

§ 1004.90

(9) The number of admissions by the practitioner or other person reviewed by the QIO during the period in which the violation(s) were identified;

(10) The professional qualifications of the QIO's reviewers; and

(11) The QIO's sanction recommendation.

(c) *QIO recommendation.* The QIO must specify in its report—

(1) The sanction recommended;

(2) The amount of the monetary penalty recommended, if applicable;

(3) The period of exclusion recommended, if applicable;

(4) The availability of alternative sources of services in the community, with supporting information; and

(5) The county or counties in which the practitioner or other person furnishes services.

[60 FR 63640, Dec. 12, 1995, as amended at 62 FR 23143, Apr. 29, 1997]

§ 1004.90 Basis for recommended sanction.

The QIO's specific recommendation must be based on documentation provided to the OIG showing its consideration of—

(a) The type of offense involved;

(b) The severity of the offense;

(c) The deterrent value;

(d) The practitioner's or other person's previous sanction record;

(e) The availability of alternative sources of services in the community; and

(f) Any other factors that the QIO considers relevant, such as the duration of the problem.

Subpart D—OIG Responsibilities

§ 1004.100 Acknowledgement and review of report.

(a) *Acknowledgement.* The OIG will inform the QIO of the date it received the QIO's report and recommendation.

(b) *Review.* The OIG will review the QIO report and recommendation to determine whether—

(1) The QIO has followed the regulatory requirements of this part; and

(2) A violation has occurred.

(c) *Rejection of the QIO recommendation.* If the OIG decides that a sanction is not warranted, it will notify the QIO that recommended the sanction, the af-

fecting practitioner or other person, and the licensing board informed by the QIO of the sanction recommendation that the recommendation is rejected.

(d) *Decision to sanction.* If the OIG decides that a violation of obligations has occurred, it will determine the appropriate sanction by considering—

(1) The recommendation of the QIO;

(2) The type of offense;

(3) The severity of the offense;

(4) The previous sanction record of the practitioner or other person;

(5) The availability of alternative sources of services in the community;

(6) Any prior problems the Medicare or State health care programs have had with the practitioner or other person; and

(7) Any other matters relevant to the particular case.

(e) *Exclusion sanction.* If the QIO submits a recommendation for exclusion to the OIG, and a determination is not made by the 120th day after actual receipt by the OIG, the exclusion sanction recommended will become effective and the OIG will provide notice in accordance with § 1004.110(f).

(f) *Monetary penalty.* If the QIO recommendation is to assess a monetary penalty, the 120-day provision does not apply and the OIG will provide notice in accordance with § 1004.110 (a)–(e).

[60 FR 63640, Dec. 12, 1995, as amended at 62 FR 23143, Apr. 29, 1997]

§ 1004.110 Notice of sanction.

(a) The OIG must notify the practitioner or other person of the adverse determination and of the sanction to be imposed.

(b) The sanction is effective 20 days from the date of the notice. Receipt is presumed to be 5 days after the date on the notice, unless there is a reasonable showing to the contrary.

(c) The notice must specify—

(1) The legal and factual basis for the determination;

(2) The sanction to be imposed;

(3) The effective date and, if appropriate, the duration of the exclusion;

(4) The appeal rights of the practitioner or other person;

(5) The opportunity and the process necessary to provide alternative notification as set forth in paragraphs (d) and (e) of this section; and