

815 CMR 4.00: LATE PENALTY INTEREST

Section

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4.01: Applications Purpose Scope and Authority

- (1) The purpose of 815 CMR 4.00 is to provide all departments of the Commonwealth with rules and procedures to govern the payment of interest to commercial vendors when departments do not make payment by the required contractual payment date for goods or services delivered.
- (2) 815 CMR 4.00 applies to goods and/or services delivered and accepted after March 24, 1988.
- (3) All vendors of the Commonwealth except; Employees (including "03" employees), recipients of public assistance, cities and towns and other public instrumentalities designated as public agencies on the Commonwealth's vendor file, are eligible for late penalty interest in compliance with 815 CMR 4.00.
- (4) 815 CMR 4.00 *et. seq.* sets forth the respective responsibilities of the vendors, the departments and the Office of the Comptroller regarding the payment of the Commonwealth's obligations.
- (5) It is the responsibility of all departments to establish encumbering and bill-paying procedures consistent with their internal control policies and in compliance with the Office of the Comptroller's policies and procedures, which will result in the timely payment of all properly submitted invoices after the goods and/or services have been received.
- (6) 815 CMR 4.00 *et seq.* is adopted under the authority of M.G.L. c. 7A, § 8, c. 29, §§ 20C and 29C.

4.02: Definitions

- (1) Contract - A legally enforceable agreement between a vendor and a department for the provision of goods and/or services in consideration of compensation to be paid by the Commonwealth, executed in the name of the Commonwealth by a department thereof.
- (2) Department - Any department, office, board, commission or institution of the Executive, Judicial or Legislative branches including the constitutional offices.
- (3) General Appropriation Bill - A bill enacted annually by the Legislature to set apart from public revenues a specific amount of money to be used by officers of the Commonwealth's departments for particular purposes to implement and maintain programs the Legislature has established for the state fiscal year.
- (4) Invoice - A bill submitted by a vendor on a form determined by the contract between the department and the vendor, or if no form is specified, Mosaic Form PV, which specifies the goods and/or services delivered and the price.
- (5) Mosaic - The Commonwealth's enterprise statewide accounting and financial reporting system.

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(6) Medical Assistance Provider - (hereinafter Medicaid Providers) constitutes any agency, person, or group qualified under the laws of the Commonwealth to perform or provide medical care or services eligible for financial assistance from the department for all or part of the cost of eligible medical care and services pursuant to 42 USCA § 1396 *et seq.*

(7) Office of the Comptroller - A department established pursuant to M.G.L. c. 7A within the Executive Office for Administration and Finance.

(8) Vendor - A party, whether an individual, a partnership, a corporation, or other form of business entity, who is registered to do business with the Commonwealth and is listed on the Commonwealth's vendor file with the Office of the Comptroller, but excluding state employees, "03" employees, recipients of public assistance, and cities and town and other instrumentalities designated as governmental jurisdictions on the Commonwealth's vendor file.

(9) Warrant Date - The date of the weekly meeting of the Governor's Council, usually a Wednesday but if a holiday falls on a Wednesday, then the Tuesday, during which the Governor's Council approves expenditures under M.G.L. c. 7A, § 3.

4.03: Contractual Requirements

(1) In addition to applicable statutory and/or regulatory requirements departments must include in all contracts, purchase orders, master-service agreements, price agreements and other forms of contracts, provisions which describe the invoicing and bill paying procedures which govern the contract including:

- (a) the form of the required invoice, specifying the standard Commonwealth invoice (Mosaic Form PV) or other Mosaic form, time sheet, vendor-generated invoice, magnetic tape or other form of invoice;
- (b) the information which must be included in the invoice (including department reference numbers, and charges);
- (c) the documentation which must be included with the invoice to demonstrate to the department that the goods and/or services were delivered;
- (d) the method of presentment, including when and where the invoice will be submitted, provided invoices shall be submitted after the goods and/or service have been delivered and accepted and the final invoice must be received by the department within 30 days of delivery and acceptance of the goods and/or services or July 31st whichever is sooner;
- (e) the required payment date, which shall be the date required by statute, the standard payment date used by the industry, the date negotiated by the vendor and the department, or 45 days, whichever is longer, and;
- (f) the application procedures to request payment for late penalty interest as delineated in 815 CMR 4.05.

(2) Departments must have contracts executed and encumbrances approved on Mosaic prior to the delivery of the goods and/or services in compliance with the Office of the Comptroller's policies and procedures, as well as compliance with applicable procurement regulation, and/or other administrative rules.

(3) Departments must establish encumbrances for emergency procurements so as to assure the availability of funds and approvals to pay invoices for such emergency goods and/or services procured. The payment date for emergency procurements shall be 45 days.

(4) The payment date for contracts which do not specify a payment date or for purchases which are authorized to be made without a purchase order or contract shall be 45 days.

(5) Departments procuring the services of Medicaid providers shall continue to process payments in accordance with federal standards delineated in 42 CFR § 447.45(d).

4.04: Late Penalty Encumbrance

(1) Departments shall establish a miscellaneous encumbrance under Object Code 698 of the Commonwealth's Expenditure Classification Code in accordance with the Office of the Comptroller's policies and procedures, to cover the amounts which the department estimates it will expend in late penalty interest.

(2) For Fiscal Year 1988, (July 1, 1987 through June 30, 1988), departments may pay the late penalty interest from object Code 698 without an encumbrance.

4.05: Bill Paying Procedures

(1) Departments shall date-stamp all invoices received. The date centered on the invoice shall be the date the invoice was received by the department except that invoices delivered on Saturdays, Sundays, holidays or "skeleton days" as defined by Administrative Bulletin 85-3, shall be stamped with the date of the next business day.

(2) All departments, except the Department of Public Welfare, the Commission of the Blind, and other departments procuring the service of qualified Medicaid providers as determined by the Office of the Comptroller, shall within 15 calendar days from the date of receipt of the invoice confirm the following:

- (a) that the invoice was submitted according to the contractual terms after the delivery of the goods and/or services;
- (b) the goods and/or services were delivered in accordance with the contract and the required documentation, if any, was submitted with the invoice, and;
- (c) the charges are accurate

(3) For services rendered by Medicaid providers specifically exempted in 4.05(2) SUPRA, said departments shall have 30 days from the receipt of the invoice to approve or disapprove the invoice as provided in 815 CMR 4.05(2) and 4.05(4).

(4) If any of the requirements in 815 CMR 4.05(2)(a) through (c) have not been confirmed then a copy of the invoice with a letter explaining the defect or impropriety and the method for curing same shall be sent by the department to the vendor no later than 15 calendar days from the receipt of the invoice. The letter must provide the name and telephone number of a contact person to assist the vendor. The department shall retain the original invoice for its records.

(5) The vendor must resubmit the invoice after the defect or impropriety is cured. The resubmitted invoice shall be date stamped as provided in 815 CMR 4.05(1) and reviewed as provided in 815 CMR 4.05(7).

(6) If the vendor believes that the invoice was improperly rejected, the vendor shall telephone the department contact person immediately. If the department after, reconsideration of the rejected invoice agrees that said invoice was properly submitted, then it shall process the invoice for payment as provided in 815 CMR 4.05(7).

(7) If the department discovers a defect or impropriety after the 15th day from the receipt of the invoice but before the payment date, the department shall telephone the vendor immediately to notify the vendor of the problem and shall confirm that oral conversation in writing. The vendor shall be afforded the opportunity to cure as provided in the contract and may resubmit the invoice after the cure. The department's failure to notify the vendor of a defect or impropriety within 15 days will not obligate the Commonwealth to pay for goods and/or services not delivered in accordance with the contract or goods and/or services not ordered or legally authorized.

4.05: continued

(8) If the department confirms both the delivery of goods and/or services, and that the invoice was properly submitted and accurate, then the department shall process the invoice for payment in accordance with the Office of the Comptroller's policies and procedures, and other supplementary instructions which are issued periodically by the Office of the Comptroller. The payment date must be scheduled for a warrant date which does not exceed the contractual payment period (or if no date is specified therein, 45 days). The calculable time frame for determining when to schedule the payment for the warrant is from the date of receipt of the invoice to the warrant date.

(9) If a vendor, who after submission of an invoice pursuant to applicable time frames delineated in 815 CMR 4.05(2) and (4), neither receives payment within 60 days nor a departmental decision not to honor the invoice as prescribed in 815 CMR 4.05(3), (5), (6) and (7) inclusive, then the vendor should contact the department contact officer. If it is determined that the payment was delayed due solely to departmental error, the department shall immediately process the invoice for payment and shall notify the vendor in writing of the warrant date on which the payment has been scheduled. The vendor may exercise its rights to make a demand for late penalty interest as provided in 815 CMR 4.06(1) through (6).

(10) With the exception of Medicaid providers, if the rate setting commission grants a retroactive rate adjustment, the vendor shall invoice the department for any sums now owing to the vendor. The department shall have 45 days from the receipt of the invoice to make payment of the sums owing to the vendor.

(11) Retroactive rate adjustments granted by the Rate Setting Commission to Medicaid providers shall be processed by the department as soon as practicable after the date the rate is received. In no event shall the processing of Medicaid retroactive rate adjustments occur later than 60 days after the rate is received.

(12) If no general appropriation bill is in effect at the beginning of the Commonwealth's fiscal year (July 1st) the department shall date stamp and retain all invoices received for goods and/or services rendered in the new fiscal year according to instructions issued by the Office of the Comptroller. Invoices received for the prior fiscal year shall be processed as accounts payable items in accordance to instructions issued annually by the Office of the Comptroller. Vendors should be notified in writing that invoices for the new fiscal year will be processed as soon as the Office of the Comptroller notifies departments that funds have become legally available.

4.06: Late Penalty Interest Procedures

(1) Eligible vendors may qualify for late penalty interest if the vendor has provided the goods and/or services, has properly submitted an invoice, and the payment received by the vendor was not scheduled on the warrant within the contractual payment period *i.e.*, from the date of receipt of the invoice to the warrant date, or if no such period is specified in the contract, within 45 days.

(2) Invoices received by departments after the close of the Commonwealth's accounts payable period in violation of 815 CMR 4.03(1)(d) shall be ineligible for the payment of late penalty interest. Departments shall notify the vendor in writing when an invoice must be processed as a prior year deficiency appropriation request.

(3) Notwithstanding the time frame specified in the contract, if a vendor has not receive payment pursuant to 815 CMR 4.05(8), as modified by 815 CMR 4.05(11), then the vendor may demand late penalty interest by invoicing the department for same. The demand shall be submitted on a Commonwealth Standard Invoice (Mosaic Form PV) in the manner specified in the contract to the address to which the original invoice was submitted. The vendor shall document the method and timing of presentment of the original invoice and provide a copy of the check stub or wire transfer certificate denoting payment to the department.

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(4) Late Penalty interest shall be computed at a rate to be set semiannually on January 1st and July 1st by the Commissioner of Administration by publication in the Massachusetts Register. With the exception of departments procuring the services of Medicaid providers, the Commonwealth will pay interest at the rate promulgated by the Secretary of Administration and Finance on the amount owed from the payment date (or the 46th day if no payment date is specified in the contract) until the warrant date on which the department had scheduled the payment.

(5) The department shall date stamp the demand for late payment in accordance with 815 CMR 4.05(1). The department shall review the vendor's demand for late payment interest within five days of receipt. The department shall approve the payment of late penalty interest if said department confirms the original invoice was not scheduled for warrant within the payment date. Said payment shall be computed and processed in accordance with procedures set forth in 815 CMR 4.06(6). Failure of the department to review the vendor's demand for late penalty interest within the stated time frames shall subject the demand to desk review by the Office of the General Counsel to the Comptroller pursuant to 815 CMR 4.07.

(6) The amount of penalty interest shall be computed as follows:

The payment due under the original invoice, multiplied by the number of days between the contract payment date and the warrant upon which the payment was actually scheduled, multiplied by the daily interest rate as set by the Commissioner of Administration and Finance.

The department shall add the figures to the invoice submitted by the vendor and shall process the late penalty interest in accordance with the Office of the Comptroller's policies and procedures, under Object Code 698. It is the department's responsibility to assure that the invoice for late penalty interest clears the payment process successfully to facilitate its appearance on the earliest warrant.

(7) If the department disapproves the vendor's demand for late penalty interest because the time frames were tolled due to the proper rejection of the invoice under 815 CMR 4.05(3), (5) and (7) inclusive, or because the payment was made within the payment date, then within five days the department will notify the vendor of the rejection of the demand and forward the file to the Office of the General Counsel to the Comptroller for desk review pursuant to the provisions delineated in 815 CMR 4.07.

4.07: Desk Review

(1) Desk Review is conducted by the Office of the General Counsel to the Comptroller and is available in the following instances:

(a) by the vendor

1. when a department fails after 60 days to respond to vendor's request pursuant to 815 CMR 4.05(9)
2. when a department fails to review a vendor's demand for late penalty interest pursuant to 815 CMR 4.06(5)

(b) by a department

1. when a department disapproves the vendor's demand for late penalty interest because the time frames were tolled due to proper rejection of the invoice pursuant to 815 CMR 4.06(7)
2. when a department disapproves the demand for late penalty interest because payment was made within the payment date pursuant to 815 CMR 4.05(6), (7) and 815 CMR 4.06(7).

(2) The requesting party shall forward the file including: a copy of the original invoice, any communication between the vendor or department, where applicable, the original warrant date, the vendor's demand for late penalty interest and the department's written reason for disapproval, if any.

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(3) The Office of the General Counsel of the Comptroller shall review the written documents within five days of receipt and either:

- (a) order the department to pay the late penalty interest including the time spent in the desk review appeal process, or;
- (b) notify the vendor that the appeal was decided in favor of the department

(4) Review by the Office of the General Counsel of the Comptroller shall not be subject to administrative appeal and shall constitute final agency decision.

REGULATORY AUTHORITY

815 CMR 4.00: M.G.L. c. 7, § 14B; c. 29, § 20C; c. 29, § 29C.