§ 890.1030

finding hearing. A provider adversely affected by the debarring official’s final decision in a contested case may appeal under 5 U.S.C. 8902a(h)(2) to the appropriate U.S. district court.

SUSPENSION

§ 890.1030 Effect of a suspension.

(a) Temporary action pending formal proceedings. Suspension is a temporary action pending completion of an investigation or ensuing criminal, civil, or administrative proceedings.

(b) Immediate effect. Suspension is effective immediately upon the suspending official’s decision, without prior notice to the provider.

(c) Effect equivalent to debarment. The effect of a suspension is the same as the effect of a debarment. A suspended provider may not receive payment from FEHBP funds for items or services furnished to FEHBP-covered persons while suspended.

§ 890.1031 Grounds for suspension.

(a) Basis for suspension. OPM may suspend a provider if:

(1) OPM obtains reliable evidence indicating that one of the grounds for suspension listed in paragraph (b) of this section applies to the provider; and

(2) The suspending official determines under paragraph (c) of this section that immediate action to suspend the provider is necessary to protect the health and safety of persons covered by FEHBP.

(b) Grounds for suspension. Evidence constituting grounds for a suspension may include, but is not limited to:

(1) Indictment or conviction of a provider for a criminal offense that is a basis for mandatory debarment under this subpart;

(2) Indictment or conviction of a provider for a criminal offense that reflects a risk to the health, safety, or well-being of FEHBP-covered individuals;

(3) Other credible evidence indicating, in the judgment of the suspending official, that a provider has committed a violation that would warrant debarment under this subpart. This may include, but is not limited to:

(i) Civil judgments;

(ii) Notice that a Federal, State, or local government agency has debarred, suspended, or excluded a provider from participating in a program or revoked or declined to renew a professional license; or

(iii) Other official findings by Federal, State, or local bodies that determine factual or legal matters.

(c) Determining need for immediate action. Suspension is intended to protect the public interest, including the health and safety of covered individuals or the integrity of FEHBP funds. The suspending official has wide discretion to decide whether to suspend a provider. A specific finding of immediacy or necessity is not required to issue a suspension. The suspending official may draw reasonable inferences from the nature of the alleged misconduct and from a provider’s actual or potential transactions with the FEHBP.

§ 890.1032 Length of suspension.

(a) Initial period. The initial term of all suspensions shall be an indefinite period not to exceed 12 months.

(b) Formal legal proceedings not initiated. If formal legal or administrative proceedings have not begun against a provider within 12 months after the effective date of his suspension, the suspending official may:

(1) Terminate the suspension; or

(2) If requested by the Department of Justice, the cognizant United States Attorney’s Office, or other responsible Federal, State, or local prosecuting official, extend the suspension for an additional period, not to exceed 6 months.

(c) Formal proceedings initiated. If formal criminal, civil, or administrative proceedings are initiated against a suspended provider, the suspension may continue indefinitely, pending the outcome of those proceedings.

(d) Terminating the suspension. The suspending official may terminate a suspension at any time, and shall terminate it after 18 months, unless formal proceedings have begun within that period.

§ 890.1033 Notice of suspension.

(a) Written notice. OPM shall send written notice of suspension according
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§ 890.1037 Cases where additional fact-finding is not required.

The suspending official may decide a contest without an additional fact-finding process if:

(a) Previously adjudicated facts. The suspension is based on an indictment or on facts determined by a prior adjudication in which the provider was afforded due process rights. Examples of due process proceedings include, but are not limited to, the adjudication procedures associated with licensure revocation, suspension, restriction, or nonrenewal by a State licensing authority; similar administrative adjudications by Federal, State, or local agencies; a criminal conviction or civil judgment; or an action by the provider that constitutes a waiver of his right to a due process adjudication, such as surrender of professional licensure during the pendency of a disciplinary hearing, entering a guilty plea or confession of judgment in a judicial proceeding, or signing a settlement agreement stipulating facts that constitute a sanctionable violation. Neither the existence of the prior adjudication nor any of the underlying circumstances are considered to be subject to genuine factual dispute as part of the suspension proceeding.

(b) Advisory by law enforcement officials. OPM is advised by the Department of Justice, the appropriate U.S. Attorney’s Office, a State attorney general’s office, or a State or local prosecutor’s office that proceedings before a presiding official would prejudice the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension.

(c) No bona fide dispute of material facts. The information, arguments, and documents submitted to the suspending official do not establish that...