**Section 104.272 Withholding of Payments and Release of Withholds**

a) Effective July 1, 2012, 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 proceeding by any court:

1) In which:

A) the administrative proceeding seeks the termination, exclusion or suspension of the provider or revocation of the alternate payee; or

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) In which 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 toHFS.OIGWebmaster@illinois.gov. 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) When 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) When, 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:

1) The basis for the termination, exclusion, suspension or revocation is a criminal conviction.

2) The basis for the termination, exclusion, suspension 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 Section 12-4.25(K) or (K-5) of the Public Aid Code or 42 CFR 455.23.

4) The provider or alternate payee has had payments suspended pursuant to Section12-4.25(F-5) of the Public Aid Code.

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, exclude, suspend or revoke subject to setoff for recovery of the amount sought in the proceeding.

i) If the payments have been suspended pursuant to Section12-4.25(F-5) of the Public Aid Code 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.

j) If the provider or alternate payee is convicted of an offense of the type described in Section12-4.25(F-5) of the Public Aid Code, 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, exclude, suspend or revoke. Once the provider or alternate payee receives a notice of intent to terminate, exclude, suspend or revoke, the Department may continue to withhold payments during the pendency of the administrative proceeding.

k) If payments have been withheld pursuant to Section 12-4.25(K) or (K-5) of the Public Aid Code, 42 CFR 455.23, or 89 Ill. Adm. Code 140.44, and the Department commences an administrative proceeding that seeks the termination, exclusion or suspension 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, excluded or suspended, or the alternate payee is revoked, as a result of final agency action, the withheld payments shall be denied.

l) Effective July 1, 2012, 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 [210 ILCS 45] shall have payments denied or withheld pursuant to Section 12-4.25(I) of the Public Aid Code.

(Source: Amended at 37 Ill. Reg. 10172, effective June 27, 2013)