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(b) *No further administrative review available*. The suspending official's decision is final and is not subject to further administrative review.

§ 890.1039 Cases where additional fact-finding is required.

(a) *Criteria for holding fact-finding proceeding*. The debarring official shall request another OPM official (''presiding official'') to hold an additional fact-finding proceeding if:

(1) Facts material to the suspension have not been adjudicated in a prior due process proceeding; and

(2) These facts are genuinely in dispute, based on the entire administrative record available to the debarring official.

(b) *Qualification to serve as presiding official*. The presiding official is designated by the OPM Director or another OPM official authorized by the Director to make such designations. The presiding official shall be a senior official who is qualified to conduct informal adjudicative proceedings and who has had no previous contact with the suspension or the contest.

(c) *Effect on contest*. The suspending official shall defer a final decision on the contest pending the results of the fact-finding proceeding.

§ 890.1040 Conducting a fact-finding proceeding.

(a) *Informal proceeding*. The presiding official may conduct the fact-finding proceedings as informally as practicable, consistent with principles of fundamental fairness. Specific rules of evidence or procedure do not apply to these proceedings.

(b) *Proceeding limited to disputed material facts*. The presiding official shall consider only the genuinely disputed facts identified by the suspending official as relevant to the basis for the suspension. Matters that have been previously adjudicated or which are not in bona fide dispute within the record shall not be considered by the presiding official.

(c) *Right to present information, evidence, and arguments*. A provider may appear before the presiding official with counsel, submit oral and written arguments and documentary evidence, present witnesses, question any witnesses testifying in support of the suspension, and challenge the accuracy of any other evidence that the agency offers as a basis for the suspension.

(d) *Record of proceedings*. The presiding official shall make an audio recording of the proceedings and shall provide a copy to the provider at no charge. If the provider wishes to have a transcribed record, OPM shall arrange for production of one which may be purchased at cost.

(e) *Presiding official's findings*. The presiding official shall resolve all of the disputed facts identified by the suspending official, on the basis of a preponderance of the evidence in the entire administrative record. Within 30 days after the record of the proceeding closes, the presiding official shall issue a written report of all findings of fact to the suspending official.

§ 890.1041 Deciding a contest after a fact-finding proceeding.

(a) *Presiding official's findings shall be accepted*. The suspending official shall accept the presiding official's findings, unless they are arbitrary, capricious, or clearly erroneous.

(b) *Suspending official's decision*. Within 30 days after receiving the presiding official's report, the suspending official shall issue a final written decision that either sustains, modifies, or terminates the suspension. The suspending official may extend this period for good cause.

(c) *Effect on subsequent debarment or suspension proceedings*. A decision by the suspending official to modify or terminate a suspension shall not prevent OPM from subsequently debarring the same provider, or any other Federal agency from either suspending or debarring the provider, based on the same facts.

EFFECT OF DEBARMENT

§ 890.1042 Effective dates of debarments.

(a) *Minimum notice period*. A debarment shall take effect not sooner than 30 days after the date of OPM's notice of proposed debarment, unless the debarring official specifically determines that the health or safety of covered individuals or the integrity of the FEHBP warrants an earlier effective

date. In such a situation, the notice shall specifically inform the provider that the debarring official decided to shorten or eliminate the 30-day notice period.

(b) *Uncontested debarments*. If a provider does not file a contest within the 30-day notice period, the proposed debarment shall take effect on the date stated in the notice of proposed debarment, without further procedures, actions, or notice by OPM.

(c) *Contested debarments and requests for reducing the period of debarment*. If a provider files a contest within the 30-day notice period, the proposed debarment shall not go into effect until the debarring official issues a final written decision, unless the health or safety of covered individuals or the integrity of the FEHBP requires the debarment to be effective while the contest is pending.

§ 890.1043 Effect of debarment on a provider.

(a) *FEHBP payments prohibited*. A debarred provider is not eligible to receive payment, directly or indirectly, from FEHBP funds for items or services furnished to a covered individual on or after the effective date of the debarment. Also, a provider shall not accept an assignment of a claim for items or services furnished to a covered individual during the period of debarment. These restrictions shall remain in effect until the provider is reinstated by OPM.

(b) *Governmentwide effect*. Debarment precludes a provider from participating in all other Federal agencies' procurement and nonprocurement programs and activities, as required by section 2455 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355). Other agencies may grant a waiver or exception under their own regulations, to permit a provider to participate in their programs, notwithstanding the OPM debarment.

(c) *Civil or criminal liability*. A provider may be subject to civil monetary penalties under this subpart or criminal liability under other Federal statutes for knowingly filing claims, causing claims to be filed, or accepting payment from FEHBP carriers for items or services furnished to a covered individual during a period of debarment .

NOTIFYING OUTSIDE PARTIES ABOUT DEBARMENT AND SUSPENSION ACTIONS

§ 890.1044 Entities notified of OPM-issued debarments and suspensions.

When OPM debars or suspends a provider under this subpart, OPM shall notify:

(a) All FEHBP carriers;

(b) The General Services Administration, for publication in the comprehensive Governmentwide list of Federal agency exclusions;

(c) Other Federal agencies that administer health care or health benefits programs; and

(d) State and local agencies, authorities, boards, or other organizations with health care licensing or certification responsibilities.

§ 890.1045 Informing persons covered by FEHBP about debarment or suspension of their provider.

FEHBP carriers are required to notify covered individuals who have obtained items or services from a debarred or suspended provider within one year of the date of the debarment or suspension of:

(a) The existence of the provider's debarment or suspension;

(b) The minimum period remaining in the provider's period of debarment; and

(c) The requirement that OPM terminate the debarment or suspension before FEHBP funds can be paid for items or services the provider furnishes to covered individuals.

EXCEPTIONS TO THE EFFECT OF DEBARMENTS

§ 890.1046 Effect of debarment or suspension on payments for services furnished in emergency situations.

A debarred or suspended health care provider may receive FEHBP funds paid for items or services furnished on an emergency basis if the FEHBP carrier serving the covered individual determines that:

(a) The provider's treatment was essential to the health and safety of the covered individual; and