**Section 104.246 Evidence at Hearings**

a) The vendor may introduce evidence at the hearing that was not made available to the Department at the time the application or request for special permission was denied. If additional evidence is introduced at the hearing and the hearing officer determines that the vendor did not demonstrate he should be admitted based on the evidence available at the time the application or request for special permission was denied, but would have so demonstrated had the additional evidence at the hearing been available, the hearing shall be remanded to the Department for a new decision that considers such additional evidence. If additional evidence is introduced at the hearing and the hearing officer determines that the vendor would not have demonstrated that he should be admitted to the Medical Assistance Program or granted special permission even if such additional evidence had been considered, the recommendation shall be to uphold the Department's decision.

b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is of the type commonly relied upon by reasonably prudent men in the conduct of their affairs. When the admissibility of evidence is in dispute and depends upon fairly arguable interpretations of law, such evidence shall be admitted. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form. Any party may submit evidence in rebuttal or surrebuttal.

c) Summaries of voluminous documents may be admitted into evidence. The document summarized need not itself be admitted into evidence. Copies of the document need not be provided so long as all parties are accorded a reasonable opportunity to inspect the document summarized and no substantial injustice results.

d) If the hearing is related in whole or in part to the Department's intent to recover money and the Department's recovery is based on sampling and extrapolation, the vendor or alternate payee may:

1) present evidence to show that the sample used by the Department was invalid and, therefore, should not be used to project the overpayments identified in the sample to total billings for the audit period; or

2) the vendor or alternate payee may also conduct an audit of 100% of the medical records of payments received during the audit period and present the results of such an audit at the hearing. Any such audit should demonstrate that the vendor's records for the unaudited services provided during the audit period were in compliance with the regulations, provider handbooks and other written requirements of the Department. The vendor should be prepared to submit supporting documentation to demonstrate this compliance.

e) In contested hearings to establish paternity under 89 Ill. Adm. Code 160.61(c), certified copies of bills for costs incurred for pregnancy and childbirth shall be admitted into evidence without foundation testimony or other proof of authenticity or accuracy.

(Source: Amended at 31 Ill. Reg. 2388, effective January 19, 2007)