(b) *Definition of ''Material''.* For purposes of this section, the term ''material'' means having a natural tendency to influence or be capable of influencing the decision to approve or deny the request to participate or enroll as a provider of services or supplier under a Federal health care program.

(c) *Sources.* The OIG's determination under paragraph (a) of this section will be made on the basis of information from the following sources:

(1) CMS;

(2) Medicaid State agencies;

(3) Fiscal agents or contractors or private insurance companies;

(4) Law enforcement agencies;

(5) State or local licensing or certification authorities;

(6) State or local professional societies; or

(7) Any other sources deemed appropriate by the OIG.

(d) *Length of exclusion.* In determining the length of an exclusion imposed in accordance with this section, the OIG will consider the following factors:

(1) The nature and circumstances surrounding the false statement;

(2) Whether and to what extent payments were requested or received from the Federal health care program under the application, agreement, bid, or contract on which the false statement, omission, or misrepresentation was made; and

(3) Whether the individual or entity has a documented history of criminal, civil, or administrative wrongdoing.

[82 FR 4115, Jan. 12, 2017]

§ 1001.1601 Violations of the limitations on physician charges.

(a) *Circumstance for exclusion.* (1) The OIG may exclude a physician whom it determines—

(i) Is a non-participating physician under section 1842(j) of the Act;

(ii) Furnished services to a beneficiary;

(iii) Knowingly and willfully billed—

(A) On a repeated basis for such services actual charges in excess of the maximum allowable actual charge determined in accordance with section 1842(j)(1)(C) of the Act for the period January 1, 1987 through December 31, 1990, or

(B) Individuals enrolled under part B of title XVIII of the Act during the statutory freeze for actual charges in excess of such physician's actual charges determined in accordance with section 1842(j)(1)(A) of the Act for the period July 1, 1984 to December 31, 1986; and''

(iv) Is not the sole community physician or sole source of essential specialized services in the community.

(2) The OIG will take into account access of beneficiaries to physicians' services for which Medicare payment may be made in determining whether to impose an exclusion.

(b) *Length of exclusion.* (1) In determining the length of an exclusion in accordance with this section, the OIG will consider the following factors—

(i) The number of services for which the physician billed in excess of the maximum allowable charges;

(ii) The number of beneficiaries for whom services were billed in excess of the maximum allowable charges;

(iii) The amount of the charges that were in excess of the maximum allowable charges; and

(iv) Whether the physician has a documented history of criminal, civil, or administrative wrongdoing (the lack of any prior record is to be considered neutral).

(2) The period of exclusion may not exceed 5 years.

[57 FR 3329, Jan. 29, 1992; 57 FR 9669, Mar. 20, 1992, as amended at 63 FR 46689, Sept. 2, 1998; 82 FR 4116, Jan. 12, 2017]

§ 1001.1701 Billing for services of assistant at surgery during cataract operations.

(a) *Circumstance for exclusion.* The OIG may exclude a physician whom it determines—

(1) Has knowingly and willfully presented or caused to be presented a claim, or billed an individual enrolled under Part B of the Medicare program (or his or her representative) for:

(i) Services of an assistant at surgery during a cataract operation, or

(ii) Charges that include a charge for an assistant at surgery during a cataract operation;

(2) Has not obtained prior approval for the use of such assistant from the appropriate Utilization and Quality