

**§ 1003.104**

**42 CFR Ch. V (10–1–99 Edition)**

the contracting organization by Medicare beneficiaries and Medicaid recipients whose medical condition or history indicates a need for substantial future medical services.

(4) If enrollees are charged more than the allowable premium, the OIG will impose an additional penalty equal to double the amount of excess premium charged by the contracting organization. The excess premium amount will be deducted from the penalty and returned to the enrollee.

(5) The OIG will impose an additional \$15,000 penalty for each individual not enrolled when HCFA determines that a contracting organization has committed a violation described in paragraph (f)(3)(ii) of this section.

(6) For purposes of paragraph (f) of this section, a violation is each incident where a person has committed an act listed in §417.500(a) or §434.67(a) of this title, or failed to comply with a requirement set forth in §434.80(c) of this title.

(g) The OIG may impose a penalty of not more than \$25,000 against a health plan for failing to report information on an adverse action required to be reported to the Healthcare Integrity and Protection Data Bank in accordance with section 1128E of the Act and §1003.102(b)(5)(ii).

(h) For each violation of §1003.102(b)(11), the OIG may impose—

(1) A penalty of not more than \$50,000, and

(2) An assessment of up to three times the total amount of remuneration offered, paid, solicited or received, as specified in §1003.104(b).

[57 FR 3346, Jan. 29, 1992, as amended at 59 FR 32125, June 22, 1994; 59 FR 48566, Sept. 22, 1994; 60 FR 16584, Mar. 31, 1995; 60 FR 58241, Nov. 27, 1995; 61 FR 13449, Mar. 27, 1996; 61 FR 52301, Oct. 7, 1996; 64 FR 39429, July 22, 1999]

**§ 1003.104 Amount of assessment.**

(a) The OIG may impose an assessment, where authorized, in accordance with §1003.102 (except for §1003.102(b)(11)), of not more than three times the amount claimed for each item or service which was a basis for the penalty. The assessment is in lieu of damages sustained by the Department or a State because of that claim.

(b) In accordance with §1003.102(b)(11), the OIG may impose an assessment of not more than three times the total amount of remuneration offered, paid, solicited or received, without regard to whether a portion of such remuneration was offered, paid, solicited or received for a lawful purpose.

[64 FR 39429, July 22, 1999]

**§1003.105 Exclusion from participation in Medicare, Medicaid and other Federal health care programs.**

(a)(1) Except as set forth in paragraph (b) of this section, in lieu of or in addition to any penalty or assessment, the OIG may exclude from participation in Medicare, Medicaid and other Federal health care programs the following persons for a period of time determined under §1003.107—

(i) Any person who is subject to a penalty or assessment under §1003.102 (a) or (b)(1) through (b)(4).

(ii) Any responsible physician who—

(A) Knowingly violates section 1867 of the Act or §489.24 of this title on or after December 22, 1987, but before July 1, 1990;

(B) Knowingly and willfully, or negligently, violates section 1867 of the Act or §489.24 of this title on or after July 1, 1990 but before May 1, 1991; or

(C) Commits a gross and flagrant, or repeated, violation of section 1867 of the Act or §489.24 of this title on or after May 1, 1991. For purposes of this section, a gross and flagrant violation is one that presents an imminent danger to the health, safety or well-being of the individual who seeks emergency examination and treatment or places that individual unnecessarily in a high-risk situation.

(2) Nothing in this section will be construed to limit the Department's authority to impose an exclusion without imposing a penalty.

(b)(1)(i) With respect to determinations under §1003.102(b)(2) or (b)(3), a physician may not be excluded if the OIG determines that he or she is the sole community physician or the sole source of essential specialized services in a community.