



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1330

Introduced 2/5/2013, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

305 ILCS 5/12-4.25

from Ch. 23, par. 12-4.25

Amends the Administration Article of the Illinois Public Aid Code. Establishes civil penalties ranging from \$10,000 to \$50,000 for any person (including a vendor, organization, agency, or other entity, but excluding a recipient) who: knowingly presents or causes to be presented a fraudulent claim for payment under the State's medical assistance program; knowingly gives or causes to be given to any person, with respect to coverage for inpatient hospital services under the medical assistance program, information that he or she knows or should know is false or misleading; arranges or contracts (by employment or otherwise) with an individual or entity that the person knows or should know is excluded from participation in a federal or state health care program, including, but not limited to, the medical assistance program, for the provision of items or services for which payment may be made under such a program; or commits other specified fraudulent acts. Provides that the Director of Healthcare and Family Services may make a determination to terminate, suspend, bar, or exclude the person from participation in the medical assistance program, but not before granting the affected individual, entity, or vendor an opportunity for a hearing after reasonable notice. Provides that a final order, decision, or other determination made by the Director is subject to review in accordance with the Administrative Review Law. Removes language allowing the Department to recover interest on the amount of an overpayment. Makes other changes. Effective immediately.

LRB098 02585 KTG 32689 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning public aid.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Public Aid Code is amended by
5 changing Section 12-4.25 as follows:

6 (305 ILCS 5/12-4.25) (from Ch. 23, par. 12-4.25)

7 Sec. 12-4.25. Medical assistance program; vendor
8 participation.

9 (A) The Illinois Department may deny, suspend, or terminate
10 the eligibility of any person, firm, corporation, association,
11 agency, institution or other legal entity to participate as a
12 vendor of goods or services to recipients under the medical
13 assistance program under Article V, or may exclude any such
14 person or entity from participation as such a vendor, and may
15 deny, suspend, or recover payments, if after reasonable notice
16 and opportunity for a hearing the Illinois Department finds:

17 (a) Such vendor is not complying with the Department's
18 policy or rules and regulations, or with the terms and
19 conditions prescribed by the Illinois Department in its
20 vendor agreement, which document shall be developed by the
21 Department as a result of negotiations with each vendor
22 category, including physicians, hospitals, long term care
23 facilities, pharmacists, optometrists, podiatrists and

1 dentists setting forth the terms and conditions applicable
2 to the participation of each vendor group in the program;
3 or

4 (b) Such vendor has failed to keep or make available
5 for inspection, audit or copying, after receiving a written
6 request from the Illinois Department, such records
7 regarding payments claimed for providing services. This
8 section does not require vendors to make available patient
9 records of patients for whom services are not reimbursed
10 under this Code; or

11 (c) Such vendor has failed to furnish any information
12 requested by the Department regarding payments for
13 providing goods or services; or

14 (d) Such vendor has knowingly made, or caused to be
15 made, any false statement or representation of a material
16 fact in connection with the administration of the medical
17 assistance program; or

18 (e) Such vendor has furnished goods or services to a
19 recipient which are (1) in excess of need, (2) harmful, or
20 (3) of grossly inferior quality, all of such determinations
21 to be based upon competent medical judgment and
22 evaluations; or

23 (f) The vendor; a person with management
24 responsibility for a vendor; an officer or person owning,
25 either directly or indirectly, 5% or more of the shares of
26 stock or other evidences of ownership in a corporate

1 vendor; an owner of a sole proprietorship which is a
2 vendor; or a partner in a partnership which is a vendor,
3 either:

4 (1) was previously terminated, suspended, or
5 excluded from participation in the Illinois medical
6 assistance program, or was terminated, suspended, or
7 excluded from participation in another state or
8 federal medical assistance or health care program; or

9 (2) was a person with management responsibility
10 for a vendor previously terminated, suspended, or
11 excluded from participation in the Illinois medical
12 assistance program, or terminated, suspended, or
13 excluded from participation in another state or
14 federal medical assistance or health care program
15 during the time of conduct which was the basis for that
16 vendor's termination, suspension, or exclusion; or

17 (3) was an officer, or person owning, either
18 directly or indirectly, 5% or more of the shares of
19 stock or other evidences of ownership in a corporate or
20 limited liability company vendor previously
21 terminated, suspended, or excluded from participation
22 in the Illinois medical assistance program, or
23 terminated, suspended, or excluded from participation
24 in a state or federal medical assistance or health care
25 program during the time of conduct which was the basis
26 for that vendor's termination, suspension, or

1 exclusion; or

2 (4) was an owner of a sole proprietorship or
3 partner of a partnership previously terminated,
4 suspended, or excluded from participation in the
5 Illinois medical assistance program, or terminated,
6 suspended, or excluded from participation in a state or
7 federal medical assistance or health care program
8 during the time of conduct which was the basis for that
9 vendor's termination, suspension, or exclusion; or

10 (f-1) Such vendor has a delinquent debt owed to the
11 Illinois Department; or

12 (g) The vendor; a person with management
13 responsibility for a vendor; an officer or person owning,
14 either directly or indirectly, 5% or more of the shares of
15 stock or other evidences of ownership in a corporate or
16 limited liability company vendor; an owner of a sole
17 proprietorship which is a vendor; or a partner in a
18 partnership which is a vendor, either:

19 (1) has engaged in practices prohibited by
20 applicable federal or State law or regulation; or

21 (2) was a person with management responsibility
22 for a vendor at the time that such vendor engaged in
23 practices prohibited by applicable federal or State
24 law or regulation; or

25 (3) was an officer, or person owning, either
26 directly or indirectly, 5% or more of the shares of

1 stock or other evidences of ownership in a vendor at
2 the time such vendor engaged in practices prohibited by
3 applicable federal or State law or regulation; or

4 (4) was an owner of a sole proprietorship or
5 partner of a partnership which was a vendor at the time
6 such vendor engaged in practices prohibited by
7 applicable federal or State law or regulation; or

8 (h) The direct or indirect ownership of the vendor
9 (including the ownership of a vendor that is a sole
10 proprietorship, a partner's interest in a vendor that is a
11 partnership, or ownership of 5% or more of the shares of
12 stock or other evidences of ownership in a corporate
13 vendor) has been transferred by an individual who is
14 terminated, suspended, or excluded or barred from
15 participating as a vendor to the individual's spouse,
16 child, brother, sister, parent, grandparent, grandchild,
17 uncle, aunt, niece, nephew, cousin, or relative by
18 marriage.

19 (A-5) The Illinois Department may deny, suspend, or
20 terminate the eligibility of any person, firm, corporation,
21 association, agency, institution, or other legal entity to
22 participate as a vendor of goods or services to recipients
23 under the medical assistance program under Article V, or may
24 exclude any such person or entity from participation as such a
25 vendor, if, after reasonable notice and opportunity for a
26 hearing, the Illinois Department finds that the vendor; a

1 person with management responsibility for a vendor; an officer
2 or person owning, either directly or indirectly, 5% or more of
3 the shares of stock or other evidences of ownership in a
4 corporate vendor; an owner of a sole proprietorship that is a
5 vendor; or a partner in a partnership that is a vendor has been
6 convicted of an offense based on fraud or willful
7 misrepresentation related to any of the following:

8 (1) The medical assistance program under Article V of
9 this Code.

10 (2) A medical assistance or health care program in
11 another state.

12 (3) The Medicare program under Title XVIII of the
13 Social Security Act.

14 (4) The provision of health care services.

15 (5) A violation of this Code, as provided in Article
16 VIIIA, or another state or federal medical assistance
17 program or health care program.

18 (A-10) The Illinois Department may deny, suspend, or
19 terminate the eligibility of any person, firm, corporation,
20 association, agency, institution, or other legal entity to
21 participate as a vendor of goods or services to recipients
22 under the medical assistance program under Article V, or may
23 exclude any such person or entity from participation as such a
24 vendor, if, after reasonable notice and opportunity for a
25 hearing, the Illinois Department finds that (i) the vendor,
26 (ii) a person with management responsibility for a vendor,

1 (iii) an officer or person owning, either directly or
2 indirectly, 5% or more of the shares of stock or other
3 evidences of ownership in a corporate vendor, (iv) an owner of
4 a sole proprietorship that is a vendor, or (v) a partner in a
5 partnership that is a vendor has been convicted of an offense
6 related to any of the following:

7 (1) Murder.

8 (2) A Class X felony under the Criminal Code of 1961.

9 (3) Sexual misconduct that may subject recipients to an
10 undue risk of harm.

11 (4) A criminal offense that may subject recipients to
12 an undue risk of harm.

13 (5) A crime of fraud or dishonesty.

14 (6) A crime involving a controlled substance.

15 (7) A misdemeanor relating to fraud, theft,
16 embezzlement, breach of fiduciary responsibility, or other
17 financial misconduct related to a health care program.

18 (A-15) The Illinois Department may deny the eligibility of
19 any person, firm, corporation, association, agency,
20 institution, or other legal entity to participate as a vendor
21 of goods or services to recipients under the medical assistance
22 program under Article V if, after reasonable notice and
23 opportunity for a hearing, the Illinois Department finds:

24 (1) The applicant or any person with management
25 responsibility for the applicant; an officer or member of
26 the board of directors of an applicant; an entity owning

1 (directly or indirectly) 5% or more of the shares of stock
2 or other evidences of ownership in a corporate vendor
3 applicant; an owner of a sole proprietorship applicant; a
4 partner in a partnership applicant; or a technical or other
5 advisor to an applicant has a debt owed to the Illinois
6 Department, and no payment arrangements acceptable to the
7 Illinois Department have been made by the applicant.

8 (2) The applicant or any person with management
9 responsibility for the applicant; an officer or member of
10 the board of directors of an applicant; an entity owning
11 (directly or indirectly) 5% or more of the shares of stock
12 or other evidences of ownership in a corporate vendor
13 applicant; an owner of a sole proprietorship applicant; a
14 partner in a partnership vendor applicant; or a technical
15 or other advisor to an applicant was (i) a person with
16 management responsibility, (ii) an officer or member of the
17 board of directors of an applicant, (iii) an entity owning
18 (directly or indirectly) 5% or more of the shares of stock
19 or other evidences of ownership in a corporate vendor, (iv)
20 an owner of a sole proprietorship, (v) a partner in a
21 partnership vendor, (vi) a technical or other advisor to a
22 vendor, during a period of time where the conduct of that
23 vendor resulted in a debt owed to the Illinois Department,
24 and no payment arrangements acceptable to the Illinois
25 Department have been made by that vendor.

26 (3) There is a credible allegation of the use,

1 transfer, or lease of assets of any kind to an applicant
2 from a current or prior vendor who has a debt owed to the
3 Illinois Department, no payment arrangements acceptable to
4 the Illinois Department have been made by that vendor or
5 the vendor's alternate payee, and the applicant knows or
6 should have known of such debt.

7 (4) There is a credible allegation of a transfer of
8 management responsibilities, or direct or indirect
9 ownership, to an applicant from a current or prior vendor
10 who has a debt owed to the Illinois Department, and no
11 payment arrangements acceptable to the Illinois Department
12 have been made by that vendor or the vendor's alternate
13 payee, and the applicant knows or should have known of such
14 debt.

15 (5) There is a credible allegation of the use,
16 transfer, or lease of assets of any kind to an applicant
17 who is a spouse, child, brother, sister, parent,
18 grandparent, grandchild, uncle, aunt, niece, relative by
19 marriage, nephew, cousin, or relative of a current or prior
20 vendor who has a debt owed to the Illinois Department and
21 no payment arrangements acceptable to the Illinois
22 Department have been made.

23 (6) There is a credible allegation that the applicant's
24 previous affiliations with a provider of medical services
25 that has an uncollected debt, a provider that has been or
26 is subject to a payment suspension under a federal health

1 care program, or a provider that has been previously
2 excluded from participation in the medical assistance
3 program, poses a risk of fraud, waste, or abuse to the
4 Illinois Department.

5 As used in this subsection, "credible allegation" is
6 defined to include an allegation from any source, including,
7 but not limited to, fraud hotline complaints, claims data
8 mining, patterns identified through provider audits, civil
9 actions filed under the Illinois False Claims Act, and law
10 enforcement investigations. An allegation is considered to be
11 credible when it has indicia of reliability.

12 (B) The Illinois Department shall deny, suspend or
13 terminate the eligibility of any person, firm, corporation,
14 association, agency, institution or other legal entity to
15 participate as a vendor of goods or services to recipients
16 under the medical assistance program under Article V, or may
17 exclude any such person or entity from participation as such a
18 vendor:

19 (1) immediately, if such vendor is not properly
20 licensed, certified, or authorized;

21 (2) within 30 days of the date when such vendor's
22 professional license, certification or other authorization
23 has been refused renewal, restricted, revoked, suspended,
24 or otherwise terminated; or

25 (3) if such vendor has been convicted of a violation of
26 this Code, as provided in Article VIII A.

1 (C) Upon termination, suspension, or exclusion of a vendor
2 of goods or services from participation in the medical
3 assistance program authorized by this Article, a person with
4 management responsibility for such vendor during the time of
5 any conduct which served as the basis for that vendor's
6 termination, suspension, or exclusion is barred from
7 participation in the medical assistance program.

8 Upon termination, suspension, or exclusion of a corporate
9 vendor, the officers and persons owning, directly or
10 indirectly, 5% or more of the shares of stock or other
11 evidences of ownership in the vendor during the time of any
12 conduct which served as the basis for that vendor's
13 termination, suspension, or exclusion are barred from
14 participation in the medical assistance program. A person who
15 owns, directly or indirectly, 5% or more of the shares of stock
16 or other evidences of ownership in a terminated, suspended, or
17 excluded vendor may not transfer his or her ownership interest
18 in that vendor to his or her spouse, child, brother, sister,
19 parent, grandparent, grandchild, uncle, aunt, niece, nephew,
20 cousin, or relative by marriage.

21 Upon termination, suspension, or exclusion of a sole
22 proprietorship or partnership, the owner or partners during the
23 time of any conduct which served as the basis for that vendor's
24 termination, suspension, or exclusion are barred from
25 participation in the medical assistance program. The owner of a
26 terminated, suspended, or excluded vendor that is a sole

1 proprietorship, and a partner in a terminated, suspended, or
2 excluded vendor that is a partnership, may not transfer his or
3 her ownership or partnership interest in that vendor to his or
4 her spouse, child, brother, sister, parent, grandparent,
5 grandchild, uncle, aunt, niece, nephew, cousin, or relative by
6 marriage.

7 A person who owns, directly or indirectly, 5% or more of
8 the shares of stock or other evidences of ownership in a
9 corporate or limited liability company vendor who owes a debt
10 to the Department, if that vendor has not made payment
11 arrangements acceptable to the Department, shall not transfer
12 his or her ownership interest in that vendor, or vendor assets
13 of any kind, to his or her spouse, child, brother, sister,
14 parent, grandparent, grandchild, uncle, aunt, niece, nephew,
15 cousin, or relative by marriage.

16 Rules adopted by the Illinois Department to implement these
17 provisions shall specifically include a definition of the term
18 "management responsibility" as used in this Section. Such
19 definition shall include, but not be limited to, typical job
20 titles, and duties and descriptions which will be considered as
21 within the definition of individuals with management
22 responsibility for a provider.

23 A vendor or a prior vendor who has been terminated,
24 excluded, or suspended from the medical assistance program, or
25 from another state or federal medical assistance or health care
26 program, and any individual currently or previously barred from

1 the medical assistance program, or from another state or
2 federal medical assistance or health care program, as a result
3 of being an officer or a person owning, directly or indirectly,
4 5% or more of the shares of stock or other evidences of
5 ownership in a corporate or limited liability company vendor
6 during the time of any conduct which served as the basis for
7 that vendor's termination, suspension, or exclusion, may be
8 required to post a surety bond as part of a condition of
9 enrollment or participation in the medical assistance program.
10 The Illinois Department shall establish, by rule, the criteria
11 and requirements for determining when a surety bond must be
12 posted and the value of the bond.

13 A vendor or a prior vendor who has a debt owed to the
14 Illinois Department and any individual currently or previously
15 barred from the medical assistance program, or from another
16 state or federal medical assistance or health care program, as
17 a result of being an officer or a person owning, directly or
18 indirectly, 5% or more of the shares of stock or other
19 evidences of ownership in that corporate or limited liability
20 company vendor during the time of any conduct which served as
21 the basis for the debt, may be required to post a surety bond
22 as part of a condition of enrollment or participation in the
23 medical assistance program. The Illinois Department shall
24 establish, by rule, the criteria and requirements for
25 determining when a surety bond must be posted and the value of
26 the bond.

1 (D) If a vendor has been suspended from the medical
2 assistance program under Article V of the Code, the Director
3 may require that such vendor correct any deficiencies which
4 served as the basis for the suspension. The Director shall
5 specify in the suspension order a specific period of time,
6 which shall not exceed one year from the date of the order,
7 during which a suspended vendor shall not be eligible to
8 participate. At the conclusion of the period of suspension the
9 Director shall reinstate such vendor, unless he finds that such
10 vendor has not corrected deficiencies upon which the suspension
11 was based.

12 If a vendor has been terminated, suspended, or excluded
13 from the medical assistance program under Article V, such
14 vendor shall be barred from participation for at least one
15 year, except that if a vendor has been terminated, suspended,
16 or excluded based on a conviction of a violation of Article
17 VIIIA or a conviction of a felony based on fraud or a willful
18 misrepresentation related to (i) the medical assistance
19 program under Article V, (ii) a federal or another state's
20 medical assistance or health care program, or (iii) the
21 provision of health care services, then the vendor shall be
22 barred from participation for 5 years or for the length of the
23 vendor's sentence for that conviction, whichever is longer. At
24 the end of one year a vendor who has been terminated,
25 suspended, or excluded may apply for reinstatement to the
26 program. Upon proper application to be reinstated such vendor

1 may be deemed eligible by the Director providing that such
2 vendor meets the requirements for eligibility under this Code.
3 If such vendor is deemed not eligible for reinstatement, he
4 shall be barred from again applying for reinstatement for one
5 year from the date his application for reinstatement is denied.

6 A vendor whose termination, suspension, or exclusion from
7 participation in the Illinois medical assistance program under
8 Article V was based solely on an action by a governmental
9 entity other than the Illinois Department may, upon
10 reinstatement by that governmental entity or upon reversal of
11 the termination, suspension, or exclusion, apply for
12 rescission of the termination, suspension, or exclusion from
13 participation in the Illinois medical assistance program. Upon
14 proper application for rescission, the vendor may be deemed
15 eligible by the Director if the vendor meets the requirements
16 for eligibility under this Code.

17 If a vendor has been terminated, suspended, or excluded and
18 reinstated to the medical assistance program under Article V
19 and the vendor is terminated, suspended, or excluded a second
20 or subsequent time from the medical assistance program, the
21 vendor shall be barred from participation for at least 2 years,
22 except that if a vendor has been terminated, suspended, or
23 excluded a second time based on a conviction of a violation of
24 Article VIII A or a conviction of a felony based on fraud or a
25 willful misrepresentation related to (i) the medical
26 assistance program under Article V, (ii) a federal or another

1 state's medical assistance or health care program, or (iii) the
2 provision of health care services, then the vendor shall be
3 barred from participation for life. At the end of 2 years, a
4 vendor who has been terminated, suspended, or excluded may
5 apply for reinstatement to the program. Upon application to be
6 reinstated, the vendor may be deemed eligible if the vendor
7 meets the requirements for eligibility under this Code. If the
8 vendor is deemed not eligible for reinstatement, the vendor
9 shall be barred from again applying for reinstatement for 2
10 years from the date the vendor's application for reinstatement
11 is denied.

12 (E) The Illinois Department may recover money improperly or
13 erroneously paid, or overpayments, either by setoff, crediting
14 against future billings or by requiring direct repayment to the
15 Illinois Department. The Illinois Department may suspend or
16 deny payment, in whole or in part, if such payment would be
17 improper or erroneous or would otherwise result in overpayment.

18 (1) Payments may be suspended, denied, or recovered
19 from a vendor or alternate payee: (i) for services rendered
20 in violation of the Illinois Department's provider
21 notices, statutes, rules, and regulations; (ii) for
22 services rendered in violation of the terms and conditions
23 prescribed by the Illinois Department in its vendor
24 agreement; (iii) for any vendor who fails to grant the
25 Office of Inspector General timely access to full and
26 complete records, including, but not limited to, records

1 relating to recipients under the medical assistance
2 program for the most recent 6 years, in accordance with
3 Section 140.28 of Title 89 of the Illinois Administrative
4 Code, and other information for the purpose of audits,
5 investigations, or other program integrity functions,
6 after reasonable written request by the Inspector General;
7 this subsection (E) does not require vendors to make
8 available the medical records of patients for whom services
9 are not reimbursed under this Code or to provide access to
10 medical records more than 6 years old; (iv) when the vendor
11 has knowingly made, or caused to be made, any false
12 statement or representation of a material fact in
13 connection with the administration of the medical
14 assistance program; or (v) when the vendor previously
15 rendered services while terminated, suspended, or excluded
16 from participation in the medical assistance program or
17 while terminated or excluded from participation in another
18 state or federal medical assistance or health care program.

19 (2) Notwithstanding any other provision of law, if a
20 vendor has the same taxpayer identification number
21 (assigned under Section 6109 of the Internal Revenue Code
22 of 1986) as is assigned to a vendor with past-due financial
23 obligations to the Illinois Department, the Illinois
24 Department may make any necessary adjustments to payments
25 to that vendor in order to satisfy any past-due
26 obligations, regardless of whether the vendor is assigned a

1 different billing number under the medical assistance
2 program.

3 ~~If the Illinois Department establishes through an~~
4 ~~administrative hearing that the overpayments resulted from the~~
5 ~~vendor or alternate payee knowingly making, using, or causing~~
6 ~~to be made or used, a false record or statement to obtain~~
7 ~~payment or other benefit from the medical assistance program~~
8 ~~under Article V, the Department may recover interest on the~~
9 ~~amount of the payment or other benefit at the rate of 5% per~~
10 ~~annum. In addition to any other penalties that may be~~
11 ~~prescribed by law, such a vendor or alternate payee shall be~~
12 ~~subject to civil penalties consisting of an amount not to~~
13 ~~exceed 3 times the amount of payment or other benefit resulting~~
14 ~~from each such false record or statement, and the sum of \$2,000~~
15 ~~for each such false record or statement for payment or other~~
16 ~~benefit. For purposes of this paragraph, "knowingly" means that~~
17 ~~a vendor or alternate payee with respect to information: (i)~~
18 ~~has actual knowledge of the information, (ii) acts in~~
19 ~~deliberate ignorance of the truth or falsity of the~~
20 ~~information, or (iii) acts in reckless disregard of the truth~~
21 ~~or falsity of the information. No proof of specific intent to~~
22 ~~defraud is required.~~

23 (E-5) Civil monetary penalties.

24 (1) For purposes of this Section, "knowingly" means
25 that a vendor or alternate payee, with respect to
26 information: (i) has actual knowledge of the information,

1 (ii) acts in deliberate ignorance of the truth or falsity
2 of the information, or (iii) acts in reckless disregard of
3 the truth or falsity of the information. No proof of
4 specific intent to defraud is required.

5 (2) Any person (including a vendor, provider,
6 organization, agency, or other entity, or an alternate
7 payee thereof, but excluding a recipient) who:

8 (a) knowingly presents or causes to be presented to
9 an officer, employee, or agent of the Department or the
10 State, a claim that the Department determines:

11 (i) is for a medical or other item or service
12 that the person knows or should know was not
13 provided as claimed, including any person who
14 engaged in a pattern or practice of presenting or
15 causing to be presented a claim for an item or
16 service that is based on a billing procedure code
17 that the person knows or should know will result in
18 a greater payment to the person than the billing
19 procedure code the person knows or should know is
20 applicable to the item or service actually
21 provided;

22 (ii) is for a medical or other item or service
23 and the person knows or should know that the claim
24 is false or fraudulent;

25 (iii) is presented for a vendor physician's
26 service, or an item or service incident to a vendor

1 physician's service, by a person who knows or
2 should know that the individual who furnished, or
3 who supervised the furnishing of, the service:

4 (AA) was not licensed as a physician;

5 (BB) was licensed as a physician but such
6 license had been obtained through a
7 misrepresentation of material fact (including
8 cheating on an examination required for
9 licensing); or

10 (CC) represented to the patient at the
11 time the service was furnished that the
12 physician was certified in a medical specialty
13 by the applicable specialty board, when the
14 individual was not so certified;

15 (iv) is for a medical or other item or service
16 furnished during a period in which the person was
17 excluded from the medical assistance program; or

18 (v) is for a pattern of medical or other items
19 or services that a person knows or should know are
20 not medically necessary;

21 (b) knowingly presents or causes to be presented to
22 any person a request for payment which is in violation
23 of the terms of an agreement with the Department or
24 another requirement of the medical assistance program;

25 (c) knowingly gives or causes to be given to any
26 person, with respect to coverage for inpatient

1 hospital services under the medical assistance
2 program, information that he or she knows or should
3 know is false or misleading, and that could reasonably
4 be expected to influence the decision when to discharge
5 such person or other individual from the hospital;

6 (d) in the case of a person who is not an
7 organization, agency, or other entity, is excluded
8 from participating in any federal or state health care
9 program, including, but not limited to, the medical
10 assistance program, and who, at the time of a violation
11 of this subsection (E-5):

12 (i) has a direct or indirect ownership or
13 control interest in an entity that is
14 participating in the medical assistance program,
15 and who knows or should know of the action
16 constituting the basis for the exclusion; or

17 (ii) is an officer or managing employee of such
18 an entity;

19 (e) offers or transfers remuneration to any
20 individual eligible for benefits under the medical
21 assistance program that such person knows or should
22 know is likely to influence such individual to order or
23 receive from a particular provider, vendor, or
24 supplier any item or service for which payment may be
25 made, in whole or in part, under the medical assistance
26 program;

1 (f) arranges or contracts (by employment or
2 otherwise) with an individual or entity that the person
3 knows or should know is excluded from participation in
4 a federal or state health care program, including, but
5 not limited to, the medical assistance program, for the
6 provision of items or services for which payment may be
7 made under such a program;

8 (g) commits an act described in subsection (b) or
9 (c) of Section 8A-3;

10 (h) orders or prescribes a medical or other item or
11 service during a period in which that person was
12 excluded from the medical assistance program, in the
13 case where the person knows or should know that a claim
14 for such medical or other item or service will be made
15 under such a program;

16 (i) knowingly makes, uses, or causes to be made or
17 used, a false record or statement material to a false
18 or fraudulent claim to obtain payment or other benefit
19 from the medical assistance program;

20 (j) knowingly makes or causes to be made any false
21 statement, omission, or misrepresentation of a
22 material fact in any application, bid, or contract to
23 participate or enroll as a provider of services under
24 the medical assistance program;

25 (k) fails to grant timely access, upon reasonable
26 request (as defined by the Department) to the

1 Department or Department Inspector General, for the
2 purpose of audits, investigations, evaluations, or
3 other statutory functions of the Inspector General; or
4 (l) knows of any overpayment and does not report
5 and return the overpayment to the Department;
6 shall be subject, in addition to any other penalties that
7 may be prescribed by law, to a civil monetary penalty of
8 not more than \$10,000 for each item or service (or, in
9 cases under item (c), \$15,000 for each individual with
10 respect to whom false or misleading information was given;
11 in cases under item (d), \$10,000 for each day the
12 prohibited relationship occurs; in cases under item (g),
13 \$50,000 for each such act; in cases under item (h), \$50,000
14 for each order or prescription; in cases under paragraphs
15 (i) or (j), \$50,000 for each false record or statement; or
16 in cases under item (k), \$15,000 for each day of the
17 failure described in such item). In addition, such a person
18 shall be subject to an assessment of not more than 3 times
19 the amount claimed for each such item or service in lieu of
20 damages sustained by the Department because of such claim
21 (or, in the case of item (g), damages of not more than 3
22 times the total amount of remuneration offered, paid,
23 solicited, or received, with regard to whether a portion of
24 such remuneration was offered, paid, solicited, or
25 received for a lawful purpose). In addition, the Director
26 or his or her designee may make a determination in the same

1 proceeding to terminate, suspend, bar, or exclude the
2 person from participation in the medical assistance
3 program.

4 (3) The Illinois Department may seek the civil monetary
5 penalties or termination, suspension, barment, or
6 exclusion identified in this subsection (E-5). Prior to the
7 imposition of any penalties or sanctions, the affected
8 individual, entity, or vendor shall be afforded an
9 opportunity for a hearing after reasonable notice. The
10 Department shall establish hearing procedures by rule.

11 Any final order, decision, or other determination
12 made, issued, or executed by the Director under the
13 provisions of this subsection, whereby an individual,
14 entity, or vendor is aggrieved, shall be subject to review
15 in accordance with the provisions of the Administrative
16 Review Law, and the rules adopted pursuant thereto, which
17 shall apply to and govern all proceedings for the judicial
18 review of final administrative decisions of the Director.

19 (F) The Illinois Department may withhold payments to any
20 vendor or alternate payee prior to or during the pendency of
21 any audit or proceeding under this Section, and through the
22 pendency of any administrative appeal or administrative review
23 by any court proceeding. The Illinois Department shall state by
24 rule with as much specificity as practicable the conditions
25 under which payments will not be withheld under this Section.
26 Payments may be denied for bills submitted with service dates

1 occurring during the pendency of a proceeding, after a final
2 decision has been rendered, or after the conclusion of any
3 administrative appeal, where the final administrative decision
4 is to terminate, exclude, or suspend eligibility to participate
5 in the medical assistance program. The Illinois Department
6 shall state by rule with as much specificity as practicable the
7 conditions under which payments will not be denied for such
8 bills. The Illinois Department shall state by rule a process
9 and criteria by which a vendor or alternate payee may request
10 full or partial release of payments withheld under this
11 subsection. The Department must complete a proceeding under
12 this Section in a timely manner.

13 Notwithstanding recovery allowed under subsection (E) or
14 this subsection (F), the Illinois Department may withhold
15 payments to any vendor or alternate payee who is not properly
16 licensed, certified, or in compliance with State or federal
17 agency regulations. Payments may be denied for bills submitted
18 with service dates occurring during the period of time that a
19 vendor is not properly licensed, certified, or in compliance
20 with State or federal regulations. Facilities licensed under
21 the Nursing Home Care Act shall have payments denied or
22 withheld pursuant to subsection (I) of this Section.

23 (F-5) The Illinois Department may temporarily withhold
24 payments to a vendor or alternate payee if any of the following
25 individuals have been indicted or otherwise charged under a law
26 of the United States or this or any other state with an offense

1 that is based on alleged fraud or willful misrepresentation on
2 the part of the individual related to (i) the medical
3 assistance program under Article V of this Code, (ii) a federal
4 or another state's medical assistance or health care program,
5 or (iii) the provision of health care services:

6 (1) If the vendor or alternate payee is a corporation:
7 an officer of the corporation or an individual who owns,
8 either directly or indirectly, 5% or more of the shares of
9 stock or other evidence of ownership of the corporation.

10 (2) If the vendor is a sole proprietorship: the owner
11 of the sole proprietorship.

12 (3) If the vendor or alternate payee is a partnership:
13 a partner in the partnership.

14 (4) If the vendor or alternate payee is any other
15 business entity authorized by law to transact business in
16 this State: an officer of the entity or an individual who
17 owns, either directly or indirectly, 5% or more of the
18 evidences of ownership of the entity.

19 If the Illinois Department withholds payments to a vendor
20 or alternate payee under this subsection, the Department shall
21 not release those payments to the vendor or alternate payee
22 while any criminal proceeding related to the indictment or
23 charge is pending unless the Department determines that there
24 is good cause to release the payments before completion of the
25 proceeding. If the indictment or charge results in the
26 individual's conviction, the Illinois Department shall retain

1 all withheld payments, which shall be considered forfeited to
2 the Department. If the indictment or charge does not result in
3 the individual's conviction, the Illinois Department shall
4 release to the vendor or alternate payee all withheld payments.

5 (F-10) If the Illinois Department establishes that the
6 vendor or alternate payee owes a debt to the Illinois
7 Department, and the vendor or alternate payee subsequently
8 fails to pay or make satisfactory payment arrangements with the
9 Illinois Department for the debt owed, the Illinois Department
10 may seek all remedies available under the law of this State to
11 recover the debt, including, but not limited to, wage
12 garnishment or the filing of claims or liens against the vendor
13 or alternate payee.

14 (F-15) Enforcement of judgment.

15 (1) Any fine, recovery amount, other sanction, or costs
16 imposed, or part of any fine, recovery amount, other
17 sanction, or cost imposed, remaining unpaid after the
18 exhaustion of or the failure to exhaust judicial review
19 procedures under the Illinois Administrative Review Law is
20 a debt due and owing the State and may be collected using
21 all remedies available under the law.

22 (2) After expiration of the period in which judicial
23 review under the Illinois Administrative Review Law may be
24 sought for a final administrative decision, unless stayed
25 by a court of competent jurisdiction, the findings,
26 decision, and order of the Director may be enforced in the

1 same manner as a judgment entered by a court of competent
2 jurisdiction.

3 (3) In any case in which any person or entity has
4 failed to comply with a judgment ordering or imposing any
5 fine or other sanction, any expenses incurred by the
6 Illinois Department to enforce the judgment, including,
7 but not limited to, attorney's fees, court costs, and costs
8 related to property demolition or foreclosure, after they
9 are fixed by a court of competent jurisdiction or the
10 Director, shall be a debt due and owing the State and may
11 be collected in accordance with applicable law. Prior to
12 any expenses being fixed by a final administrative decision
13 pursuant to this subsection (F-15), the Illinois
14 Department shall provide notice to the individual or entity
15 that states that the individual or entity shall appear at a
16 hearing before the administrative hearing officer to
17 determine whether the individual or entity has failed to
18 comply with the judgment. The notice shall set the date for
19 such a hearing, which shall not be less than 7 days from
20 the date that notice is served. If notice is served by
21 mail, the 7-day period shall begin to run on the date that
22 the notice was deposited in the mail.

23 (4) Upon being recorded in the manner required by
24 Article XII of the Code of Civil Procedure or by the
25 Uniform Commercial Code, a lien shall be imposed on the
26 real estate or personal estate, or both, of the individual

1 or entity in the amount of any debt due and owing the State
2 under this Section. The lien may be enforced in the same
3 manner as a judgment of a court of competent jurisdiction.
4 A lien shall attach to all property and assets of such
5 person, firm, corporation, association, agency,
6 institution, or other legal entity until the judgment is
7 satisfied.

8 (5) The Director may set aside any judgment entered by
9 default and set a new hearing date upon a petition filed at
10 any time (i) if the petitioner's failure to appear at the
11 hearing was for good cause, or (ii) if the petitioner
12 established that the Department did not provide proper
13 service of process. If any judgment is set aside pursuant
14 to this paragraph (5), the hearing officer shall have
15 authority to enter an order extinguishing any lien which
16 has been recorded for any debt due and owing the Illinois
17 Department as a result of the vacated default judgment.

18 (G) The provisions of the Administrative Review Law, as now
19 or hereafter amended, and the rules adopted pursuant thereto,
20 shall apply to and govern all proceedings for the judicial
21 review of final administrative decisions of the Illinois
22 Department under this Section. The term "administrative
23 decision" is defined as in Section 3-101 of the Code of Civil
24 Procedure.

25 (G-5) Vendors who pose a risk of fraud, waste, abuse, or
26 harm.

1 (1) Notwithstanding any other provision in this
2 Section, the Department may terminate, suspend, or exclude
3 vendors who pose a risk of fraud, waste, abuse, or harm
4 from participation in the medical assistance program prior
5 to an evidentiary hearing but after reasonable notice and
6 opportunity to respond as established by the Department by
7 rule.

8 (2) Vendors who pose a risk of fraud, waste, abuse, or
9 harm shall submit to a fingerprint-based criminal
10 background check on current and future information
11 available in the State system and current information
12 available through the Federal Bureau of Investigation's
13 system by submitting all necessary fees and information in
14 the form and manner prescribed by the Department of State
15 Police. The following individuals shall be subject to the
16 check:

17 (A) In the case of a vendor that is a corporation,
18 every shareholder who owns, directly or indirectly, 5%
19 or more of the outstanding shares of the corporation.

20 (B) In the case of a vendor that is a partnership,
21 every partner.

22 (C) In the case of a vendor that is a sole
23 proprietorship, the sole proprietor.

24 (D) Each officer or manager of the vendor.

25 Each such vendor shall be responsible for payment of
26 the cost of the criminal background check.

1 (3) Vendors who pose a risk of fraud, waste, abuse, or
2 harm may be required to post a surety bond. The Department
3 shall establish, by rule, the criteria and requirements for
4 determining when a surety bond must be posted and the value
5 of the bond.

6 (4) The Department, or its agents, may refuse to accept
7 requests for authorization from specific vendors who pose a
8 risk of fraud, waste, abuse, or harm, including
9 prior-approval and post-approval requests, if:

10 (A) the Department has initiated a notice of
11 termination, suspension, or exclusion of the vendor
12 from participation in the medical assistance program;
13 or

14 (B) the Department has issued notification of its
15 withholding of payments pursuant to subsection (F-5)
16 of this Section; or

17 (C) the Department has issued a notification of its
18 withholding of payments due to reliable evidence of
19 fraud or willful misrepresentation pending
20 investigation.

21 (5) As used in this subsection, the following terms are
22 defined as follows:

23 (A) "Fraud" means an intentional deception or
24 misrepresentation made by a person with the knowledge
25 that the deception could result in some unauthorized
26 benefit to himself or herself or some other person. It

1 includes any act that constitutes fraud under
2 applicable federal or State law.

3 (B) "Abuse" means provider practices that are
4 inconsistent with sound fiscal, business, or medical
5 practices and that result in an unnecessary cost to the
6 medical assistance program or in reimbursement for
7 services that are not medically necessary or that fail
8 to meet professionally recognized standards for health
9 care. It also includes recipient practices that result
10 in unnecessary cost to the medical assistance program.
11 Abuse does not include diagnostic or therapeutic
12 measures conducted primarily as a safeguard against
13 possible vendor liability.

14 (C) "Waste" means the unintentional misuse of
15 medical assistance resources, resulting in unnecessary
16 cost to the medical assistance program. Waste does not
17 include diagnostic or therapeutic measures conducted
18 primarily as a safeguard against possible vendor
19 liability.

20 (D) "Harm" means physical, mental, or monetary
21 damage to recipients or to the medical assistance
22 program.

23 (G-6) The Illinois Department, upon making a determination
24 based upon information in the possession of the Illinois
25 Department that continuation of participation in the medical
26 assistance program by a vendor would constitute an immediate

1 danger to the public, may immediately suspend such vendor's
2 participation in the medical assistance program without a
3 hearing. In instances in which the Illinois Department
4 immediately suspends the medical assistance program
5 participation of a vendor under this Section, a hearing upon
6 the vendor's participation must be convened by the Illinois
7 Department within 15 days after such suspension and completed
8 without appreciable delay. Such hearing shall be held to
9 determine whether to recommend to the Director that the
10 vendor's medical assistance program participation be denied,
11 terminated, suspended, placed on provisional status, or
12 reinstated. In the hearing, any evidence relevant to the vendor
13 constituting an immediate danger to the public may be
14 introduced against such vendor; provided, however, that the
15 vendor, or his or her counsel, shall have the opportunity to
16 discredit, impeach, and submit evidence rebutting such
17 evidence.

18 (H) Nothing contained in this Code shall in any way limit
19 or otherwise impair the authority or power of any State agency
20 responsible for licensing of vendors.

21 (I) Based on a finding of noncompliance on the part of a
22 nursing home with any requirement for certification under Title
23 XVIII or XIX of the Social Security Act (42 U.S.C. Sec. 1395 et
24 seq. or 42 U.S.C. Sec. 1396 et seq.), the Illinois Department
25 may impose one or more of the following remedies after notice
26 to the facility:

- 1 (1) Termination of the provider agreement.
- 2 (2) Temporary management.
- 3 (3) Denial of payment for new admissions.
- 4 (4) Civil money penalties.
- 5 (5) Closure of the facility in emergency situations or
6 transfer of residents, or both.
- 7 (6) State monitoring.
- 8 (7) Denial of all payments when the U.S. Department of
9 Health and Human Services has imposed this sanction.

10 The Illinois Department shall by rule establish criteria
11 governing continued payments to a nursing facility subsequent
12 to termination of the facility's provider agreement if, in the
13 sole discretion of the Illinois Department, circumstances
14 affecting the health, safety, and welfare of the facility's
15 residents require those continued payments. The Illinois
16 Department may condition those continued payments on the
17 appointment of temporary management, sale of the facility to
18 new owners or operators, or other arrangements that the
19 Illinois Department determines best serve the needs of the
20 facility's residents.

21 Except in the case of a facility that has a right to a
22 hearing on the finding of noncompliance before an agency of the
23 federal government, a facility may request a hearing before a
24 State agency on any finding of noncompliance within 60 days
25 after the notice of the intent to impose a remedy. Except in
26 the case of civil money penalties, a request for a hearing

1 shall not delay imposition of the penalty. The choice of
2 remedies is not appealable at a hearing. The level of
3 noncompliance may be challenged only in the case of a civil
4 money penalty. The Illinois Department shall provide by rule
5 for the State agency that will conduct the evidentiary
6 hearings.

7 The Illinois Department may collect interest on unpaid
8 civil money penalties.

9 The Illinois Department may adopt all rules necessary to
10 implement this subsection (I).

11 (J) The Illinois Department, by rule, may permit individual
12 practitioners to designate that Department payments that may be
13 due the practitioner be made to an alternate payee or alternate
14 payees.

15 (a) Such alternate payee or alternate payees shall be
16 required to register as an alternate payee in the Medical
17 Assistance Program with the Illinois Department.

18 (b) If a practitioner designates an alternate payee,
19 the alternate payee and practitioner shall be jointly and
20 severally liable to the Department for payments made to the
21 alternate payee. Pursuant to subsection (E) of this
22 Section, any Department action to suspend or deny payment
23 or recover money or overpayments from an alternate payee
24 shall be subject to an administrative hearing.

25 (c) Registration as an alternate payee or alternate
26 payees in the Illinois Medical Assistance Program shall be

1 conditional. At any time, the Illinois Department may deny
2 or cancel any alternate payee's registration in the
3 Illinois Medical Assistance Program without cause. Any
4 such denial or cancellation is not subject to an
5 administrative hearing.

6 (d) The Illinois Department may seek a revocation of
7 any alternate payee, and all owners, officers, and
8 individuals with management responsibility for such
9 alternate payee shall be permanently prohibited from
10 participating as an owner, an officer, or an individual
11 with management responsibility with an alternate payee in
12 the Illinois Medical Assistance Program, if after
13 reasonable notice and opportunity for a hearing the
14 Illinois Department finds that:

15 (1) the alternate payee is not complying with the
16 Department's policy or rules and regulations, or with
17 the terms and conditions prescribed by the Illinois
18 Department in its alternate payee registration
19 agreement; or

20 (2) the alternate payee has failed to keep or make
21 available for inspection, audit, or copying, after
22 receiving a written request from the Illinois
23 Department, such records regarding payments claimed as
24 an alternate payee; or

25 (3) the alternate payee has failed to furnish any
26 information requested by the Illinois Department

1 regarding payments claimed as an alternate payee; or

2 (4) the alternate payee has knowingly made, or
3 caused to be made, any false statement or
4 representation of a material fact in connection with
5 the administration of the Illinois Medical Assistance
6 Program; or

7 (5) the alternate payee, a person with management
8 responsibility for an alternate payee, an officer or
9 person owning, either directly or indirectly, 5% or
10 more of the shares of stock or other evidences of
11 ownership in a corporate alternate payee, or a partner
12 in a partnership which is an alternate payee:

13 (a) was previously terminated, suspended, or
14 excluded from participation as a vendor in the
15 Illinois Medical Assistance Program, or was
16 previously revoked as an alternate payee in the
17 Illinois Medical Assistance Program, or was
18 terminated, suspended, or excluded from
19 participation as a vendor in a medical assistance
20 program in another state that is of the same kind
21 as the program of medical assistance provided
22 under Article V of this Code; or

23 (b) was a person with management
24 responsibility for a vendor previously terminated,
25 suspended, or excluded from participation as a
26 vendor in the Illinois Medical Assistance Program,

1 or was previously revoked as an alternate payee in
2 the Illinois Medical Assistance Program, or was
3 terminated, suspended, or excluded from
4 participation as a vendor in a medical assistance
5 program in another state that is of the same kind
6 as the program of medical assistance provided
7 under Article V of this Code, during the time of
8 conduct which was the basis for that vendor's
9 termination, suspension, or exclusion or alternate
10 payee's revocation; or

11 (c) was an officer, or person owning, either
12 directly or indirectly, 5% or more of the shares of
13 stock or other evidences of ownership in a
14 corporate vendor previously terminated, suspended,
15 or excluded from participation as a vendor in the
16 Illinois Medical Assistance Program, or was
17 previously revoked as an alternate payee in the
18 Illinois Medical Assistance Program, or was
19 terminated, suspended, or excluded from
20 participation as a vendor in a medical assistance
21 program in another state that is of the same kind
22 as the program of medical assistance provided
23 under Article V of this Code, during the time of
24 conduct which was the basis for that vendor's
25 termination, suspension, or exclusion; or

26 (d) was an owner of a sole proprietorship or

1 partner in a partnership previously terminated,
2 suspended, or excluded from participation as a
3 vendor in the Illinois Medical Assistance Program,
4 or was previously revoked as an alternate payee in
5 the Illinois Medical Assistance Program, or was
6 terminated, suspended, or excluded from
7 participation as a vendor in a medical assistance
8 program in another state that is of the same kind
9 as the program of medical assistance provided
10 under Article V of this Code, during the time of
11 conduct which was the basis for that vendor's
12 termination, suspension, or exclusion or alternate
13 payee's revocation; or

14 (6) the alternate payee, a person with management
15 responsibility for an alternate payee, an officer or
16 person owning, either directly or indirectly, 5% or
17 more of the shares of stock or other evidences of
18 ownership in a corporate alternate payee, or a partner
19 in a partnership which is an alternate payee:

20 (a) has engaged in conduct prohibited by
21 applicable federal or State law or regulation
22 relating to the Illinois Medical Assistance
23 Program; or

24 (b) was a person with management
25 responsibility for a vendor or alternate payee at
26 the time that the vendor or alternate payee engaged

1 in practices prohibited by applicable federal or
2 State law or regulation relating to the Illinois
3 Medical Assistance Program; or

4 (c) was an officer, or person owning, either
5 directly or indirectly, 5% or more of the shares of
6 stock or other evidences of ownership in a vendor
7 or alternate payee at the time such vendor or
8 alternate payee engaged in practices prohibited by
9 applicable federal or State law or regulation
10 relating to the Illinois Medical Assistance
11 Program; or

12 (d) was an owner of a sole proprietorship or
13 partner in a partnership which was a vendor or
14 alternate payee at the time such vendor or
15 alternate payee engaged in practices prohibited by
16 applicable federal or State law or regulation
17 relating to the Illinois Medical Assistance
18 Program; or

19 (7) the direct or indirect ownership of the vendor
20 or alternate payee (including the ownership of a vendor
21 or alternate payee that is a partner's interest in a
22 vendor or alternate payee, or ownership of 5% or more
23 of the shares of stock or other evidences of ownership
24 in a corporate vendor or alternate payee) has been
25 transferred by an individual who is terminated,
26 suspended, or excluded or barred from participating as

1 a vendor or is prohibited or revoked as an alternate
2 payee to the individual's spouse, child, brother,
3 sister, parent, grandparent, grandchild, uncle, aunt,
4 niece, nephew, cousin, or relative by marriage.

5 (K) The Illinois Department of Healthcare and Family
6 Services may withhold payments, in whole or in part, to a
7 provider or alternate payee where there is credible evidence,
8 received from State or federal law enforcement or federal
9 oversight agencies or from the results of a preliminary
10 Department audit, that the circumstances giving rise to the
11 need for a withholding of payments may involve fraud or willful
12 misrepresentation under the Illinois Medical Assistance
13 program. The Department shall by rule define what constitutes
14 "credible" evidence for purposes of this subsection. The
15 Department may withhold payments without first notifying the
16 provider or alternate payee of its intention to withhold such
17 payments. A provider or alternate payee may request a
18 reconsideration of payment withholding, and the Department
19 must grant such a request. The Department shall state by rule a
20 process and criteria by which a provider or alternate payee may
21 request full or partial release of payments withheld under this
22 subsection. This request may be made at any time after the
23 Department first withholds such payments.

24 (a) The Illinois Department must send notice of its
25 withholding of program payments within 5 days of taking
26 such action. The notice must set forth the general

1 allegations as to the nature of the withholding action, but
2 need not disclose any specific information concerning its
3 ongoing investigation. The notice must do all of the
4 following:

5 (1) State that payments are being withheld in
6 accordance with this subsection.

7 (2) State that the withholding is for a temporary
8 period, as stated in paragraph (b) of this subsection,
9 and cite the circumstances under which withholding
10 will be terminated.

11 (3) Specify, when appropriate, which type or types
12 of Medicaid claims withholding is effective.

13 (4) Inform the provider or alternate payee of the
14 right to submit written evidence for reconsideration
15 of the withholding by the Illinois Department.

16 (5) Inform the provider or alternate payee that a
17 written request may be made to the Illinois Department
18 for full or partial release of withheld payments and
19 that such requests may be made at any time after the
20 Department first withholds such payments.

21 (b) All withholding-of-payment actions under this
22 subsection shall be temporary and shall not continue after
23 any of the following:

24 (1) The Illinois Department or the prosecuting
25 authorities determine that there is insufficient
26 evidence of fraud or willful misrepresentation by the

1 provider or alternate payee.

2 (2) Legal proceedings related to the provider's or
3 alternate payee's alleged fraud, willful
4 misrepresentation, violations of this Act, or
5 violations of the Illinois Department's administrative
6 rules are completed.

7 (3) The withholding of payments for a period of 3
8 years.

9 (c) The Illinois Department may adopt all rules
10 necessary to implement this subsection (K).

11 (K-5) The Illinois Department may withhold payments, in
12 whole or in part, to a provider or alternate payee upon
13 initiation of an audit, quality of care review, investigation
14 when there is a credible allegation of fraud, or the provider
15 or alternate payee demonstrating a clear failure to cooperate
16 with the Illinois Department such that the circumstances give
17 rise to the need for a withholding of payments. As used in this
18 subsection, "credible allegation" is defined to include an
19 allegation from any source, including, but not limited to,
20 fraud hotline complaints, claims data mining, patterns
21 identified through provider audits, civil actions filed under
22 the Illinois False Claims Act, and law enforcement
23 investigations. An allegation is considered to be credible when
24 it has indicia of reliability. The Illinois Department may
25 withhold payments without first notifying the provider or
26 alternate payee of its intention to withhold such payments. A

1 provider or alternate payee may request a hearing or a
2 reconsideration of payment withholding, and the Illinois
3 Department must grant such a request. The Illinois Department
4 shall state by rule a process and criteria by which a provider
5 or alternate payee may request a hearing or a reconsideration
6 for the full or partial release of payments withheld under this
7 subsection. This request may be made at any time after the
8 Illinois Department first withholds such payments.

9 (a) The Illinois Department must send notice of its
10 withholding of program payments within 5 days of taking
11 such action. The notice must set forth the general
12 allegations as to the nature of the withholding action but
13 need not disclose any specific information concerning its
14 ongoing investigation. The notice must do all of the
15 following:

16 (1) State that payments are being withheld in
17 accordance with this subsection.

18 (2) State that the withholding is for a temporary
19 period, as stated in paragraph (b) of this subsection,
20 and cite the circumstances under which withholding
21 will be terminated.

22 (3) Specify, when appropriate, which type or types
23 of claims are withheld.

24 (4) Inform the provider or alternate payee of the
25 right to request a hearing or a reconsideration of the
26 withholding by the Illinois Department, including the

1 ability to submit written evidence.

2 (5) Inform the provider or alternate payee that a
3 written request may be made to the Illinois Department
4 for a hearing or a reconsideration for the full or
5 partial release of withheld payments and that such
6 requests may be made at any time after the Illinois
7 Department first withholds such payments.

8 (b) All withholding of payment actions under this
9 subsection shall be temporary and shall not continue after
10 any of the following:

11 (1) The Illinois Department determines that there
12 is insufficient evidence of fraud, or the provider or
13 alternate payee demonstrates clear cooperation with
14 the Illinois Department, as determined by the Illinois
15 Department, such that the circumstances do not give
16 rise to the need for withholding of payments; or

17 (2) The withholding of payments has lasted for a
18 period in excess of 3 years.

19 (c) The Illinois Department may adopt all rules
20 necessary to implement this subsection (K-5).

21 (L) The Illinois Department shall establish a protocol to
22 enable health care providers to disclose an actual or potential
23 violation of this Section pursuant to a self-referral
24 disclosure protocol, referred to in this subsection as "the
25 protocol". The protocol shall include direction for health care
26 providers on a specific person, official, or office to whom

1 such disclosures shall be made. The Illinois Department shall
2 post information on the protocol on the Illinois Department's
3 public website. The Illinois Department may adopt rules
4 necessary to implement this subsection (L). In addition to
5 other factors that the Illinois Department finds appropriate,
6 the Illinois Department may consider a health care provider's
7 timely use or failure to use the protocol in considering the
8 provider's failure to comply with this Code.

9 (M) Notwithstanding any other provision of this Code, the
10 Illinois Department, at its discretion, may exempt an entity
11 licensed under the Nursing Home Care Act and the ID/DD
12 Community Care Act from the provisions of subsections (A-15),
13 (B), and (C) of this Section if the licensed entity is in
14 receivership.

15 (Source: P.A. 97-689, eff. 6-14-12; revised 8-3-12.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.