

§ 1003.104

charged by the contracting organization. The excess premium amount will be deducted from the penalty and returned to the enrollee.

(5) The OIG will impose an additional \$15,000 penalty for each individual not enrolled when CMS determines that a contracting organization has committed a violation described in paragraph (f)(3)(ii) of this section.

(6) For purposes of paragraph (f) of this section, a violation is each incident where a person has committed an act listed in § 417.500(a) or § 434.67(a) of this title, or failed to comply with a requirement set forth in § 434.80(c) of this title.

(g) The OIG may impose a penalty of not more than \$25,000 against a health plan for failing to report information on an adverse action required to be reported to the Healthcare Integrity and Protection Data Bank in accordance with section 1128E of the Act and § 1003.102(b)(5)(ii).

(h) For each violation of § 1003.102(b)(11), the OIG may impose—

(1) A penalty of not more than \$50,000, and

(2) An assessment of up to three times the total amount of remuneration offered, paid, solicited or received, as specified in § 1003.104(b).

(i) For violations of § 1003.102(b)(14) of this part, the OIG may impose a penalty of not more than the greater of—

(1) \$5,000, or

(2) Three times the amount of Medicare payments for home health services that are made with regard to the false certification of eligibility by a physician in accordance with sections 1814(a)(2)(C) or 1835(a)(2)(A) of the Act.

(j) The OIG may impose a penalty of not more than \$10,000 per day for each day that the prohibited relationship described in § 1001.102(b)(12) of this part occurs.

(k) For violations of section 1862(a)(14) of the Act and § 1003.102(b)(15), the OIG may impose a penalty of not more than \$2,000 for each bill or request for payment for items and services furnished to a hospital patient.

(l) For violations of section 351A(b) or (c) of the Public Health Service Act and 42 CFR part 73, the OIG may impose a penalty of not more than \$250,000

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in the case of an individual, and not more than \$500,000 in the case of any other person.

(m) For violations of section 1860D–31 of the Act and 42 CFR part 403, subpart H, regarding the misleading or defrauding of program beneficiaries, or the misuse of transitional assistance funds, the OIG may impose a penalty of not more than \$10,000 for each individual violation.

[57 FR 3346, Jan. 29, 1992, as amended at 59 FR 32125, June 22, 1994; 59 FR 48566, Sept. 22, 1994; 60 FR 16584, Mar. 31, 1995; 60 FR 58241, Nov. 27, 1995; 61 FR 13449, Mar. 27, 1996; 61 FR 52301, Oct. 7, 1996; 64 FR 39429, July 22, 1999; 65 FR 18550, Apr. 7, 2000; 65 FR 24416, Apr. 26, 2000; 65 FR 35584, June 5, 2000; 67 FR 76905, Dec. 13, 2002; 69 FR 28845, May 19, 2004]

§ 1003.104 Amount of assessment.

(a) The OIG may impose an assessment, where authorized, in accordance with § 1003.102, of not more than—

(1) Two times the amount for each item or service wrongfully claimed prior to January 1, 1997; and

(2) Three times the amount for each item or service wrongfully claimed on or after January 1, 1997.

(b) The assessment is in lieu of damages sustained by the Department or a State agency because of that claim.

[65 FR 24416, Apr. 26, 2000]

§ 1003.105 Exclusion from participation in Medicare, Medicaid and all Federal health care programs.

(a)(1) Except as set forth in paragraph (b) of this section, the following persons may be subject, in lieu of or in addition to any penalty or assessment, to an exclusion from participation in Medicare for a period of time determined under § 1003.107. There will be exclusions from Federal health care programs for the same period as the Medicare exclusion for any person who—

(i) Is subject to a penalty or assessment under § 1003.102(a), (b)(1), (b)(4), (b)(12), (b)(13) or (b)(15); or

(ii) Commits a gross and flagrant, or repeated, violation of section 1867 of the Act or § 489.24 of this title on or after May 1, 1991. For purposes of this section, a gross and flagrant violation is one that presents an imminent danger to the health, safety or well-being of the individual who seeks emergency