

(h) Collected or attempted to collect from the employee, either directly or through a collection agent, an amount in excess of the charge allowed by OWCP for the procedure performed, and has failed or refused to make appropriate refund to the employee, or to cease such collection attempts, within 60 days of the date of the decision of OWCP.

§ 10.816 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?

(a) OWCP shall automatically exclude a physician, hospital, or provider of medical services or supplies who has been convicted of a crime described in § 10.815(a), or has been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any program as described in § 10.815(b).

(b) The exclusion applies to participating in the program and to seeking payment under the FECA for services performed after the date of the entry of the judgment of conviction or order of exclusion, suspension or resignation, as the case may be, by the court or agency concerned. Proof of the conviction, exclusion, suspension or resignation may consist of a copy thereof authenticated by the seal of the court or agency concerned.

§ 10.817 When are OWCP's exclusion procedures initiated?

Upon receipt of information indicating that a physician, hospital or provider of medical services or supplies (hereinafter the provider) has engaged in activities enumerated in paragraphs (c) through (h) of § 10.815, the Regional Director, after completion of inquiries he or she deems appropriate, may initiate procedures to exclude the provider from participation in the FECA program. For the purposes of this section, "Regional Director" may include any officer designated to act on his or her behalf.

§ 10.818 How is a provider notified of OWCP's intent to exclude him or her?

The Regional Director shall initiate the exclusion process by sending the provider a letter, by certified mail and

with return receipt requested, which shall contain the following:

(a) A concise statement of the grounds upon which exclusion shall be based;

(b) A summary of the information, with supporting documentation, upon which the Regional Director has relied in reaching an initial decision that exclusion proceedings should begin;

(c) An invitation to the provider to:

(1) Resign voluntarily from participation in the FECA program without admitting or denying the allegations presented in the letter; or

(2) Request that the decision on exclusion be based upon the existing record and any additional documentary information the provider may wish to furnish;

(d) A notice of the provider's right, in the event of an adverse ruling by the Regional Director, to request a formal hearing before an administrative law judge;

(e) A notice that should the provider fail to answer (as described in § 10.819) the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider without conducting any further proceedings; and

(f) The name and address of the OWCP representative who shall be responsible for receiving the answer from the provider.

§ 10.819 What requirements must the provider's reply and OWCP's decision meet?

(a) The provider's answer shall be in writing and shall include an answer to OWCP's invitation to resign voluntarily. If the provider does not offer to resign, he or she shall request that a determination be made upon the existing record and any additional information provided.

(b) Should the provider fail to answer the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider.

(c) By arrangement with the official representative, the provider may inspect or request copies of information

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in the record at any time prior to the Regional Director's decision.

(d) The Regional Director shall issue his or her decision in writing, and shall send a copy of the decision to the provider by certified mail, return receipt requested. The decision shall advise the provider of his or her right to request, within 30 days of the date of the adverse decision, a formal hearing before an administrative law judge under the procedures set forth in §10.820. The filing of a request for a hearing within the time specified shall stay the effectiveness of the decision to exclude.

§ 10.820 How can an excluded provider request a hearing?

A request for a hearing shall be sent to the official representative named under §10.818(f) and shall contain:

(a) A concise notice of the issues on which the provider desires to give evidence at the hearing;

(b) Any request for a more definite statement by OWCP;

(c) Any request for the presentation of oral argument or evidence; and

(d) Any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or Federal, State or local regulatory body.

§ 10.821 How are hearings assigned and scheduled?

(a) If the designated OWCP representative receives a timely request for hearing, the OWCP representative shall refer the matter to the Chief Administrative Law Judge of the Department of Labor, who shall assign it for an expedited hearing. The administrative law judge assigned to the matter shall consider the request for hearing, act on all requests therein, and issue a Notice of Hearing and Hearing Schedule for the conduct of the hearing. A copy of the hearing notice shall be served on the provider by certified mail, return receipt requested. The Notice of Hearing and Hearing Schedule shall include:

(1) A ruling on each item raised in the request for hearing;

(2) A schedule for the prompt disposition of all preliminary matters, including requests for more definite state-

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ments and for the certification of questions to advisory bodies; and

(3) A scheduled hearing date not less than 30 days after the date the schedule is issued, and not less than 15 days after the scheduled conclusion of preliminary matters, provided that the specific time and place of the hearing may be set on 10 days' notice.

(b) The purpose of the designation of issues is to provide for an effective hearing process. The provider is entitled to be heard on any matter placed in issue by his or her response to the Notice of Intent to Exclude, and may designate "all issues" for purposes of hearing. However, a specific designation of issues is required if the provider wishes to interpose affirmative defenses, or request the issuance of subpoenas or the certification of questions for an advisory opinion.

§ 10.822 How are subpoenas or advisory opinions obtained?

(a) The provider may apply to the administrative law judge for the issuance of subpoenas upon a showing of good cause therefor.

(b) A certification of a request for an advisory opinion concerning professional medical standards, medical ethics or medical regulation to a competent recognized or professional organization or Federal, State or local regulatory agency may be made:

(1) As to an issue properly designated by the provider, in the sound discretion of the administrative law judge, provided that the request will not unduly delay the proceedings;

(2) By OWCP on its own motion either before or after the institution of proceedings, and the results thereof shall be made available to the provider at the time that proceedings are instituted or, if after the proceedings are instituted, within a reasonable time after receipt. The opinion, if rendered by the organization or agency, is advisory only and not binding on the administrative law judge.

§ 10.823 How will the administrative law judge conduct the hearing and issue the recommended decision?

(a) To the extent appropriate, proceedings before the administrative law