(c) The OIG will give notice of a reinstatement under this section in accordance with §1001.3003(a).

(d) An action taken by the OIG under this section will not require any other Federal health care program to reinstate the individual or entity if such program has imposed an exclusion under its own authority.

(e) If an action which results in the retroactive reinstatement of an individual or entity is subsequently overturned, the OIG may reimpose the exclusion for the initial period of time, less the period of time that was served prior to the reinstatement of the individual or entity.

[57 FR 3330, Jan. 29, 1992, as amended at 64 FR 39428, July 22, 1999; 67 FR 11935, Mar. 18, 2002; 82 FR 4117, Jan. 12, 2017]

PART 1002—PROGRAM INTEGRITY—STATE-INITIATED EXCLUSIONS FROM MEDICAID

Subpart A—General Provisions

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Subpart D—Notification to OIG of State or Local Convictions of Crimes Against Medicaid

1002.230 Notification of State or local convictions of crimes against Medicaid.

AUTHORITY: 42 U.S.C. 1302, 1320a–3, 1320a–5, 1320a–7, 1396(a)(4)(A), 1396a(p), 1396a(a)(39), 1396a(a)(41), and 1396b(i)(2).

SOURCE: 57 FR 3343, Jan. 29, 1992, unless otherwise noted.

Subpart A—General Provisions

§1002.1 Basis and scope.

(a) *Statutory basis.* This part implements sections 1902(a)(4), 1902(a)(39), 1902(a)(41), 1902(p), 1903(i)(2), 1124, 1126, and 1128 of the Act.

(1) Under authority of section 1902(a)(4) of the Act, this part sets forth methods of administration and procedures the State agency must follow to exclude a provider from participation in the State Medicaid program. State-initiated exclusion from Medicaid may lead to OIG exclusion from all Federal health care programs.

(2) Under authority of sections 1124 and 1126 of the Act, this part requires the Medicaid agency to obtain and disclose to the OIG certain provider ownership and control information, along with actions taken on a provider's application to participate in the program.

(3) Under authority of sections 1902(a)(41) and 1128 of the Act, this part requires the State agency to notify the OIG of sanctions and other actions the State takes to limit a provider's participation in Medicaid.

(4) Section 1902(p) of the Act permits the State to exclude an individual or entity from Medicaid for any reason the Secretary can exclude and requires the State to exclude certain managed care entities that could be excluded by the OIG.

(5) Sections 1902(a)(39) and 1903(i)(2) of the Act prohibit State payments to providers and deny Federal financial participation (FFP) in State expenditures for items or services furnished by an individual or entity that has been excluded by the OIG from participation in Federal health care programs.

(b) *Scope.* This part specifies certain bases upon which the State may or, in some cases, must exclude an individual or entity from participation in the Medicaid program and the administrative procedures the State must follow to do so. These regulations specifically address the authority of State agencies to exclude on their own initiative, regardless of whether the OIG has excluded an individual or entity under part 1001 of this chapter. In addition,

this part delineates the States' obligation to obtain certain information from Medicaid providers and to inform the OIG of information received and actions taken.

[82 FR 4117, Jan. 12, 2017]

§ 1002.2 Other applicable regulations.

(a) Part 455, subpart B, of this title sets forth requirements for disclosure of ownership and control information to the State Medicaid agency by providers and fiscal agents.

(b) Part 438, subpart J, of this title sets forth payment and exclusion requirements specific to Medicaid managed care organizations.

[82 FR 4118, Jan. 12, 2017]

§ 1002.3 General authority.

(a) In addition to any other authority it may have, a State may exclude an individual or entity from participation in the Medicaid program for any reason for which the Secretary could exclude that individual or entity from participation in Federal health care programs under sections 1128, 1128A, or 1866(b)(2) of the Act.

(b) Nothing contained in this part should be construed to limit a State's own authority to exclude an individual or entity from Medicaid for any reason or period authorized by State law.

[57 FR 3343, Jan. 29, 1992, as amended at 64 FR 39428, July 22, 1999. Redesignated and amended at 82 FR 4118, Jan. 12, 2017]

§ 1002.4 Disclosure by providers and State Medicaid agencies.

(a) *Information that must be disclosed.* Before the Medicaid agency enters into or renews a provider agreement, or at any time upon written request by the Medicaid agency, the provider must disclose to the Medicaid agency the identity of any person described in § 1001.1001(a)(1) of this chapter.

(b) *Notification to Inspector General.* (1) The Medicaid agency must notify the Inspector General of any disclosures made under paragraph (a) of this section within 20 working days from the date it receives the information.

(2) The agency must promptly notify the Inspector General of any action it takes on the provider's application for participation in the program.

(3) The agency must also promptly notify the Inspector General of any action it takes to limit the ability of an individual or entity to participate in its program, regardless of what such an action is called. This includes, but is not limited to, suspension actions, settlement agreements and situations where an individual or entity voluntarily withdraws from the program to avoid a formal sanction.

(c) *Denial or termination of provider participation.* (1) The Medicaid agency may refuse to enter into or renew an agreement with a provider if any person who has an ownership or control interest, or who is an agent or managing employee of the provider, in the provider has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid, Title V, Title XX, or Title XXI of the Act.

(2) The Medicaid agency may refuse to enter into, or terminate, a provider agreement if it determines that the provider did not fully and accurately make any disclosure required under paragraph (a) of this section.

[57 FR 3343, Jan. 29, 1992, as amended at 63 FR 46691, Sept. 2, 1998. Redesignated and amended at 82 FR 4118, Jan. 12, 2017]

§ 1002.5 State plan requirement.

The plan must provide that the requirements of this subpart are met. However, the provisions of these regulations are minimum requirements. The agency may impose broader sanctions if it has the authority to do so under State law.

[57 FR 3343, Jan. 29, 1992. Redesignated at 82 FR 4118, Jan. 12, 2017]

§ 1002.6 Payment prohibitions.

(a) *Denial of payment by State agencies.* Except as provided for in § 1001.1901(c)(3), (4) and (5)(i) of this chapter, no payment may be made by the State agency for any item or service furnished on or after the effective date specified in the notice:

(1) By an individual or entity excluded by the OIG or

(2) At the medical direction or on the prescription of a physician or other authorized individual who is excluded by the OIG when a person furnishing such

item or service knew, or had reason to know, of the exclusion.

(b) *Denial of Federal financial participation (FFP).* FFP is not available for any item or service for which the State agency is required to deny payment under paragraph (a) of this section. FFP will be available for items and services furnished after the excluded individual or entity is reinstated in the Medicaid program.

[82 FR 4118, Jan. 12, 2017]

Subpart B—State Exclusion of Certain Managed Care Entities

§ 1002.203 State exclusion of certain managed care entities.

(a) The State agency, in order to receive FFP, must provide that it will exclude from participation *any* managed care organization (as defined in section 1903(m) of the Act) or entity furnishing services under a waiver approved under section 1915(b)(1) of the Act, if such organization or entity—

(1) Has a prohibited ownership or control relationship with any individual or entity that could subject the managed care organization or entity to exclusion under § 1001.1001 or § 1001.1551 of this chapter or

(2) Has, directly or indirectly, a substantial contractual relationship with an individual or entity that could be excluded under § 1001.1001 or § 1001.1551 of this chapter.

(b) As used in this section, the term—

Exclude includes the refusal to enter into or renew a participation agreement or the termination of such an agreement.

Substantial contractual relationship is one in which the sanctioned individual described in § 1001.1001 of this chapter has direct or indirect business transactions with the organization or entity that, in any fiscal year, amount to more than $25,000 or 5 percent of the organization's or entity's total operating expenses, whichever is less. Business transactions include, but are not limited to, contracts, agreements, purchase orders, or leases to obtain services, supplies, equipment, space or salaried employment.

[57 FR 3343, Jan. 29, 1992, as amended at 63 FR 46691, Sept. 2, 1998; 82 FR 4118, Jan. 12, 2017]

Subpart C—Procedures for State-Initiated Exclusions

§ 1002.210 General authority.

The State agency must have administrative procedures in place that enable it to exclude an individual or entity for any reason for which the Secretary could exclude such individual or entity under parts 1001 or 1003 of this chapter. The period of such exclusion is at the discretion of the State agency.

§ 1002.211 [Reserved]

§ 1002.212 State agency notifications.

When the State agency initiates an exclusion under § 1002.210, it must provide to the individual or entity subject to the exclusion notification consistent with that required in subpart E of part 1001 of this chapter, and must notify other State agencies, the State medical licensing board (where applicable), the public, beneficiaries, and others as provided in §§ 1001.2005 and 1001.2006 of this chapter.

§ 1002.213 Appeals of exclusions.

Before imposing an exclusion under § 1002.210, the State agency must give the individual or entity the opportunity to submit documents and written argument against the exclusion. The individual or entity must also be given any additional appeals rights that would otherwise be available under procedures established by the State.

§ 1002.214 Basis for reinstatement after State agency-initiated exclusion.

(a) The provisions of this section and § 1002.215 apply to the reinstatement in the Medicaid program of all individuals or entities excluded in accordance with § 1002.210, if a State affords reinstatement opportunity to those excluded parties.

(b) An individual or entity who has been excluded from Medicaid may be

reinstated only by the Medicaid agency that imposed the exclusion.

(c) An individual or entity may submit to the State agency a request for reinstatement at any time after the date specified in the notice of exclusion.

§ 1002.215 Action on request for reinstatement.

(a) The State agency may grant reinstatement only if it is reasonably certain that the types of actions that formed the basis for the original exclusion have not recurred and will not recur. In making this determination, the agency will consider, in addition to any factors set forth in State law—

(1) The conduct of the individual or entity occurring prior to the date of the notice of exclusion, if not known to the agency at the time of the exclusion;

(2) The conduct of the individual or entity after the date of the notice of exclusion; and

(3) Whether all fines, and all debts due and owing (including overpayments) to any Federal, State or local government that relate to Medicare or any of the State health care programs, have been paid, or satisfactory arrangements have been made, that fulfill these obligations.

(b) Notice of action on request for reinstatement. (1) If the State agency approves the request for reinstatement, it must give written notice to the excluded party, and to all others who were informed of the exclusion in accordance with §1002.212, specifying the date on which Medicaid program participation may resume.

(2) If the State agency does not approve the request for reinstatement, it will notify the excluded party of its decision. Any appeal of a denial of reinstatement will be in accordance with State procedures and need not be subject to administrative or judicial review, unless required by State law.

Subpart D—Notification to OIG of State or Local Convictions of Crimes Against Medicaid

§ 1002.230 Notification of State or local convictions of crimes against Medicaid.

(a) The State agency must notify the OIG whenever a State or local court has convicted an individual who is receiving reimbursement under Medicaid of a criminal offense related to participation in the delivery of health care items or services under the Medicaid program, except where the State Medicaid Fraud Control Unit (MFCU) has so notified the OIG.

(b) If the State agency was involved in the investigation or prosecution of the case, it must send notice within 15 days after the conviction.

(c) If the State agency was not so involved, it must give notice within 15 days after it learns of the conviction.

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

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1003.200 Basis for civil money penalties, assessments, and exclusions.
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Subpart C—CMPs, Assessments, and Exclusions for Anti-Kickback and Physician Self-Referral Violations

1003.300 Basis for civil money penalties, assessments, and exclusions.