

AMENDED IN SENATE MAY 18, 2000
AMENDED IN ASSEMBLY JANUARY 3, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1098

**Introduced by Assembly Member Romero
(Coauthors: Assembly Members Aroner, Firebaugh, Honda,
and Keeley)**

February 25, 1999

An act to amend ~~Section 14171.6~~ of Sections 1265, 1287, 1301, and 1320 of, and to add Sections 1281.1, 1282.1, 1282.2, 1311, and 1320.5 to, the Business and Professions Code, and to amend Sections 14040, 14040.5, 14043.1, 14043.2, 14043.36 14043.37, 14043.65, 14043.7, 14043.75, 14100.75, 14107, 14107.11, 14115.5, 14124.1, 14124.2, 14170, 14170.8, 14171.6, and 24005 of, and to add Sections 14040.1, 14043.34, 14043.61, 14043.62, and 14123.25 to, the Welfare and Institutions Code, relating to health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1098, as amended, Romero. ~~Medi-Cal~~ Health.

Existing law contains provisions governing the licensure and registration of clinical laboratories, which are administered by the State Department of Health Services.

This bill would make various modifications to these requirements, including the provision of additional grounds for denial, suspension, or revocation of licensure or registration, as well as provisions relating to the retention of records.

The bill would also provide that a violation of provisions that constitute grounds for denial, registration suspension, or revocation of clinical laboratory licensure or registration that results in bodily harm to a human being or involves the taking of blood from a minor child or dependent adult shall be a crime, punishable as specified.

The bill would also make it unlawful, and subject to criminal penalties, for any person to: (1) provide any form of payment or gratuity for human blood or any other human specimen provided for the purpose of clinical laboratory testing or practice, (2) solicit, or to provide any form of payment or gratuity to, another person for the procurement of that person's blood or any other specimen from his or her body, unless the solicitor is serving as the agent of either a clinical laboratory performing tests or examinations for purposes of research or teaching or a licensed biologics producer, or (3) perform venipuncture, skin puncture, or arterial puncture, unless authorized by law.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons.

Existing law defines a provider for the purposes of the Medi-Cal program.

This bill would revise the definition of a provider for that purpose.

Existing law provides for the State-Only Family Planning Program, under which family planning services are provided to eligible individuals.

Existing law also establishes the Family Planning Access, Care, and Treatment Waiver Program, as part of the Medi-Cal program.

The bill would enact various provisions relating to billing for Medi-Cal and family planning services, including provisions relating to provider billing agents.

Existing law provides that any person, with intent to defraud, presents for allowance or payment any false or fraudulent claim for furnishing Medi-Cal program services or merchandise, knowingly submits false information for the purpose of obtaining greater compensation than that to which



he or she is legally entitled, or knowingly submits false information for the purpose of obtaining authorization of obtaining Medi-Cal program services or merchandise is guilty of a crime.

This bill would, instead, make it a crime for any person, including a Medi-Cal provider, an applicant for provider status, or a billing agent, who engages in specified activities, punishable as prescribed.

The bill would also permit, subject to specified requirements, the forfeiture of property of persons engaging in these activities.

Because the bill creates additional crimes, the bill would constitute a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—Section 14171.6 of the Welfare and~~
2 SECTION 1. Section 1265 of the Business and
3 Professions Code is amended to read:
4 1265. (a) (1) A clinical laboratory performing
5 clinical laboratory tests or examinations classified as of
6 moderate or of high complexity under CLIA shall obtain
7 a clinical laboratory license pursuant to this chapter. The
8 department shall issue a clinical laboratory license to any
9 person who has applied for the license on forms provided
10 by the department and who is found to be in compliance
11 with this chapter and the regulations pertaining thereto.
12 No clinical laboratory license shall be issued by the
13 department unless the clinical laboratory and its
14 personnel meet the CLIA requirements for laboratories
15 performing tests or examinations classified as of moderate
16 or high complexity, or both.



1 (2) A clinical laboratory performing clinical
2 laboratory tests or examinations subject to a certificate of
3 waiver or a certificate of provider-performed microscopy
4 under CLIA, shall register with the department. The
5 department shall issue a clinical laboratory registration to
6 any person who has applied for the registration on forms
7 provided by the department and is found to be in
8 compliance with this chapter, the regulations pertaining
9 thereto, and the CLIA requirements for either a
10 certificate of waiver or a certificate of
11 provider-performed microscopy.

12 (b) An application for a clinical laboratory license or
13 registration shall include the name or names of the owner
14 or the owners, the name or names of the laboratory
15 director or directors, the name and location of the
16 laboratory, a list of the clinical laboratory tests or
17 examinations performed by the laboratory by name and
18 total number of test procedures and examinations
19 performed annually (excluding tests the laboratory may
20 run for quality control, quality assurance, or proficiency
21 testing purposes). The application shall also include a list
22 of the tests and the test kits, methodologies, and
23 laboratory equipment used, and the qualifications
24 (educational background, training, and experience) of
25 the personnel directing and supervising the laboratory
26 and performing the laboratory examinations and test
27 procedures, and any other relevant information as may
28 be required by the department. If the laboratory is
29 performing tests subject to a provider-performed
30 microscopy certificate, the name of the provider or
31 providers performing those tests shall be included on the
32 application. Application shall be made by the owners of
33 the laboratory and the laboratory directors prior to its
34 opening. A license or registration to conduct a clinical
35 laboratory if the owners are not the laboratory directors
36 shall be issued jointly to the owners and the laboratory
37 directors and the license or registration shall include any
38 information as may be required by the department. The
39 owners and laboratory directors shall be severally and
40 jointly responsible to the department for the



1 maintenance and conduct thereof or for any violations of
2 this chapter and regulations pertaining thereto.

3 (c) The department shall not issue a license or
4 registration until it is satisfied that the clinical laboratory
5 will be operated within the spirit and intent of this
6 chapter, that the owners and laboratory directors are
7 each of good moral character, and that the granting of the
8 license will not be in conflict with the interests of public
9 health.

10 (d) A separate license or registration shall be obtained
11 for each laboratory location, with the following
12 exceptions:

13 (1) Laboratories that are not at a fixed location, that is,
14 laboratories that move from one testing site to another,
15 such as mobile units providing laboratory testing, health
16 screening fairs, or other temporary testing locations, may
17 apply for and obtain one license or registration for the
18 designated primary site or home base, using the address
19 of that primary site.

20 (2) Not-for-profit, or federal, state, or local
21 government laboratories that engage in limited (not
22 more than a combination of 15 moderately complex or
23 waived tests, as defined under CLIA, per license) public
24 health testing may apply for and obtain a single license or
25 registration.

26 (3) Laboratories within a hospital that are located at
27 contiguous buildings on the same campus and under
28 common direction, may file a single application or
29 multiple applications for a license or registration of
30 laboratory locations within the same campus or street
31 address.

32 (4) Locations within a single street and city address
33 that are under common ownership may apply for and
34 obtain a single license or registration or multiple licenses
35 or registrations, at the discretion of the owner or owners.

36 (e) ~~A license or registration shall be automatically~~
37 ~~revoked in 30 days if there is a major change of laboratory~~
38 ~~directorship or ownership. The license or registration~~
39 shall be valid for the calendar year or remainder thereof
40 for which it is issued unless revoked or suspended. A



1 license or registration shall be automatically revoked if
2 there is a major change of laboratory directorship or
3 ownership, in which case the clinical laboratory shall be
4 required to obtain a new clinical laboratory license or
5 registration prior to engaging in clinical laboratory
6 practice.

7 (f) If the department does not within 60 days after the
8 date of receipt of the application issue a license or
9 registration, it shall state the grounds and reasons for its
10 refusal in writing, serving a copy upon the applicant by
11 certified mail addressed to the applicant at his or her last
12 known address.

13 ~~(f)~~

14 (g) The department shall be notified *in writing by the*
15 *laboratory owners or directors* within 30 days of any
16 change in ownership, name, location, ~~or~~ *and by the*
17 *laboratory owners and directors, 30 days prior to any*
18 *change in laboratory directors, including any additions or*
19 *deletions. Laboratory owners and directors to whom the*
20 *current license or registration is issued shall remain*
21 *jointly and severally responsible to the department for*
22 *the operation, maintenance, and conduct of the clinical*
23 *laboratory and for any violations of this chapter or the*
24 *regulations adopted thereunder, including any failure to*
25 *provide the notifications required by this subdivision. In*
26 *addition, failure of the laboratory owners or directors to*
27 *notify the department at least 30 days prior to any change*
28 *in laboratory directors, including any additions or*
29 *deletions, shall result in the automatic revocation of the*
30 *clinical laboratory's license or registration.*

31 (h) *The withdrawal of an application for a license or*
32 *registration or for a renewal of a license, or registration,*
33 *issuable under this chapter, shall not, after the application*
34 *has been filed with the department, deprive the*
35 *department of its authority to institute or continue a*
36 *proceeding against the applicant for denial of the license,*
37 *registration, or renewal upon any ground provided by law*
38 *or to enter an order denying the license, registration, or*
39 *renewal upon any such ground, unless the department*
40 *consents in writing to the withdrawal.*



1 (i) *The suspension, expiration, or forfeiture by*
2 *operation of law of a license or registration issued under*
3 *this chapter; or its suspension, forfeiture, or cancellation*
4 *by order of the department or by order of a court of law,*
5 *or its surrender without the written consent of the*
6 *department, shall not deprive the department of its*
7 *authority to institute or continue an action against a*
8 *license or registration issued under this chapter or against*
9 *the laboratory owner or laboratory director upon any*
10 *ground provided by law or to enter an order suspending*
11 *or revoking the license or registration issued under this*
12 *chapter.*

13 (j) (1) *The department shall be notified within 10*
14 *days whenever a clinical laboratory ceases operations or*
15 *suspends clinical laboratory practice for any reason.*

16 (2) *If a clinical laboratory ceases operation or suspends*
17 *clinical laboratory practice, it shall preserve all of its*
18 *records for a minimum of seven years and shall maintain*
19 *an ability to provide the results of clinical laboratory tests*
20 *or examinations performed during its operation when*
21 *requested pursuant to Section 123148 of the Health and*
22 *Safety Code. The records preserved shall include all those*
23 *showing compliance during the laboratory's operation*
24 *with this chapter and the regulations adopted*
25 *thereunder, including, but not limited to, records for test*
26 *performance, test reporting, personnel, and the purchase*
27 *or lease of supplies or equipment. In addition, all records*
28 *of tests or examinations classified under the specialties or*
29 *subspecialties of pathology or cytology shall be retained*
30 *as required by this chapter, the regulations adopted*
31 *thereunder or the federal Clinical Laboratory*
32 *Improvement Amendments of 1988 (42 U.S.C. Sec. 263a),*
33 *whichever period is longer.*

34 (3) *The department or any person injured as a result*
35 *of a laboratory's abandonment or failure to retain records*
36 *pursuant to this section may bring an action in a court of*
37 *proper jurisdiction for the amount of any damages*
38 *suffered as a result thereof.*

39 (4) *Failure to retain records as required by this section*
40 *shall also subject a laboratory to a civil penalty of one*



1 thousand dollars (\$1,000) for each record not retained
2 and the recovery of any department costs.

3 SEC. 2. Section 1281.1 is added to the Business and
4 Professions Code, to read:

5 1281.1. It is unlawful for any person, including a
6 person who owns, operates, or directs a clinical
7 laboratory, to provide any form of payment or gratuity for
8 human blood or any other human specimen provided for
9 the purpose of clinical laboratory testing or clinical
10 laboratory practice.

11 SEC. 3. Section 1282.1 is added to the Business and
12 Professions Code, to read:

13 1282.1. It is unlawful for any person to solicit, or to
14 provide any form of payment or gratuity to, another
15 person for the procurement of that person's blood, or any
16 other specimen from his or her body, unless the solicitor
17 is serving as the agent of either a clinical laboratory
18 performing tests or examinations for purposes of research
19 or teaching, only, or an entity licensed under Chapter 4
20 (commencing with Section 1600) of Division 2 of the
21 Health and Safety Code.

22 SEC. 4. Section 1282.2 is added to the Business and
23 Professions Code, to read:

24 1282.2. It is unlawful for any person to perform
25 venipuncture, skin puncture, or arterial puncture unless
26 he or she is authorized to do so under this chapter, the
27 regulations adopted thereunder, or under other
28 provisions of law.

29 SEC. 5. Section 1287 of the Business and Professions
30 Code is amended to read:

31 1287. (a) Any person who violates any provision of
32 this chapter is guilty of a misdemeanor punishable upon
33 conviction by imprisonment in the county jail for a period
34 not exceeding six months or by fine not exceeding one
35 thousand dollars (\$1,000) or by both.

36 (b) Notwithstanding subdivision (a), a violation of
37 Section 1281.1, 1282.1, or 1282.2 is a public offense and is
38 punishable upon a first conviction by imprisonment in
39 the county jail for not more than one year, or by
40 imprisonment in the state prison, or by a fine not



1 *exceeding ten thousand dollars (\$10,000), or by both that*
2 *imprisonment and fine. A second or subsequent*
3 *conviction is punishable by imprisonment in the state*
4 *prison.*

5 *SEC. 6. Section 1301 of the Business and Professions*
6 *Code is amended to read:*

7 1301. (a) *The annual renewal fee for a clinical*
8 *laboratory license or registration set under this chapter*
9 *shall be paid during the 30-day period before the first day*
10 *of January of each calendar year expiration date of the*
11 *license or registration. Failure to pay the annual fee in*
12 *advance during the time the license remains in force*
13 *shall, ipso facto, work a forfeiture of said license after a*
14 *period of 60 days from the first day of January of each year*
15 *expiration date of the license or registration.*

16 ¶

17 (b) *The department shall give written notice to all*
18 *licensees persons licensed pursuant to Sections 1260,*
19 *1260.1, 1261, 1261.5, 1262, 1264, or 1270 30 days in advance*
20 *of the regular renewal date that a renewal fee has not*
21 *been paid. In addition, the department shall give written*
22 *notice to licensed clinical laboratory bioanalysts or*
23 *doctoral degree specialists and clinical laboratory*
24 *scientists or limited clinical laboratory scientists by*
25 *registered or certified mail 90 days in advance of the*
26 *expiration of the fifth year that a renewal fee has not been*
27 *paid and if not paid before the expiration of the fifth year*
28 *of delinquency the licensee may be subject to*
29 *reexamination.*

30 ¶

31 (c) *If the renewal fee is not paid for five or more years,*
32 *the department may require an examination before*
33 *reinstating the license, except that no examination shall*
34 *be required as a condition for reinstatement if the original*
35 *license was issued without an examination. No*
36 *examination shall be required for reinstatement if the*
37 *license was forfeited solely by reason of nonpayment of*
38 *the renewal fee if the nonpayment was for less than five*
39 *years.*

40 ¶



1 (d) If the license is not renewed within 60 days after
2 its expiration, the licensee, as a condition precedent to
3 renewal, shall pay the delinquency fee identified in
4 subdivision (l) of Section 1300, in addition to the renewal
5 fee in effect on the last preceding regular renewal date.
6 Payment of the delinquency fee will not be necessary if
7 within 60 days of the license expiration date the licensee
8 files with the department an application for inactive
9 status.

10 *SEC. 7. Section 1311 is added to the Business and*
11 *Professions Code, to read:*

12 *1311. The department shall have seven years from the*
13 *date of discovery by the department of a violation of this*
14 *chapter or of a regulation adopted thereunder to file an*
15 *action in a court of competent jurisdiction.*

16 *SEC. 8. Section 1320 of the Business and Professions*
17 *Code is amended to read:*

18 1320. The department may deny, suspend, or revoke
19 any license or registration issued under this chapter for
20 any of the following reasons:

21 (a) Conduct involving moral turpitude or dishonest
22 reporting of tests.

23 (b) Violation by the applicant, licensee, or registrant
24 of this chapter or any rule or regulation adopted pursuant
25 thereto.

26 (c) Aiding, abetting, or permitting the violation of this
27 chapter, the rules or regulations adopted under this
28 chapter or the Medical Practice Act, Chapter 5
29 (commencing with Section 2000) of Division 2.

30 (d) Permitting a licensed trainee to perform tests or
31 procure specimens unless under the direct and
32 responsible supervision of a person duly licensed under
33 this chapter or physician and surgeon other than another
34 licensed trainee.

35 (e) Violation of any provision of this code governing
36 the practice of medicine and surgery.

37 (f) Proof that an applicant, licensee, or registrant has
38 made false statements in any material regard on the
39 application for a license, registration, or renewal issued
40 under this chapter.



1 (g) Conduct inimical to the public health, morals,
2 welfare, or safety of the people of the State of California
3 in the maintenance or operation of the premises or
4 services for which a license or registration is issued under
5 this chapter.

6 ~~(h) Proof that the applicant or licensee has used any~~
7 ~~degree, or certificate, as a means of qualifying for~~
8 ~~licensure that has been purchased or procured by barter~~
9 ~~or by any unlawful means or obtained from any institution~~
10 ~~that at the time the degree, certificate, or title was~~
11 ~~obtained was not recognized or accredited by the~~
12 ~~department of education of the state where the~~
13 ~~institution is or was located to give training in the field of~~
14 ~~study in which the degree, certificate, or title is claimed~~
15 *Conduct that may cause harm to a patient by affecting*
16 *the integrity of a biological specimen or the clinical*
17 *laboratory test or examination result, through improper*
18 *collection, handling, storage, or labeling of the specimen*
19 *or the erroneous transcription or reporting of test or*
20 *examination results.*

21 (i) Violation of any of the prenatal laws or regulations
22 pertaining thereto in Chapter 2 (commencing with
23 Section 120675) of Part 3 of Division 105 of the Health and
24 Safety Code and Article 1 (commencing with Section
25 1125) of Group 4 of Subchapter 1 of Chapter 2 of Part 1
26 of Title 17 of the California Code of Regulations.

27 (j) Knowingly accepting an assignment for clinical
28 laboratory tests or specimens from and the rendering of
29 a report thereon to persons not authorized by law to
30 submit those specimens or assignments.

31 (k) Rendering a report on clinical laboratory work
32 actually performed in another clinical laboratory without
33 designating clearly the name and address of the
34 laboratory in which the test was performed.

35 (l) Conviction of a felony or of any misdemeanor
36 involving moral turpitude under the laws of any state or
37 of the United States arising out of or in connection with
38 the practice of clinical laboratory technology. The record
39 of conviction or a certified copy thereof shall be
40 conclusive evidence of that conviction.



1 (m) Unprofessional conduct.

2 (n) The use of drugs or alcoholic beverages to the
3 extent or in a manner as to be dangerous to a person
4 licensed under this chapter, or any other person to the
5 extent that that use impairs the ability of the licensee to
6 conduct with safety to the public the practice of clinical
7 laboratory technology.

8 (o) Misrepresentation in obtaining a license or
9 registration.

10 (p) Performance of, or representation of the
11 laboratory as entitled to perform, a clinical laboratory test
12 or examination or other procedure that is not within the
13 specialties or subspecialties, or category of laboratory
14 procedures authorized by the license or registration.

15 (q) Refusal of a reasonable request of HCFA, a HCFA
16 agent, the department, or any employee, agent or
17 contractor of the department, for permission to inspect,
18 pursuant to this chapter, the laboratory and its operations
19 and pertinent records during the hours the laboratory is
20 in operation.

21 (r) Failure to comply with reasonable requests of the
22 department for any information, work, or materials that
23 the department concludes is necessary to determine the
24 laboratory's continued eligibility for its license or
25 registration, or its continued compliance with this
26 chapter or the regulations adopted under this chapter.

27 (s) Failure to comply with a sanction imposed under
28 Section 1310.

29 (t) *Proof that the applicant or licensee has used any*
30 *degree or certificate as a means of qualifying for*
31 *licensure, if the degree or certificate has been purchased*
32 *or procured by barter or by any unlawful means or*
33 *obtained from any institution that, at the time the degree,*
34 *certificate, or title was obtained, was not recognized or*
35 *accredited by the state department of education of the*
36 *state where the institution is or was located to give*
37 *training in the field of study in which the degree,*
38 *certificate, or title is claimed.*

39 (u) *Performance by unlicensed laboratory personnel*
40 *of any activity that is not authorized by Section 1269.*



1 SEC. 9. Section 1320.5 is added to the Business and
2 Professions Code, to read:

3 1320.5. A violation of Section 1320 that results in
4 bodily harm to a human being or involves the taking of
5 blood from a minor child or dependent adult shall be
6 punishable by imprisonment in the county jail for not
7 more than one year, or in a state prison for not more than
8 10 years, or by a fine not exceeding fifty thousand dollars
9 (\$50,000) or by both imprisonment and fine.

10 SEC. 10. Section 14040 of the Welfare and Institutions
11 Code is amended to read:

12 14040. (a) Each contract for fiscal intermediary
13 services shall allow, to the extent practicable, providers to
14 utilize electronic means for transmitting claims to the
15 fiscal intermediary contractor. Means of transmission,
16 and the manner and format used, shall be approved by
17 the director. In determining which electronic means are
18 acceptable, the director shall consider magnetic tape,
19 computer-to-computer via telephone, diskettes, and any
20 other methods which may become available through
21 technological advancements.

22 (b) A provider, as defined in Section 14043.1, may
23 ~~assign~~, by written contract do either or both of the
24 following:

25 (1) Authorize a billing agent to submit claims,
26 including electronic claims, on behalf of the provider for
27 reimbursement for services, goods, supplies, or
28 merchandise rendered or provided by the provider to a
29 Medi-Cal beneficiary or under the Medi-Cal program.

30 (2) Assign signature authority for transmission of
31 claims to ~~an authorized representative or the authorized~~
32 billing agent.

33 (c) The department shall develop reasonable
34 standards for participation *and continued participation*
35 ~~by providers or persons who bill on behalf of providers~~
36 *billing agents* in the use of claim transmission methods
37 utilized pursuant to this section. These standards shall be
38 designed to ensure that ~~participants are able to~~ *billing*
39 *agents* submit technically complete claims and *to* reduce
40 the potential for fraud and abuse. A “technically



1 complete claim” means any billing request for payment
2 from a provider or the *billing agent* of ~~a~~ *the* provider,
3 including an original claim, claim inquiry, or appeal, that
4 is submitted on the correct Medi-Cal claim form or
5 electronic billing format, is fully and accurately
6 completed, and includes all information and
7 documentation required to be submitted on or with the
8 claim pursuant to Medi-Cal billing and documentation
9 requirements.

10 (d) To the extent required by federal and state law,
11 the fiscal intermediary shall retain claim data submitted
12 by providers *or the billing agent of the provider* pursuant
13 to this section. The department shall, however, return to
14 a ~~health care~~ provider *or the billing agent of the provider*
15 original tapes, diskettes, and any other similar devices
16 ~~which~~ *that* are used by the provider *or the billing agent*
17 *of the provider* pursuant to this section.

18 (e) In order to reduce the amount of paperwork or
19 attachments which are required to be completed by a
20 provider *or the billing agent of the provider* submitting
21 a ~~bill for services~~ *claim for reimbursement* under this
22 chapter to the fiscal intermediary, the department shall
23 direct the fiscal intermediary to investigate and develop
24 the means to incorporate as much information as possible
25 on the electronic format.

26 *SEC. 11. Section 14040.1 is added to the Welfare and*
27 *Institutions Code, to read:*

28 *14040.1. (a) “Billing agent” or “billing agent of the*
29 *provider” means any individual, partnership, group,*
30 *association, corporation, institution, or entity, and the*
31 *officers, directors, owners, managing employees, or*
32 *agents of any partnership, group, association,*
33 *corporation, institution, or entity, that submits claims on*
34 *behalf of the provider, as defined in Section 14043.1, for*
35 *reimbursement for services, goods, supplies, or*
36 *merchandise rendered or provided directly or indirectly*
37 *to a Medi-Cal beneficiary or under the Medi-Cal*
38 *program. As used in this section a billing agent shall not*
39 *include a nonmanaging salaried employee of a provider.*



1 (b) The department shall establish standards for the
2 registration or continued registration of each billing
3 agent. The standards shall establish time periods, no
4 longer than a year from the date the standards become
5 effective, after which, no person or entity shall submit a
6 claim on behalf of a provider, as defined in Section
7 14043.1, for reimbursement for services, goods, supplies,
8 or merchandise rendered or provided directly or
9 indirectly by the provider to a Medi-Cal beneficiary or
10 under the Medi-Cal program, unless that person or entity
11 has been registered with the department as a billing
12 agent. The department shall establish the standards for
13 the registration or continued registration of billing agents
14 pursuant to this subdivision by the adoption of
15 emergency regulations in accordance with the
16 Administrative Procedure Act (Chapter 3.5
17 (commencing with Section 11340) of Part 1 of Division 3
18 of Title 2 of the Government Code). The adoption of
19 these emergency regulations or readoption of the
20 regulations shall be deemed to be an emergency
21 necessary for the immediate preservation of the public
22 peace, health and safety, or general welfare.
23 Notwithstanding Chapter 3.5 (commencing with Section
24 11340 of Part 1 of Division 3 of Title 2 of the Government
25 Code, emergency regulations adopted or readopted
26 pursuant to this subdivision shall be exempt from review
27 by the Office of Administrative Law. The emergency
28 regulations authorized by this subdivision shall be
29 submitted to the Office of Administrative Law for filing
30 with the Secretary of State and publication in the
31 California Code of Regulations.

32 (c) The department may complete a background
33 check on applicants for registration or continued
34 registration as a billing agent and on those persons who
35 currently act as billing agents, billing intermediaries,
36 authorized representatives, or any other person or entity
37 billing for services rendered under this chapter, for the
38 purpose of verifying the accuracy of information
39 provided by an applicant for registration or continued
40 registration as a billing agent or in order to prevent fraud



1 and abuse. The background check may include, but not
2 be limited to, onsite inspection, review of business
3 records, and data searches.

4 (d) As a condition of registration, or continued
5 registration, as a billing agent, an applicant for
6 registration as a billing agent shall provide to the
7 department a surety bond of not less than fifty thousand
8 dollars (\$50,000).

9 (e) A billing agent's compensation for the submission
10 of claims to the Medi-Cal program on behalf of a provider
11 shall be related to the cost of processing the billing, but
12 shall not be related on a percentage or other basis, such
13 as a contingency fee, to the amount that is billed or
14 collected. A billing agent's compensation for the
15 submission of claims to the Medi-Cal program on behalf
16 of a provider shall not be dependent upon the collection
17 of the payment.

18 (f) Each billing agent shall be liable for ensuring that
19 each claim, for reimbursement for services, goods,
20 supplies, or merchandise rendered or supplied by the
21 provider to a Medi-Cal beneficiary or under the Medi-Cal
22 program, is a technically complete claim, as defined in
23 subdivision (c) of Section 14040.

24 SEC. 12. Section 14040.5 of the Welfare and
25 Institutions Code is amended to read:

26 14040.5. (a) Billing ~~intermediaries~~ agents shall
27 register with the director and shall obtain ~~an~~ a unique
28 identifier ~~code~~ ~~which~~ prior to submitting any claims for
29 reimbursement. This unique identifier shall be part of ~~all~~
30 ~~Medi-Cal~~ ~~claims~~ each claim for reimbursement
31 submitted by ~~any~~ the billing ~~intermediary~~ agent.

32 (b) A provider may, by written contract, do either of
33 the following:

34 (1) Authorize a billing agent to submit claims,
35 including electronic claims, on behalf of the provider for
36 reimbursement for services, goods, supplies, or
37 merchandise provided by the provider to the Medi-Cal
38 program.

39 (2) Assign signature authority for transmission of
40 claims by the authorized billing agent. Any provider



1 using a billing ~~intermediary agent to bill~~ submit claims for
2 reimbursement to the Medi-Cal program shall, at least 30
3 days prior to any claims for reimbursement being
4 submitted by the billing agent, provide written
5 notification to the director of the name ~~and~~, including the
6 legal and any fictitious or "doing business as" names used
7 by the billing agent, and address, and telephone number
8 of the billing ~~intermediary agent~~.

9 (c) (1) Any Medi-Cal claim submitted by a billing
10 ~~intermediary agent or provider~~ failing to comply with the
11 requirements of this section or Section 14040 or 14040.1 or
12 the regulations adopted under these sections, shall be
13 subject to ~~denial~~ nonpayment by the director.

14 (2) The director may deny, suspend, or ~~withdraw~~
15 ~~revoke~~ the registration or continued registration of a
16 billing ~~intermediary agent~~ based upon ~~failure~~ any of the
17 following:

18 (A) ~~Failure of the billing agent or provider to comply~~
19 ~~with this section, or for involvement of a billing~~
20 ~~intermediary in illegal submission of claims.~~

21 (3) ~~The director may immediately withdraw or~~
22 ~~suspend the registration of a billing intermediary upon~~
23 ~~the involvement of Section 14040 or 14040.1, or the~~
24 ~~regulations adopted under these sections.~~

25 (B) ~~Determination by the director that the billing~~
26 ~~intermediary in the filing of agent has submitted a claim~~
27 ~~containing false or misleading information on claims~~
28 ~~submitted for regarding services rendered, or allegedly~~
29 ~~rendered, or regarding goods, supplies, or merchandise~~
30 ~~furnished or allegedly furnished, or when a that the~~
31 ~~billing intermediary agent has demonstrated a pattern of~~
32 ~~filing claims which are not technically complete claims as~~
33 ~~defined in subdivision (c) of Section 14040.~~

34 (4) ~~Proceedings for suspension or withdrawal of the~~
35 ~~registration of a billing intermediary pursuant to this~~
36 ~~section shall be conducted in accordance with Chapter 5~~
37 ~~(commencing with Section 11500) of Part 1 of Division 3~~
38 ~~of Title 2 of the Government Code, except that hearings~~
39 ~~may be conducted by departmental hearing officers~~
40 ~~appointed by the director. The director may periodically~~



1 ~~contract with the Office of Administrative Hearings to~~
2 ~~conduct these hearings.~~

3 ~~(5) The director shall notify the billing intermediary~~
4 ~~30 days in advance of a proposed suspension and shall~~
5 ~~allow the billing intermediary to demonstrate why the~~
6 ~~suspension notice should not be issued.~~

7 ~~(6) The director shall notify the billing intermediary~~
8 ~~of the suspension and the effective date thereof and at the~~
9 ~~same time shall serve the billing intermediary with the~~
10 ~~accusation. Upon receipt of a notice of defense by the~~
11 ~~billing intermediary, the director shall set the matter for~~
12 ~~hearing within 30 days of the receipt of the notice. The~~
13 ~~suspension shall remain in effect until the hearing is~~
14 ~~completed and the director has made a final~~
15 ~~determination on the merits. The suspension shall,~~
16 ~~however, be deemed vacated if the director fails to make~~
17 ~~a final determination on the merits within 60 days of the~~
18 ~~completion of the original hearing.~~

19 ~~(6) This subdivision shall not apply where the~~
20 ~~suspension of a billing intermediary is based upon the~~
21 ~~conviction for any crime involving fraud, abuse of the~~
22 ~~Medi-Cal program, or suspension from the federal~~
23 ~~Medicare program. In those instances, suspension shall be~~
24 ~~automatic.~~

25 ~~(d) For purposes of this section, a billing intermediary~~
26 ~~includes any entity including a partnership, corporation,~~
27 ~~sole proprietorship, or person which bills Medi-Cal on~~
28 ~~behalf of a provider pursuant to a contractual relationship~~
29 ~~with the provider. As used in this section a billing~~
30 ~~intermediary does not include salaried employees of a~~
31 ~~provider.~~

32 ~~(e) As used in this section “provider” means any~~
33 ~~individual, partnership, clinic, group, association,~~
34 ~~corporation, or institution as defined in Section 51051 of~~
35 ~~Title 22 of the California Administrative Code, and~~
36 ~~includes any officer, director, agent, or employee thereof.~~

37 ~~(C) The determination by the director that the billing~~
38 ~~agent is under investigation for fraud or abuse, has been~~
39 ~~convicted of fraud or abuse in a criminal proceeding,~~
40 ~~found liable for fraud or abuse in a civil proceeding, or~~



1 settled a criminal or civil proceeding alleging fraud or
2 abuse.

3 (3) The director shall notify the billing agent and each
4 provider utilizing the services of the billing agent of the
5 denial, suspension, or revocation of the billing agent's
6 registration or continued registration and the effective
7 date thereof. Notwithstanding Section 100171 of the
8 Health and Safety Code, proceedings after the imposition
9 of denial, suspension, or revocation pursuant to this
10 subdivision shall be in accordance with Section 14043.65,
11 except that this subdivision shall not apply where the
12 denial, suspension, or revocation of a billing agent's
13 registration or continued registration is based upon
14 conviction for any crime involving fraud or abuse of the
15 Medi-Cal program or the federal medicaid or Medicare
16 programs, or exclusion by the federal government from
17 the medicaid or Medicare programs. In those instances
18 and notwithstanding any other provision of law, the
19 denial, suspension, or revocation shall be automatic and
20 not subject to appeal or hearing.

21 (d) As used in this section, "provider" has the same
22 meaning as defined in Section 14043.1.

23 SEC. 13. Section 14043.1 of the Welfare and
24 Institutions Code is amended to read:

25 14043.1. As used in this article:

26 (a) "Abuse" means either of the following:

27 (1) Practices that are inconsistent with sound fiscal or
28 business practices and result in unnecessary cost to ~~the~~
29 ~~Medicare program, the federal medicaid and Medicare~~
30 ~~programs,~~ the Medi-Cal program, another state's
31 medicaid program, or other health care programs
32 operated, or financed in whole or in part, by the federal
33 government or any state or local agency in this state or
34 any other state.

35 (2) Practices that are inconsistent with sound medical
36 practices and result in reimbursement by the *federal*
37 *medicaid and Medicare programs, the Medi-Cal program*
38 or other health care programs operated, or financed in
39 whole or in part, by the federal government or any state
40 or local agency in this state or any other state, for services



1 that are unnecessary or for substandard items or services
2 that fail to meet professionally recognized standards for
3 health care.

4 (b) “Applicant” means any individual, partnership,
5 group, association, corporation, institution, or entity, and
6 the officers, directors, *owners, managing* employees, or
7 agents thereof, that applies to the department for
8 enrollment as a provider in the Medi-Cal program.

9 (c) “Convicted” means any of the following:

10 (1) A judgment of conviction has been entered against
11 an individual or entity by a federal, state, or local court,
12 regardless of whether there is a posttrial motion or an
13 appeal pending or the judgment of conviction or other
14 record relating to the criminal conduct has been
15 expunged or otherwise removed.

16 (2) A federal, state, or local court has made a finding
17 of guilt against an individual or entity.

18 (3) A federal, state, or local court has accepted a plea
19 of guilty or nolo contendere by an individual or entity.

20 (4) An individual or entity has entered into
21 participation in a first offender, deferred adjudication, or
22 other program or arrangement where judgment of
23 conviction has been withheld.

24 (d) “Fraud” means an intentional deception or
25 misrepresentation made by a person with the knowledge
26 that the deception could result in some unauthorized
27 benefit to himself or herself or some other person. It
28 includes any act that constitutes fraud under applicable
29 federal or state law.

30 (e) “Provider” means any individual, partnership,
31 group, association, corporation, institution, or entity, and
32 the officers, directors, *owners, managing* employees, or
33 agents—~~thereof~~ *of any partnership, group association,*
34 *corporation, institution, or entity,* that provides services,
35 goods, supplies, or merchandise, directly or indirectly, to
36 a Medi-Cal beneficiary and that has been enrolled in the
37 Medi-Cal program.

38 (f) “*Enrolled or enrollment in the Medi-Cal program*”
39 *means authorized under any and all processes by the*
40 *department or its agents or contractors to receive,*



1 *directly or indirectly, reimbursement for the provision of*
2 *services, goods, supplies, or merchandise to a Medi-Cal*
3 *beneficiary.*

4 (g) “Professionally recognized standards of health
5 care” means statewide or national standards of care,
6 whether in writing or not, that professional peers of the
7 individual or entity whose provision of care is an issue,
8 recognize as applying to those peers practicing or
9 providing care within a state. When the United States
10 Department of Health and Human Services has declared
11 a treatment modality not to be safe and effective,
12 practitioners that employ that treatment modality shall
13 be deemed not to meet professionally recognized
14 standards of health care. This definition shall not be
15 construed to mean that all other treatments meet
16 professionally recognized standards of care.

17 ~~(g)~~

18 (h) “Unnecessary or substandard items or services”
19 means those that are either of the following:

20 (1) Substantially in excess of the provider’s usual
21 charges or costs for the items or services.

22 (2) Furnished, or caused to be furnished, to patients,
23 whether or not covered by Medicare, medicaid, or any of
24 the state health care programs to which the definitions of
25 applicant and provider apply, and which are substantially
26 in excess of the patient’s needs, or of a quality that fails to
27 meet professionally recognized standards of health care.
28 The department’s determination that the items or
29 services furnished were excessive or of unacceptable
30 quality shall be made on the basis of information,
31 including sanction reports, from the following sources:

32 (A) The professional review organization for the area
33 served by the individual or entity.

34 (B) State or local licensing or certification authorities.

35 (C) Fiscal agents or contractors, or private insurance
36 companies.

37 (D) State or local professional societies.

38 (E) Any other sources deemed appropriate by the
39 department.



1 SEC. 14. Section 14043.2 of the Welfare and
2 Institutions Code is amended to read:

3 14043.2. (a) Whether or not regulations for
4 certification are adopted under Section 14043.15, in order
5 to be enrolled as a provider, or for enrollment as a
6 provider to continue, an applicant or provider may be
7 required to sign a provider agreement and shall disclose
8 all information as required in federal medicaid
9 regulations and any other information required by the
10 department. *Applicants, providers, and persons with an*
11 *ownership or control interest, as defined in federal*
12 *medicaid regulations, shall submit their social security*
13 *number or numbers to the department, to the full extent*
14 *allowed under federal law.* The director may designate
15 the form of a provider agreement by provider type.
16 Failure to disclose the required information, or the
17 disclosure of false information, shall, ~~prior to any hearing,~~
18 result in denial of the application for enrollment or shall
19 make the provider subject to temporary suspension *from*
20 *the Medi-Cal program,* which shall include temporary
21 deactivation of all provider numbers used by the provider
22 to obtain reimbursement from the Medi-Cal program.

23 (b) The director shall notify the provider of the
24 temporary suspension and deactivation of the provider's
25 Medi-Cal provider number or numbers and the effective
26 date thereof. Notwithstanding Section 100171 of the
27 Health and Safety Code and Section 14123, proceedings
28 after the imposition of sanctions provided for in
29 subdivision (a) shall be in accordance with Section
30 14043.65.

31 SEC. 15. Section 14043.34 is added to the Welfare and
32 Institutions Code, to read:

33 14043.34. (a) *As a condition of a pharmacy's*
34 *participation in the Medi-Cal program, the pharmacy*
35 *shall have in stock and regularly dispense prescription*
36 *drugs.*

37 (b) *For purposes of this section, "prescription drugs"*
38 *means any drug unsafe for self use by a person, and*
39 *includes either of the following:*



1 (1) Any drug that bears the legend: “R_x Only” or
2 “Caution: federal law prohibits dispensing without
3 prescription” or words of similar import.

4 (2) Any other drug that by federal or state law can be
5 lawfully dispensed by the prescription of a licensed
6 physician and surgeon.

7 SEC. 16. Section 14043.36 of the Welfare and
8 Institutions Code is amended to read:

9 14043.36. (a) The department shall not enroll any
10 applicant that has been convicted of any felony or
11 misdemeanor involving fraud or abuse in any
12 government program, or related to neglect or abuse of a
13 patient in connection with the delivery of a health care
14 item or service, or in connection with the interference
15 with or obstruction of any investigation into health care
16 related fraud or abuse or that has been found ~~guilty~~
17 liable for fraud or abuse in any civil proceeding, or that
18 has entered into a settlement in lieu of conviction for a
19 civil or criminal proceeding alleging fraud or abuse in any
20 government program, within the previous ~~five~~ 10 years.
21 In addition, the department may deny enrollment to any
22 applicant that, at the time of application, is under
23 investigation by any state, local, or federal government
24 agency for fraud or abuse pursuant to Subpart A
25 (commencing with Section 455.12) of Part 455 of Title 42
26 of the Code of Federal Regulations. ~~The~~ Except where
27 there has been a settlement, the department shall not
28 deny enrollment to an otherwise qualified applicant
29 whose felony or misdemeanor charges did not result in a
30 conviction solely on the basis of the prior charges. If it is
31 discovered that a provider is under investigation by any
32 state, local, or federal government agency for fraud or
33 abuse, that provider shall be subject to temporary
34 suspension from the Medi-Cal program, which shall
35 include temporary deactivation of all provider numbers
36 used by the provider to obtain reimbursement from the
37 Medi-Cal program.

38 (b) The director shall notify the provider of the
39 temporary suspension and deactivation of the provider’s
40 Medi-Cal provider number or numbers and the effective



1 date thereof. Notwithstanding Section 100171 of the
2 Health and Safety Code, proceedings after the imposition
3 of sanctions provided for in subdivision (a) shall be in
4 accordance with Section 14043.65.

5 *SEC. 17. Section 14043.37 of the Welfare and*
6 *Institutions Code is amended to read:*

7 14043.37. The department may complete a
8 background check on applicants for the purpose of
9 verifying the accuracy of the information provided ~~in the~~
10 ~~application~~ *to the department for purposes of enrolling*
11 *in the Medi-Cal program* and in order to prevent fraud
12 and abuse. The background check may include, but is not
13 ~~be~~ limited to, the following:

14 (a) Onsite inspection prior to enrollment.

15 (b) Review of business records.

16 (c) Data searches.

17 *SEC. 18. Section 14043.61 is added to the Welfare and*
18 *Institutions Code, to read:*

19 14043.61. (a) A provider shall be subject to
20 suspension if claims for payment are submitted under any
21 provider number used by the provider to obtain
22 reimbursement from the Medi-Cal program for the
23 services, goods, supplies, or merchandise provided,
24 directly or indirectly, to a Medi-Cal beneficiary, by an
25 individual or entity, including a billing agent, as defined
26 in Section 14040.1, that has been previously suspended,
27 excluded, or otherwise made ineligible to receive,
28 directly or indirectly, reimbursement from the Medi-Cal
29 program and the individual or entity has previously been
30 listed on either the Suspended and Ineligible Provider
31 List, published by the department, to identify suspended
32 and otherwise ineligible providers, or any list published
33 by the federal Office of Inspector General regarding the
34 suspension or exclusion of individuals or entities from the
35 federal Medicare and medicaid programs, to identify
36 suspended, excluded, or otherwise ineligible providers.

37 (b) Notwithstanding Section 100171 of the Health and
38 Safety Code, the imposition of the sanction provided for
39 in subdivision (a) shall be appealable in accordance with
40 Section 14043.65.



1 SEC. 19. Section 14043.62 is added to the Welfare and
2 Institutions Code, to read:

3 14043.62. (a) The department shall deactivate,
4 immediately and without prior notice, the provider
5 numbers used by a provider to obtain reimbursement
6 from the Medi-Cal program when warrants or documents
7 mailed to a provider's mailing address or its pay to
8 address, if any, or its service or business address, are
9 returned by the United States Postal Service as not
10 deliverable or when a provider has not submitted a claim
11 for reimbursement from the Medi-Cal program for one
12 year. Prior to taking this action the department shall
13 attempt to contact the provider at its last known
14 telephone number and ascertain if the return by the
15 United States Postal Service is by mistake. If deactivation
16 pursuant to this section occurs, the provider shall meet
17 the requirements for reapplication as specified in this
18 article or the regulations adopted thereunder.

19 (b) For purposes of this section:

20 (1) "Mailing address" means the address that the
21 provider has identified to the department in its
22 application for enrollment as the address at which it
23 wishes to receive general program correspondence.

24 (2) "Pay to address" means the address that the
25 provider has identified to the department in its
26 application for enrollment as the address at which it
27 wishes to receive warrants.

28 (3) "Service or business address" means the address
29 that the provider has identified to the department in its
30 application for enrollment as the address at which the
31 provider will provide services to program beneficiaries.

32 SEC. 20. Section 14043.65 of the Welfare and
33 Institutions Code is amended to read:

34 14043.65. (a) Notwithstanding any other provision of
35 law, any applicant whose application for enrollment as a
36 provider or whose certification is ~~denied~~, *denied*; or any
37 provider who is denied continued enrollment or
38 certification, who has been temporarily suspended, ~~or~~
39 who has had payments withheld, who has had one or more
40 provider numbers used to obtain reimbursement from



1 the Medi-Cal program deactivated, pursuant to *this*
2 *article* or Section 14107.11, or who has had a civil penalty
3 imposed pursuant to Section 14123.25; or any billing
4 agent, as defined in Section 14040, when the billing
5 agent's registration or continued registration has been
6 denied, suspended, or revoked, pursuant to subdivision
7 (c) of Section 14040.5, may appeal this action by
8 submitting a written appeal, including any supporting
9 evidence, to the director or the director's designee.
10 Where the appeal is of a withholding of payment
11 pursuant to Section 14107.11, the appeal to the director
12 or the director's designee shall be limited to the issue of
13 the reliability of the *information* or evidence supporting
14 the withhold and shall not encompass fraud or abuse. The
15 appeal procedure shall not include a formal
16 administrative hearing under the Administrative
17 Procedure Act and shall not result in reactivation of any
18 deactivated provider numbers during appeal. An
19 applicant or provider that ~~appeals an action taken~~ *files an*
20 *appeal* pursuant to this ~~article~~ *section* shall submit *the*
21 *written appeal along with* all pertinent documents and all
22 other relevant evidence to the director or to the
23 director's designee within 60 days of the date of
24 notification of the department's action. The director or
25 the director's designee shall review all of the relevant
26 materials submitted and shall issue a decision within 90
27 days of the receipt of the ~~evidence~~ *appeal*. The decision
28 may provide that the action taken should be upheld,
29 continued, or reversed, in whole or in part. The decision
30 of the director or the director's designee shall be final.
31 Any further appeal shall be required to be filed in
32 accordance with Section 1085 of the ~~Civil~~ *Code of Civil*
33 *Procedure*.

34 (b) *No applicant whose application for enrollment, as*
35 *a provider, has been denied pursuant to Section 14043.2,*
36 *14043.36, or 14043.4 may reapply for a period of three*
37 *years from the date the application is denied or from the*
38 *date of final action by the director or the director's*
39 *designee under this section if the denial is appealed.*



1 SEC. 21. Section 14043.7 of the Welfare and
2 Institutions Code is amended to read:

3 14043.7. (a) The department may make
4 unannounced visits to any applicant or to any provider for
5 the purpose of determining whether enrollment,
6 continued enrollment, or certification is warranted, or as
7 necessary for the administration of the Medi-Cal
8 program. At the time of the visit, the applicant or
9 provider shall be required to demonstrate an established
10 place of business appropriate and adequate for the
11 services billed or claimed to the Medi-Cal program, as
12 relevant to his or her scope of practice, as indicated by,
13 but not limited to, the following:

14 (1) Being open and available to the general public.

15 (2) Having regularly established and posted business
16 hours.

17 (3) Having adequate supplies in stock on the premises.

18 (4) Meeting all local laws and ordinances regarding
19 business licensing and operations.

20 (5) Having the necessary equipment and facilities to
21 carry out day-to-day business for his or her practice.

22 (b) An unannounced visit pursuant to subdivision (a)
23 shall be prohibited with respect to clinics licensed under
24 Section 1204 of the Health and Safety Code, clinics
25 exempt from licensure under Section 1206 of the Health
26 and Safety Code, health facilities licensed under Chapter
27 2 (commencing with Section 1250) of Division 2 of the
28 Health and Safety Code, and natural persons licensed or
29 certified under Division 2 (commencing with Section
30 500) of the Business and Professions Code, the
31 Osteopathic Initiative Act, or the Chiropractic Initiative
32 Act, unless the department has reason to believe that the
33 provider will defraud or abuse the Medi-Cal program or
34 lacks the organizational or administrative capacity to
35 provide services under the program.

36 (c) Failure to remediate discrepancies *in information*
37 *provided to the department or discrepancies* that are
38 discovered as a result of an *announced or unannounced*
39 visit to a provider shall, ~~prior to hearing,~~ make the
40 provider subject to temporary suspension *from the*



1 *Medi-Cal* program, which shall include temporary
2 deactivation of all provider numbers used by the provider
3 to obtain reimbursement from the *Medi-Cal* program.
4 The director shall notify the provider of the temporary
5 suspension and deactivation of provider numbers, and
6 the effective date thereof. Notwithstanding Section
7 100171 of the Health and Safety Code, proceedings after
8 the imposition of sanctions in this paragraph shall be in
9 accordance with Section 14043.65.

10 *SEC. 22. Section 14043.75 of the Welfare and*
11 *Institutions Code is amended to read:*

12 14043.75. The director may, by regulation, adopt,
13 *readopt, repeal, or amend* additional measures to prevent
14 or curtail fraud and abuse. *Regulations adopted,*
15 *readopted, repealed, or amended pursuant to this section*
16 *shall be deemed emergency regulations in accordance*
17 *with the Administrative Procedure Act (Chapter 3.5*
18 *(commencing with Section 11340) of Part 1 of Division 3*
19 *of Title 2 of the Government Code). These emergency*
20 *regulations shall be deemed necessary for the immediate*
21 *preservation of the public peace, health and safety, or*
22 *general welfare. Emergency regulations adopted,*
23 *amended, or repealed pursuant to this section shall be*
24 *exempt from review by the Office of Administrative Law.*
25 *The emergency regulations authorized by this section*
26 *shall be submitted to the Office of Administrative Law for*
27 *filing with the Secretary of State and publication in the*
28 *California Code of Regulations.*

29 *SEC. 23. Section 14100.75 of the Welfare and*
30 *Institutions Code is amended to read:*

31 14100.75. (a) (1) ~~Any~~ *Each* provider ~~of goods or~~
32 ~~services~~ *and each applicant, as defined in Section 14043.1,*
33 *when applying for enrollment and continued enrollment,*
34 shall provide, to the department, a bond, or other security
35 satisfactory to the department, of an amount determined
36 by the department, pursuant to regulations adopted by
37 the department.

38 (2) The department, in determining the amount of
39 bond or security required by paragraph (1), shall base the



1 determination on the level of estimated billings, and shall
2 not be less than twenty-five thousand dollars (\$25,000).

3 (b) (1) After three years of continuous operation as a
4 provider, a Medi-Cal provider may apply to the
5 department for an exemption from the requirements of
6 subdivision (a).

7 (2) The department shall adopt regulations
8 establishing conditions for the approval or denial of
9 applications for exemption pursuant to paragraph (1).

10 (c) The department shall establish a mechanism to
11 track rates of participation among providers who are
12 subject to the requirement of subdivision (a) to
13 determine if the requirement is a deterrent to Medi-Cal
14 program participation among provider applicants.

15 (d) Subdivisions (a) and (b) do not apply to
16 ~~individuals who are natural persons licensed or certified~~
17 pursuant to Division 2 (commencing with Section 500) of
18 the Business and Professions Code, *the Osteopathic*
19 *Initiative Act, or the Chiropractic Initiative Act, or to any*
20 clinic licensed pursuant to subdivision (a) of Section 1204
21 of the Health and Safety Code, to any health facility
22 licensed ~~pursuant to~~ *under Chapter 2 (commencing with*
23 ~~Section 1250~~ *1250) of Division 2 of the Health and Safety*
24 Code, or to any provider that is operated by a city, county,
25 school district, county office of education, or state special
26 school.

27 (e) *Nothing in this section shall relieve an applicant or*
28 *provider of durable medical equipment or home health*
29 *agency services from complying with subdivisions (a)*
30 *and (b) of Sections 14100.8 and 14100.9, as applicable.*

31 SEC. 24. *Section 14107 of the Welfare and Institutions*
32 *Code is amended to read:*

33 14107. (a) (1) Any person ~~who, with intent to~~
34 ~~defraud, presents for allowance or payment any false or~~
35 ~~fraudulent claim for furnishing services or merchandise,~~
36 ~~knowingly submits false information for the purpose of~~
37 ~~obtaining greater compensation than that to which he is~~
38 ~~legally entitled for furnishing services or merchandise, or~~
39 ~~knowingly submits false information for the purpose of~~
40 ~~obtaining authorization for furnishing services or~~



1 ~~merchandise under this chapter or Chapter 8~~
2 ~~(commencing with Section 14200) including any~~
3 ~~applicant or provider as defined in Section 14043.1, or~~
4 ~~billing agent, as defined in Section 14040.1, who engages~~
5 ~~in any of the activities identified in subdivision (b) is~~
6 ~~punishable by imprisonment in the county jail not longer~~
7 ~~than one year or in the state prison 10 years, or by fine not~~
8 ~~exceeding five thousand dollars (\$5,000) three times the~~
9 ~~amount of the fraud or improper reimbursement, or by~~
10 ~~both such this fine and imprisonment.~~

11 The

12 (2) *If the activity results in serious bodily injury to any*
13 *person, or bodily injury to a person under 18 years of age,*
14 *or is a threat to the public health, the person shall be fined*
15 *in accordance with paragraph (1) or imprisoned in the*
16 *state prison for not more than 20 years, or both. If the*
17 *activity results in death, the person shall be fined in*
18 *accordance with paragraph (1), or imprisoned in the*
19 *state prison for any term of years or for life, or both.*

20 (3) *The length of imprisonment under this section*
21 *shall be determined based on the sentencing guidelines*
22 *used by the federal government for false or fraudulent*
23 *claims.*

24 (b) (1) *A person, with intent to defraud, presents for*
25 *allowance or payment any false or fraudulent claim for*
26 *furnishing services or merchandise under this chapter or*
27 *Chapter 8 (commencing with Section 14200).*

28 (2) *A person knowingly submits false information for*
29 *the purpose of obtaining greater compensation than that*
30 *to which he or she is legally entitled for furnishing*
31 *services or merchandise under this chapter or Chapter 8*
32 *(commencing with Section 14200).*

33 (3) *A person knowingly submits false information for*
34 *the purpose of obtaining authorization for furnishing*
35 *services or merchandise under this chapter or Chapter 8*
36 *(commencing with Section 14200).*

37 (4) *A person knowingly and willfully executes, or*
38 *attempts to execute, a scheme or artifice to do either of*
39 *the following:*



1 (A) Defraud the Medi-Cal program or any other
2 health care program administered by the department or
3 its agents or contractors.

4 (B) Obtain, by means of false or fraudulent pretenses,
5 representations, or promises, any of the money or
6 property owned by, or under the custody or control of,
7 the Medi-Cal program or any other health care program
8 administered by the department or its agents or
9 contractors, in connection with the delivery of or
10 payment for health care benefits, services, goods,
11 supplies, or merchandise.

12 (c) For purposes of this section, the following
13 definitions apply:

14 (1) "Serious bodily injury" means bodily injury that
15 involves any of the following:

16 (A) A substantial risk of death.

17 (B) Extreme physical pain.

18 (C) Protracted and obvious disfigurement.

19 (D) Protracted loss or impairment of the function of
20 a bodily member, organ, or mental faculty.

21 (2) "Bodily injury" means any of the following:

22 (A) A cut, abrasion, bruise, burn, or disfigurement.

23 (B) Physical pain.

24 (C) Illness.

25 (D) Impairment of the function of a bodily member,
26 organ, or mental faculty, no matter how temporary.

27 (E) Any other injury to the body, no matter how
28 temporary.

29 (d) (1) Any of the following property of a person,
30 including any applicant or provider as defined in Section
31 14043.1, who has engaged in any of the activities subject
32 to fine or imprisonment under subdivision (a), shall be
33 subject to the forfeiture provisions of subdivision (e):

34 (A) Any property, real or personal, involved in a
35 transaction or attempted transaction in violation of this
36 chapter or Chapter 8 (commencing with Section 14200),
37 or any health care program administered by the
38 department, its agents or contractors, or any property
39 traceable to that property.



1 (B) Any property, real or personal, that constitutes, is
2 derived from, or is traceable to, any proceeds obtained
3 directly or indirectly, from a violation of this chapter or
4 Chapter 8 (commencing with Section 14200), or any
5 health care program administered by the department or
6 its agents or contractors.

7 (2) Property subject to forfeiture under this section
8 includes, but is not limited to, real property, including
9 things growing on, affixed to, and found in land, and
10 personal property, including tangible and intangible
11 personal property, including rights, privileges, interests,
12 claims, and securities.

13 (e) All right, title, and interest in the property
14 described in subdivision (d), shall vest in the state upon
15 the commission of the act giving rise to forfeiture under
16 this section. Any such property that is subsequently
17 transferred to another person shall be subject to
18 forfeiture, unless the transferee establishes in a hearing
19 that he or she is a bona fide purchaser for value of the
20 property, who at the time of purchase was reasonably
21 without cause to believe that the property was subject to
22 forfeiture under this section.

23 (f) Upon application of the state, the court may enter
24 a restraining order or injunction, require the execution of
25 a satisfactory performance bond, or take any other action
26 to preserve the availability of property described in
27 subdivision (d) for forfeiture under this section. Upon the
28 filing of information charging a violation of this chapter
29 or Chapter 8 (commencing with Section 14200), or any
30 health care program administered by the department or
31 its agents or contractors and alleging that the property
32 with respect to which the order is sought would, in the
33 event of a conviction, be subject to forfeiture under this
34 section. Prior to the filing of this information, if, after
35 notice to persons appearing to have an interest in the
36 property and opportunity for a hearing, the court
37 determines that there is substantial probability that the
38 state will prevail on the issue of forfeiture and that failure
39 to enter the order will result in the property being
40 destroyed, removed from the jurisdiction of the court, or



1 otherwise made unavailable for forfeiture, and the need
2 to preserve the availability of the property through the
3 entry of the requested order outweighs the hardship on
4 any party against whom the order is to be entered.

5 (g) A temporary restraining order under this section
6 may be entered upon application of the state without
7 notice or opportunity for a hearing when information has
8 not yet been filed with respect to the property, if the state
9 demonstrates that there is probable cause to believe that
10 the property with respect to which the order is sought
11 would, in the event of conviction or if the person enters
12 into a settlement in a civil or criminal proceeding, be
13 subject to forfeiture under this section and that provision
14 of notice will jeopardize the availability of the property
15 for forfeiture. The temporary order shall expire not more
16 than 10 days after the date on which it is entered, unless
17 extended for good cause shown or unless the party against
18 whom it is entered consents to an extension for a longer
19 period. A hearing requested concerning an order entered
20 under this subdivision shall be held at the earliest possible
21 time, and prior to the expiration of the temporary order.
22 The court may receive and consider, at a hearing held
23 pursuant to this subdivision, information and evidence
24 that would be inadmissible under the Evidence Code.

25 (h) Upon conviction of a person for engaging in the
26 activities subject to fine or imprisonment under
27 subdivision (a), or if the person has entered into a
28 settlement in a civil or criminal proceeding alleging fraud
29 or abuse in the Medi-Cal program or in any other health
30 care program administered by the department or its
31 agents or contractors, the court shall enter a judgment of
32 forfeiture of the property to the state and shall authorize
33 the Attorney General to seize all property ordered
34 forfeited upon such terms and conditions as the court
35 shall deem proper. Following the entry of an order
36 declaring the property forfeited, the court may, upon
37 application of the state, enter appropriate restraining
38 orders or injunctions, require the execution of satisfactory
39 performance bonds, appoint receivers, conservators,
40 appraisers, accountants, or trustees, or take any other



1 action to protect the interest of the state in the property
2 ordered forfeited. Any income accruing to, or derived
3 from, an enterprise or an interest in an enterprise that has
4 been ordered forfeited under this section may be used to
5 offset ordinary and necessary expenses to the enterprise,
6 as required by law, or as necessary to protect the interests
7 of the state or third parties.

8 (i) Following the seizure of property ordered forfeited
9 under this section, the Attorney General shall direct the
10 disposition of the property by sale or any other
11 commercially feasible means, making due provision for
12 the rights of any innocent person. Any property right or
13 interest not exercisable by, or transferable for value to,
14 the state, shall expire and shall not revert to the provider,
15 nor shall the provider or any person acting in concert
16 with or on behalf of the provider be eligible to purchase
17 forfeited property at any sale held by the state. Upon
18 application of a person, other than the provider or a
19 person acting in concert with or on behalf of the provider,
20 the court, may restrain or stay the sale or disposition of the
21 property pending the conclusion of any appeal of the case
22 giving rise to the forfeiture, if the applicant demonstrates
23 that proceeding with the sale or disposition of the
24 property will result in irreparable injury, harm, or loss to
25 him or her.

26 (j) If the Attorney General convenes a state grand jury
27 related to health care fraud or abuse, the grand jury may
28 investigate and indict for any of the activities subject to
29 fine, imprisonment, or asset forfeiture under this section
30 on a statewide basis.

31 (k) The enforcement remedies provided under this
32 section are not exclusive and shall not preclude the use of
33 any other criminal or civil remedy.

34 SEC. 25. Section 14107.11 of the Welfare and
35 Institutions Code is amended to read:

36 14107.11. (a) Upon receipt of reliable information or
37 evidence, including evidence that would be inadmissible
38 under the Evidence Code, of fraud or willful
39 misrepresentation by a provider as defined in Section
40 14043.1, under the Medi-Cal program or the



1 *commencement of a suspension under Section 14123, the*
2 *department may do any of the following:*

3 (1) Collect any Medi-Cal program overpayment
4 identified through an audit or examination, or any
5 portion thereof from any provider. Notwithstanding
6 Section 100171 of the Health and Safety Code, a provider
7 may appeal the collection of overpayments under this
8 section pursuant to procedures established in Article 5.3
9 (commencing with Section 14170). Overpayments
10 collected under this section shall not be returned to the
11 provider during the pendency of any appeal and may be
12 offset to satisfy audit or appeal findings if the findings are
13 against the provider. Overpayments will be returned to
14 a provider with interest if findings are in favor of the
15 provider.

16 (2) Withhold payment for any goods~~or~~, services,
17 *supplies, or merchandise, or any portion thereof, from*
18 ~~any Medi-Cal program provider~~. The department shall
19 notify the provider within five days of any withholding of
20 payment under this section. The notice shall do all of the
21 following:

22 (A) State that payments are being withheld in
23 accordance with this subdivision and that the withholding
24 is for a temporary period and will not continue after it is
25 determined that there is insufficient evidence of fraud or
26 willful misrepresentation or when legal proceedings
27 relating to the alleged fraud or willful misrepresentation
28 are complete.

29 (B) Cite the circumstances under which the
30 withholding of the payments will be terminated.

31 (C) Specify, when appropriate, the type or types of
32 ~~claimed payments~~ *claims for which payment is being*
33 withheld.

34 (D) Inform the provider of the right to submit written
35 *information or evidence, including evidence that would*
36 *be inadmissible under the Evidence Code, for*
37 consideration by the department.

38 (3) Notwithstanding Section 100171 of the Health and
39 Safety Code, a provider may appeal a withholding of
40 payment pursuant to Section 14043.65. Payments



1 withheld under this section shall not be returned to the
2 provider during the pendency of any appeal and may be
3 offset to satisfy audit or appeal findings.

4 (b) The director may adopt regulations to implement
5 this section as necessary. These regulations may be
6 adopted as emergency regulations in accordance with the
7 Administrative Procedure Act (Chapter 3.5
8 (commencing with Section 11340) Part 1 of Division 3 of
9 Title 2 of the Government Code) and the adoption of the
10 regulations shall be deemed to be an emergency and
11 necessary for the immediate preservation of the public
12 peace, health and safety, or general welfare. The director
13 shall transmit these emergency regulations directly to the
14 Secretary of State for filing and the regulations shall
15 become effective immediately upon filing. Upon
16 completion of the formal regulation adoption process and
17 prior to the expiration of the 120-day duration period of
18 emergency regulations, the director shall transmit
19 directly to the Secretary of State the adopted regulations,
20 the rulemaking file, and the certification of compliance
21 as required by subdivision (e) of Section 11346.1 of the
22 Government Code.

23 (c) For purposes of this section, “provider” means any
24 individual, partnership, group, association, corporation,
25 institution, or entity, and the officers, directors,
26 employees, or agents thereof, that provide services,
27 goods, supplies, or merchandise, directly or indirectly, to
28 a Medi-Cal beneficiary, and that has been enrolled in the
29 Medi-Cal program.

30 *SEC. 26. Section 14115.5 of the Welfare and*
31 *Institutions Code is amended to read:*

32 14115.5. (a) Moneys payable or rights existing under
33 this chapter shall be subject to any claim, lien or offset of
34 the State of California, and any claim of the United States
35 of America made pursuant to federal statute, but shall not
36 otherwise be subject to enforcement of a money
37 judgment or other legal process, and no transfer or
38 assignment, at law or in equity, of any right of a provider
39 of health care to any payment shall be enforceable against
40 the state, a fiscal intermediary or carrier.



1 (b) If a provider, as defined in Section 14043.1, is under
2 any investigation for fraud or abuse by any state, local, or
3 federal government agency, the director may withhold
4 the reimbursement of funds due and payable to that
5 provider from the Medi-Cal program or any other health
6 care program administered by the department or its
7 agents or contractors, as assets pending the outcome of
8 the investigation of fraud or abuse. The withholding of
9 payments authorized by this subdivision shall not be
10 subject to Section 14107.11 and, notwithstanding Section
11 100171 of the Health and Safety Code or any other
12 provision of law, shall not be subject to appeal or hearing.

13 SEC. 27. Section 14123.25 is added to the Welfare and
14 Institutions Code, to read:

15 14123.25. (a) In lieu of, or in addition to, the
16 imposition of any other sanction available to it, including
17 the sanctions and penalties authorized under Section
18 14123.2 or 14171.6, and as the “single state agency” for
19 California vested with authority to administer the
20 Medi-Cal program, the department shall exercise the
21 authority granted to it in Section 1002.2 of Title 42 of the
22 Code of Federal Regulations, and may also impose the
23 mandatory and permissive exclusions identified in
24 Section 1128 of the federal Social Security Act (42 U.S.C.
25 Sec. 1320a-7), and its implementing regulations, and
26 impose civil penalties identified in Section 1128A of the
27 federal Social Security Act (42 U.S.C. Sec. 1320a-7a), and
28 its implementing regulations, against applicants and
29 providers, as defined in Section 14043.1 or against billing
30 agents, as defined in Section 14040.1. The department
31 may also terminate, or refuse to enter into, a provider
32 agreement authorized under Section 14043.2 with an
33 applicant or provider, as defined in Section 14043.1, upon
34 the grounds specified in Section 1866(b)(2) of the federal
35 Social Security Act (42 U.S.C. Sec. 1395cc(b)(2)).
36 Notwithstanding Section 100171 of the Health and Safety
37 Code or any other provision of law, any appeal by an
38 applicant, provider, or billing agent of the imposition of
39 a civil penalty, exclusion, or other sanction pursuant to
40 this subdivision shall be in accordance with Section



1 14043.65, except that where the action is based upon
2 conviction for any crime involving fraud or abuse of the
3 Medi-Cal, medicaid, or Medicare programs, or exclusion
4 by the federal government from the medicaid or
5 Medicare programs the action shall be automatic and not
6 subject to appeal or hearing.

7 (b) In addition, the department may impose the
8 intermediate sanctions identified in Section 1846 of the
9 Social Security Act (42 U.S.C. Sec. 1395w-2), and its
10 implementing regulations, against any provider that is a
11 clinical laboratory, as defined in Section 1206 of the
12 Business and Professions Code. The imposition and
13 appeal of this intermediate sanction shall be in
14 accordance with Article 8 (commencing with Section
15 1065) of Chapter 2 of Division 1 of Title 17 of the
16 California Code of Regulations.

17 SEC. 28. Section 14124.1 of the Welfare and
18 Institutions Code is amended to read:

19 14124.1. Each provider, as defined in Section 14043.1,
20 of health care services rendered to ~~any beneficiary under~~
21 ~~this chapter~~ under the Medi-Cal program or any other
22 health care program administered by the department or
23 its agents or contractors, shall keep and maintain records
24 of each such service rendered, the beneficiary or person
25 to whom rendered, the date *the service was rendered*,
26 and such additional information as the department may
27 by regulation require. Records herein required to be kept
28 and maintained shall be retained by the provider for a
29 period of three years from the date the service was
30 rendered.

31 SEC. 29. Section 14124.2 of the Welfare and
32 Institutions Code is amended to read:

33 14124.2. (a) (1) During normal working hours, the
34 department may make any examination of the books and
35 records of ~~any provider pertaining to services rendered~~
36 ~~to any beneficiary under this chapter or Chapter 8~~
37 ~~(commencing with Section 14200) of this part~~, and may
38 visit and inspect the premises or facilities of ~~any provider~~,
39 *those identified in paragraphs (2) and (3)*, that it may
40 deem necessary to carry out the provisions of this chapter



1 or Chapter 8 (commencing with Section 14200) and
2 regulations adopted thereunder. ~~A provider shall furnish~~
3 ~~this~~, or the law under which the department or its agents
4 or contractors administer any other health care program.

5 (2) Any applicant or provider, as defined in Section
6 14043.1, pertaining to services, goods, supplies, or
7 merchandise rendered or supplied, directly or indirectly,
8 or to be rendered or supplied, directly or indirectly, to
9 any beneficiary under this chapter or Chapter 8
10 (commencing with Section 14200).

11 (3) Any person or entity that provides services, goods,
12 supplies, or merchandise, directly or indirectly, under, or
13 seeks reimbursement from, any other health care
14 program administered by the department or its agents or
15 contractors.

16 (b) (1) Applicants, providers, or others receiving or
17 seeking reimbursement under the Medi-Cal program or
18 other health care programs administered by the
19 department or its agents or contractors shall provide a
20 reasonable amount of assistance, and furnish information
21 or copies of ~~the~~ records and documentation upon request
22 by the department. Unannounced visits to request this
23 information shall be reserved for those exceptional
24 situations where arrangement of an appointment
25 beforehand is clearly not possible or is clearly
26 inappropriate to the nature of the intended visit. Only
27 those related books and records of each service rendered,
28 the beneficiary to whom rendered, the date, and
29 additional information as the department may by
30 regulation require shall be subject to the requirement of
31 furnishing copies. This information may include records
32 to support and document the recipient's eligibility for
33 services and, to the extent necessary, records to provide
34 proof of the quantity and receipt of the services, and that
35 the services were provided by proper personnel.
36 Providers and others subject to this section shall be
37 reimbursed for reasonable photocopying-related
38 expenses as determined by the department. Failure to
39 comply with the ~~request~~ department's authority under
40 this section shall be grounds for immediate suspension of



1 the provider or others subject to this section under
2 subdivision (b) of Section 14123 or under the other health
3 care programs administered by the department or its
4 agents or contractors.

5 ~~(b)~~

6 (2) Any copies furnished pursuant to this section shall
7 be used only to investigate and pursue criminal, civil, or
8 administrative sanctions for Medi-Cal fraud and or abuse
9 or, including the provision of dental services that are
10 below or less than the standard of acceptable quality as
11 prescribed by subdivision (f) of Section 14123, or fraud or
12 abuse under any other health care program administered
13 by the department or its agents or contractors and the
14 copies shall be destroyed when that purpose has been
15 satisfied. This section shall not be construed to prohibit
16 the referral of investigative findings, including copies of
17 books and records, to the appropriate federal, state, or
18 local licensing, certifying, or regulatory, or prosecutorial
19 authority.

20 (c) For purposes of this section and Section 14124.1;
21 ~~“provider” shall, in addition to the provider of health care~~
22 ~~services, “provider” shall be defined as follows:~~

23 (1) “Provider” shall have the meaning contained in
24 Section 14043.1.

25 (2) “Provider” shall also include any person or entity
26 under contract with the provider of health care services,
27 as defined in paragraph (1), to assist in the application
28 process or eligibility determination.

29 SEC. 30. Section 14170 of the Welfare and Institutions
30 Code is amended to read:

31 14170. (a) (1) Amounts paid for services provided to
32 Medi-Cal beneficiaries shall be audited by the
33 department in the manner and form prescribed by the
34 department. The department shall maintain adequate
35 controls to ensure responsibility and accountability for
36 the expenditure of federal and state funds. Cost reports
37 and other data submitted by providers to a state agency
38 for the purpose of determining reasonable costs for
39 services or establishing rates of payment shall be
40 considered true and correct unless audited or reviewed



1 by the department within 18 months after July 1, 1969, the
2 close of the period covered by the report, or after the date
3 of submission of the original or amended report by the
4 provider, whichever is later. Moreover the cost reports
5 and other data for cost reporting periods beginning on
6 January 1, 1972, and thereafter shall be considered true
7 and correct unless audited or reviewed within three years
8 after the close of the period covered by the report, or
9 after the date of submission of the original or amended
10 report by the provider, whichever is later.

11 (2) (A) Nothing in this section shall be construed to
12 limit the correction of cost reports or rates of payment
13 when inaccuracies are determined to be the result of
14 intent to defraud, or when a delay in the completion of an
15 audit is the result of willful acts by the provider or
16 inability to reach agreement on the terms of final
17 settlement.

18 (B) *Nothing in this section shall be construed to*
19 *preclude the department from further review of cost*
20 *reports and other data for cost reporting periods*
21 *beginning on January 1, 1972, after the three-year period*
22 *contained in paragraph (1) of subdivision (a), where*
23 *after that time information not customarily contained in*
24 *these cost reports and other data for the fiscal periods in*
25 *question indicates the provider may have engaged in*
26 *practices that have resulted in overreimbursement.*

27 (3) Notwithstanding any other provision of law,
28 nursing facilities and all categories of intermediate care
29 facilities for the developmentally disabled which have
30 received and are receiving funds for salary increases
31 pursuant to Sections 14110.6 and 14110.7 shall maintain
32 payroll and personnel records for examination by
33 auditors from the department and the Labor
34 Commissioner beginning March 1985 until the records
35 have been audited, or until December 31, 1992,
36 whichever occurs first.

37 (b) Notwithstanding any other provision of law, costs
38 reported for reimbursement purposes relative to
39 Medi-Cal beneficiaries in nursing facilities that are
40 distinct parts of acute care hospitals shall be audited by



1 the department at least annually. The audits may be
2 performed on a sample basis and, when the sample is
3 statistically reliable, as determined by the department,
4 may be used for ratesetting purposes.

5 *SEC. 31. Section 14170.8 of the Welfare and*
6 *Institutions Code is amended to read:*

7 14170.8. (a) Notwithstanding any other provision of
8 law, every primary supplier of pharmaceuticals—~~or,~~
9 medical equipment—~~and,~~ *or* supplies shall maintain
10 accounting records to demonstrate the manufacture,
11 assembly, purchase, or acquisition and subsequent sale, of
12 any pharmaceuticals, or medical equipment—~~and,~~ *or*
13 supplies to ~~Medi-Cal~~ providers, *as defined in Section*
14 *14043.1*. Accounting records shall include, but not be
15 limited to, inventory records, general ledgers, financial
16 statements, purchase and sales journals and invoices,
17 prescription records, bills of lading, and delivery records.
18 For purposes of this section the term “primary suppliers”
19 shall mean any manufacturer, principal labeler,
20 *assembler*, wholesaler, ~~and any other primary supplier or~~
21 *retailer*.

22 (b) Accounting records maintained pursuant to
23 subdivision (a) shall be subject to audit or examination by
24 the department or ~~the Controller during regular business~~
25 ~~hours~~ *its agents. This audit or examination may include,*
26 *but is not limited to, verification of the costs claimed by*
27 *providers*. These accounting records shall be maintained
28 for three years from the date of sale or the date of service.

29 (c) This section shall not apply to any clinic licensed
30 pursuant to subdivision (a) of Section 1204 of the Health
31 and Safety Code or to any manufacturer of prescription
32 drugs registered with the federal Food and Drug
33 Administration in accordance with Section 510 of the
34 Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360).

35 *SEC. 32. Section 14171.6 of the Welfare and*
36 *Institutions Code is amended to read:*

37 14171.6. (a) (1) Any provider, as defined in
38 paragraph (3), that obtains reimbursement under this
39 chapter to which it is not entitled shall be subject to
40 interest charges or penalties as specified in this section.



1 (2) When it is established upon audit that the provider
2 has not received reimbursement to which ~~it~~ *the provider*
3 is entitled, the department shall pay the provider interest
4 assessed at the rate, and in the manner, specified in
5 subdivision ~~(h)~~ (g) of Section 14171.

6 (3) For purposes of this section, “provider” means any
7 provider ~~of services~~, as defined in ~~subdivision (a) of~~
8 ~~Section 51051 of Title 22 of the California Code of~~
9 ~~Regulations Section 14043.1.~~

10 (b) When it is established upon audit that the provider
11 has claimed payments under this chapter to which it is not
12 entitled, the provider shall pay, in addition to the amount
13 improperly received, interest at the rate specified by
14 subdivision (h) of Section 14171.

15 (c) (1) When it is established upon audit that the
16 provider claimed payments related to services or costs
17 that the department had previously notified the provider
18 in an audit report that the costs or services were not
19 reimbursable, the provider shall pay, in addition to the
20 amount improperly claimed, a penalty of 10 percent of
21 the amount improperly claimed after receipt of the
22 notice, plus the cost of the audit.

23 (2) In addition to the penalty and costs specified by
24 paragraph (1), interest shall be assessed at the rate
25 specified in subdivision (h) of Section 14171.

26 (3) Providers that wish to preserve appeal rights or to
27 challenge the department’s positions regarding appeal
28 issues may claim the costs or services and not be
29 reimbursed therefor if they are identified and presented
30 separately on the cost report.

31 (d) (1) When it is ~~adjudicated~~ *established* that the
32 provider fraudulently claimed and received payments
33 under this chapter, the provider shall pay, in addition to
34 that portion of the claim that was improperly claimed, a
35 penalty of 300 percent of the amount improperly claimed,
36 plus the cost of the audit.

37 (2) In addition to the penalty and costs specified by
38 paragraph (1), interest shall be assessed at the rate
39 specified by subdivision (h) of Section 14171.



1 (3) For purposes of this subdivision, a fraudulent claim
2 is a claim upon which the provider has been convicted of
3 fraud upon the Medi-Cal program.

4 (e) Nothing in this section shall prevent the imposition
5 of any other civil or criminal penalties to which the
6 provider may be liable.

7 (f) Any appeal to any action taken pursuant to
8 subdivision (b), (c), or (d) is subject to the administrative
9 appeals process provided by Section 14171.

10 (g) As used in this section, “cost of the audit” includes
11 actual hourly wages, travel, and incidental expenses at
12 rates allowable by rules adopted by the State Board of
13 Control and applicable overhead costs that are incurred
14 by employees of the state in administering this chapter
15 with respect to the performance of audits.

16 (h) This section shall not apply to any clinic licensed
17 pursuant to subdivision (a) of Section 1204 of the Health
18 and Safety Code, *clinics exempt from licensure under*
19 *Section 1206 of the Health and Safety Code, health*
20 *facilities licensed under Chapter 2 (commencing with*
21 *Section 1250) of Division 2 of the Health and Safety Code,*
22 *or to any provider that is operated by a city, county, or*
23 *school district.*

24 *SEC. 33. Section 24005 of the Welfare and Institutions*
25 *Code is amended to read:*

26 24005. (a) *This section shall apply to the Family*
27 *Planning Access Care and Treatment Waiver program*
28 *identified in subdivision (aa) of Section 14132 and this*
29 *program.*

30 (b) Only licensed medical personnel with family
31 planning skills, knowledge, and competency may provide
32 the full range of family planning medical services covered
33 in this program.

34 ~~(b) The following requirements shall apply to the~~
35 ~~Family Planning Access Care and Treatment Waiver~~
36 ~~program identified in subdivision (aa) of Section 14132~~
37 ~~and this program:~~

38 ~~(1)~~

39 (c) Medi-Cal enrolled providers, as determined by the
40 department, shall be eligible to provide family planning



1 services under the program when these services are
2 within their scope of practice and licensure. Those
3 clinical providers electing to participate in the program
4 and approved by the department shall provide the full
5 scope of family planning education, counseling, and
6 medical services specified for the program, either
7 directly or by referral, consistent with standards of care
8 issued by the department.

9 ~~(2)~~

10 (d) The department shall require providers to enter
11 into clinical agreements with the department to ensure
12 compliance with standards and requirements to maintain
13 the fiscal integrity of the program. *Provider applicants,*
14 *providers, and persons with an ownership or control*
15 *interest, as defined in federal medicaid regulations, shall*
16 *be required to submit to the department their social*
17 *security numbers to the full extent allowed under federal*
18 *law. All state and federal statutes and regulations*
19 *pertaining to the audit or examination of Medi-Cal*
20 *providers shall apply to this program.*

21 ~~(3)~~

22 (e) Clinical provider agreements shall be signed by
23 the provider under penalty of perjury. The department
24 may screen applicants at the initial application and at any
25 reapplication pursuant to requirements developed by the
26 department to determine provider suitability for the
27 program.

28 ~~(e)~~

29 (f) The department may complete a background
30 check on clinical provider applicants for the purpose of
31 verifying the accuracy of information provided ~~in the~~
32 ~~application~~ *to the department for purposes of enrolling*
33 *in the program* and in order to prevent fraud and abuse.
34 The background check may include, but not be limited
35 to, unannounced onsite inspection prior to enrollment,
36 review of business records, and data searches. If
37 discrepancies are found to exist during the preenrollment
38 period, the department may conduct additional
39 inspections prior to enrollment. Failure to remediate
40 discrepancies as prescribed by the director may result in



1 denial of the application for enrollment. Providers that do
2 not provide services consistent with the standards of care
3 or that do not comply with the department's rules related
4 to the fiscal integrity of the program may be disenrolled
5 as a provider from the program at the sole discretion of
6 the department.

7 ~~(d)~~

8 (g) The department shall not enroll any applicant ~~that~~
9 ~~has who, within the previous 10 years:~~

10 (1) ~~Has been convicted of any felony or misdemeanor~~
11 ~~involving that involves~~ fraud or abuse in any government
12 program, that ~~has~~ *relates to neglect or abuse of a patient*
13 *in connection with the delivery of a health care item or*
14 *service, or that is in connection with the interference*
15 *with, or obstruction of, any investigation into health care*
16 *related fraud or abuse.*

17 (2) ~~Has been found guilty of liable for~~ fraud or abuse
18 in any civil proceeding, or that has entered into a
19 settlement in ~~lieu of conviction for a civil or criminal~~
20 *proceeding alleging* fraud or abuse, ~~within the previous~~
21 ~~five years. In~~ *in any government program.*

22 (h) In addition, the department may deny enrollment
23 to any applicant that, at the time of application, is under
24 investigation *by any local, state, or federal government*
25 *agency for fraud or abuse.* ~~The~~ *Except where there has*
26 *been a settlement,* the department shall not deny
27 enrollment to an otherwise qualified applicant whose
28 felony or misdemeanor charges did not result in a
29 conviction solely on the basis of the prior charges. If it is
30 discovered that a provider is under investigation *by any*
31 *local, state, or federal government agency* for fraud or
32 abuse, that provider shall be subject to immediate
33 disenrollment from the program.

34 ~~(e)~~

35 (i) (1) The program shall disenroll as a program
36 provider any individual who, or any entity that, has a
37 license, certificate, or other approval to provide health
38 care, which is revoked or suspended by a federal,
39 California, or other state's licensing, certification, or other
40 approval authority, has otherwise lost that license,



1 certificate, or approval, or has surrendered that license,
2 certificate, or approval while a disciplinary hearing on the
3 license, certificate, or approval was pending. The
4 disenrollment shall be effective on the date the license,
5 certificate, or approval is revoked, lost, or surrendered.

6 ~~(f)~~

7 (2) *A provider shall be subject to disenrollment if*
8 *claims for payment are submitted under any provider*
9 *number used by the provider to obtain reimbursement*
10 *from the program for the services, goods, supplies, or*
11 *merchandise provided, directly or indirectly, to a*
12 *program beneficiary, by an individual or entity that has*
13 *been previously suspended, excluded, or otherwise made*
14 *ineligible to receive, directly or indirectly,*
15 *reimbursement from the program or from the Medi-Cal*
16 *program and the individual has previously been listed on*
17 *either The Suspended and Ineligible Provider List, which*
18 *is published by the department, to identify suspended*
19 *and otherwise ineligible providers or any list published by*
20 *the federal Office of Inspector General regarding the*
21 *suspension or exclusion of individuals or entities from the*
22 *federal Medicare and medicaid programs, to identify*
23 *suspended, excluded, or otherwise ineligible providers.*

24 (3) *The department shall deactivate, immediately and*
25 *without prior notice, the provider numbers used by a*
26 *provider to obtain reimbursement from the program*
27 *when warrants or documents mailed to a provider's*
28 *mailing address, its pay to address, or its service address,*
29 *if any, are returned by the United States Postal Service as*
30 *not deliverable or when a provider has not submitted a*
31 *claim for reimbursement from the program for one year.*
32 *If deactivation pursuant to this section occurs, the*
33 *provider shall meet the requirements for reapplication as*
34 *specified in regulation.*

35 (4) *For purposes of this subdivision:*

36 (A) *"Mailing address" means the address that the*
37 *provider has identified to the department in its*
38 *application for enrollment as the address at which it*
39 *wishes to receive general program correspondence.*



1 (B) “Pay to address” means the address that the
2 provider has identified to the department in its
3 application for enrollment as the address at which it
4 wishes to receive warrants.

5 (C) “Service address” means the address that the
6 provider has identified to the department in its
7 application for enrollment as the address at which the
8 provider will provide services to program beneficiaries.

9 (j) Subject to Article 4 (commencing with Section
10 19130) of Chapter 5 of Division 5 of Title 2 of the
11 Government Code, the department may enter into
12 contracts to secure consultant services or information
13 technology including, but not limited to, software, data,
14 or analytical techniques or methodologies for the purpose
15 of fraud or abuse detection and prevention. Contracts
16 under this section shall be exempt from the Public
17 Contract Code.

18 ~~(g)~~

19 (k) Enrolled providers shall attend specific
20 orientation approved by the department in
21 comprehensive family planning services. Enrolled
22 providers who insert IUDs or contraceptive implants
23 shall have received prior clinical training specific to these
24 procedures.

25 ~~(h)~~

26 (l) Upon receipt of reliable *information or* evidence,
27 *including evidence that would be inadmissible under the*
28 *Evidence Code*, of fraud or willful misrepresentation by
29 a provider under the program *or commencement of a*
30 *suspension under Section 14123*, the department may do
31 *any of the following*:

32 (1) Collect any State-Only Family Planning program
33 or Family Planning Access Care and Treatment Waiver
34 program overpayment identified through an audit or
35 examination, or any portion thereof from any provider.
36 Notwithstanding Section 100171 of the Health and Safety
37 Code, a provider may appeal the collection of
38 overpayments under this section pursuant to procedures
39 established in Article 5.3 (commencing with Section
40 14170) of Part 3 of Division 9. Overpayments collected



1 under this section shall not be returned to the provider
2 during the pendency of any appeal and may be offset to
3 satisfy audit or appeal findings, if the findings are against
4 the provider. Overpayments shall be returned to a
5 provider with interest if findings are in favor of the
6 provider.

7 (2) Withhold payment for any goods or services, or any
8 portion thereof, from any State-Only Family Planning
9 program or Family Planning Access Care and Treatment
10 Waiver program provider. The department shall notify
11 the provider within five days of any withholding of
12 payment under this section. The notice shall do all of the
13 following:

14 (A) State that payments are being withheld in
15 accordance with this paragraph and that the withholding
16 is for a temporary period and will not continue after it is
17 determined that there is insufficient *information or*
18 *evidence, including evidence that would be inadmissible*
19 *under the Evidence Code*, of fraud or willful
20 misrepresentation or when legal proceedings relating to
21 the alleged fraud or willful misrepresentation are
22 completed.

23 (B) Cite the circumstances under which the
24 withholding of the payments will be terminated.

25 (C) Specify, when appropriate, the type or types of
26 claimed payments being withheld.

27 (D) Inform the provider of the right to submit written
28 *information or evidence, including evidence that would*
29 *be inadmissible under the Evidence Code*, for
30 consideration by the department.

31 (3) Notwithstanding Section 100171 of the Health and
32 Safety Code, a provider may appeal a withholding of
33 payment under this section pursuant to Section 14043.65.
34 Payments withheld under this section shall not be
35 returned to the provider during the pendency of any
36 appeal and may be offset to satisfy audit or appeal
37 findings.

38 ~~(i)~~

39 (m) As used in this section:

40 (1) “Abuse” means either of the following:



1 (A) Practices that are inconsistent with sound fiscal or
2 business practices and result in unnecessary cost to the
3 *medicaid program, the Medicare program, the Medi-Cal*
4 *program, including the Family Planning Access Care and*
5 *Treatment Waiver program, identified in subdivision*
6 *(aa) of Section 14132, another state’s medicaid program,*
7 *or the State-Only Family Planning program, or other*
8 *health care programs operated, or financed in whole or*
9 *in part, by the federal government or any state or local*
10 *agency in this state or any other state.*

11 (B) Practices that are inconsistent with sound medical
12 practices and result in reimbursement, by any of the
13 programs referred to in subparagraph (A) or other health
14 care programs operated, or financed in whole or in part,
15 by the federal government or any state or local agency in
16 this state or any other state, for services that are
17 unnecessary or for substandard items or services that fail
18 to meet professionally recognized standards for health
19 care.

20 (2) “Fraud” means an intentional deception or
21 misrepresentation made by a person with the knowledge
22 that the deception could result in some unauthorized
23 benefit to himself or herself or some other person. It
24 includes any act that constitutes fraud under applicable
25 federal or state law.

26 (3) “Provider” means any individual, partnership,
27 group, association, corporation, institution, or entity, and
28 the officers, directors, *owners, managing* employees, or
29 ~~agents—thereof~~ *of any partnership, group, association,*
30 *corporation, institution, or entity,* that provides services,
31 goods, supplies, or merchandise, directly or indirectly, to
32 a beneficiary and that has been enrolled in the program.

33 (4) “Convicted” means any of the following:

34 (A) A judgment of conviction has been entered
35 against an individual or entity by a federal, state, or local
36 court, regardless of whether there is a post-trial motion or
37 an appeal pending or the judgment of conviction or other
38 record relating to the criminal conduct has been
39 expunged or otherwise removed.



1 (B) A federal, state, or local court has made a finding
2 of guilt against an individual or entity.

3 (C) A federal, state, or local court has accepted a plea
4 of guilty or nolo contendere by an individual or entity.

5 (D) An individual or entity has entered into
6 participation in a first offender, deferred adjudication, or
7 other program or arrangement where judgment of
8 conviction has been withheld.

9 (5) “Professionally recognized standards of health
10 care” means statewide or national standards of care,
11 whether in writing or not, that professional peers of the
12 individual or entity whose provision of care is an issue,
13 recognize as applying to those peers practicing or
14 providing care within a state. When the United States
15 Department of Health and Human Services has declared
16 a treatment modality not to be safe and effective,
17 practitioners that employ that treatment modality shall
18 be deemed not to meet professionally recognized
19 standards of health care. This definition shall not be
20 construed to mean that all other treatments meet
21 professionally recognized standards of care.

22 (6) “Unnecessary or substandard items or services”
23 means those that are either of the following:

24 (A) Substantially in excess of the provider’s usual
25 charges or costs for the items or services.

26 (B) Furnished, or caused to be furnished, to patients,
27 whether or not covered by Medicare, medicaid, or any of
28 the state health care programs to which the definitions of
29 applicant and provider apply, and which are substantially
30 in excess of the patient’s needs, or of a quality that fails to
31 meet professionally recognized standards of health care.
32 The department’s determination that the items or
33 services furnished were excessive or of unacceptable
34 quality shall be made on the basis of information,
35 including sanction reports, from the following sources:

36 (i) The professional review organization for the area
37 served by the individual or entity.

38 (ii) State or local licensing or certification authorities.

39 (iii) Fiscal agents or contractors, or private insurance
40 companies.



1 (iv) State or local professional societies.

2 (v) Any other sources deemed appropriate by the
3 department.

4 (7) *“Enrolled or enrollment in the program” means*
5 *authorized under any and all processes by the*
6 *department or its agents or contractors to receive,*
7 *directly or indirectly, reimbursement for the provision of*
8 *services, goods, supplies, or merchandise to a program*
9 *beneficiary.*

10 (n) *In lieu of, or in addition to, the imposition of any*
11 *other sanctions available, including the imposition of a*
12 *civil penalty under Sections 14123.2 or 14171.6, the*
13 *program may impose on providers any or all of the*
14 *penalties pursuant to Sections 14107 and 14123.25, in*
15 *accordance with the provisions of those sections.*

16 (o) (1) *Notwithstanding any other provision of law,*
17 *every primary supplier of pharmaceuticals, medical*
18 *equipment, or supplies shall maintain accounting records*
19 *to demonstrate the manufacture, assembly, purchase, or*
20 *acquisition and subsequent sale, of any pharmaceuticals,*
21 *medical equipment, or supplies, to providers. Accounting*
22 *records shall include, but not be limited to, inventory*
23 *records, general ledgers, financial statements, purchase*
24 *and sales journals, and invoices, prescription records, bills*
25 *of lading, and delivery records.*

26 (2) *For purposes of this subdivision, the term “primary*
27 *supplier” means any manufacturer, principal labeler,*
28 *assembler, wholesaler, or retailer.*

29 (3) *Accounting records maintained pursuant to*
30 *paragraph (1) shall be subject to audit or examination by*
31 *the department or its agents. The audit or examination*
32 *may include, but is not limited to, verification of the costs*
33 *claimed by providers. These accounting records shall be*
34 *maintained for three years from the date of sale or the*
35 *date of service.*

36 (p) *Each provider of health care services rendered to*
37 *any program beneficiary shall keep and maintain records*
38 *of each service rendered, the beneficiary to whom*
39 *rendered, the date, and such additional information as*
40 *the department may by regulation require. Records*



1 required to be kept and maintained pursuant to this
2 subdivision shall be retained by the provider for a period
3 of three years from the date the service was rendered.

4 (q) A program provider applicant or a program
5 provider shall furnish information or copies of records
6 and documentation requested by the department.
7 Failure to comply with the department's request shall be
8 grounds for denial of the application or automatic
9 disenrollment of the provider.

10 (r) A program provider may assign signature
11 authority for transmission of claims to a billing agent
12 subject to Sections 14040, 14040.1, and 14040.5.

13 (s) (1) Moneys payable or rights existing under this
14 division shall be subject to any claim, lien, or offset of the
15 State of California, and any claim of the United States of
16 America made pursuant to federal statute, but shall not
17 otherwise be subject to enforcement of a money
18 judgment or other legal process, and no transfer or
19 assignment, at law or in equity, of any right of a provider
20 of health care to any payment shall be enforceable against
21 the state, a fiscal intermediary, or carrier.

22 (2) If a provider is under any investigation for fraud or
23 abuse by any state, local, or federal government agency,
24 the director may withhold reimbursement of funds due
25 and payable to that provider from any other program
26 under the administration of the department, as assets
27 pending the outcome of the investigation of fraud and
28 abuse. The withholding permitted pursuant to this
29 section shall not be taken pursuant to Section 14107.11
30 and, notwithstanding Section 100171 of the Health and
31 Safety Code or any other provision of law, is not subject
32 to appeal or hearing.

33 SEC. 34. No reimbursement is required by this act
34 pursuant to Section 6 of Article XIII B of the California
35 Constitution because the only costs that may be incurred
36 by a local agency or school district will be incurred
37 because this act creates a new crime or infraction,
38 eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section
40 17556 of the Government Code, or changes the definition



1 of a crime within the meaning of Section 6 of Article
2 XIII B of the California Constitution.

3 Institutions Code is amended to read:

4 14171.6. (a) (1) Any ~~provider, as defined in~~
5 ~~paragraph (3), that obtains reimbursement under this~~
6 ~~chapter to which it is not entitled shall be subject to~~
7 ~~interest charges or penalties as specified in this section.~~

8 (2) ~~When it is established upon audit that the provider~~
9 ~~has not received reimbursement to which it is entitled,~~
10 ~~the department shall pay the provider interest assessed at~~
11 ~~the rate, and in the manner, specified in subdivision (h)~~
12 ~~of Section 14171.~~

13 (3) ~~For purposes of this section, “provider” means any~~
14 ~~individual, partnership, group, association, corporation,~~
15 ~~institution, or entity and the officers, directors,~~
16 ~~employees, or agents thereof, that provides services,~~
17 ~~goods, supplies, or merchandise, directly or indirectly, to~~
18 ~~a Medi-Cal beneficiary and that has been enrolled in the~~
19 ~~Medi-Cal program.~~

20 (b) ~~When it is established upon audit that the provider~~
21 ~~has claimed payments under this chapter to which it is not~~
22 ~~entitled, the provider shall pay, in addition to the amount~~
23 ~~improperly received, interest at the rate specified by~~
24 ~~subdivision (h) of Section 14171.~~

25 (e) (1) ~~When it is established upon audit that the~~
26 ~~provider claimed payments related to services or costs~~
27 ~~that the department had previously notified the provider~~
28 ~~in an audit report that the costs or services were not~~
29 ~~reimbursable, the provider shall pay, in addition to the~~
30 ~~amount improperly claimed, a penalty of 10 percent of~~
31 ~~the amount improperly claimed after receipt of the~~
32 ~~notice, plus the cost of the audit.~~

33 (2) ~~In addition to the penalty and costs specified by~~
34 ~~paragraph (1), interest shall be assessed at the rate~~
35 ~~specified in subdivision (h) of Section 14171.~~

36 (3) ~~Providers that wish to preserve appeal rights or to~~
37 ~~challenge the department’s positions regarding appeal~~
38 ~~issues may claim the costs or services and not be~~
39 ~~reimbursed therefor if they are identified and presented~~
40 ~~separately on the cost report.~~



1 ~~(d) (1) When it is adjudicated that the provider~~
2 ~~fraudulently claimed and received payments under this~~
3 ~~chapter, the provider shall pay, in addition to that portion~~
4 ~~of the claim that was improperly claimed, a penalty of 300~~
5 ~~percent of the amount improperly claimed, plus the cost~~
6 ~~of the audit.~~

7 ~~(2) In addition to the penalty and costs specified by~~
8 ~~paragraph (1), interest shall be assessed at the rate~~
9 ~~specified by subdivision (h) of Section 14171.~~

10 ~~(3) For purposes of this subdivision, a fraudulent claim~~
11 ~~is a claim upon which the provider has been convicted of~~
12 ~~fraud upon the Medi-Cal program.~~

13 ~~(e) Nothing in this section shall prevent the imposition~~
14 ~~of any other civil or criminal penalties to which the~~
15 ~~provider may be liable.~~

16 ~~(f) Any appeal to any action taken pursuant to~~
17 ~~subdivision (b), (c), or (d) is subject to the administrative~~
18 ~~appeals process provided by Section 14171.~~

19 ~~(g) As used in this section, "cost of the audit" includes~~
20 ~~actual hourly wages, travel, and incidental expenses at~~
21 ~~rates allowable by rules adopted by the State Board of~~
22 ~~Control and applicable overhead costs that are incurred~~
23 ~~by employees of the state in administering this chapter~~
24 ~~with respect to the performance of audits.~~

25 ~~(h) This section shall not apply to any clinic licensed~~
26 ~~pursuant to subdivision (a) of Section 1204 of the Health~~
27 ~~and Safety Code.~~

