans may not deny claims for services or supplies based on debarment of the provider under this subpart if the claimant did not know or could not reasonably be expected to have known of the debarment. In any such instance, the carrier involved must take appropriate measures to ensure that the individual is informed of the debarment and the minimum period of time remaining under the terms of the debarment.

[59 FR 24030, May 10, 1994]

§§ 890.1007—890.1009 [Reserved]

Subpart K—Temporary Continuation of Coverage

SOURCE: 54 FR 52339, Dec. 21, 1989, unless otherwise noted.

§ 890.1101 Purpose.

This subpart identifies the individuals who may temporarily continue coverage after the coverage would otherwise terminate under this part and sets forth the circumstances of their enrollment.

§ 890.1102 Definitions.

In this subpart—

Gross misconduct means a flagrant and extreme transgression of law or established rule of action for which an employee is separated and concerning which a judicial or administrative finding of gross misconduct has been made.

Qualifying event means any of the following events that qualify an individual for temporary continuation of coverage under subpart K of this part:

(1) A separation from Government service.