

(2)(i) CMS sends written notice to the individual or entity via letter of their inclusion on the preclusion list. The notice must contain the reason for the inclusion and inform the individual or entity of their appeal rights. An individual or entity may appeal their inclusion on the preclusion list, defined in § 422.2, in accordance with part 498 of this chapter.

(ii) If the individual's or entity's inclusion on the preclusion list is based on a contemporaneous Medicare revocation under § 424.535 of this chapter:

(A) The notice described in paragraph (a)(2)(i) of this section must also include notice of the revocation, the reason(s) for the revocation, and a description of the individual's or entity's appeal rights concerning the revocation.

(B) The appeals of the individual's or entity's inclusion on the preclusion list and the individual's or entity's revocation must be filed jointly by the individual or entity and, as applicable, considered jointly under part 498 of this chapter.

(3)(i) Except as provided in paragraph (a)(3)(ii) of this section, an individual or entity will only be included on the preclusion list after the expiration of either of the following:

(A) If the individual or entity does not file a reconsideration request under § 498.5(n)(1) of this chapter, the individual or entity will be added to the preclusion list upon the expiration of the 60-day period in which the individual or entity may request a reconsideration; or

(B) If the individual or entity files a reconsideration request under § 498.5(n)(1) of this chapter, the individual or entity will be added to the preclusion list effective on the date on which CMS, if applicable, denies the individual's or entity's reconsideration.

(ii) An OIG excluded individual or entity is added to the preclusion list effective on the date of the exclusion.

(4) Payment denials based upon an individual's or entity's inclusion on the preclusion list are not appealable by beneficiaries.

(5)(i) Except as provided in paragraphs (a)(5)(iii) and (iv) of this section, an individual or entity that is revoked under § 424.535 of this chapter will be included on the preclusion list

for the same length of time as the individual's or entity's reenrollment bar.

(ii) Except as provided in paragraphs (a)(5)(iii) and (iv) of this section, an individual or entity that is not enrolled in Medicare will be included on the preclusion list for the same length of time as the reenrollment bar that CMS could have imposed on the individual or entity had they been enrolled and then revoked.

(iii) Except as provided in paragraph (a)(5)(iv) of this section, an individual or entity, regardless of whether they are or were enrolled in Medicare, that is included on the preclusion list because of a felony conviction will remain on the preclusion list for a 10-year period, beginning on the date of the felony conviction, unless CMS determines that a shorter length of time is warranted. Factors that CMS considers in making such a determination are as follows:—

(A) The severity of the offense.

(B) When the offense occurred.

(C) Any other information that CMS deems relevant to its determination.

(iv) In cases where an individual or entity is excluded by the OIG, the individual or entity must remain on the preclusion list until the expiration of the CMS-imposed preclusion list period or reinstatement by the OIG, whichever occurs later.

(6) CMS has the discretion not to include a particular individual or entity on (or if warranted, remove the individual or entity from) the preclusion list should it determine that exceptional circumstances exist regarding beneficiary access to MA items, services, or drugs. In making a determination as to whether such circumstances exist, CMS takes into account:

(i) The degree to which beneficiary access to MA items, services, or drugs would be impaired; and

(ii) Any other evidence that CMS deems relevant to its determination.

(b) An MA organization that does not comply with paragraph (a) of this section may be subject to sanctions under § 422.750 and termination under § 422.510.

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