

WEST VIRGINIA CODE: §5A-7-4A

§5A-7-4a. Payment of legitimate uncontested invoices for telecommunications services; procedures and powers of the Information and Communications Division and Secretary of Administration.

(a) The Legislature finds that it is in the best interest of the state, its spending units and those vendors supplying telecommunications services to the state and its spending units that any properly registered and qualified vendor supplying telecommunications services to two or more spending units under a shared account is entitled to prompt payment upon presentation of a legitimate uncontested invoice for telecommunications services to the division, as provided in the following subsections.

(b) To facilitate the administration and payment of telecommunications services, there is continued in the State Treasury a special revenue account to be known as the Telecommunications Services Payment and Reserve Fund. All moneys transferred from state spending units pursuant to the requirements of this section shall be deposited in the account. Expenditures from the fund shall be made by the director for the exclusive purposes set forth in this section: Provided, That no more than \$150,000 or the actual amount collected pursuant to subsection (j) of this section in any fiscal year, whichever is less, may be expended from the fund in any fiscal year to defray the costs of administration of this section.

(c) Upon receipt of any telecommunications charges from a properly registered and qualified vendor, the division shall conduct a preliminary review of the charges. If the division determines during this preliminary review that: (1) Any of the charges are not authorized by law or by the contract under which the telecommunications services are provided; (2) no specific spending unit is designated for any charge; or (3) any charge or service is not in accordance with contract pricing, the division shall reject those charges. Within fourteen days of receipt of any telecommunications charge, the director shall notify a vendor of any rejected charges and shall include in the notice a description of the rejected charges, the reasons a charge was rejected and a proposed resolution of the rejected charge. The director and the vendor shall attempt to resolve the matter in good faith. Within ninety days of the receipt of the vendor's invoice or a time period mutually agreed to by the vendor and secretary, the secretary shall make the final decision as to the legitimacy of the rejected amount and determine if payment is warranted. If the final decision of the secretary is to require payment of the rejected amount, the secretary shall cause the division to bill that amount to the appropriate spending unit which shall remit payment of the amount as required in subsection (d) of this section. If the final decision of the secretary is to refuse to pay any amount, the vendor may proceed in accordance with the provisions of article two, chapter fourteen of this code.

(d) Following the preliminary review of the charges, the director shall fully apportion all telecommunications charges not rejected during the preliminary review required by

subsection (c) of this section among spending units based on the spending unit's service and usage, as determined by the director. The director shall send each spending unit a statement of the spending unit's proportionate share of any telecommunications charges within thirty days of receipt by the division of the invoice detailing the telecommunications charges. Monthly statements for a spending unit of less than \$75 may be accumulated and sent to the spending unit on one statement near the end of the fiscal year. The director shall continue to pay any vendor invoices based upon the requirements of subsection (b) of this section. The statement is to provide a date of no more than thirty calendar days from the date the division sends the statement by which the spending unit shall submit payment or transfer to the telecommunications services payment and reserve fund all funds necessary to pay for the spending unit's charges in full: Provided, That the statement sent in last month of the fiscal year shall provide that the transfer shall be made by July 31. If feasible for the spending unit, the preferable method of payment is by intergovernmental transfer.

(e) All spending units shall budget for telecommunications service expenses. Prior to the date provided in each statement sent to a spending unit pursuant to subsection (d) of this section, each spending unit shall pay or transfer the statement amount to the Telecommunications Services Payment and Reserve Fund.

(f) If a spending unit fails to pay or transfer funds by the date specified in the statement sent pursuant to subsection (d) of this section, the Secretary of the Department of Administration shall transfer to the Telecommunications Services Payment and Reserve Fund the statement amount plus an additional penalty in the amount of three percent of the statement amount from any funds supporting the administration of that spending unit: Provided, That the secretary shall complete all such transfers by July 31 of each fiscal year. Upon exercising a transfer under the authority of this subsection, the director shall provide a notification to the spending unit, including, but not limited to, the date, time, total amount of the transfer, statement amount and penalty amount. If a participating spending unit does not maintain funds in the State Treasury, the secretary may transfer funds by wire from any depository outside the State Treasury. A participating spending unit maintaining funds in depositories outside the State Treasury shall furnish the secretary access to those funds for the exclusive purposes of this section.

(g) If a spending unit contests any portion of its statement, it shall nonetheless remit payment for the entire statement amount and notify the division in writing within thirty days of statement receipt by the spending unit. The secretary shall consider any contested apportionments of charges and provide a final determination on the apportionment of legitimate charges. Corrections or adjustments to apportionments may be effected on future transfer payments: Provided, That legitimate vendor charges are to be fully apportioned. If the basis of the contest is vendor error, overcharge, service failure, failure to terminate services as required by the division or other failure of or error in vendor performance, the director shall withhold the contested amount from current or future vendor payments, pending resolution by the secretary, and the director shall bring the contested matter to the attention of the vendor. The director and the vendor shall attempt to resolve the matter in good faith. Within ninety days of the receipt of the vendor's invoice or a time period mutually

agreed to by the vendor and secretary, the secretary shall make the final decision as to the legitimacy of the contested amount and determine if payment is warranted. If the final decision of the secretary is to refuse to pay any amount, the vendor may proceed in accordance with the provisions of article two, chapter fourteen of this code.

(h) The director shall provide for full payment of legitimate, uncontested telecommunications charges within ninety days of receipt of an invoice detailing the telecommunications charges by the division. Payment for the charges shall be made by the director from the Telecommunications Services Payment and Reserve Fund.

(i) The director may direct the discontinuance of telecommunications services to any spending unit that fails to comply with the provisions of this section and the vendor supplying telecommunication services shall comply with the written direction of the director on discontinuance of services.

(j) To help defray the additional cost of administering this section, the director may assess a proportional fee of up to \$150,000 in aggregate per fiscal year to the participating spending units based on each spending unit's portion of service and usage. This fee is to be included in the statement sent to spending units pursuant to subsection (d) of this section and transferred to the Telecommunications Service Payment and Reserve Fund by the date specified in the statement for the transfer of payment.

(k) Notwithstanding any other provision of this code to the contrary, for purposes of this section, an invoice is considered received by the division on the date on which the invoice is marked as received by the division, or three business days after the date of the postmark made by the United States Postal Service as evidenced on the envelope in which the invoice is mailed, whichever is earlier: Provided, That if an invoice is received by the division prior to the date on which the telecommunications services covered by the invoice are delivered or fully performed, for purposes of determining the ninety-day time period for payment in subsection (h) of this section, the invoice is considered received on the date on which the telecommunications services covered by the invoice were delivered or fully performed.

(l) For purposes of this section, "telecommunications service" means and includes not only telephone service regulated under chapter twenty-four of this code or under federal law, but also may include, at the discretion of the Secretary of Administration, wireless service, voice over Internet protocol service, Internet service and any other service or equipment used for the electronic transmission of voice or data: Provided, That the service is provided under a statewide contract.

(m) The director may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the purposes of this section.