

ILLINOIS REGISTER

DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Practice in Administrative Hearings
- 2) Code Citation: 89 Ill. Adm. Code 104
- 3)

<u>Section Numbers</u> :	<u>Proposed Action</u> :
104.74	New Section
104.75	New Section
104.206	Amendment
104.208	Amendment
104.221	Amendment
104.244	Amendment
104.272	Amendment
104.274	Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13] and P.A. 97-0689
- 5) Complete Description of the Subjects and Issues Involved: These changes are implemented pursuant to amendments to 305 ILCS 5/12-4.25. The amendments:
 - broaden the circumstances in which the Department is authorized to collect interest on overpayments paid to a vendor or alternate payee;
 - authorize the Department to terminate, suspend or exclude vendors who pose a risk of fraud, waste, abuse or harm, and providers who constitute an immediate danger to the public, from program participation prior to an evidentiary hearing;
 - authorize the Department to deny medical assistance program eligibility to individuals and entities with prior unpaid debts owed the Department, or who have been transferred assets, ownership or control from a vendor with unpaid debts;
 - broaden the Department's authority to withhold payments to a vendor or alternate payee prior to the pendency of an audit, administrative appeal or administrative review, and to a vendor or alternate payee who is not properly licensed, certified, or in compliance with state or federal regulations; and
 - authorize the Department to deny requests to pay or credit services provided by vendors that were rendered subsequent to a vendor's receipt of a notice to suspend or exclude the vendor from the medical assistance program.

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- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect? Yes
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.
- 12) Time, Place, and Manner in which Interested Persons may Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Jeanette Badrov
General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Avenue E., 3rd Floor
Springfield IL 62763-0002

217/782-1233

The Department requests the submission of written comments within 45 days after the publication of this Notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Medicaid funded providers
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None

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- 14) Regulatory Agenda on which this Rulemaking was Summarized: This rulemaking amendments was not anticipated by the Department when the most recent regulatory agendas were published.

The full text of the Proposed Amendments are identical to the text of the Emergency Amendments that appears in this issue of the *Illinois Register* on page :

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- 1) Heading of the Part: Practice in Administrative Hearings
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<u>Section Numbers:</u>	<u>Emergency Action:</u>
104.74	New Section
104.75	New Section
104.206	Amendment
104.208	Amendment
104.221	Amendment
104.244	Amendment
104.272	Amendment
104.274	Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13] and Public Act 97-0689.
- 5) Effective Date: July 1, 2012
- 6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency rule expires, as authorized by the SMART Act, on June 30, 2013.
- 7) Date Filed with the Index Department: June 29, 2012
- 8) A copy of the emergency amendment, including any materials incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Reason for Emergency: Public Act 97-0689, Save Medicaid Access and Resources Together (SMART) Act, gives any agency in charge with implementing a provision or initiative in SMART, the ability to adopt rules through emergency rulemaking in order to provide for the expeditious and timely implementation of SMART. The adoption of this emergency rulemaking is deemed to be necessary for the public interest, safety, and welfare. Pursuant to Public Act 97-0689, the 150-day limitation of the effective period of emergency rules does not apply and the effective period of rules necessary to implement SMART may continue through June 30, 2013. These emergency rules are necessary to implement the provisions and initiatives of SMART.
- 10) Complete Description of the Subjects and Issues Involved: These changes are implemented pursuant to amendments to 305 ILCS 5/12-4.25. The amendments:

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- broaden the circumstances in which the Department is authorized to collect interest on overpayments paid to a vendor or alternate payee;
- authorize the Department to terminate, suspend or exclude vendors who pose a risk of fraud, waste, abuse or harm, and providers who constitute an immediate danger to the public, from program participation prior to an evidentiary hearing;
- authorize the Department to deny medical assistance program eligibility to individuals and entities with prior unpaid debts owed the Department, or who have been transferred assets, ownership or control from a vendor with unpaid debts;
- broaden the Department's authority to withhold payments to a vendor or alternate payee prior to the pendency of an audit, administrative appeal or administrative review, and to a vendor or alternate payee who is not properly licensed, certified, or in compliance with state or federal regulations; and
- authorize the Department to deny requests to pay or credit services provided by vendors that were rendered subsequent to a vendor's receipt of a notice to suspend or exclude the vendor from the medical assistance program.

- 11) Are there any other rulemakings pending on this Part? No
- 12) Statement of Statewide Policy Objectives: These emergency amendments neither create nor expand any State mandate affecting units of local government.
- 13) Information and questions regarding this amendment shall be directed to:

Jeanette Badrov
General Counsel
Illinois Department of Healthcare and Family Services
201 South Grand Avenue East, 3rd Floor
Springfield IL 62763-0002

217/782-1233

The full text of the Emergency Amendments begins on the next page:

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DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

NOTICE OF EMERGENCY AMENDMENTS

TITLE 89: SOCIAL SERVICES

CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES

SUBCHAPTER a: GENERAL PROVISIONS

PART 104

PRACTICE IN ADMINISTRATIVE HEARINGS

SUBPART A: ASSISTANCE APPEALS

Section

104.1	Assistance Appeals
104.10	Initiation of Appeal Process
104.11	Pre-Appeal Review
104.12	Notice of Hearing
104.20	Conduct of Hearings
104.21	Representation
104.22	Appellant Participation in Hearing
104.23	Evidentiary Requirements
104.30	Subpoenas
104.35	Amendment of Appeal
104.40	Consolidation of Appeals
104.45	Postponement or Continuation of Hearings
104.50	Withdrawal of Appeal
104.55	Closing of Hearing Record
104.60	Dismissal of Appeal
104.70	Final Administrative Decision
104.74	Surety Bonds
EMERGENCY	
104.75	Immediate Suspension of a Vendor
EMERGENCY	
104.80	Public Aid Committee

SUBPART B: RESPONSIBLE RELATIVE AND JOINT PAYEE PETITIONS

Section

104.100	Support Order, Responsible Relative and Joint Payee Petitions
104.101	Petition for Hearing
104.102	Conduct of Administrative Support Hearings
104.103	Conduct of Hearings to Contest the Determination of Past-Due Support or of a Failure of a Licensee to Comply with a Subpoena or Warrant in a Paternity or

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- Child Support Proceeding or of Share of Jointly-Owned Federal or State Income
Tax Refunds or Other Joint Federal or State Payments
- 104.104 Conduct of Other Hearings
- 104.105 Conduct of Hearings on Petitions for Release from Administrative Paternity
Orders
- 104.106 Conduct of Hearings on Petitions for Family Financial Responsibility Driving
Permits
- 104.110 Conduct of Hearings on Joint Owner's Contest of Levy of Jointly-Owned Personal
Property

SUBPART C: MEDICAL VENDOR AND ALTERNATE PAYEE HEARINGS

Section

- 104.200 Applicability
- 104.202 Definitions
- 104.204 Notice of Denial of An Application
- 104.206 Notice of Intent to Recover Money
- EMERGENCY
- 104.207 Notice of Contested Paternity Hearing
- 104.208 Notice of Intent to Terminate, Suspend, Exclude or Not Renew Provider
Agreement or to Revoke Alternate Payee
- EMERGENCY
- 104.209 Notice of Intent to Certify Past-Due Support Owed by a Responsible Relative to,
or Failure to Comply with a Subpoena or Warrant from, a State Licensing Agency
and to Take Disciplinary Action (Repealed)
- 104.210 Right to Hearing
- 104.211 Notice of Termination or Suspension Pursuant to Exclusion by the Department of
Health and Human Services
- 104.212 Prior Factual Determinations
- 104.213 Demand for Judicial Determination of the Existence of the Father and Child
Relationship
- 104.215 Notice of Formal Conference
- 104.216 Formal Conference on Recovery of Money
- 104.217 Purpose of Formal Conference
- 104.220 Notice of Hearing
- 104.221 Issues at Hearings
- EMERGENCY
- 104.225 Legal Counsel
- 104.226 Appearance of Attorney or Other Representative
- 104.230 Notice, Service and Proof of Service
- 104.231 Form of Papers

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- 104.235 Discovery
- 104.240 Conduct of Hearings
- 104.241 Amendments
- 104.242 Motions
- 104.243 Subpoenas
- 104.244 Burden of Proof
- EMERGENCY
- 104.245 Witness at Hearings
- 104.246 Evidence at Hearings
- 104.247 Cross-Examination
- 104.248 Disqualification of Hearing Officers
- 104.249 Genetic Testing in Contested Paternity Hearings
- 104.250 Official Notice
- 104.255 Computer Generated Documents
- 104.260 Recommendation of Peer Review Committee
- 104.270 Time Limits for Hearings
- 104.271 Continuances and Extensions
- 104.272 Withholding of Payments and Release of Withholds~~During Pendency of Proceedings~~
- EMERGENCY
- 104.273 Continuation of Payments During Pendency of Proceedings
- 104.274 Denial of Payments for Services During Pendency of Proceedings
- EMERGENCY
- 104.280 Record of Hearings
- 104.285 Failure to Appear or Proceed
- 104.290 Recommended Decision
- 104.295 Director's Decision

SUBPART D: RULES FOR JOINT DEPARTMENT ACTIONS AGAINST
SKILLED NURSING FACILITIES AND INTERMEDIATE CARE
FACILITIES PARTICIPATING IN THE MEDICAID PROGRAM

- Section
- 104.300 Authority
- 104.302 Definitions
- 104.304 Department Actions Against Nursing Homes Facilities
- 104.310 Certification
- 104.320 Joint Administrative Hearing
- 104.330 Facilities Certified Under Both Medicare and Medicaid

SUBPART E: FOOD STAMP ADMINISTRATIVE DISQUALIFICATION HEARINGS

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Section	
104.400	Suspected Intentional Violation of the Program
104.410	Advance Notice of Administrative Disqualification Hearing
104.420	Postponement of Hearing
104.430	Administrative Disqualification Hearing Procedures
104.440	Failure to Appear
104.450	Participation While Awaiting a Hearing
104.460	Consolidation of Administrative Disqualification Hearing with Fair Hearing
104.470	Administrative Disqualification Hearing Decision and Notice of Decision
104.480	Appeal Procedure

SUBPART F: INCORPORATION BY REFERENCE

Section	
104.800	Incorporation by Reference

AUTHORITY: Implementing Sections 11-8 through 11-8.7, 12-4.9 and 12-4.25 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/11-8 through 11-8.7, 12-4.9, 12-4.25 and 12-13].

SOURCE: Filed and effective December 30, 1977; emergency rule at 2 Ill. Reg. 11, p. 151, effective March 9, 1978, for a maximum of 150 days; amended at 2 Ill. Reg. 21, p. 10, effective May 26, 1978; amended at 2 Ill. Reg. 33, p. 57, effective August 17, 1978; peremptory amendment at 3 Ill. Reg. 11, p. 38, effective March 1, 1979; amended at 4 Ill. Reg. 21, p.80, effective May 8, 1980; peremptory amendment at 5 Ill. Reg. 1197, effective January 23, 1981; amended at 5 Ill. Reg. 10753, effective October 1, 1981; amended at 6 Ill. Reg. 894, effective January 7, 1982; codified at 7 Ill. Reg. 5706; amended at 8 Ill. Reg. 5274, effective April 9, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 16979; amended at 8 Ill. Reg. 18114, effective September 21, 1984; amended at 10 Ill. Reg. 10129, effective June 1, 1986; amended at 11 Ill. Reg. 9213, effective April 30, 1987; amended at 12 Ill. Reg. 9142, effective May 16, 1988; amended at 13 Ill. Reg. 3944, effective March 10, 1989; amended at 13 Ill. Reg. 17013, effective October 16, 1989; amended at 14 Ill. Reg. 18836, effective November 9, 1990; amended at 15 Ill. Reg. 5320, effective April 1, 1991; amended at 15 Ill. Reg. 6557, effective April 30, 1991; amended at 16 Ill. Reg. 12903, effective August 15, 1992; amended at 16 Ill. Reg. 16632, effective October 23, 1992; amended at 16 Ill. Reg. 18834, effective December 1, 1992; emergency amendment at 17 Ill. Reg. 659, effective January 7, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 7025, effective April 30, 1993; amended at 18 Ill. Reg. 11260, effective July 1, 1994; amended at 19 Ill. Reg. 1321, effective January 30, 1995; emergency amendment at 19 Ill. Reg. 10268, effective July 1, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 15521, effective October 30, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15711, effective November 6, 1995;

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amended at 20 Ill. Reg. 1229, effective December 29, 1995; amended at 20 Ill. Reg. 5699, effective March 28, 1996; amended at 20 Ill. Reg. 14891, effective November 1, 1996; emergency amendment at 21 Ill. Reg. 8671, effective July 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 9306, effective July 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 13648, effective October 1, 1997; amended at 21 Ill. Reg. 14977, effective November 7, 1997; emergency amendment at 22 Ill. Reg. 17113, effective September 10, 1998, for a maximum of 150 days; amended at 23 Ill. Reg. 2393, effective January 22, 1999; emergency amendment at 23 Ill. Reg. 11734, effective September 1, 1999, for a maximum of 150 days; amended at 24 Ill. Reg. 2418, effective January 27, 2000; amended at 25 Ill. Reg. 5351, effective April 1, 2001; amended at 26 Ill. Reg. 9836, effective June 26, 2002; emergency amendment at 26 Ill. Reg. 11022, effective July 1, 2002, for a maximum of 150 days; amended at 26 Ill. Reg. 12306, effective July 26, 2002; amended at 26 Ill. Reg. 17743, effective November 27, 2002; amended at 27 Ill. Reg. 5853, effective March 24, 2003; amended at 27 Ill. Reg. 13771, effective August 1, 2003; amended at 28 Ill. Reg. 2735, effective February 1, 2004; emergency amendment at 29 Ill. Reg. 2735, effective February 7, 2005, for a maximum of 150 days; amended at 29 Ill. Reg. 10187, effective June 30, 2005; amended at 31 Ill. Reg. 2387, effective January 19, 2007; amended at 32 Ill. Reg. 16797, effective October 6, 2008; amended at 33 Ill. Reg. 6283, effective April 15, 2009; amended at 35 Ill. Reg. 2030, effective January 21, 2011; amended at 35 Ill. Reg. 12900, effective July 25, 2011; amended at 36 Ill. Reg. 7530, effective May 7, 2012; amended at 36 Ill. Reg. 9086, effective June 11, 2012; emergency amendment at 36 Ill. Reg.____, effective July 1, 2012 for a maximum of 365 days.

SUBPART A: ASSISTANCE APPEALS

Section 104.74 Surety Bonds
EMERGENCY

- a) The following individuals and entities may be required to post a surety bond as part of a condition of enrollment or participation in the medical assistance program:
- 1) a vendor or a prior vendor who has been terminated, excluded, or suspended from the Medical Assistance Program, or from another state or federal medical assistance or health care program;
 - 2) any individual currently or previously barred from the Medical Assistance Program, or from another state or federal medical assistance or health care program, as a result of being an officer or a person owning, directly or indirectly, 5% or more of the shares of stock or other evidences of ownership in a corporate or limited liability company vendor during the

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time of any conduct which served as the basis for that vendor's termination, suspension, or exclusion;

- 3) a vendor or a prior vendor who has a debt owed to the Department;
 - 4) any individual currently or previously barred from the Medical Assistance Program, or from another state or federal medical assistance or health care program, as a result of being an officer or a person owning, directly or indirectly, 5% or more of the shares of stock or other evidences of ownership in that corporate ore limited liability company vendor who has a debt owed to the Department, where the individual was in such position during the time of any conduct which served as the basis for the vendor's debt; or
 - 5) vendors, individuals or entities that demonstrated previous poor performance or conduct who pose a risk or fraud, waste, abuse, or harm, as defined in 89 Ill. Adm. Code 140.13.
- b) When required by the Department, the value of surety bond shall be based on:
- 1) the potential for loss to the Department;
 - 2) the value of claims historically submitted by the individual or entity to the Department, or to another state or federal medical assistance or health care program;
 - 3) the previous performance and conduct of the individual or entity; and
 - 4) where a debt is owed the Department, the amount of the debt.
- c) As used in this Section, "surety bond" means a bond executed by the individual or entity for enrollment or participation in the medical assistance program and a person or firm authorized to conduct surety business in Illinois, which obligates the guarantor to pay the Department or its designee upon default by the individual or entity in the performance of any duty the individual or entity owes to the Department or a third party.

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(Source: Emergency added at 36 Ill. Reg._____, effective July 1, 2012, for a maximum of 365 days)

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Section 104.75 Immediate Suspension of a Vendor

EMERGENCY

- a) Anything in this Part to the contrary notwithstanding, upon making a determination based upon information in the possession of the Department that continuation of participation in the Medical Assistance Program by a vendor would constitute an immediate danger to the public, the Department may immediately suspend such vendor's participation in the Medical Assistance Program without a prior hearing.
- b) In instances in which the Illinois Department immediately suspends the medical assistance program participation of a vendor under subsection (a) of this Section:
- 1) The Department shall notify the vendor of the action in writing.
 - 2) A hearing upon the vendor's participation shall be convened by the Department within 15 days of suspension and completed without appreciable delay.
 - 3) The sole issue at hearing shall be held to determine whether to recommend to the Department Director that the vendor's medical assistance program participation be denied, terminated, suspended, placed on provisional status, or reinstated.
 - 4) The standard of proof at the hearing shall be a preponderance of the evidence.
 - 5) Any evidence relevant to the vendor constituting an immediate danger to the public may be introduced against such vendor. The vendor, or his or her counsel, shall have the opportunity to discredit, impeach, and submit evidence rebutting such evidence.

(Source: Emergency added at 36 Ill. Reg._____, effective July 1, 2012, for a maximum of 365 days)

SUBPART C: MEDICAL VENDOR AND ALTERNATE PAYEE HEARINGS

Section 104.206 Notice of Intent to Recover Money

EMERGENCY

- a) Institutional Vendors

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- 1) For purposes of this Section, institutional vendors means providers enrolled in the Medical Assistance Program to provide inpatient or residential services, such as hospitals and long term care facilities.
- 2) The Department shall notify the institutional vendor in writing of an intent to recover money, setting forth:
 - A) the reason for the Department's action,
 - B) a statement of the right to request a hearing,
 - C) a statement of the time, place and nature of the hearing,
 - D) a statement of the legal authority and jurisdiction under which the hearing is to be held, and
 - E) a reference to the Sections of the statutes and rules involved.
- 3) For institutional vendors, the Department will not recover money prior to the issuance of a final administrative decision, unless the Department determines that the recovery of money would be in jeopardy if the recovery does not occur prior to the completion of the hearing due to events such as, but not limited to, pending decertification of the provider or the filing of a False Claims Act (31 USC 3729) action against the provider. In such circumstances, the Department may recover the money prior to the completion of the hearing, and the notice shall set forth:
 - A) the date after which the Department will start to recover money by deducting from Department obligations to the vendor,
 - B) a statement that the Department will recover the money in this manner prior to the completion of any hearing requested,
 - C) a statement that any money so recovered will be repaid to the vendor if it is determined at hearing that the recovery was not warranted, and
 - D) a statement that the vendor has the opportunity to respond prior to the date the Department will start to recover money during the pendency of the hearing and a statement of how and to whom such a response should be made.

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- 4) Nothing in this subsection (a), except as provided in subsection (a)(3), shall preclude a vendor who is enrolled to provide inpatient or residential services from voluntarily having the Department recover money by deducting from Department obligations to the vendor all or part of the claimed overpayment prior to the completion of any hearing.
- b) Noninstitutional Vendors
- 1) For purposes of this Section, noninstitutional vendors means providers enrolled in the Medical Assistance Program that do not provide inpatient or residential services.
 - 2) The Department shall notify the noninstitutional vendor in writing of an intent to recover money setting forth:
 - A) the requirements described in subsections (a)(2)(A) through (E) of this Section,
 - B) the date after which the Department will start to recover money by deducting from Department obligations to the vendor,
 - C) a statement that the Department will recover the money in this manner prior to the completion of any hearing requested,
 - D) a statement that any money so recovered will be repaid to the vendor if it is determined at hearing that the recovery was not warranted, and
 - E) a statement that the vendor has the opportunity to respond prior to the date the Department will start to recover money during the pendency of the hearing and a statement of how and to whom such a response should be made.
- c) Alternate Payee
- The Department shall notify the alternate payee in writing of an intent to recover money, setting forth:
- 1) the requirements described in subsections (a)(2)(A) through (E) of this Section,

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- 2) the date after which the Department will start to recover money by deducting from Department obligations to the alternate payee,
- 3) a statement that the Department will recover the money in this manner prior to the completion of any hearing requested,
- 4) a statement that any money so recovered will be repaid to the alternate payee if it is determined at hearing that the recovery was not warranted, and
- 5) a statement that the alternate payee has the opportunity to respond prior to the date the Department will start to recover money during the pendency of the hearing and a statement of how and to whom such a response should be made.

d) Recovery of Interest

- 1) The Department ~~may~~ shall recover interest on the amount of an overpayment or other benefit at the rate of five percent per annum if it is established through an administrative hearing that the overpayment resulted from the institutional or noninstitutional vendor or alternate payee ~~knowingly willfully~~ making, ~~using~~, or causing to be made or used, a false ~~record or statement to obtain payment or other benefit from or~~ misrepresentation of a material fact in connection with billings and payments under the medical assistance program.
- 2) The Department shall notify the institutional or noninstitutional vendor or alternate payee in writing of its intent to recover interest on the amount of overpayment by setting forth:
 - A) the requirements described in subsections (a)(2)(A) through (E) of this Section,
 - B) a statement of the amount of overpayment or other benefit subject to recovery of interest,
 - C) a statement of the amount of interest as of the date of notice,
 - D) a statement that the amount of interest may continue to accrue until such time as the amount of overpayment or other benefit subject to interest has been paid,

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- E) a statement that any amounts withheld pursuant to Section 104.272 shall first be applied to the amount not subject to the interest provisions of this subsection (c). If the amounts subject to recovery of interest are withheld, the interest will be adjusted to reflect the withholding, and
 - F) a statement that any money so recovered will be repaid to the vendor if it is determined at hearing that the recovery was not warranted.
- e) Nothing in this Section shall preclude a vendor or alternate payee from voluntarily paying the amount of interest or having the Department recover the interest by deducting from Department obligations to the vendor prior to completion of the hearing. If the vendor or alternate payee has voluntarily paid the amount of overpayment subject to recovery of interest prior to the issuance of a final administrative decision, the amount of interest will cease to accrue.

(Source: Emergency amended at 36 Ill. Reg._____, effective July 1, 2012, for a maximum of 365 days)

Section 104.208 Notice of Intent to Terminate, Suspend, Exclude or Not Renew Provider Agreement or to Revoke Alternate Payee

EMERGENCY

- a) Except for actions brought jointly by the Department of Healthcare and Family Services and the Department of Public Health pursuant to Section 104.300, the following provisions apply. If, in an action other than one under 89 Ill. Adm. Code 140.16(a)(2), ~~or~~ one under 89 Ill. Adm. Code 140.16(a)(9) based on a conviction for a violation of the Illinois Public Aid Code, or an action under 89 Ill. Adm. Code 140.16(c), the Department intends to terminate, ~~or~~ suspend, or exclude a vendor's eligibility to participate in the Medical Assistance Program, or terminate (or not renew) a vendor's provider agreement, it shall notify the vendor in writing, setting forth:
- 1) the reason for the Department's action,
 - 2) a statement of the right to request a hearing prior to the intended action taking effect,
 - 3) a statement of the time, place and nature of the hearing,

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- 4) a statement of the legal authority and jurisdiction under which the hearing is to be held, and
 - 5) a reference to the provisions of the statutes and rules involved.
- b) Except for actions brought jointly by the Department of Healthcare and Family Services and the Department of Public Health pursuant to Section 104.300, the following provisions apply. If, in an action under 89 Ill. Adm. Code 140.16(a)(2) or under 89 Ill. Adm. Code 140.16(c), except in an action initiated pursuant to Section 104.211, an action under 89 Ill. Adm. Code 140.16(a)(9) based on a conviction for a violation of the Illinois Public Aid Code, or an action brought against a non-emergency transportation vendor under 89 Ill. Adm. Code 140.16(a), the Department intends to terminate or suspend, or in the case of actions brought under 89 Ill. Adm. Code 140.16 (c), exclude, a vendor's eligibility to participate in the Medical Assistance Program, or terminate (or not renew) a vendor's provider agreement, it shall notify the vendor in writing, setting forth:
- 1) the reason for the Departments' action,
 - 2) the effective date of the action,
 - 3) a statement that the vendor has the opportunity to respond prior to the effective date and a statement of how and to whom such a response should be made,
 - 4) a statement that the action will be effective on such date regardless of whether any hearing requested has been completed,
 - 5) a statement of the right to request a hearing,
 - 6) a statement of the time, place and nature of the hearing,
 - 7) a statement of the legal authority and jurisdiction under which the hearing is to be held, and
 - 8) a reference to the provisions of the statutes and rules involved.
- c) In an action brought jointly against a nursing home (not an ICF/MR facility) by the Illinois Department of Healthcare and Family Services and the Illinois Department of Public Health pursuant to Section 104.300 in which the Department of Healthcare and Family Services intends to terminate, suspend or

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deny the provider agreement, and the Department of Public Health intends to deny certification, the Departments shall notify the vendor in writing, setting forth:

- 1) the reason for the Departments' action,
 - 2) the effective date of the action,
 - 3) a statement that the vendor has an opportunity to respond prior to the effective date and a statement of how and to whom such a response should be made,
 - 4) a statement that the action will be effective on such date regardless of whether any hearing requested has been completed,
 - 5) a statement of the right to request a hearing,
 - 6) a statement that a hearing will be scheduled to take place within 30 days after receipt of a request for hearing,
 - 7) a statement of the legal authority and jurisdiction under which the hearing is to be held, and
 - 8) a reference to the Sections of the statutes and rules involved.
- d) In an action brought jointly against an ICF/MR facility by the Illinois Department of Healthcare and Family Services and the Illinois Department of Public Health pursuant to Section 104.300 in which the Department of Healthcare and Family Services intends to terminate, suspend or deny the provider agreement, and the Department of Public Health intends to deny certification, the Departments shall notify the vendor in writing, setting forth:
- 1) the reason for the Departments' action,
 - 2) a statement of the right to request a hearing prior to the intended action taking effect,
 - 3) a statement that a hearing will be scheduled to take place within 30 days after receipt of a request for hearing,

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- 4) a statement of the legal authority and jurisdiction under which the hearing is to be held, and
 - 5) a reference to the provisions of the statutes and rules involved.
- e) In an action in which the Department intends to seek revocation of an alternate payee in the Medical Assistance Program, it shall notify the alternate payee in writing, setting forth:
- 1) the reason for the Department's action,
 - 2) a statement of the right to request a hearing prior to the intended action taking effect,
 - 3) a statement of the time, place and nature of the hearing,
 - 4) a statement of the legal authority and jurisdiction under which the hearing is to be held, and
 - 5) a reference to the provisions of the statutes and rules involved.
- f) The notice shall also inform the vendor, where applicable, that the final administrative decision of the Department could result in suspension for a specific period of time as well as termination.
- g) For actions of the Department for the purpose of immediate suspension of a provider pursuant to 89 Ill. Adm. Code 104.74, the Department shall notify the vendor in writing, set forth:
- 1) the reason for the Department's action;
 - 2) the effective date of the action;
 - 3) a statement that the action will be effective on such date regardless of whether any hearing requested has been completed;
 - 4) a statement of the time, place and nature of the hearing;
 - 5) that the purpose of the hearing shall be to determine whether to recommend to the Director that the vendor's medical assistance program

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participation be denied, terminated, suspended, placed on provisional status, or reinstated;

6) a statement of the legal authority and jurisdiction under which the hearing is to be held; and

7) a reference to the provisions of the statutes and rules involved.

(Source: Emergency amended at 36 Ill. Reg. ____, effective July 1, 2012, for a maximum of 365 days)

Section 104.221 Issues at Hearings

EMERGENCY

- a) The sole issue at a hearing where the basis for denial of an application pursuant to 89 Ill. Adm. Code 140.14(d) is that the vendor does not have a necessary license, certificate or authorization shall be whether the vendor has such a license, certificate or authorization.
- b) The sole issue at a hearing where the basis of the denial of an application is as set forth in 89 Ill. Adm. Code 140.14(b) shall be whether the vendor has demonstrated, according to the factors listed in that Section, in light of the prior activities, that he should be admitted to the Medical Assistance Program.
- c) The only issues at a hearing in which the basis of the denial of an application is as set forth: in 89 Ill. Adm. Code 140.14
 - 1) (e)(1), shall be whether the applicant or any person with management responsibility for the applicant; an officer or member of the board of directors of the applicant; an entity owning (directly or indirectly) 5% or more of the shares of stock or other evidences of ownership in a corporate vendor applicant; an owner of a sole proprietorship applicant; a partner in a partnership applicant; or a technical or other advisor to the applicant, has a debt owed to the Department and/or whether payment arrangements acceptable to the Department have been made by the applicant.
 - 2) (e)(2), shall be whether the applicant or any person with management responsibility for the applicant; an officer or member of the board of directors of the applicant; an entity owning (directly or indirectly) 5% or more of the shares of stock or other evidences of ownership in a corporate vendor applicant; an owner of a sole proprietorship applicant; a partner in

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a partnership vendor applicant; or a technical or other advisor to the applicant was (i) a person with management responsibility, (ii) an officer or member of the board directors of an applicant, (iii) an entity owning (directly or indirectly) 5% or more of the shares of stock or other evidences or ownership in a corporate vendor, (iv) an owner of a sole proprietorship, (v) a partner in a partnership vendor, or (vi) a technical or other advisor to a vendor, during the period of time where the conduct of that vendor resulted in a debt owed to the Department and/or whether payment arrangements acceptable to the Department have been made by that vendor.

- 3) (e)(3), shall be whether the allegation of the use, transfer, or lease of assets of any kind to the applicant from a current or prior vendor who has a debt owed to the Department is credible; whether payment arrangements acceptable to the Department have been made by that vendor or the vendor's alternate payee; and/or whether the applicant knows or should have known of such debt.
- 4) (e)(4), shall be whether the allegation of a transfer of management responsibilities, or direct or indirect ownership, to an applicant from a current or prior vendor who has a debt owed to the Department have been made by that vendor or the vendor's alternate payee; and/or whether the applicant knows or should have known of such debt.
- 5) (e)(5), shall be whether the allegation of the use, transfer, or lease of assets of any kind to an applicant who is a spouse, child, brother, sister, parent, grandparent, grandchild, uncle, aunt, niece, nephew, cousin, relative by marriage, or relative of a current or prior vendor who has a debt owed to the Department is credible and/or whether payment arrangements acceptable to the Department have been made.
- 6) (e)(6), shall be whether the allegation that the applicant's previous affiliations with a provider of medical services that has an uncollected debt, a provider that has been or is subject to a payment suspension under the federal health care program, or a provider that has been previously excluded from participation in the medical assistance program, poses a risk of fraud, waste, or abuse to the Department, is credible.

- de) The sole issue at a hearing where the basis for termination is as set forth in 89 Ill. Adm. Code 140.16(a)(2) shall be whether the appropriate licensing, certifying or

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authorizing agency has determined that the vendor does not have a necessary license, certification or authorization.

- d) The sole issue at a hearing requested by a previously suspended vendor that is being terminated pursuant to 89 Ill. Adm. Code 140.19(b) shall be whether the vendor has corrected the deficiencies on which the suspension was based.
- e) At a hearing conducted pursuant to Subpart D of this Part, the sole relevant time with respect to the existence of the violations of the Department's requirements alleged in the notice shall be the date or dates in the notice.
- f) ~~The only issues at a hearing initiated pursuant to Section 104.209 are whether the responsible relative has or is applying for a license, the amount, if any, of delinquent child support owed pursuant to a support order entered by a court or administrative body, whether the responsible relative is more than 30 days delinquent, and, if applicable, whether the responsible relative failed to comply with a subpoena or warrant.~~
- g) The only issue at a hearing initiated pursuant to 89 Ill. Adm. Code 140.16(c) is whether the vendor is not in compliance with State income tax requirements, child support requirements of Article X of the Public Aid Code, or educational loans guaranteed by the Illinois Student Assistance Commission.

(Source: Emergency amended at 36 Ill. Reg. ____, effective July 1, 2012, for a maximum of 365 days)

Section 104.244 Burden of Proof
EMERGENCY

- a) The burden of proof in hearings conducted pursuant to 89 Ill. Adm. Code 140.14 shall be on the Department if the application was denied because the vendor engaged in activities which constitute grounds for termination or was denied pursuant to 89 Ill. Adm. Code 140.14(c). The burden of proof shall be on the applicant if the application was denied because of:
 - 1) a determination that a previously terminated or barred vendor cannot reasonably be expected to meet the requirements of the Department; ~~or~~
 - 2) a determination that based on the activities which served as the basis for terminating or barring a vendor, the application should not be approved; ~~or~~

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3) denial of the eligibility of the applicant pursuant to 89 Ill. Adm. Code 140.14(e).

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- b) The burden of proof in hearings conducted pursuant to 89 Ill. Adm. Code 140.15 or Subpart D of this Part shall be on the Department.
- c) The burden of proof in hearings conducted pursuant to 89 Ill. Adm. Code 140.16 shall be on the Department.
- d) The burden of proof in hearings conducted pursuant to 89 Ill. Adm. Code 140.32 shall be on the party seeking special permission, and in hearings conducted pursuant to 89 Ill. Adm. Code 140.19(b) shall be on the vendor.
- e) In the case of any new matter introduced in connection with any affirmative defense, the burden of proof with respect thereto shall be upon the party which alleges such new matter. In hearings initiated pursuant to Section 104.209, a party alleging that the support order referenced in the notice has subsequently been modified shall have the burden of producing a certified copy of the modified order.
- f) The standard of proof with respect to all hearings conducted pursuant to these rules shall be a preponderance of the evidence.

(Source: Emergency amended at 36 Ill. Reg. _____, effective July 1, 2012, for a maximum of 365 days)

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**Section 104.272 Withholding of Payments and Release of Withholds During Pendency of Proceedings
EMERGENCY**

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- a) Payments to any vendor or alternate payee on pending and subsequently submitted bills may be withheld prior to or during the pendency of any audit, administrative appeal or administrative review by any court ~~the administrative~~ proceeding:
 - 1) Where:
 - A) the administrative proceeding seeks the termination of the provider or revocation of the alternate payee; or

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- B) the administrative hearing is seeking recovery of money and the recovery is at risk due to the financial or other circumstances of the provider or the alternate payee.
- 2) Where the administrative proceeding is seeking recovery of money only, the withholding shall be limited to the amount sought in the recovery and in conformance with Section 104.273.
- b) A provider or alternate payee may request a full or partial release of withheld payments. The provider must submit a request, in writing, setting forth the reasons the payments should be released, to the Office of Inspector General at either 404 North Fifth Street, Springfield, Illinois 62702, or by e-mail to Oigwebmaster@illinois.gov.state.il.us. The request should set forth the reasons for the request in conformance with subsection (c) of this Section.
- c) Partial or full release of payments on pending and subsequently submitted bills may be granted, at the discretion of the Inspector General of the Department, based on the following factors:
 - 1) The Department has not proceeded in a timely manner in presentation of its case in the administrative proceeding, including, but not limited to, lengthy delays in the availability of Department witnesses, attorneys or Administrative Law Judges.
 - 2) Where it is in the best interests of the recipients of medical assistance. This may include, but is not limited to, access to medical services for recipients or the potential movement of patients from long term care settings.
 - 3) Where, based on the reasons for the initiation of the proceeding, the full or partial release of payments would not be, in the judgment of the Inspector General, detrimental to the recipients or the Department.
 - 4) Whether the provider or alternate payee has caused delays in proceeding in a timely manner, including, but not limited to, delays in the availability of witnesses or attorneys.
- d) The Inspector General will notify the provider or alternate payee in writing of the decision on the request for release of payments.
- e) Payments on pending and subsequently submitted bills will not be released if:

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- 1) The basis for the termination or revocation is a criminal conviction.
 - 2) The basis for the termination or revocation is the termination, revocation or denial of a professional license or certification.
 - 3) The provider or alternate payee has had payments suspended pursuant to 305 ILCS 5/12-4.25(K), 305 ILCS 5/12-4.25(K-5) or 42 CFR 455.23.
 - 4) The provider or alternate payee has had payments suspended pursuant to 305 ILCS 5/12-4.25(F-5).
- f) The Inspector General may release partial payment when, in the judgment of the Inspector General, full release of payments is not warranted pursuant to subsection (b) of this Section, but a partial release would meet these criteria.
- g) The Inspector General may again institute full or partial withholding of payments after a full or partial release of payments if:
- 1) The provider or alternate payee has not proceeded in a timely manner in presentation of its case in the administrative proceeding, including, but not limited to, lengthy delays in the availability of witnesses or attorneys.
 - 2) The provider's or alternate payee's professional license or certification has been revoked, suspended, denied or otherwise not renewed.
- h) If the provider is terminated, excluded, or suspended, or the alternate payee is revoked, as a result of final agency action, payments or credit for any services rendered subsequent to receipt of the notice of intent to terminate, after a final decision has been rendered, or after the conclusion of any administrative appeal, shall be denied. The provider or alternate payee will receive payment or credit for services rendered prior to receipt of the notice of intent to terminate or revoke subject to setoff for recovery of the amount sought in the proceeding.
- i) If the payments have been suspended pursuant to 305 ILCS 5/12-4.25(F-5) and the indictment or charge results in conviction, all withheld payments shall be considered forfeited to the Department. If the indictment or charge does not result in conviction, payments pending and subsequently submitted bills will be released, unless the provider is involved in any other proceeding in which payments are being withheld.

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- j) If the provider or alternate payee is convicted of an a felony offense of the type described in 305 ILCS 5/12-4.25(F-5), the Department may withhold payments from the provider or alternate payee from the date of conviction until the date the provider or alternate payee receives a notice of intent to terminate or revoke. Once the provider or alternate payee receives a notice of intent to terminate or revoke, the Department may continue to withhold payments during the pendency of the administrative proceeding.
- k) If payments have been withheld pursuant to 305 ILCS 5/12-4.25(K), 305 ILCS 5/12-4.25(K-5), 42 CFR 455.23, or 89 Ill. Adm. Code 140.44, and the Department commences an administrative proceeding that seeks the termination of the provider or revocation of the alternate payee, the Department shall continue to withhold payments during the pendency of the administrative proceeding. If the provider is terminated or alternate payee is revoked as a result of final agency action, the withheld payments shall be denied.
- l) The Department may withhold payments to any vendor or alternate payee who is not properly licensed, certified, or in compliance with State or federal agency regulations. Payments may be denied for bills submitted with service dates occurring during the period of time that a vendor is not properly licensed, certified, or in compliance with State or federal regulations; provided, however, that facilities licensed under the Nursing Home Care Act shall have payments denied or withheld pursuant to 305 ILCS 5/12-4.25(I).

(Source: Emergency amended at 36 Ill. Reg. _____, effective July 1, 2012, for a maximum of 365 days)

Section 104.274 Denial of Payments for Services During Pendency of Proceedings
EMERGENCY

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If the vendor is terminated, suspended, or excluded, or the alternate payee is revoked as a result of final agency action, payments or credit for any services rendered subsequent to receipt of the notice of intent to terminate, suspend, exclude, or revoke shall be denied unless:

- a) Pursuant to Section 104.273, payments were not withheld; or
- b) Pursuant to Section 104.272, previously withheld payments for such services had been released.

(Source: Emergency amended at 36 Ill. Reg. _____, effective July 1, 2012, for a maximum of 365 days)