**Section 104.206 Notice of Intent to Recover Money**

a) Institutional Vendors

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 these 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 a response should be made.

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 subsection (a)(2);

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 suspend or deny payment or to recover money, setting forth:

1) the requirements described in subsection (a)(2);

2) the date after which the Department will start to suspend, deny or recover money by deducting from Department obligations to the alternate payee;

3) a statement that the Department will suspend, deny or recover the money in this manner prior to the completion of any hearing requested;

4) a statement that any money so suspended, denied or recovered will be repaid to the alternate payee if it is determined at hearing that the suspension, denial or 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 suspend, deny or recover money during the pendency of the hearing and a statement of how and to whom a response should be made.

d) Recovery of Interest

1) The Department may recover interest on the amount of an overpayment or other benefit authorized under Article V of the Public Aid Code 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 making, using or causing to be made or used, a false record or statement to obtain payment or other benefit from the Medical Assistance Program.

2) In addition to any other factors it deems appropriate, the HFS Office of Inspector General, in its sole discretion, shall consider the following factors when determining whether to collect interest from a provider paid an overpayment:

A) the egregiousness of the conduct, including the duration, severity and volume of claims billed to the Department;

 B) the best interest of the recipients of medical assistance; and

C) the provider's history with the Department, including previous audit determinations.

3) 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 subsection (a)(2);

B) a statement of the amount of overpayment or other medical assistance 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 the amount of overpayment or other medical assistance benefit subject to interest has been paid;

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