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## 42 C.F.R. § 402.208

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### Factors considered in determining whether to exclude, and the length of exclusion.

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(a) *General factors.* In determining whether to exclude a person and the length of exclusion, the initiating agency considers the following:

- (1) The nature of the claims and the circumstances under which they were presented.
- (2) The degree of culpability, the history of prior offenses, and the financial condition of the person presenting the claims.
- (3) The total number of acts in which the violation occurred.
- (4) The dollar amount at issue (Medicare Trust Fund dollars or beneficiary out-of-pocket expenses).
- (5) The prior history of the person insofar as its willingness or refusal to comply with requests to correct said violations.
- (6) Any other facts bearing on the nature and seriousness of the person's misconduct.
- (7) Any other matters that justice may require.

(b) *Criteria to be considered.* As a guideline for taking into account the general factors listed in paragraph (a) of this section, the initiating agency may consider any one or more of the circumstances listed in paragraphs (b)(1) and (b)(2) of this section, as applicable. The respondent, in his or her written response to the notice of intent to exclude (that is, the proposed exclusion), may provide information concerning potential mitigating circumstances.

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