§ 890.1016 Aggravating and mitigating factors used to determine the length of permissive debarments.

(a) Aggravating factors. The presence of aggravating circumstances may support an OPM determination to increase the length of a debarment beyond the nominal periods set forth in §§890.1017 through 890.1021. The factors that OPM considers as aggravating are:

(1) Whether the provider’s actions underlying the basis for the debarment, or similar acts, had an adverse impact on the physical or mental health or well-being of one or more FEHBP-covered individuals or other persons.

(2) Whether the provider has a documented history of prior criminal wrongdoing; civil violations related to health care items or services; improper conduct; or administrative violations addressed by a Federal or State agency. OPM may consider matters involving violence, patient abuse, drug abuse, or controlled substances convictions or violations to be particularly serious.

(3) Whether the provider’s actions underlying the basis for the debarment, or similar acts, resulted in financial loss to the FEHBP, FEHBP-covered individuals, or other persons. In determining whether, or to what extent, a financial loss occurred, OPM shall not consider any amounts of restitution that the provider may have paid.

(4) Whether the provider’s false, wrongful, or improper claims to FEHBP carriers were numerous, submitted over a prolonged period of time, or part of an on-going pattern of wrongful acts.

(5) Whether the provider was specifically aware of or directly responsible for the acts constituting the basis for the debarment.

(b) Mitigating factors. The presence of mitigating circumstances may support an OPM determination to shorten the length of a debarment below the nominal periods set forth in §§890.1017 through 890.1021, respectively. The factors that OPM considers as mitigating are:

(1) Whether the provider’s cooperation with Federal, State, or local authorities resulted in criminal convictions, civil recoveries, or administrative actions against other violators, or served as the basis for official determinations of program weaknesses or vulnerabilities. Restitution that the provider made for funds wrongfully, improperly, or illegally received from Federal or State programs may also be considered as a mitigating factor.

(2) Whether official records of judicial proceedings or the proceedings of State licensing authorities contain a formal determination that the provider
§ 890.1017 Determining length of debarment based on revocation or suspension of a provider’s professional licensure.

(a) Indefinite term of debarment. Subject to the exceptions set forth in paragraph (b) of this section, debarment under 5 U.S.C. 8902a(c)(1) shall be for an indefinite period coinciding with the period during which the provider’s license is revoked, suspended, restricted, surrendered, or otherwise not in effect in the State whose action formed the basis for OPM’s debarment.

(b) Aggravating circumstances. If any of the aggravating circumstances set forth in §890.1016 apply, OPM may debar the provider for an additional period beyond the duration of the licensure revocation or suspension.

§ 890.1018 Determining length of debarment for an entity owned or controlled by a sanctioned provider.

OPM shall determine the length of debarments of entities under 5 U.S.C. 8902a(c)(2) based on the type of violation committed by the sanctioned entity owned or controlled by the person with an ownership or control interest. The types of violations actionable under this provision are:

(a) Owner/controller’s debarment. The debarment of an entity based on the debarment of an individual with an ownership or control interest shall be for a period concurrent with the individual’s debarment. If any aggravating or mitigating circumstances set forth in §890.1016 apply solely to the entity and were not considered in setting the period of the individual’s debarment, OPM may debar the entity for a period longer or shorter than the individual’s debarment.

(b) Owner/controller’s conviction. If a provider’s debarment is based on the criminal conviction of an entity he owns or controls for an offense listed in 5 U.S.C. 8902a(b)(1)-(4), OPM shall debar the provider for a period of no less than 3 years, subject to adjustment for any aggravating or mitigating circumstances identified in §890.1016 that apply to the provider as an individual.

(c) Entity’s civil monetary penalty. If a provider’s debarment is based on a civil monetary penalty imposed on an entity he owns or controls, OPM shall debar him for 3 years, subject to adjustment on the basis of the aggravating and mitigating circumstances listed in

§ 890.1019 Determining length of debarment based on ownership or control of a sanctioned entity.

OPM shall determine the length of debarments of individual providers under 5 U.S.C. 8902a(c)(3) based on the type of violation committed by the sanctioned entity owned or controlled by the person with an ownership or control interest. The types of violations actionable under this provision are:

(a) Entity’s debarment. If a provider’s debarment is based on his ownership or control of a debarred entity, the debarment shall be concurrent with the entity’s debarment. If any of the aggravating or mitigating circumstances identified in §890.1016 applies directly to the provider that owns or controls the debarred entity and was not considered in setting the period of the entity’s debarment, OPM may debar the provider for a period longer or shorter, respectively, than the entity’s debarment.

(b) Entity’s conviction. If a provider’s debarment is based on the criminal conviction of an entity he owns or controls for an offense listed in 5 U.S.C. 8902a(b)(1)-(4), OPM shall debar the provider for a period of no less than 3 years, subject to adjustment for any aggravating or mitigating circumstances identified in §890.1016 that apply to the provider as an individual.

(c) Entity’s civil monetary penalty. If a provider’s debarment is based on a civil monetary penalty imposed on an entity he owns or controls, OPM shall debar him for 3 years, subject to adjustment on the basis of the aggravating and mitigating circumstances listed in