

(e)(1) The standards set forth in this section are binding, except to the extent that their application would result in imposition of an amount that would exceed limits imposed by the United States Constitution.

(2) The amount imposed will not be less than the approximate amount required to fully compensate the United States, or any State, for its damages and costs, tangible and intangible, including but not limited to the costs attributable to the investigation, prosecution and administrative review of the case.

(3) Nothing in this section will limit the authority of the Department to settle any issue or case as provided by § 1003.126, or to compromise any penalty and assessment as provided by § 1003.128.

[57 FR 3347, Jan. 29, 1992, as amended at 59 FR 32125, June 22, 1994; 59 FR 36086, July 15, 1994; 59 FR 48567, Sept. 22, 1994; 60 FR 16584, Mar. 31, 1995; 60 FR 58241, Nov. 27, 1995; 61 FR 13449, Mar. 27, 1996; 64 FR 39429, July 22, 1999]

§ 1003.107 Determinations regarding exclusion.

(a) In determining whether to exclude a person under this part and the duration of any exclusion, the Department considers the circumstances described in § 1003.106(a).

(b) With respect to determinations to exclude a person under §§ 1003.102(a) or (b)(1) through (b)(4), the Department considers those circumstances described in § 1003.106(b). Where there are aggravating circumstances with respect to such determinations, the person should be excluded.

(c) In determining whether to exclude a physician under §§ 1003.102(b)(2) or (b)(3) or, with respect to a violation occurring on or after December 22, 1987 and before July 1, 1990, under § 1003.105(a)(1)(ii), the Department also considers the access of beneficiaries to physicians' services.

(d) Except as set forth in paragraph (e), 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.

(e) An exclusion based on a determination under §§ 1003.102(b)(2) or (b)(3) or, with respect to a violation occur-

ring on or after December 22, 1987 and before July 1, 1990, under § 1003.105(a)(1)(ii), may not exceed 5 years.

[59 FR 32126, June 22, 1994]

§ 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, an assessment, or proposes to exclude a respondent from participation in Medicare, Medicaid and any other 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;