

§ 1001.1401

42 CFR Ch. V (10–1–03 Edition)

the request, the definition of *reasonable request* and *immediate access*, and the penalties for failure to comply, including when the exclusion will take effect.

(3) For purposes of paragraphs (a)(1)(iii) and (a)(1)(iv) of this section, the term—

*Failure to grant immediate access* means:

(i) Except where the OIG or State Medicaid fraud control unit reasonably believes that requested documents are about to be altered or destroyed, the failure to produce or make available for inspection and copying requested records upon reasonable request, or to provide a compelling reason why they cannot be produced, within 24 hours of such request;

(ii) Where the OIG or State Medicaid fraud control unit has reason to believe that requested documents are about to be altered or destroyed, the failure to provide access to requested records at the time the request is made.

*Reasonable request* means a written request for documents, signed by a designated representative of the OIG or the State Medicaid fraud control unit, and made by a properly identified agent of the OIG or a State Medicaid fraud control unit during reasonable business hours, where there is information to suggest that the individual or entity has violated statutory or regulatory requirements under titles V, XI, XVIII, XIX or XX of the Act. The request will include a statement of the authority for the request, the rights of the individual or entity in responding to the request, the definition of *reasonable request* and *immediate access*, and the effective date, length, and scope and effect of the exclusion that would be imposed for failure to comply with the request, and the earliest date that a request for reinstatement would be considered.

(4) Nothing in this section shall in any way limit access otherwise authorized under State or Federal law.

(b) *Length of exclusion.* (1) An exclusion of an individual under this section may be for a period equal to the sum of:

(i) The length of the period during which the immediate access was not granted, and

(ii) An additional period of up to 90 days.

(2) The exclusion of an entity may be for a longer period than the period in which immediate access was not granted based on consideration of the following factors—

(i) The impact of the failure to grant the requested immediate access on Medicare or any of the State health care programs, beneficiaries or the public;

(ii) The circumstances under which such access was refused;

(iii) The impact of the exclusion on Medicare, Medicaid or any of the other Federal health care programs, beneficiaries or the public; and

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

(3) For purposes of paragraphs (b)(1) and (b)(2) of this section, the length of the period in which immediate access was not granted will be measured from the time the request is made, or from the time by which access was required to be granted, whichever is later.

(c) The exclusion will be effective as of the date immediate access was not granted.

[57 FR 3330, Jan. 29, 1992, as amended at 58 FR 40753, July 30, 1993; 63 FR 46689, Sept. 2, 1998; 64 FR 39427, July 22, 1999]

**§ 1001.1401 Violations of PPS corrective action.**

(a) *Circumstance for exclusion.* The OIG may exclude any hospital that CMS determines has failed substantially to comply with a corrective action plan required by CMS under section 1886(f)(2)(B) of the Act.

(b) *Length of exclusion.* The following factors will be considered in determining the length of exclusion under this section—

(1) The impact of the hospital's failure to comply on Medicare, Medicaid or any of the other Federal health care programs, program beneficiaries or other individuals;

(2) The circumstances under which the failure occurred;

(3) The nature of the failure to comply;

(4) The impact of the exclusion on Medicare, Medicaid or any of the other Federal health care programs, beneficiaries or the public; and

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

[57 FR 3330, Jan. 29, 1992, as amended at 63 FR 46689, Sept. 2, 1998; 64 FR 39427, July 22, 1999]

**§ 1001.1501 Default of health education loan or scholarship obligations.**

(a) *Circumstance for exclusion.* (1) Except as provided in paragraph (a)(4) of this section, the OIG may exclude any individual that the Public Health Service (PHS) determines is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured in whole or in part by the Secretary.

(2) Before imposing an exclusion in accordance with paragraph (a)(1) of this section, the OIG must determine that PHS has taken all reasonable administrative steps to secure repayment of the loans or obligations. If PHS has offered a Medicare offset arrangement as required by section 1892 of the Act, the OIG will find that all reasonable steps have been taken.

(3) The OIG will take into account access of beneficiaries to physicians' services for which payment may be made under Medicare, Medicaid or other Federal health care programs in determining whether to impose an exclusion.

(4) The OIG will not exclude a physician who is the sole community physician or the sole source of essential specialized services in a community if a State requests that the physician not be excluded.

(b) *Length of exclusion.* The individual will be excluded until such time as PHS notifies the OIG that the default has been cured or that there is no longer an outstanding debt. Upon such notice, the OIG will inform the individual of his or her right to apply for reinstatement.

[57 FR 3330, Jan. 29, 1992, as amended at 64 FR 39427, July 22, 1999; 67 FR 11935, Mar. 18, 2002]

**§ 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;

(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); and

(v) The availability of alternative sources of the type of health care items or services furnished by the physician.

(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]