

AMENDED IN SENATE JULY 3, 2000
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 Sections ~~1265, 1287, 1301, and 1320~~ of, and to add Sections ~~1281.1, 1282.1, 1282.2, 1311, and 1320.5~~ *1241, 1265, 1287, 1301, and 1324* of, and to add Sections *1269.5, 1281.1, 1282.1, 1282.2, 1287.1, and 1311* 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. 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~~ *and exemptions from clinical laboratory 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 make it a crime, punishable as specified, to engage in willful or wanton disregard of a patient's safety that exposes the patient to a substantial risk of, or that causes, serious bodily injury, by affecting the integrity of a biological specimen or the clinical laboratory test or examination result, through improper collection, handling, storage, or labeling of the specimen, or the erroneous transcription or reporting of test or examination results.

The bill would also make it unlawful, and subject to criminal penalties, for any person to: (1) except where exempt provide any form of payment or gratuity for human blood or any other ~~human~~ *biological* 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 biological 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 *who*, 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: yes.

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

- 1 SECTION 1. *Section 1241 of the Business and*
- 2 *Professions Code is amended to read:*
- 3 1241. (a) This chapter applies to all clinical
- 4 laboratories in California or receiving biological
- 5 specimens originating in California for the purpose of



1 performing a clinical laboratory test or examination, and
2 to all persons performing clinical laboratory tests or
3 examinations or engaging in clinical laboratory practice
4 in California or on biological specimens originating in
5 California, except as provided in subdivision (b).

6 (b) This chapter shall not apply to any of the following
7 clinical laboratories, or to persons performing clinical
8 laboratory tests or examinations in any of the following
9 clinical laboratories:

10 (1) Those owned and operated by the United States of
11 America, or any department, agency, or official thereof
12 acting in his or her official capacity to the extent that the
13 Secretary of the federal Department of Health and
14 Human Services has modified the application of CLIA
15 requirements to those laboratories.

16 (2) Public health laboratories, as defined in Section
17 1206.

18 (3) Those that perform clinical laboratory tests or
19 examinations for forensic purposes only.

20 (4) Those that perform clinical laboratory tests or
21 examinations for research and teaching purposes only
22 and do not report or use patient-specific results for the
23 diagnosis, prevention, or treatment of any disease or
24 impairment of, or for the assessment of the health of, an
25 individual.

26 (5) Those that perform clinical laboratory tests or
27 examinations certified by the National Institutes on Drug
28 Abuse only for those certified tests or examinations.
29 However, all other clinical laboratory tests or
30 examinations conducted by the laboratory are subject to
31 this chapter.

32 (6) Those that register with the State Department of
33 Health Services pursuant to subdivision (c) to perform
34 blood glucose testing for the purposes of monitoring a
35 minor child diagnosed with diabetes when the person
36 performing the test has been entrusted with the care and
37 control of the child by the child's parent or legal guardian
38 and provided that all of the following occur:

39 (7) *Those individuals who perform clinical laboratory*
40 *tests or examinations, approved by the federal Food and*



1 *Drug Administration for home use, on their own bodies,*
2 *or on their minor children or legal wards.*

3 (A) The blood glucose monitoring test is performed
4 with a blood glucose monitoring instrument that has been
5 approved by the federal Food and Drug Administration
6 for sale over the counter to the public without a
7 prescription.

8 (B) The person has been provided written
9 instructions by the child's health care provider or an
10 agent of the child's health care provider in accordance
11 with the manufacturer's instructions on the proper use of
12 the monitoring instrument and the handling of any
13 lancets, test strips, cotton balls, or other items used during
14 the process of conducting a blood glucose test.

15 (C) The person, receiving written authorization from
16 the minor's parent or legal guardian, complies with
17 written instructions from the child's health care provider,
18 or an agent of the child's health care provider, regarding
19 the performance of the test and the operation of the blood
20 glucose monitoring instrument, including how to
21 determine if the results are within the normal or
22 therapeutic range for the child, and any restriction on
23 activities or diet that may be necessary.

24 (D) The person complies with specific written
25 instructions from the child's health care provider or an
26 agent of the child's health care provider regarding the
27 identification of symptoms of hypoglycemia or
28 hyperglycemia, and actions to be taken when results are
29 not within the normal or therapeutic range for the child.
30 The instructions shall also contain the telephone number
31 of the child's health care provider and the telephone
32 number of the child's parent or legal guardian.

33 (E) The person records the results of the blood glucose
34 tests and provides them to the child's parent or legal
35 guardian on a daily basis.

36 (F) The person complies with universal precautions
37 when performing the testing and posts a list of the
38 universal precautions in a prominent place within the
39 proximity where the test is conducted.



1 (c) Any place where blood glucose testing is
2 performed pursuant to ~~this section~~ *paragraph (6) of*
3 *subdivision (b)* shall register by notifying the State
4 Department of Health Services in writing no later than
5 30 days after testing has commenced. Registrants
6 pursuant to this subdivision shall not be required to pay
7 any registration or renewal fees nor shall they be subject
8 to routine inspection by the State Department of Health
9 Services.

10 *SEC. 2.* Section 1265 of the Business and Professions
11 Code is amended to read:

12 1265. (a) (1) A clinical laboratory performing
13 clinical laboratory tests or examinations classified as of
14 moderate or of high complexity under CLIA shall obtain
15 a clinical laboratory license pursuant to this chapter. The
16 department shall issue a clinical laboratory license to any
17 person who has applied for the license on forms provided
18 by the department and who is found to be in compliance
19 with this chapter and the regulations pertaining thereto.
20 No clinical laboratory license shall be issued by the
21 department unless the clinical laboratory and its
22 personnel meet the CLIA requirements for laboratories
23 performing tests or examinations classified as of moderate
24 or high complexity, or both.

25 (2) A clinical laboratory performing clinical
26 laboratory tests or examinations subject to a certificate of
27 waiver or a certificate of provider-performed microscopy
28 under CLIA, shall register with the department. The
29 department shall issue a clinical laboratory registration to
30 any person who has applied for the registration on forms
31 provided by the department and is found to be in
32 compliance with this chapter, the regulations pertaining
33 thereto, and the CLIA requirements for either a
34 certificate of waiver or a certificate of
35 provider-performed microscopy.

36 (b) An application for a clinical laboratory license or
37 registration shall include the name or names of the owner
38 or the owners, the name or names of the laboratory
39 director or directors, the name and location of the
40 laboratory, a list of the clinical laboratory tests or



1 examinations performed by the laboratory by name and
2 total number of test procedures and examinations
3 performed annually (excluding tests the laboratory may
4 run for quality control, quality assurance, or proficiency
5 testing purposes). The application shall also include a list
6 of the tests and the test kits, methodologies, and
7 laboratory equipment used, and the qualifications
8 (educational background, training, and experience) of
9 the personnel directing and supervising the laboratory
10 and performing the laboratory examinations and test
11 procedures, and any other relevant information as may
12 be required by the department. If the laboratory is
13 performing tests subject to a provider-performed
14 microscopy certificate, the name of the provider or
15 providers performing those tests shall be included on the
16 application. Application shall be made by the owners of
17 the laboratory and the laboratory directors prior to its
18 opening. A license or registration to conduct a clinical
19 laboratory if the owners are not the laboratory directors
20 shall be issued jointly to the owners and the laboratory
21 directors and the license or registration shall include any
22 information as may be required by the department. The
23 owners and laboratory directors shall be severally and
24 jointly responsible to the department for the
25 maintenance and conduct thereof or for any violations of
26 this chapter and regulations pertaining thereto.

27 (c) The department shall not issue a license or
28 registration until it is satisfied that the clinical laboratory
29 will be operated within the spirit and intent of this
30 chapter, that the owners and laboratory directors are
31 each of good moral character, and that the granting of the
32 license will not be in conflict with the interests of public
33 health.

34 (d) A separate license or registration shall be obtained
35 for each laboratory location, with the following
36 exceptions:

37 (1) Laboratories that are not at a fixed location, that is,
38 laboratories that move from one testing site to another,
39 such as mobile units providing laboratory testing, health
40 screening fairs, or other temporary testing locations, may



1 apply for and obtain one license or registration for the
2 designated primary site or home base, using the address
3 of that primary site.

4 (2) Not-for-profit, or federal, state, or local
5 government laboratories that engage in limited (not
6 more than a combination of 15 moderately complex or
7 waived tests, as defined under CLIA, per license) public
8 health testing may apply for and obtain a single license or
9 registration.

10 (3) Laboratories within a hospital that are located at
11 contiguous buildings on the same campus and under
12 common direction, may file a single application or
13 multiple applications for a license or registration of
14 laboratory locations within the same campus or street
15 address.

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

20 (e) (1) A license or registration shall be valid for ~~the~~
21 ~~calendar year or remainder thereof for which it is issued~~
22 *one year unless revoked or suspended. A clinical*
23 *laboratory license or registration shall be automatically*
24 *revoked if there is 30 days from a major change of*
25 *laboratory directorship or ownership, in which case the.*
26 *The clinical laboratory shall be required to obtain submit*
27 *a completed application for a new clinical laboratory*
28 *license or registration prior to within those 30 days or*
29 *cease engaging in clinical laboratory practice.*

30 (2) *If a clinical laboratory intends to continue to*
31 *engage in clinical laboratory practice during the 30 days*
32 *after a major change in directorship occurs and before the*
33 *laboratory license or registration is automatically*
34 *revoked, the laboratory owner may appoint an interim*
35 *director who meets the requirements of this chapter and*
36 *CLIA. The interim director shall be appointed within five*
37 *business days of the major change of the directorship.*
38 *Written notice shall be provided to the department of the*
39 *appointment of the laboratory director pursuant to this*
40 *paragraph within five business days of the appointment.*



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

7 (g) The department shall be notified in writing by the
8 laboratory owners ~~—or directors within 30 days or~~
9 *delegated representatives of the owners and the*
10 *laboratory directors* of any change in ownership, ~~name,~~
11 ~~location, and by the laboratory owners and directors, 30~~
12 ~~days prior to any change in laboratory directors, including~~
13 ~~any additions or deletions.~~ *directorship, name, or*
14 *location, including the addition or deletion of laboratory*
15 *owners or laboratory directors within 30 days. However,*
16 *notice of change in ownership shall be the responsibility*
17 *of both the current and new owners. Laboratory owners*
18 *and directors to whom the current license or registration*
19 *is issued shall remain jointly and severally responsible to*
20 *the department for the operation, maintenance, and*
21 *conduct of the clinical laboratory and for any violations of*
22 *this chapter or the regulations adopted thereunder,*
23 *including any failure to provide the notifications required*
24 *by this subdivision, until proper notice is received by the*
25 *department. In addition, failure of the laboratory owners*
26 ~~or~~ *and directors to notify the department at least 30 days*
27 ~~prior to~~ *within 30 days of any change in laboratory*
28 *directors, including any additions or deletions, shall result*
29 *in the automatic revocation of the clinical laboratory's*
30 *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 *(j) (1) Whenever a clinical laboratory ceases*
35 *operations, the laboratory shall notify the department of*
36 *this fact, in writing, within 30 calendar days from the date*
37 *a clinical laboratory ceases operation. For purposes of this*
38 *subdivision, a laboratory ceases operations when it*
39 *suspends the performance of all clinical laboratory tests*



1 or examinations for 30 calendar days at the location for
2 which the clinical laboratory is licensed or registered.

3 (2) (A) Notwithstanding any other provision of law,
4 all clinical laboratories, including those laboratories that
5 cease operations, shall preserve medical records and
6 laboratory records, as defined in this section, for three
7 years from the date of testing, examination, or purchase,
8 unless a longer retention period is required pursuant to
9 any other provision of law, and shall maintain an ability
10 to provide those records when requested by the
11 department or any duly authorized representative of the
12 department.

13 (B) For purposes of this subdivision, “medical
14 records” means the test requisition or test authorization,
15 or the patient’s chart or medical record, if used as the test
16 requisition, the final and preliminary test or examination
17 result, and the name of the person contacted if the
18 laboratory test or examination result indicated an
19 imminent life-threatening result or was of panic value.

20 (C) For purposes of this subdivision, “laboratory
21 records” means records showing compliance with CLIA
22 and this chapter during a laboratory’s operation that are
23 actual or true copies, either photocopies or electronically
24 reproducible copies, of records for patient test
25 management, quality control, quality assurance, and all
26 invoices documenting the purchase or lease of laboratory
27 equipment and test kits, reagents, or media.

28 (D) Information contained in medical records and
29 laboratory records shall be confidential, and shall be
30 disclosed only to authorized persons in accordance with
31 federal, state, and local laws.

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

37 ~~(4) Failure to retain records as required by this section~~
38 ~~shall also subject a laboratory to a civil penalty of one~~
39 ~~thousand dollars (\$1,000) for each record not retained~~
40 ~~and the recovery of any department costs.~~



1 ~~SEC. 2.—~~

2 *SEC. 3. Section 1269.5 is added to the Business and*
3 *Professions Code, to read:*

4 *1269.5. The department may deny, suspend, or*
5 *revoke any license, registration, or certificate issued*
6 *under this chapter for performance by unlicensed*
7 *laboratory personnel of any activity that is not authorized*
8 *by Section 1269.*

9 *SEC. 4. Section 1281.1 is added to the Business and*
10 *Professions Code, to read:*

11 *1281.1. It is unlawful for any person, including a*
12 *person who owns, operates, or directs a clinical*
13 *laboratory, to provide any form of payment or gratuity for*
14 *human blood or any other ~~human~~ biological specimen*
15 *provided for the purpose of clinical laboratory testing or*
16 *clinical laboratory ~~practice.~~*

17 ~~*SEC. 3.—practice, unless the person is serving as an*~~
18 ~~*agent of a clinical laboratory or another facility legally*~~
19 ~~*utilizing those specimens only for purposes of research or*~~
20 ~~*teaching or for quality assurance purposes, or is an entity*~~
21 ~~*licensed under Chapter 4 (commencing with Section*~~
22 ~~*1600) of Division 2 of the Health and Safety Code.*~~

23 *SEC. 5. Section 1282.1 is added to the Business and*
24 *Professions Code, to read:*

25 *1282.1. It is unlawful for any person to solicit, or to*
26 *provide any form of payment or gratuity to, another*
27 *person for the procurement of that person's blood, or any*
28 *other specimen from his or her body, unless the solicitor*
29 *is serving as the agent of either a clinical laboratory or*
30 *another facility legally utilizing those specimens for*
31 *performing tests or examinations only for purposes of*
32 *research or teaching, ~~only~~ or for quality assurance*
33 *purposes, or is an entity licensed under Chapter 4*
34 *(commencing with Section 1600) of Division 2 of the*
35 *Health and Safety Code.*

36 ~~SEC. 4.—~~

37 *SEC. 6. Section 1282.2 is added to the Business and*
38 *Professions Code, to read:*

39 *1282.2. It is unlawful for any person to perform*
40 *venipuncture, skin puncture, or arterial puncture unless*



1 he or she is authorized to do so under this chapter, the
2 regulations adopted thereunder, or under other
3 provisions of law.

4 ~~SEC. 5.—~~

5 *SEC. 7.* Section 1287 of the Business and Professions
6 Code is amended to read:

7 1287. (a) Any person who violates any provision of
8 this chapter is guilty of a misdemeanor punishable upon
9 conviction by imprisonment in the county jail for a period
10 not exceeding six months or by fine not exceeding one
11 thousand dollars (\$1,000) or by both.

12 (b) Notwithstanding subdivision (a), a violation of
13 Section 1281.1, 1282.1, or 1282.2 is a public offense and is
14 punishable upon a first conviction by imprisonment in
15 the county jail for not more than one year, or by
16 imprisonment in the state prison, or by a fine not
17 exceeding ten thousand dollars (\$10,000), or by both that
18 imprisonment and fine. A second or subsequent
19 conviction is punishable by imprisonment in the state
20 prison.

21 ~~SEC. 6.—~~

22 *SEC. 8.* Section 1287.1 is added to the Business and
23 Professions Code, to read:

24 1287.1. (a) *Willful or wanton disregard for a patient's*
25 *safety that exposes the patient to a substantial risk of, or*
26 *that causes, serious bodily injury, by affecting the*
27 *integrity of a biological specimen or the clinical*
28 *laboratory test or examination result, through improper*
29 *collection, handling, storage, or labeling of the specimen*
30 *or through the erroneous transcription or reporting of*
31 *test or examination results, shall be punishable by*
32 *imprisonment in the county jail for not more than one*
33 *year or in state prison for not more than 10 years, or by*
34 *a fine not exceeding fifty thousand dollars (\$50,000) or by*
35 *both imprisonment and fine.*

36 (b) *For purposes of this chapter, "serious bodily*
37 *injury" means bodily injury that involves any of the*
38 *following:*

- 39 (1) *Substantial risk of death.*
40 (2) *Extreme physical pain.*



1 (3) *Protracted and obvious disfigurement.*

2 (4) *Protracted loss or impairment of the function of a*
3 *bodily member, organ, or mental faculty.*

4 SEC. 9. Section 1301 of the Business and Professions
5 Code is amended to read:

6 1301. (a) The annual renewal fee for a clinical
7 laboratory license or registration set under this chapter
8 shall be paid during the 30-day period before the
9 expiration date of the license or registration. Failure to
10 pay the annual fee in advance during the time the license
11 remains in force shall, ipso facto, work a forfeiture of said
12 license after a period of 60 days from the expiration date
13 of the license or registration.

14 (b) The department shall give written notice to all
15 persons licensed pursuant to Sections 1260, 1260.1, 1261,
16 1261.5, 1262, 1264, or 1270 30 days in advance of the
17 regular renewal date that a renewal fee has not been paid.
18 In addition, the department shall give written notice to
19 licensed clinical laboratory bioanalysts or doctoral degree
20 specialists and clinical laboratory scientists or limited
21 clinical laboratory scientists by registered or certified
22 mail 90 days in advance of the expiration of the fifth year
23 that a renewal fee has not been paid and if not paid before
24 the expiration of the fifth year of delinquency the licensee
25 may be subject to reexamination.

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

35 (d) If the license is not renewed within 60 days after
36 its expiration, the licensee, as a condition precedent to
37 renewal, shall pay the delinquency fee identified in
38 subdivision (l) of Section 1300, in addition to the renewal
39 fee in effect on the last preceding regular renewal date.
40 Payment of the delinquency fee will not be necessary if



1 within 60 days of the license expiration date the licensee
2 files with the department an application for inactive
3 status.

4 ~~SEC. 7.—~~

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

7 1311. The department shall have ~~seven~~ *three* years
8 from the date of ~~discovery by the department~~ of a
9 violation of this chapter or of a regulation adopted
10 thereunder to file an action in a court of competent
11 jurisdiction.

12 ~~SEC. 8. Section 1320 of the Business and Professions~~
13 ~~Code is amended to read:~~

14 1320. The department may deny, suspend, or revoke
15 any license or registration issued under this chapter for
16 any of the following reasons:

17 (a) ~~Conduct involving moral turpitude or dishonest~~
18 ~~reporting of tests.~~

19 (b) ~~Violation by the applicant, licensee, or registrant~~
20 ~~of this chapter or any rule or regulation adopted pursuant~~
21 ~~thereto.~~

22 (c) ~~Aiding, abetting, or permitting the violation of this~~
23 ~~chapter, the rules or regulations adopted under this~~
24 ~~chapter or the Medical Practice Act, Chapter 5~~
25 ~~(commencing with Section 2000) of Division 2.~~

26 (d) ~~Permitting a licensed trainee to perform tests or~~
27 ~~procure specimens unless under the direct and~~
28 ~~responsible supervision of a person duly licensed under~~
29 ~~this chapter or physician and surgeon other than another~~
30 ~~licensed trainee.~~

31 (e) ~~Violation of any provision of this code governing~~
32 ~~the practice of medicine and surgery.~~

33 (f) ~~Proof that an applicant, licensee, or registrant has~~
34 ~~made false statements in any material regard on the~~
35 ~~application for a license, registration, or renewal issued~~
36 ~~under this chapter.~~

37 (g) ~~Conduct inimical to the public health, morals,~~
38 ~~welfare, or safety of the people of the State of California~~
39 ~~in the maintenance or operation of the premises or~~



1 ~~services for which a license or registration is issued under~~
2 ~~this chapter.~~

3 ~~(h) Conduct that may cause harm to a patient by~~
4 ~~affecting the integrity of a biological specimen or the~~
5 ~~clinical laboratory test or examination result, through~~
6 ~~improper collection, handling, storage, or labeling of the~~
7 ~~specimen or the erroneous transcription or reporting of~~
8 ~~test or examination results.~~

9 ~~(i) Violation of any of the prenatal laws or regulations~~
10 ~~pertaining thereto in Chapter 2 (commencing with~~
11 ~~Section 120675) of Part 3 of Division 105 of the Health and~~
12 ~~Safety Code and Article 1 (commencing with Section~~
13 ~~1125) of Group 4 of Subchapter 1 of Chapter 2 of Part 1~~
14 ~~of Title 17 of the California Code of Regulations.~~

15 ~~(j) Knowingly accepting an assignment for clinical~~
16 ~~laboratory tests or specimens from and the rendering of~~
17 ~~a report thereon to persons not authorized by law to~~
18 ~~submit those specimens or assignments.~~

19 ~~(k) Rendering a report on clinical laboratory work~~
20 ~~actually performed in another clinical laboratory without~~
21 ~~designating clearly the name and address of the~~
22 ~~laboratory in which the test was performed.~~

23 ~~(l) Conviction of a felony or of any misdemeanor~~
24 ~~involving moral turpitude under the laws of any state or~~
25 ~~of the United States arising out of or in connection with~~
26 ~~the practice of clinical laboratory technology. The record~~
27 ~~of conviction or a certified copy thereof shall be~~
28 ~~conclusive evidence of that conviction.~~

29 ~~(m) Unprofessional conduct.~~

30 ~~(n) The use of drugs or alcoholic beverages to the~~
31 ~~extent or in a manner as to be dangerous to a person~~
32 ~~licensed under this chapter, or any other person to the~~
33 ~~extent that that use impairs the ability of the licensee to~~
34 ~~conduct with safety to the public the practice of clinical~~
35 ~~laboratory technology.~~

36 ~~(o) Misrepresentation in obtaining a license or~~
37 ~~registration.~~

38 ~~(p) Performance of, or representation of the~~
39 ~~laboratory as entitled to perform, a clinical laboratory test~~
40 ~~or examination or other procedure that is not within the~~



1 specialties or subspecialties, or category of laboratory
2 procedures authorized by the license or registration.

3 (q) Refusal of a reasonable request of HCFA, a HCFA
4 agent, the department, or any employee, agent or
5 contractor of the department, for permission to inspect,
6 pursuant to this chapter, the laboratory and its operations
7 and pertinent records during the hours the laboratory is
8 in operation.

9 (r) Failure to comply with reasonable requests of the
10 department for any information, work, or materials that
11 the department concludes is necessary to determine the
12 laboratory's continued eligibility for its license or
13 registration, or its continued compliance with this
14 chapter or the regulations adopted under this chapter.

15 (s) Failure to comply with a sanction imposed under
16 Section 1310.

17 (t) Proof that the applicant or licensee has used any
18 degree or certificate as a means of qualifying for
19 licensure, if the degree or certificate has been purchased
20 or procured by barter or by any unlawful means or
21 obtained from any institution that, at the time the degree,
22 certificate, or title was obtained, was not recognized or
23 accredited by the state department of education of the
24 state where the institution is or was located to give
25 training in the field of study in which the degree,
26 certificate, or title is claimed.

27 (u) Performance by unlicensed laboratory personnel
28 of any activity that is not authorized by Section 1269.

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

31 1320.5. A violation of Section 1320 that results in
32 bodily harm to a human being or involves the taking of
33 blood from a minor child or dependent adult shall be
34 punishable by imprisonment in the county jail for not
35 more than one year, or in a state prison for not more than
36 10 years, or by a fine not exceeding fifty thousand dollars
37 (\$50,000) or by both imprisonment and fine.

38 SEC. 10.—

39 SEC. 11. Section 1324 of the Business and Professions
40 Code is amended to read:



1 1324. ~~No~~ Except for a person or entity whose license
2 was revoked automatically under Section 1265, no person
3 or entity who has owned or operated a clinical laboratory
4 that had its license or registration revoked may, within
5 two years of the revocation of the license or registration,
6 own or operate a laboratory for which a license or
7 registration has been issued under this chapter.

8 SEC. 12. Section 14040 of the Welfare and Institutions
9 Code is amended to read:

10 14040. (a) Each contract for fiscal intermediary
11 services shall allow, to the extent practicable, providers to
12 utilize electronic means for transmitting claims to the
13 fiscal intermediary contractor. Means of transmission,
14 and the manner and format used, shall be approved by
15 the director. In determining which electronic means are
16 acceptable, the director shall consider magnetic tape,
17 computer-to-computer via telephone, diskettes, and any
18 other methods which may become available through
19 technological advancements.

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

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

27 ~~(2) Assign~~ assign signature authority for transmission
28 of claims to ~~the authorized billing agent~~ *the provider's*
29 *authorized representative or the registered billing agent*
30 *of the provider identified to the department pursuant to*
31 *subdivision (C) of Section 14040.5.*

32 (c) The department shall develop reasonable
33 standards for participation and continued participation
34 by *providers and* billing agents in the use of ~~claim~~ *claims*
35 transmission methods utilized pursuant to this section.
36 These standards shall be designed to ensure that
37 *providers and* billing agents submit technically complete
38 claims and to reduce the potential for fraud and abuse.
39 *The department shall notify providers and billing agents*
40 *of any planned changes to the claims transmission*



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

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

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

27 ~~SEC. 11.—~~

28 (f) *Each provider and billing agent submitting claims*
29 *shall be responsible for ensuring that each claim*
30 *submitted for reimbursement for services, goods,*
31 *supplies, or merchandise rendered or supplied by the*
32 *provider to a Medi-Cal beneficiary or under the Medi-Cal*
33 *program meets the standards established by the*
34 *department pursuant to this section.*

35 SEC. 13. Section 14040.1 is added to the Welfare and
36 Institutions Code, to read:

37 14040.1. (a) “Billing agent” or “billing agent of the
38 provider” means any individual, partnership, group,
39 association, corporation, institution, or entity, and the
40 officers, directors, owners, managing employees, or



1 agents of any partnership, group, association,
2 corporation, institution, or entity, that submits claims on
3 behalf of the provider, as defined in Section 14043.1, for
4 reimbursement for services, goods, supplies, or
5 merchandise rendered or provided directly or indirectly
6 to a Medi-Cal beneficiary or under the Medi-Cal
7 program. As used in this section a billing agent shall not
8 ~~include a nonmanaging salaried employee of a provider.~~
9 *include an employee or authorized representative of a*
10 *provider billing solely for that provider; a provider wholly*
11 *owned entity billing solely for the provider; or a clinic*
12 *licensed pursuant to subdivision (a) of Section 1204 of the*
13 *Health and Safety Code or exempt from licensure*
14 *pursuant to subdivision (c) of Section 1206 of the Health*
15 *and Safety Code when preparing and submitting claims*
16 *for services provided on behalf of the clinic. For purposes*
17 *of this subdivision, an authorized representative shall be*
18 *either an individual who is an employee of the provider*
19 *or an individual with a familial relationship to the*
20 *provider. For purposes of this section and Section 14040.5,*
21 *an authorized representative shall be considered a*
22 *provider.*

23 (b) The department shall establish standards for the
24 registration or continued registration of each billing
25 agent. The standards shall establish time periods, no
26 longer than a year from the date the standards become
27 effective, after which, no ~~person or entity~~ *billing agent*
28 shall submit a claim on behalf of a provider, as defined in
29 Section 14043.1, for reimbursement for services, goods,
30 supplies, or merchandise rendered or provided directly
31 or indirectly by the provider to a Medi-Cal beneficiary or
32 under the Medi-Cal program, unless that ~~person or entity~~
33 *billing agent* has been registered with the department as
34 ~~a billing agent~~. The department shall establish the
35 standards for the registration or continued registration of
36 billing agents pursuant to this subdivision, *in consultation*
37 *with interested parties*, by the adoption of emergency
38 regulations in accordance with the Administrative
39 Procedure Act (Chapter 3.5 (commencing with Section
40 11340) of Part 1 of Division 3 of Title 2 of the Government



1 Code). The adoption of these emergency regulations or
2 readoption of the regulations shall be deemed to be an
3 emergency necessary for the immediate preservation of
4 the public peace, health and safety, or general welfare.
5 Notwithstanding Chapter 3.5 (commencing with Section
6 11340 of Part 1 of Division 3 of Title 2 of the Government
7 Code, emergency regulations adopted or readopted
8 pursuant to this subdivision shall be exempt from review
9 by the Office of Administrative Law. The emergency
10 regulations authorized by this subdivision shall be
11 submitted to the Office of Administrative Law for filing
12 with the Secretary of State and publication in the
13 California Code of Regulations.

14 (c) The department may complete a background
15 check on applicants for registration or continued
16 registration as a billing agent and ~~on those persons who~~
17 ~~currently act as billing agents, billing intermediaries,~~
18 ~~authorized representatives, or any other person or entity~~
19 ~~billing for services rendered under this chapter, for the,~~
20 *for the* purpose of verifying the accuracy of information
21 provided by an applicant for registration or continued
22 registration as a billing agent or in order to prevent fraud
23 and abuse. The background check may include, but not
24 be limited to, onsite inspection, review of business
25 records, and data searches.

26 (d) As a condition of registration, or continued
27 registration, as a billing agent, an applicant for
28 registration as a billing agent shall provide to the
29 department a surety bond of not less than fifty thousand
30 dollars (\$50,000).

31 ~~(e) A billing agent's compensation for the submission~~
32 ~~of claims to the Medi-Cal program on behalf of a provider~~
33 ~~shall be related to the cost of processing the billing, but~~
34 ~~shall not be related on a percentage or other basis, such~~
35 ~~as a contingency fee, to the amount that is billed or~~
36 ~~collected. A billing agent's compensation for the~~
37 ~~submission of claims to the Medi-Cal program on behalf~~
38 ~~of a provider shall not be dependent upon the collection~~
39 ~~of the payment.~~



1 ~~(f) Each billing agent shall be liable for ensuring that~~
 2 ~~each claim, for reimbursement for services, goods,~~
 3 ~~supplies, or merchandise rendered or supplied by the~~
 4 ~~provider to a Medi-Cal beneficiary or under the Medi-Cal~~
 5 ~~program, is a technically complete claim, as defined in~~
 6 ~~subdivision (e) of Section 14040.~~

7 ~~SEC. 12.—~~

8 *SEC. 14.* Section 14040.5 of the Welfare and
 9 Institutions Code is amended to read:

10 14040.5. (a) Billing agents shall register with the
 11 director and shall obtain a unique identifier prior to
 12 submitting any claims for reimbursement. This unique
 13 identifier shall be part of each claim for reimbursement
 14 submitted by the billing agent.

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

17 (1) Authorize a billing agent to submit claims,
 18 including electronic claims, on behalf of the provider for
 19 reimbursement for services, goods, supplies, or
 20 merchandise provided by the provider to the Medi-Cal
 21 program.

22 (2) Assign signature authority for transmission of
 23 claims by the authorized billing agent. ~~Any~~

24 *(c) If a contract, as described in subdivision (b), is*
 25 *entered into, the contract shall meet the requirements of*
 26 *Section 447.10 of Title 42 of the Code of Federal*
 27 *Regulations or shall have been approved by the federal*
 28 *Health Care Financing Administration for purposes of*
 29 *the Medicare program.*

30 *(d) Any provider using intending to use a billing agent*
 31 *to submit claims for reimbursement to the Medi-Cal*
 32 *program shall, at least 30 days prior to any claims for*
 33 *reimbursement being submitted by the billing agent,*
 34 *provide written notification to the director of the name,*
 35 *including the known legal and any known fictitious or*
 36 *“doing business as” names used by the billing agent, and*
 37 *address, and telephone number of the billing agent.*

38 ~~(e)—~~

39 *(e) (1) Any Medi-Cal claim submitted by a billing*
 40 *agent or provider failing to comply with the*



1 requirements of this section or Section 14040 or 14040.1 or
2 the regulations adopted under these sections, shall be
3 subject to nonpayment by the director.

4 (2) The director may deny, suspend, or revoke the
5 registration or continued registration of a billing agent
6 based upon any of the following:

7 (A) Failure of the billing agent or provider to comply
8 with this section, Section ~~14040~~ or 14040.1, or the
9 regulations adopted under these sections.

10 (B) Determination by the director that the billing
11 agent has submitted ~~a claim~~ *claims* containing false or
12 misleading information ~~regarding services rendered, or~~
13 ~~allegedly rendered, or regarding goods, supplies, or~~
14 ~~merchandise furnished or allegedly furnished, or that the~~
15 ~~billing agent has demonstrated a pattern of filing claims~~
16 ~~which are not technically complete claims as defined in~~
17 ~~subdivision (e) of Section 14040.~~ *The director shall not*
18 *make this determination when the falsity or misleading*
19 *nature of the information was the result of the provider's*
20 *actions and not those of the billing agent.*

21 (C) The determination by the director that the billing
22 agent is under investigation for fraud or abuse *by the*
23 *department or any federal, state, or local law*
24 *enforcement agency*, has been convicted of fraud or
25 abuse in a criminal proceeding, found liable for fraud or
26 abuse in a civil proceeding, or ~~settled a criminal or civil~~
27 ~~proceeding alleging fraud or abuse.~~ *has entered into a*
28 *settlement in lieu of conviction for fraud or abuse in any*
29 *government program, within the previous 10 years.*

30 (3) The director shall notify *in writing* the billing
31 agent and each provider utilizing the services of the
32 billing agent of the denial, suspension, or revocation of
33 the billing agent's registration or continued registration
34 ~~and the effective date thereof,~~ *which shall take effect 15*
35 *days from the date of the notification. To the extent*
36 *allowed by federal law, the director may waive any claims*
37 *submission requirement to assist a provider in submitting*
38 *or resubmitting claims to the Medi-Cal program that*
39 *were delayed because of the denial, suspension, or*
40 *revocation, of the billing agent's registration or continued*



1 *registration*. Notwithstanding Section 100171 of the
 2 Health and Safety Code, proceedings after the imposition
 3 of denial, suspension, or revocation pursuant to this
 4 subdivision shall be in accordance with Section 14043.65,
 5 except that this subdivision shall not apply where the
 6 denial, suspension, or revocation of a billing agent’s
 7 registration or continued registration is based upon
 8 conviction for any crime involving fraud or abuse of the
 9 Medi-Cal program or the federal medicaid or Medicare
 10 programs, or exclusion by the federal government from
 11 the medicaid or Medicare programs. In those instances
 12 and notwithstanding any other provision of law, the
 13 denial, suspension, or revocation shall be automatic and
 14 not subject to *administrative* appeal or hearing.

15 ~~(d)~~

16 (f) As used in this section, “provider” has the same
 17 meaning as defined in Section 14043.1.

18 ~~SEC. 13.—~~

19 *SEC. 15.* Section 14043.1 of the Welfare and
 20 Institutions Code is amended to read:

21 14043.1. As used in this article:

22 (a) “Abuse” means either of the following:

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

30 (2) Practices that are inconsistent with sound medical
 31 practices and result in reimbursement by the federal
 32 medicaid and Medicare programs, the Medi-Cal program
 33 or other health care programs operated, or financed in
 34 whole or in part, by the federal government or any state
 35 or local agency in this state or any other state, for services
 36 that are unnecessary or for substandard items or services
 37 that fail to meet professionally recognized standards for
 38 health care.

39 (b) “Applicant” means any individual, partnership,
 40 group, association, corporation, institution, or entity, and



1 the officers, directors, owners, managing employees, or
2 agents thereof, that applies to the department for
3 enrollment as a provider in the Medi-Cal program.

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

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

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

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

15 (4) An individual or entity has entered into
16 participation in a first offender, deferred adjudication, or
17 other program or arrangement where judgment of
18 conviction has been withheld.

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

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

33 (f) “Enrolled or enrollment in the Medi-Cal program”
34 means authorized under any and all processes by the
35 department or its agents or contractors to receive,
36 directly or indirectly, reimbursement for the provision of
37 services, goods, supplies, or merchandise to a Medi-Cal
38 beneficiary.

39 (g) “Professionally recognized standards of health
40 care” means statewide or national standards of care,



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

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

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

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

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

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

29 (C) Fiscal agents or contractors, or private insurance
30 companies.

31 (D) State or local professional societies.

32 (E) Any other sources deemed appropriate by the
33 department.

34 ~~SEC. 14.~~

35 *SEC. 16.* Section 14043.2 of the Welfare and
36 Institutions Code is amended to read:

37 14043.2. (a) Whether or not regulations for
38 certification are adopted under Section 14043.15, in order
39 to be enrolled as a provider, or for enrollment as a
40 provider to continue, an applicant or provider may be



1 required to sign a provider agreement and shall disclose
2 all information as required in federal medicaid
3 regulations and any other information required by the
4 department. Applicants, providers, and persons with an
5 ownership or control interest, as defined in federal
6 medicaid regulations, shall submit their social security
7 number or numbers to the department, to the full extent
8 allowed under federal law. The director may designate
9 the form of a provider agreement by provider type.
10 Failure to disclose the required information, or the
11 disclosure of false information, shall result in denial of the
12 application for enrollment or shall make the provider
13 subject to temporary suspension from the Medi-Cal
14 program, which shall include temporary deactivation of
15 all provider numbers used by the provider to obtain
16 reimbursement from the Medi-Cal program.

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

25 ~~SEC. 15.~~—

26 *SEC. 17.* Section 14043.34 is added to the Welfare and
27 Institutions Code, to read:

28 14043.34. (a) As a condition of a pharmacy's
29 participation in the Medi-Cal program, the pharmacy
30 shall have in stock and regularly dispense prescription
31 drugs.

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

35 (1) Any drug that bears the legend: "R_x Only" or
36 "Caution: federal law prohibits dispensing without
37 prescription" or words of similar import.

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



1 ~~SEC. 16.—~~

2 *SEC. 18.* Section 14043.36 of the Welfare and
3 Institutions Code is amended to read:

4 14043.36. (a) The department shall not enroll any
5 applicant that has been convicted of any felony or
6 misdemeanor involving fraud or abuse in any
7 government program, or related to neglect or abuse of a
8 patient in connection with the delivery of a health care
9 item or service, or in connection with the interference
10 with or obstruction of any investigation into health care
11 related fraud or abuse or that has been found liable for
12 fraud or abuse in any civil proceeding, or that has entered
13 into a settlement in ~~a civil or criminal proceeding alleging~~
14 *lieu of conviction for* fraud or abuse in any government
15 program, within the previous 10 years. In addition, the
16 department may deny enrollment to any applicant that,
17 at the time of application, is under investigation by *the*
18 *department or* any state, local, or federal government *law*
19 *enforcement* agency for fraud or abuse pursuant to
20 Subpart A (commencing with Section 455.12) of Part 455
21 of Title 42 of the Code of Federal Regulations. Except
22 where there has been a settlement, the department shall
23 not deny enrollment to an otherwise qualified applicant
24 whose felony or misdemeanor charges did not result in a
25 conviction solely on the basis of the prior charges. If it is
26 discovered that a provider is under investigation by *the*
27 *department or* any state, local, or federal government *law*
28 *enforcement* agency for fraud or abuse, that provider
29 shall be subject to temporary suspension from the
30 Medi-Cal program, which shall include temporary
31 deactivation of all provider numbers used by the provider
32 to obtain reimbursement from the Medi-Cal program.

33 (b) The director shall notify *in writing* the provider of
34 the temporary suspension and deactivation of the
35 provider's Medi-Cal provider number or numbers ~~and~~
36 ~~the effective date thereof, which shall take effect 15 days~~
37 *from the date of the notification.* Notwithstanding
38 Section 100171 of the Health and Safety Code,
39 proceedings after the imposition of sanctions provided for



1 in subdivision (a) shall be in accordance with Section
2 14043.65.

3 ~~SEC. 17.—~~

4 *SEC. 19.* Section 14043.37 of the Welfare and
5 Institutions Code is amended to read:

6 14043.37. The department may complete a
7 background check on applicants for the purpose of
8 verifying the accuracy of the information provided to the
9 department for purposes of enrolling in the Medi-Cal
10 program and in order to prevent fraud and abuse. The
11 background check may include, but is not limited to, the
12 following:

- 13 (a) Onsite inspection prior to enrollment.
- 14 (b) Review of business records.
- 15 (c) Data searches.

16 ~~SEC. 18.—~~

17 *SEC. 20.* 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 *individual or entity that is suspended,* excluded, or
28 otherwise ~~made ineligible~~ *ineligible because of a sanction*
29 to receive, directly or indirectly, reimbursement from
30 the Medi-Cal program and the individual or entity ~~has~~
31 ~~previously been~~ *is* listed on either the Suspended and
32 Ineligible Provider List, published by the department, to
33 identify suspended and otherwise ineligible providers, or
34 any list published by the federal Office of Inspector
35 General regarding the suspension or exclusion of
36 individuals or entities from the federal Medicare and
37 medicaid programs, to identify suspended, excluded, or
38 otherwise ineligible providers.

39 (b) Notwithstanding Section 100171 of the Health and
40 Safety Code, the imposition of the sanction provided for



1 in subdivision (a) shall be appealable in accordance with
2 Section 14043.65.

3 ~~SEC. 19.—~~

4 *SEC. 21.* Section 14043.62 is added to the Welfare and
5 Institutions Code, to read:

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

26 (b) For purposes of this section:

27 (1) “Mailing address” means the address that the
28 provider has identified to the department in its
29 application for enrollment as the address at which it
30 wishes to receive general program correspondence.

31 (2) “Pay to address” means the address that the
32 provider has identified to the department in its
33 application for enrollment as the address at which it
34 wishes to receive warrants.

35 (3) “Service or business address” means the address
36 that the provider has identified to the department in its
37 application for enrollment as the address at which the
38 provider will provide services to program beneficiaries.

39 ~~SEC. 20.—~~



1 SEC. 22. Section 14043.65 of the Welfare and
2 Institutions Code is amended to read:

3 14043.65. (a) Notwithstanding any other provision of
4 law, any applicant whose application for enrollment as a
5 provider or whose certification is denied; or any provider
6 who is denied continued enrollment or certification, who
7 has been temporarily suspended, who has had payments
8 withheld, who has had one or more provider numbers
9 used to obtain reimbursement from the Medi-Cal
10 program deactivated pursuant to this article or Section
11 14107.11, or who has had a civil penalty imposed pursuant
12 to Section 14123.25; or any billing agent, as defined in
13 Section 14040, when the billing agent's registration or
14 continued registration has been denied, suspended, or
15 revoked, pursuant to subdivision (c) of Section 14040.5,
16 may appeal this action by submitting a written appeal,
17 including any supporting evidence, to the director or the
18 director's designee. Where the appeal is of a withholding
19 of payment pursuant to Section 14107.11, the appeal to
20 the director or the director's designee shall be limited to
21 the issue of the reliability of the ~~information~~ or evidence
22 supporting the withhold and shall not encompass fraud or
23 abuse. The appeal procedure shall not include a formal
24 administrative hearing under the Administrative
25 Procedure Act and shall not result in reactivation of any
26 deactivated provider numbers during appeal. An
27 applicant or provider that files an appeal pursuant to this
28 section shall submit the written appeal along with all
29 pertinent documents and all other relevant evidence to
30 the director or to the director's designee within 60 days
31 of the date of notification of the department's action. The
32 director or the director's designee shall review all of the
33 relevant materials submitted and shall issue a decision
34 within 90 days of the receipt of the appeal. The decision
35 may provide that the action taken should be upheld,
36 continued, or reversed, in whole or in part. The decision
37 of the director or the director's designee shall be final.
38 Any further appeal shall be required to be filed in
39 accordance with Section 1085 of the Code of Civil
40 Procedure.

1 (b) No applicant whose application for enrollment, as
 2 a provider, has been denied pursuant to Section 14043.2,
 3 14043.36, or 14043.4 may reapply for a period of three
 4 years from the date the application is denied ~~or from the~~
 5 ~~date of final action by the director or the director's~~
 6 ~~designee under this section if the denial is appealed.~~
 7 *Where the provider has appealed the denial, the*
 8 *three-year period shall commence upon the date of final*
 9 *action by the director or the director's designee.*

10 ~~SEC. 21.~~

11 *SEC. 23.* Section 14043.7 of the Welfare and
 12 Institutions Code is amended to read:

13 14043.7. (a) The department may make
 14 unannounced visits to any applicant or to any provider for
 15 the purpose of determining whether enrollment,
 16 continued enrollment, or certification is warranted, or as
 17 necessary for the administration of the Medi-Cal
 18 program. At the time of the visit, the applicant or
 19 provider shall be required to demonstrate an established
 20 place of business appropriate and adequate for the
 21 services billed or claimed to the Medi-Cal program, as
 22 relevant to his or her scope of practice, as indicated by,
 23 but not limited to, the following:

- 24 (1) Being open and available to the general public.
- 25 (2) Having regularly established and posted business
- 26 hours.
- 27 (3) Having adequate supplies in stock on the premises.
- 28 (4) Meeting all local laws and ordinances regarding
- 29 business licensing and operations.
- 30 (5) Having the necessary equipment and facilities to
- 31 carry out day-to-day business for his or her practice.

32 (b) An unannounced visit pursuant to subdivision (a)
 33 shall be prohibited with respect to clinics licensed under
 34 Section 1204 of the Health and Safety Code, clinics
 35 exempt from licensure under Section 1206 of the Health
 36 and Safety Code, health facilities licensed under Chapter
 37 2 (commencing with Section 1250) of Division 2 of the
 38 Health and Safety Code, and natural persons licensed or
 39 certified under Division 2 (commencing with Section
 40 500) of the Business and Professions Code, the



1 Osteopathic Initiative Act, or the Chiropractic Initiative
2 Act, unless the department has reason to believe that the
3 provider will defraud or abuse the Medi-Cal program or
4 lacks the organizational or administrative capacity to
5 provide services under the program.

6 (c) Failure to remediate *significant* discrepancies in
7 information provided to the department ~~or~~ *by the*
8 *provider or significant* discrepancies that are discovered
9 as a result of an announced or unannounced visit to a
10 provider, *for purposes of enrollment, continued*
11 *enrollment, or certification pursuant to subdivision (a)*
12 shall make the provider subject to temporary suspension
13 from the Medi-Cal program, which shall include
14 temporary deactivation of all provider numbers used by
15 the provider to obtain reimbursement from the Medi-Cal
16 program. The director shall notify *in writing* the provider
17 of the temporary suspension and deactivation of provider
18 numbers, ~~and the effective date thereof which shall take~~
19 *effect 15 days from the date of the notification.*
20 Notwithstanding Section 100171 of the Health and Safety
21 Code, proceedings after the imposition of sanctions in this
22 paragraph shall be in accordance with Section 14043.65.

23 ~~SEC. 22.~~

24 *SEC. 24.* Section 14043.75 of the Welfare and
25 Institutions Code is amended to read:

26 14043.75. The director may, *in consultation with*
27 *interested parties*, by regulation, adopt, readopt, repeal,
28 or amend additional measures to prevent or curtail fraud
29 and abuse. Regulations adopted, readopted, repealed, or
30 amended pursuant to this section shall be deemed
31 emergency regulations in accordance with the
32 Administrative Procedure Act (Chapter 3.5
33 (commencing with Section 11340) of Part 1 of Division 3
34 of Title 2 of the Government Code). These emergency
35 regulations shall be deemed necessary for the immediate
36 preservation of the public peace, health and safety, or
37 general welfare. Emergency regulations adopted,
38 amended, or repealed pursuant to this section shall be
39 exempt from review by the Office of Administrative Law.
40 The emergency regulations authorized by this section



1 shall be submitted to the Office of Administrative Law for
2 filing with the Secretary of State and publication in the
3 California Code of Regulations.

4 ~~SEC. 23.~~

5 *SEC. 25.* Section 14100.75 of the Welfare and
6 Institutions Code is amended to read:

7 14100.75. (a) (1) Each provider and each applicant,
8 as defined in Section 14043.1, when applying for
9 enrollment and continued enrollment, shall provide, to
10 the department, a bond, or other security satisfactory to
11 the department, of an amount determined by the
12 department, pursuant to regulations adopted by the
13 department.

14 (2) The department, in determining the amount of
15 bond or security required by paragraph (1), shall base the
16 determination on the level of estimated billings, and shall
17 not be less than twenty-five thousand dollars (\$25,000).

18 (b) (1) After three years of continuous operation as a
19 provider, a Medi-Cal provider may apply to the
20 department for an exemption from the requirements of
21 subdivision (a).

22 (2) The department shall adopt regulations
23 establishing conditions for the approval or denial of
24 applications for exemption pursuant to paragraph (1).

25 (c) The department shall establish a mechanism to
26 track rates of participation among providers who are
27 subject to the requirement of subdivision (a) to
28 determine if the requirement is a deterrent to Medi-Cal
29 program participation among provider applicants.

30 (d) Subdivisions (a) and (b) ~~do~~ *shall* not apply to
31 natural persons licensed or certified pursuant to Division
32 2 (commencing with Section 500) of the Business and
33 Professions Code, the Osteopathic Initiative Act, or the
34 Chiropractic Initiative Act, or to any clinic licensed
35 pursuant to subdivision (a) of Section 1204 of the Health
36 and Safety Code, *or exempt from licensure under*
37 *subdivision (c) of Section 1206 of the Health and Safety*
38 *Code*, to any health facility licensed under Chapter 2
39 (commencing with Section 1250) of Division 2 of the
40 Health and Safety Code, or to any provider that is



1 operated by a city, county, school district, county office of
2 education, or state special school, *or any professional*
3 *corporation practicing pursuant to the Moscone-Knox*
4 *Professional Corporation Act provided for pursuant to*
5 *Part 4 (commencing with Section 13400) of Division 3 of*
6 *Title 1 of the Corporations Code.*

7 (e) Nothing in this section shall relieve an applicant or
8 provider of durable medical equipment or home health
9 agency services from complying with subdivisions (a)
10 and (b) of Sections 14100.8 and 14100.9, as applicable.

11 ~~SEC. 24.~~—

12 *SEC. 26.* Section 14107 of the Welfare and Institutions
13 Code is amended to read:

14 14107. (a) (1) Any person, including any applicant
15 or provider as defined in Section 14043.1, or billing agent,
16 as defined in Section 14040.1, who engages in any of the
17 activities identified in subdivision (b) is punishable by
18 imprisonment not longer than 10 years, or by fine not
19 exceeding three times the amount of the fraud or
20 improper reimbursement, or by both this fine and
21 imprisonment.

22 (2) If the activity results in serious bodily injury to any
23 person, or bodily injury to a person under 18 years of age,
24 or is a threat to the public health, the person shall be fined
25 in accordance with paragraph (1) or imprisoned in the
26 state prison for not more than 20 years, or both. If the
27 activity results in death, the person shall be fined in
28 accordance with paragraph (1), or imprisoned in the
29 state prison for any term of years or for life, or both.

30 (3) The length of imprisonment under this section
31 shall be determined based on the sentencing guidelines
32 used by the federal government for false or fraudulent
33 claims.

34 (b) (1) A person, with intent to defraud, presents for
35 allowance or payment any false or fraudulent claim for
36 furnishing services or merchandise under this chapter or
37 Chapter 8 (commencing with Section 14200).

38 (2) A person knowingly submits false information for
39 the purpose of obtaining greater compensation than that
40 to which he or she is legally entitled for furnishing



1 services or merchandise under this chapter or Chapter 8
2 (commencing with Section 14200).

3 (3) A person knowingly submits false information for
4 the purpose of obtaining authorization for furnishing
5 services or merchandise under this chapter or Chapter 8
6 (commencing with Section 14200).

7 (4) A person knowingly and willfully executes, or
8 attempts to execute, a scheme or artifice to do either of
9 the following:

10 (A) Defraud the Medi-Cal program or any other
11 health care program administered by the department or
12 its agents or contractors.

13 (B) Obtain, by means of false or fraudulent pretenses,
14 representations, or promises, any of the money or
15 property owned by, or under the custody or control of,
16 the Medi-Cal program or any other health care program
17 administered by the department or its agents or
18 contractors, in connection with the delivery of or
19 payment for health care benefits, services, goods,
20 supplies, or merchandise.

21 (c) For purposes of this section, the following
22 definitions apply:

23 (1) "Serious bodily injury" means bodily injury that
24 involves any of the following:

25 (A) A substantial risk of death.

26 (B) Extreme physical pain.

27 (C) Protracted and obvious disfigurement.

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

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

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

32 (B) Physical pain.

33 (C) Illness.

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

36 (E) Any other injury to the body, no matter how
37 temporary.

38 (d) (1) Any of the following property of a person,
39 including any applicant or provider as defined in Section
40 14043.1, who has engaged in any of the activities subject



1 to fine or imprisonment under subdivision (a), shall be
2 subject to the forfeiture provisions of subdivision (e):

3 (A) Any property, real or personal, involved in a
4 transaction or attempted transaction in violation of this
5 chapter or Chapter 8 (commencing with Section 14200),
6 or any health care program administered by the
7 department, its agents or contractors, or any property
8 traceable to that property.

9 (B) Any property, real or personal, that constitutes, is
10 derived from, or is traceable to, any proceeds obtained
11 directly or indirectly, from a violation of this chapter or
12 Chapter 8 (commencing with Section 14200), or any
13 health care program administered by the department or
14 its agents or contractors.

15 (2) Property subject to forfeiture under this section
16 includes, but is not limited to, real property, including
17 things growing on, affixed to, and found in land, and
18 personal property, including tangible and intangible
19 personal property, including rights, privileges, interests,
20 claims, and securities.

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

31 (f) Upon application of the state, the court may enter
32 a restraining order or injunction, require the execution of
33 a satisfactory performance bond, or take any other action
34 to preserve the availability of property described in
35 subdivision (d) for forfeiture under this section. Upon the
36 filing of information charging a violation of this chapter
37 or Chapter 8 (commencing with Section 14200), or any
38 health care program administered by the department or
39 its agents or contractors and alleging that the property
40 with respect to which the order is sought would, in the



1 event of a conviction, be subject to forfeiture under this
2 section. Prior to the filing of this information, if, after
3 notice to persons appearing to have an interest in the
4 property and opportunity for a hearing, the court
5 determines that there is substantial probability that the
6 state will prevail on the issue of forfeiture and that failure
7 to enter the order will result in the property being
8 destroyed, removed from the jurisdiction of the court, or
9 otherwise made unavailable for forfeiture, and the need
10 to preserve the availability of the property through the
11 entry of the requested order outweighs the hardship on
12 any party against whom the order is to be entered.

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

33 (h) Upon conviction of a person for engaging in the
34 activities subject to fine or imprisonment under
35 subdivision (a), or if the person has entered into a
36 settlement in a civil or criminal proceeding alleging fraud
37 or abuse in the Medi-Cal program or in any other health
38 care program administered by the department or its
39 agents or contractors, the court shall enter a judgment of
40 forfeiture of the property to the state and shall authorize



1 the Attorney General to seize all property ordered
2 forfeited upon such terms and conditions as the court
3 shall deem proper. Following the entry of an order
4 declaring the property forfeited, the court may, upon
5 application of the state, enter appropriate restraining
6 orders or injunctions, require the execution of satisfactory
7 performance bonds, appoint receivers, conservators,
8 appraisers, accountants, or trustees, or take any other
9 action to protect the interest of the state in the property
10 ordered forfeited. Any income accruing to, or derived
11 from, an enterprise or an interest in an enterprise that has
12 been ordered forfeited under this section may be used to
13 offset ordinary and necessary expenses to the enterprise,
14 as required by law, or as necessary to protect the interests
15 of the state or third parties.

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

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



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

4 ~~SEC. 25.—~~

5 SEC. 27. Section 14107.11 of the Welfare and
 6 Institutions Code is amended to read:

7 14107.11. (a) Upon receipt of reliable ~~information or~~
 8 ~~evidence, including evidence that would be inadmissible~~
 9 ~~under the Evidence admissible under the administrative~~
 10 ~~adjudication provisions of Chapter 5 (commencing with~~
 11 ~~Section 11500) of Part 1 of Division 3 of Title 2 of the~~
 12 ~~Government Code, of fraud or willful misrepresentation~~
 13 ~~by a provider as defined in Section 14043.1, under the~~
 14 ~~Medi-Cal program or the commencement of a suspension~~
 15 ~~under Section 14123, the department may do any of the~~
 16 ~~following:~~

17 (1) Collect any Medi-Cal program overpayment
 18 identified through an audit or examination, or any
 19 portion thereof from any provider. Notwithstanding
 20 Section 100171 of the Health and Safety Code, a provider
 21 may appeal the collection of overpayments under this
 22 section pursuant to procedures established in Article 5.3
 23 (commencing with Section 14170). Overpayments
 24 collected under this section shall not be returned to the
 25 provider during the pendency of any appeal and may be
 26 offset to satisfy audit or appeal findings if the findings are
 27 against the provider. Overpayments will be returned to
 28 a provider with interest if findings are in favor of the
 29 provider.

30 (2) Withhold payment for any goods, services,
 31 supplies, or merchandise, or any portion thereof. The
 32 department shall notify the provider within five days of
 33 any withholding of payment under this section. The
 34 notice shall do all of the following:

35 (A) State that payments are being withheld in
 36 accordance with this subdivision and that the withholding
 37 is for a temporary period and will not continue after it is
 38 determined that ~~there is insufficient~~ *the* evidence of
 39 fraud or willful misrepresentation *is insufficient* or when



1 legal proceedings relating to the alleged fraud or willful
2 misrepresentation are complete.

3 (B) Cite the circumstances under which the
4 withholding of the payments will be terminated.

5 (C) Specify, when appropriate, the type or types of
6 claims for which payment is being withheld.

7 (D) Inform the provider of the right to submit written
8 ~~information or evidence, including evidence that would~~
9 ~~be inadmissible under the Evidence Code, for evidence~~
10 *that would be admissible under the administrative*
11 *adjudication provisions of Chapter 5 (commencing with*
12 *Section 11500) of Part 1 of Division 3 of Title 2 of the*
13 *Government Code, for consideration by the department.*

14 (3) Notwithstanding Section 100171 of the Health and
15 Safety Code, a provider may appeal a withholding of
16 payment pursuant to Section 14043.65. Payments
17 withheld under this section shall not be returned to the
18 provider during the pendency of any appeal and may be
19 offset to satisfy audit or appeal findings.

20 (b) The director may, *in consultation with interested*
21 *parties*, adopt regulations to implement this section as
22 necessary. These regulations may be adopted as
23 emergency regulations in accordance with the
24 Administrative Procedure Act (Chapter 3.5
25 (commencing with Section 11340) Part 1 of Division 3 of
26 Title 2 of the Government Code) and the adoption of the
27 regulations shall be deemed to be an emergency and
28 necessary for the immediate preservation of the public
29 peace, health and safety, or general welfare. The director
30 shall transmit these emergency regulations directly to the
31 Secretary of State for filing and the regulations shall
32 become effective immediately upon filing. Upon
33 completion of the formal regulation adoption process and
34 prior to the expiration of the 120-day duration period of
35 emergency regulations, the director shall transmit
36 directly to the Secretary of State the adopted regulations,
37 the rulemaking file, and the certification of compliance
38 as required by subdivision (e) of Section 11346.1 of the
39 Government Code.



1 (c) For purposes of this section, “provider” means any
2 individual, partnership, group, association, corporation,
3 institution, or entity, and the officers, directors,
4 employees, or agents thereof, that provide services,
5 goods, supplies, or merchandise, directly or indirectly, to
6 a Medi-Cal beneficiary, and that has been enrolled in the
7 Medi-Cal program.

8 ~~SEC. 26. Section 14115.5 of the Welfare and~~
9 ~~Institutions Code is amended to read:~~

10 ~~14115.5. (a) Moneys payable or rights existing under~~
11 ~~this chapter shall be subject to any claim, lien or offset of~~
12 ~~the State of California, and any claim of the United States~~
13 ~~of America made pursuant to federal statute, but shall not~~
14 ~~otherwise be subject to enforcement of a money~~
15 ~~judgment or other legal process, and no transfer or~~
16 ~~assignment, at law or in equity, of any right of a provider~~
17 ~~of health care to any payment shall be enforceable against~~
18 ~~the state, a fiscal intermediary or carrier.~~

19 ~~(b) If a provider, as defined in Section 14043.1, is under~~
20 ~~any investigation for fraud or abuse by any state, local, or~~
21 ~~federal government agency, the director may withhold~~
22 ~~the reimbursement of funds due and payable to that~~
23 ~~provider from the Medi-Cal program or any other health~~
24 ~~care program administered by the department or its~~
25 ~~agents or contractors, as assets pending the outcome of~~
26 ~~the investigation of fraud or abuse. The withholding of~~
27 ~~payments authorized by this subdivision shall not be~~
28 ~~subject to Section 14107.11 and, notwithstanding Section~~
29 ~~100171 of the Health and Safety Code or any other~~
30 ~~provision of law, shall not be subject to appeal or hearing.~~

31 ~~SEC. 27.—~~

32 ~~SEC. 28. Section 14123.25 is added to the Welfare and~~
33 ~~Institutions Code, to read:~~

34 ~~14123.25. (a) In lieu of, or in addition to, the~~
35 ~~imposition of any other sanction available to it, including~~
36 ~~the sanctions and penalties authorized under Section~~
37 ~~14123.2 or 14171.6, and as the “single state agency” for~~
38 ~~California vested with authority to administer the~~
39 ~~Medi-Cal program, the department shall exercise the~~
40 ~~authority granted to it in Section 1002.2 of Title 42 of the~~



1 Code of Federal Regulations, and may also impose the
2 mandatory and permissive exclusions identified in
3 Section 1128 of the federal Social Security Act (42 U.S.C.
4 Sec. 1320a-7), and its implementing regulations, and
5 impose civil penalties identified in Section 1128A of the
6 federal Social Security Act (42 U.S.C. Sec. 1320a-7a), and
7 its implementing regulations, against applicants and
8 providers, as defined in Section 14043.1 or against billing
9 agents, as defined in Section 14040.1. The department
10 may also terminate, or refuse to enter into, a provider
11 agreement authorized under Section 14043.2 with an
12 applicant or provider, as defined in Section 14043.1, upon
13 the grounds specified in Section 1866(b)(2) of the federal
14 Social Security Act (42 U.S.C. Sec. 1395cc(b)(2).
15 Notwithstanding Section 100171 of the Health and Safety
16 Code or any other provision of law, any appeal by an
17 applicant, provider, or billing agent of the imposition of
18 a civil penalty, exclusion, or other sanction pursuant to
19 this subdivision shall be in accordance with Section
20 14043.65, except that where the action is based upon
21 conviction for any crime involving fraud or abuse of the
22 Medi-Cal, medicaid, or Medicare programs, or exclusion
23 by the federal government from the medicaid or
24 Medicare programs the action shall be automatic and not
25 subject to appeal or hearing.

26 (b) In addition, the department may impose the
27 intermediate sanctions identified in Section 1846 of the
28 Social Security Act (42 U.S.C. Sec. 1395w-2), and its
29 implementing regulations, against any provider that is a
30 clinical laboratory, as defined in Section 1206 of the
31 Business and Professions Code. The imposition and
32 appeal of this intermediate sanction shall be in
33 accordance with Article 8 (commencing with Section
34 1065) of Chapter 2 of Division 1 of Title 17 of the
35 California Code of Regulations.

36 ~~SEC. 28.—~~

37 *SEC. 29.* Section 14124.1 of the Welfare and
38 Institutions Code is amended to read:

39 14124.1. Each provider, as defined in Section 14043.1,
40 of health care services rendered under the Medi-Cal



1 program or any other health care program administered
2 by the department or its agents or contractors, shall keep
3 and maintain records of each such service rendered, the
4 beneficiary or person to whom rendered, the date the
5 service was rendered, and such additional information as
6 the department may by regulation require. Records
7 herein required to be kept and maintained shall be
8 retained by the provider for a period of three years from
9 the date the service was rendered.

10 ~~SEC. 29.~~

11 *SEC. 30.* Section 14124.2 of the Welfare and
12 Institutions Code is amended to read:

13 14124.2. (a) (1) During normal working hours, the
14 department may make any examination of the books and
15 records of, and may visit and inspect the premises or
16 facilities of, those identified in paragraphs (2) and (3),
17 that it may deem necessary to carry out the provisions of
18 this chapter or Chapter 8 (commencing with Section
19 14200) and regulations adopted thereunder, or the law
20 under which the department or its agents or contractors
21 administer any other health care program.

22 (2) Any applicant or provider, as defined in Section
23 14043.1, pertaining to services, goods, supplies, or
24 merchandise rendered or supplied, directly or indirectly,
25 or to be rendered or supplied, directly or indirectly, to
26 any beneficiary under this chapter or Chapter 8
27 (commencing with Section 14200).

28 (3) Any person or entity that provides services, goods,
29 supplies, or merchandise, directly or indirectly, under, or
30 seeks reimbursement from, any other health care
31 program administered by the department or its agents or
32 contractors.

33 (b) (1) Applicants, providers, or others receiving or
34 seeking reimbursement under the Medi-Cal program or
35 other health care programs administered by the
36 department or its agents or contractors shall ~~provide a~~
37 ~~reasonable amount of assistance,~~ and furnish information
38 or copies of records and documentation upon request by
39 the department. Unannounced visits to request this
40 information shall be reserved for those exceptional



1 situations where arrangement of an appointment
2 beforehand is clearly not possible or is clearly
3 inappropriate to the nature of the intended visit. Only
4 those related books and records of each service rendered,
5 the beneficiary to whom rendered, the date, and
6 additional information as the department may by
7 regulation require shall be subject to the requirement of
8 furnishing copies. This information may include records
9 to support and document the recipient's eligibility for
10 services and, to the extent necessary, records to provide
11 proof of the quantity and receipt of the services, and that
12 the services were provided by proper personnel.
13 Providers and others subject to this section shall be
14 reimbursed for reasonable photocopying-related
15 expenses as determined by the department. Failure to
16 comply with the ~~department's authority under requests~~
17 *for information or records made pursuant to* this section
18 shall be grounds for immediate suspension of the provider
19 or others subject to this section under subdivision (b) of
20 Section 14123 or under the other health care programs
21 administered by the department or its agents or
22 contractors.

23 (2) Any copies furnished pursuant to this section shall
24 be used only to investigate and pursue criminal, civil, or
25 administrative sanctions for Medi-Cal fraud or abuse,
26 including the provision of dental services that are below
27 or less than the standard of acceptable quality as
28 prescribed by subdivision (f) of Section 14123, or fraud or
29 abuse under any other health care program administered
30 by the department or its agents or contractors and the
31 copies shall be destroyed when that purpose has been
32 satisfied. This section shall not be construed to prohibit
33 the referral of investigative findings, including copies of
34 books and records, to the appropriate federal, state, or
35 local licensing, certifying, regulatory, or prosecutorial
36 authority.

37 (c) For purposes of this section and Section 14124.1,
38 "provider" shall be defined as follows:

39 (1) "Provider" shall have the meaning contained in
40 Section 14043.1.

1 (2) "Provider" shall also include any person or entity
2 under contract with the provider, as defined in paragraph
3 (1), to assist in the application process or eligibility
4 determination.

5 ~~SEC. 30.~~

6 *SEC. 31.* Section 14170 of the Welfare and Institutions
7 Code is amended to read:

8 14170. (a) (1) Amounts paid for services provided to
9 Medi-Cal beneficiaries shall be audited by the
10 department in the manner and form prescribed by the
11 department. The department shall maintain adequate
12 controls to ensure responsibility and accountability for
13 the expenditure of federal and state funds. Cost reports
14 and other data submitted by providers to a state agency
15 for the purpose of determining reasonable costs for
16 services or establishing rates of payment shall be
17 considered true and correct unless audited or reviewed
18 by the department within 18 months after July 1, 1969, the
19 close of the period covered by the report, or after the date
20 of submission of the original or amended report by the
21 provider, whichever is later. Moreover the cost reports
22 and other data for cost reporting periods beginning on
23 January 1, ~~1972~~ 1998, and thereafter shall be considered
24 true and correct unless audited or reviewed within three
25 years after the close of the period covered by the report,
26 or after the date of submission of the original or amended
27 report by the provider, whichever is later.

28 (2) (A) Nothing in this section shall be construed to
29 limit the correction of cost reports or rates of payment
30 when inaccuracies are determined to be the result of
31 intent to defraud, or when a delay in the completion of an
32 audit is the result of willful acts by the provider or
33 inability to reach agreement on the terms of final
34 settlement.

35 (B) Nothing in this section shall be construed to
36 preclude the department from further review of cost
37 reports and other data for cost reporting periods
38 beginning on January 1, 1972, after the three-year period
39 contained in paragraph (1) of subdivision (a), where
40 after ~~that time~~ *the three-year period the department*



1 *discovers* information not customarily contained in these
2 cost reports and other data for the fiscal periods in
3 question *that* indicates the provider may have engaged in
4 practices that have resulted in overreimbursement.

5 (3) Notwithstanding any other provision of law,
6 nursing facilities and all categories of intermediate care
7 facilities for the developmentally disabled which have
8 received and are receiving funds for salary increases
9 pursuant to Sections 14110.6 and 14110.7 shall maintain
10 payroll and personnel records for examination by
11 auditors from the department and the Labor
12 Commissioner beginning March 1985 until the records
13 have been audited, or until December 31, 1992,
14 whichever occurs first.

15 (b) Notwithstanding any other provision of law, costs
16 reported for reimbursement purposes relative to
17 Medi-Cal beneficiaries in nursing facilities that are
18 distinct parts of acute care hospitals shall be audited by
19 the department at least annually. The audits may be
20 performed on a sample basis and, when the sample is
21 statistically reliable, as determined by the department,
22 may be used for ratesetting purposes.

23 ~~SEC. 31.—~~

24 *SEC. 32.* Section 14170.8 of the Welfare and
25 Institutions Code is amended to read:

26 14170.8. (a) Notwithstanding any other provision of
27 law, every primary supplier of pharmaceuticals, medical
28 equipment, or supplies shall maintain accounting records
29 to demonstrate the manufacture, assembly, purchase, or
30 acquisition and subsequent sale, of any pharmaceuticals,
31 or medical equipment, or supplies to providers, as
32 defined in Section 14043.1. Accounting records shall
33 include, but not be limited to, inventory records, general
34 ledgers, financial statements, purchase and sales journals
35 and invoices, prescription records, bills of lading, and
36 delivery records. For purposes of this section the term
37 “primary suppliers” shall mean any manufacturer,
38 principal labeler, assembler, wholesaler, or retailer.

39 (b) Accounting records maintained pursuant to
40 subdivision (a) shall be subject to audit or examination by



1 the department or its agents. This audit or examination
2 may include, but is not limited to, verification of ~~the costs~~
3 *what was* claimed by ~~providers~~ *the provider*. These
4 accounting records shall be maintained for three years
5 from the date of sale or the date of service.

6 (c) This section shall not apply to any clinic licensed
7 pursuant to subdivision (a) of Section 1204 of the Health
8 and Safety Code or to any manufacturer of prescription
9 drugs registered with the federal Food and Drug
10 Administration in accordance with Section 510 of the
11 Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 360).

12 ~~SEC. 32.—~~

13 *SEC. 33.* Section 14171.6 of the Welfare and
14 Institutions Code is amended to read:

15 14171.6. (a) (1) Any provider, as defined in
16 paragraph (3), that obtains reimbursement under this
17 chapter to which it is not entitled shall be subject to
18 interest charges or penalties as specified in this section.

19 (2) When it is established upon audit that the provider
20 has not received reimbursement to which the provider is
21 entitled, the department shall pay the provider interest
22 assessed at the rate, and in the manner, specified in
23 subdivision (g) of Section 14171.

24 (3) For purposes of this section, “provider” means any
25 provider, as defined in Section 14043.1.

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

31 (c) (1) When it is established upon audit that the
32 provider claimed payments related to services or costs
33 that the department had previously notified the provider
34 in an audit report that the costs or services were not
35 reimbursable, the provider shall pay, in addition to the
36 amount improperly claimed, a penalty of 10 percent of
37 the amount improperly claimed after receipt of the
38 notice, plus the cost of the audit.



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

4 (3) Providers that wish to preserve appeal rights or to
5 challenge the department's positions regarding appeal
6 issues may claim the costs or services and not be
7 reimbursed therefor if they are identified and presented
8 separately on the cost report.

9 (d) (1) When it is established that the provider
10 fraudulently claimed and received payments under this
11 chapter, the provider shall pay, in addition to that portion
12 of the claim that was improperly claimed, a penalty of 300
13 percent of the amount improperly claimed, plus the cost
14 of the audit.

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

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

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

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

27 (g) As used in this section, "cost of the audit" includes
28 actual hourly wages, travel, and incidental expenses at
29 rates allowable by rules adopted by the State Board of
30 Control and applicable overhead costs that are incurred
31 by employees of the state in administering this chapter
32 with respect to the performance of audits.

33 (h) This section shall not apply to any clinic licensed
34 pursuant to subdivision (a) of Section 1204 of the Health
35 and Safety Code, clinics exempt from licensure under
36 Section 1206 of the Health and Safety Code, health
37 facilities licensed under Chapter 2 (commencing with
38 Section 1250) of Division 2 of the Health and Safety Code,
39 or to any provider that is operated by a city, county, or
40 school district.



1 ~~SEC. 33.~~—

2 *SEC. 34.* Section 24005 of the Welfare and Institutions
3 Code is amended to read:

4 24005. (a) This section shall apply to the Family
5 Planning Access Care and Treatment Waiver program
6 identified in subdivision (aa) of Section 14132 and this
7 program.

8 (b) Only licensed medical personnel with family
9 planning skills, knowledge, and competency may provide
10 the full range of family planning medical services covered
11 in this program.

12 (c) Medi-Cal enrolled providers, as determined by the
13 department, shall be eligible to provide family planning
14 services under the program when these services are
15 within their scope of practice and licensure. Those
16 clinical providers electing to participate in the program
17 and approved by the department shall provide the full
18 scope of family planning education, counseling, and
19 medical services specified for the program, either
20 directly or by referral, consistent with standards of care
21 issued by the department.

22 (d) The department shall require providers to enter
23 into clinical agreements with the department to ensure
24 compliance with standards and requirements to maintain
25 the fiscal integrity of the program. Provider applicants,
26 providers, and persons with an ownership or control
27 interest, as defined in federal medicaid regulations, shall
28 be required to submit to the department their social
29 security numbers to the full extent allowed under federal
30 law. All state and federal statutes and regulations
31 pertaining to the audit or examination of Medi-Cal
32 providers shall apply to this program.

33 (e) Clinical provider agreements shall be signed by
34 the provider under penalty of perjury. The department
35 may screen applicants at the initial application and at any
36 reapplication pursuant to requirements developed by the
37 department to determine provider suitability for the
38 program.

39 (f) The department may complete a background
40 check on clinical provider applicants for the purpose of



1 verifying the accuracy of information provided to the
2 department for purposes of enrolling in the program and
3 in order to prevent fraud and abuse. The background
4 check may include, but not be limited to, unannounced
5 onsite inspection prior to enrollment, review of business
6 records, and data searches. If discrepancies are found to
7 exist during the preenrollment period, the department
8 may conduct additional inspections prior to enrollment.
9 Failure to remediate *significant* discrepancies as
10 prescribed by the director may result in denial of the
11 application for enrollment. Providers that do not provide
12 services consistent with the standards of care or that do
13 not comply with the department's rules related to the
14 fiscal integrity of the program may be disenrolled as a
15 provider from the program at the sole discretion of the
16 department.

17 (g) The department shall not enroll any applicant
18 who, within the previous 10 years:

19 (1) Has been convicted of any felony or misdemeanor
20 that involves fraud or abuse in any government program,
21 that relates to neglect or abuse of a patient in connection
22 with the delivery of a health care item or service, or that
23 is in connection with the interference with, or obstruction
24 of, any investigation into health care related fraud or
25 abuse.

26 (2) Has been found liable for fraud or abuse in any civil
27 proceeding, or that has entered into a settlement in ~~a civil~~
28 ~~or criminal proceeding alleging fraud or abuse~~ *lieu of*
29 *conviction for fraud or abuse* in any government
30 program.

31 (h) In addition, the department may deny enrollment
32 to any applicant that, at the time of application, is under
33 investigation by *the department or* any local, state, or
34 federal government *law enforcement* agency for fraud or
35 abuse. Except where there has been a settlement, the
36 department shall not deny enrollment to an otherwise
37 qualified applicant whose felony or misdemeanor charges
38 did not result in a conviction solely on the basis of the
39 prior charges. If it is discovered that a provider is under
40 investigation by *the department or* any local, state, or



1 federal government *law enforcement* agency for fraud or
2 abuse, that provider shall be subject to immediate
3 disenrollment from the program.

4 (i) (1) The program shall disenroll as a program
5 provider any individual who, or any entity that, has a
6 license, certificate, or other approval to provide health
7 care, which is revoked or suspended by a federal,
8 California, or other state's licensing, certification, or other
9 approval authority, has otherwise lost that license,
10 certificate, or approval, or has surrendered that license,
11 certificate, or approval while a disciplinary hearing on the
12 license, certificate, or approval was pending. The
13 disenrollment shall be effective on the date the license,
14 certificate, or approval is revoked, lost, or surrendered.

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

32 (3) The department shall deactivate, immediately and
33 without prior notice, the provider numbers used by a
34 provider to obtain reimbursement from the program
35 when warrants or documents mailed to a provider's
36 mailing address, its pay to address, or its service address,
37 if any, are returned by the United States Postal Service as
38 not deliverable or when a provider has not submitted a
39 claim for reimbursement from the program for one year.
40 *Prior to taking this action, the department shall use due*



1 *diligence in attempting to contact the provider at its last*
2 *known telephone number and to ascertain if the return*
3 *by the United States Postal Service is by mistake and shall*
4 *use due diligence in attempting to contact the provider*
5 *by telephone or in writing to ascertain whether the*
6 *provider wishes to continue to participate in the*
7 *Medi-Cal program. If deactivation pursuant to this*
8 *section occurs, the provider shall meet the requirements*
9 *for reapplication as specified in regulation.*

10 (4) For purposes of this subdivision:

11 (A) “Mailing address” means the address that the
12 provider has identified to the department in its
13 application for enrollment as the address at which it
14 wishes to receive general program correspondence.

15 (B) “Pay to address” means the address that the
16 provider has identified to the department in its
17 application for enrollment as the address at which it
18 wishes to receive warrants.

19 (C) “Service address” means the address that the
20 provider has identified to the department in its
21 application for enrollment as the address at which the
22 provider will provide services to program beneficiaries.

23 (j) Subject to Article 4 (commencing with Section
24 19130) of Chapter 5 of Division 5 of Title 2 of the
25 Government Code, the department may enter into
26 contracts to secure consultant services or information
27 technology including, but not limited to, software, data,
28 or analytical techniques or methodologies for the purpose
29 of fraud or abuse detection and prevention. Contracts
30 under this section shall be exempt from the Public
31 Contract Code.

32 (k) Enrolled providers shall attend specific
33 orientation approved by the department in
34 comprehensive family planning services. Enrolled
35 providers who insert IUDs or contraceptive implants
36 shall have received prior clinical training specific to these
37 procedures.

38 (l) Upon receipt of reliable ~~information or evidence,~~
39 ~~including evidence that would be inadmissible under the~~
40 ~~Evidence~~ *evidence that would be admissible under the*



1 *administrative adjudication provisions of Chapter 5*
2 *(commencing with Section 11500) of Part 1 of Division 3*
3 *of Title 2 of the Government Code, of fraud or willful*
4 *misrepresentation by a provider under the program or*
5 *commencement of a suspension under Section 14123, the*
6 *department may do any of the following:*

7 (1) Collect any State-Only Family Planning program
8 or Family Planning Access Care and Treatment Waiver
9 program overpayment identified through an audit or
10 examination, or any portion thereof from any provider.
11 Notwithstanding Section 100171 of the Health and Safety
12 Code, a provider may appeal the collection of
13 overpayments under this section pursuant to procedures
14 established in Article 5.3 (commencing with Section
15 14170) of Part 3 of Division 9. Overpayments collected
16 under this section shall not be returned to the provider
17 during the pendency of any appeal and may be offset to
18 satisfy audit or appeal findings, if the findings are against
19 the provider. Overpayments shall be returned to a
20 provider with interest if findings are in favor of the
21 provider.

22 (2) Withhold payment for any goods or services, or any
23 portion thereof, from any State-Only Family Planning
24 program or Family Planning Access Care and Treatment
25 Waiver program provider. The department shall notify
26 the provider within five days of any withholding of
27 payment under this section. The notice shall do all of the
28 following:

29 (A) State that payments are being withheld in
30 accordance with this paragraph and that the withholding
31 is for a temporary period and will not continue after it is
32 ~~determined that there is insufficient information or~~
33 ~~evidence, including evidence that would be inadmissible~~
34 ~~under the Evidence Code, determined that the evidence~~
35 *of fraud or willful misrepresentation is insufficient* or
36 when legal proceedings relating to the alleged fraud or
37 willful misrepresentation are completed.

38 (B) Cite the circumstances under which the
39 withholding of the payments will be terminated.



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

3 (D) Inform the provider of the right to submit written
4 ~~information or evidence, including evidence that would~~
5 ~~be inadmissible under the Evidence Code, for evidence~~
6 *that is evidence that would be admissible under the*
7 *administrative adjudication provisions of Chapter 5*
8 *(commencing with Section 11500) of Part 1 of Division 3*
9 *of Title 2 of the Government Code, for consideration by*
10 the department.

11 (3) Notwithstanding Section 100171 of the Health and
12 Safety Code, a provider may appeal a withholding of
13 payment under this section pursuant to Section 14043.65.
14 Payments withheld under this section shall not be
15 returned to the provider during the pendency of any
16 appeal and may be offset to satisfy audit or appeal
17 findings.

18 (m) As used in this section:

19 (1) "Abuse" means either of the following:

20 (A) Practices that are inconsistent with sound fiscal or
21 business practices and result in unnecessary cost to the
22 medicaid program, the Medicare program, the Medi-Cal
23 program, including the Family Planning Access Care and
24 Treatment Waiver program, identified in subdivision
25 (aa) of Section 14132, another state's medicaid program,
26 or the State-Only Family Planning program, or other
27 health care programs operated, or financed in whole or
28 in part, by the federal government or any state or local
29 agency in this state or any other state.

30 (B) Practices that are inconsistent with sound medical
31 practices and result in reimbursement, by any of the
32 programs referred to in subparagraph (A) or other health
33 care programs operated, or financed in whole or in part,
34 by the federal government or any state or local agency in
35 this state or any other state, for services that are
36 unnecessary or for substandard items or services that fail
37 to meet professionally recognized standards for health
38 care.

39 (2) "Fraud" means an intentional deception or
40 misrepresentation made by a person with the knowledge



1 that the deception could result in some unauthorized
2 benefit to himself or herself or some other person. It
3 includes any act that constitutes fraud under applicable
4 federal or state law.

5 (3) “Provider” means any individual, partnership,
6 group, association, corporation, institution, or entity, and
7 the officers, directors, owners, managing employees, or
8 agents of any partnership, group, association,
9 corporation, institution, or entity, that provides services,
10 goods, supplies, or merchandise, directly or indirectly, to
11 a beneficiary and that has been enrolled in the program.

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

13 (A) A judgment of conviction has been entered
14 against an individual or entity by a federal, state, or local
15 court, regardless of whether there is a post-trial motion or
16 an appeal pending or the judgment of conviction or other
17 record relating to the criminal conduct has been
18 expunged or otherwise removed.

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

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

23 (D) An individual or entity has entered into
24 participation in a first offender, deferred adjudication, or
25 other program or arrangement where judgment of
26 conviction has been withheld.

27 (5) “Professionally recognized standards of health
28 care” means statewide or national standards of care,
29 whether in writing or not, that professional peers of the
30 individual or entity whose provision of care is an issue,
31 recognize as applying to those peers practicing or
32 providing care within a state. When the United States
33 Department of Health and Human Services has declared
34 a treatment modality not to be safe and effective,
35 practitioners that employ that treatment modality shall
36 be deemed not to meet professionally recognized
37 standards of health care. This definition shall not be
38 construed to mean that all other treatments meet
39 professionally recognized standards of care.



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

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

5 (B) Furnished, or caused to be furnished, to patients,
6 whether or not covered by Medicare, medicaid, or any of
7 the state health care programs to which the definitions of
8 applicant and provider apply, and which are substantially
9 in excess of the patient’s needs, or of a quality that fails to
10 meet professionally recognized standards of health care.
11 The department’s determination that the items or
12 services furnished were excessive or of unacceptable
13 quality shall be made on the basis of information,
14 including sanction reports, from the following sources:

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

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

18 (iii) Fiscal agents or contractors, or private insurance
19 companies.

20 (iv) State or local professional societies.

21 (v) Any other sources deemed appropriate by the
22 department.

23 (7) “Enrolled or enrollment in the program” means
24 authorized under any and all processes by the
25 department or its agents or contractors to receive,
26 directly or indirectly, reimbursement for the provision of
27 services, goods, supplies, or merchandise to a program
28 beneficiary.

29 (n) In lieu of, or in addition to, the imposition of any
30 other sanctions available, including the imposition of a
31 civil penalty under Sections 14123.2 or 14171.6, the
32 program may impose on providers any or all of the
33 penalties pursuant to ~~Sections 14107 and Section 14123.25,~~
34 in accordance with the provisions of ~~those sections that~~
35 *section. In addition, program providers shall be subject to*
36 *the penalties contained in Section 14107.*

37 (o) (1) Notwithstanding any other provision of law,
38 every primary supplier of pharmaceuticals, medical
39 equipment, or supplies shall maintain accounting records
40 to demonstrate the manufacture, assembly, purchase, or



1 acquisition and subsequent sale, of any pharmaceuticals,
2 medical equipment, or supplies, to providers. Accounting
3 records shall include, but not be limited to, inventory
4 records, general ledgers, financial statements, purchase
5 and sales journals, and invoices, prescription records, bills
6 of lading, and delivery records.

7 (2) For purposes of this subdivision, the term “primary
8 supplier” means any manufacturer, principal labeler,
9 assembler, wholesaler, or retailer.

10 (3) Accounting records maintained pursuant to
11 paragraph (1) shall be subject to audit or examination by
12 the department or its agents. The audit or examination
13 may include, but is not limited to, verification of ~~the costs~~
14 ~~claimed by providers~~ *what was claimed by the provider.*
15 These accounting records shall be maintained for three
16 years from the date of sale or the date of service.

17 (p) Each provider of health care services rendered to
18 any program beneficiary shall keep and maintain records
19 of each service rendered, the beneficiary to whom
20 rendered, the date, and such additional information as
21 the department may by regulation require. Records
22 required to be kept and maintained pursuant to this
23 subdivision shall be retained by the provider for a period
24 of three years from the date the service was rendered.

25 (q) A program provider applicant or a program
26 provider shall furnish information or copies of records
27 and documentation requested by the department.
28 Failure to comply with the department’s request shall be
29 grounds for denial of the application or automatic
30 disenrollment of the provider.

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

34 (s) ~~(t)~~ Moneys payable or rights existing under this
35 division shall be subject to any claim, lien, or offset of the
36 State of California, and any claim of the United States of
37 America made pursuant to federal statute, but shall not
38 otherwise be subject to enforcement of a money
39 judgment or other legal process, and no transfer or
40 assignment, at law or in equity, of any right of a provider



1 of health care to any payment shall be enforceable against
2 the state, a fiscal intermediary, or carrier.

3 ~~(2) If a provider is under any investigation for fraud or~~
4 ~~abuse by any state, local, or federal government agency,~~
5 ~~the director may withhold reimbursement of funds due~~
6 ~~and payable to that provider from any other program~~
7 ~~under the administration of the department, as assets~~
8 ~~pending the outcome of the investigation of fraud and~~
9 ~~abuse. The withholding permitted pursuant to this~~
10 ~~section shall not be taken pursuant to Section 14107.11~~
11 ~~and, notwithstanding Section 100171 of the Health and~~
12 ~~Safety Code or any other provision of law, is not subject~~
13 ~~to appeal or hearing.~~

14 ~~SEC. 34.—~~

15 *SEC. 35.* No reimbursement is required by this act
16 pursuant to Section 6 of Article XIII B of the California
17 Constitution because the only costs that may be incurred
18 by a local agency or school district will be incurred
19 because this act creates a new crime or infraction,
20 eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section
22 17556 of the Government Code, or changes the definition
23 of a crime within the meaning of Section 6 of Article
24 XIII B of the California Constitution.

