

(c) The guidelines set forth in this section are not binding. Nothing in this section limits the authority of the Department to settle any issue or case as provided by § 1003.126 of this part.

[59 FR 32126, June 22, 1994, as amended at 65 FR 24418, Apr. 26, 2000]

§ 1003.108 Penalty, assessment, and exclusion not exclusive.

Penalties, assessments, and exclusions imposed under this part are in addition to any other penalties prescribed by law.

[59 FR 32126, June 22, 1994]

§ 1003.109 Notice of proposed determination.

(a) If the Inspector General proposes a penalty and, when applicable, assessment, or proposes to exclude a respondent from participation in a Federal health care program, as applicable, in accordance with this part, he or she must deliver or send by certified mail, return receipt requested, to the respondent written notice of his or her intent to impose a penalty, assessment and exclusion, as applicable. The notice includes—

(1) Reference to the statutory basis for the penalty, assessment and exclusion;

(2) A description of the claims, requests for payment, or incidents with respect to which the penalty, assessment and exclusion are proposed (except in cases where the Inspector General is relying upon statistical sampling in accordance with § 1003.133 in which case the notice shall describe those claims and requests for payment comprising the sample upon which the Inspector General is relying and will also briefly describe the statistical sampling technique utilized by the Inspector General);

(3) The reason why such claims, requests for payments or incidents subject the respondent to a penalty, assessment and exclusion;

(4) The amount of the proposed penalty, assessment and the period of proposed exclusion (where applicable);

(5) Any circumstances described in § 1003.106 that were considered when determining the amount of the proposed

penalty and assessment and the period of exclusion;

(6) Instructions for responding to the notice, including—

(i) A specific statement of respondent's right to a hearing, and

(ii) A statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty, assessment and exclusion without right of appeal; and

(7) In the case of a notice sent to a respondent who has an agreement under section 1866 of the Act, the notice also indicates that the imposition of an exclusion may result in the termination of the provider's agreement in accordance with section 1866(b)(2)(C) of the Act.

(b) Any person upon whom the Inspector General has proposed the imposition of a penalty, assessment or exclusion may appeal such proposed penalty, assessment or exclusion to the DAB in accordance with § 1005.2 of this chapter. The provisions of part 1005 of this chapter govern such appeals.

(c) If the respondent fails, within the time permitted, to exercise his or her right to a hearing under this section, any exclusion, penalty, or assessment becomes final.

[57 FR 3348, Jan. 29, 1992, as amended at 59 FR 32126, June 22, 1994; 64 FR 39429, July 22, 1999; 65 FR 24418, Apr. 26, 2000]

§ 1003.110 Failure to request a hearing.

If the respondent does not request a hearing within the time prescribed by § 1003.109(a), the Inspector General may impose the proposed penalty, assessment, and exclusion, or any less severe penalty, assessment, and suspension. The Inspector General shall notify the respondent by certified mail, return receipt requested, of any penalty, assessment, and exclusion that has been imposed and of the means by which the respondent may satisfy the judgment. The respondent has no right to appeal a penalty, assessment, and exclusion, with respect to which he or she has not requested a hearing.

[51 FR 34777, Sept. 30, 1986, as amended at 57 FR 3348, Jan. 29, 1992]