CHAPTER_______

1 AN ACT concerning

2 Department of Health and Mental Hygiene - Office of the Inspector

3 General - Health Program Integrity and Recovery Act

4 FOR the purpose of establishing the Office of the Inspector General in the
5 Department of Health and Mental Hygiene; providing for the authority, duties, and powers of the Office; prohibiting certain acts by providers; describing certain provider duties; providing for penalties and sanctions for violating certain prohibited acts; granting a provider notice and an opportunity to be heard; providing a person with an award, civil immunity, and protection from retaliation for cooperating with an investigation under certain circumstances; prohibiting certain health care providers from taking retaliatory actions against certain employees under certain circumstances; authorizing certain employees to file civil actions against certain providers under certain circumstances; limiting the length of time an employee may file a civil action under certain circumstances; authorizing a court to take certain actions; requiring certain providers to display certain notices and provide certain information in a certain manner; requiring the Department to establish a task force to review certain laws and regulations for certain purposes; requiring a certain report to be submitted to certain committees; defining certain terms; and generally relating to health program integrity and recovery activities.

21 BY adding to
22 Article - Health - General
23 Section 2-501 through 2-509, inclusive, to be under the new subtitle "Subtitle 5. Health Program Integrity and Recovery Activities"
25 Annotated Code of Maryland
SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Health - General

SUBTITLE 5. HEALTH PROGRAM INTEGRITY AND RECOVERY ACTIVITIES.

2-501.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "ABUSE" MEANS PROVIDER PRACTICES THAT ARE INCONSISTENT WITH SOUND FISCAL, BUSINESS, OR MEDICAL PRACTICES AND RESULT IN UNNECESSARY COSTS TO A PROGRAM, OR IN REIMBURSEMENT FOR SERVICES THAT ARE NOT MEDICALLY NECESSARY OR THAT FAIL TO MEET PROFESSIONALLY RECOGNIZED HEALTH CARE STANDARDS.

(C) "CLAIM" MEANS A REQUEST OR DEMAND FOR MONEY, PROPERTY, OR SERVICES MADE UNDER CONTRACT OR OTHERWISE, BY A CONTRACTOR, GRANTEE, PROVIDER, OR OTHER PERSON SEEKING MONEY FOR THE PROVISION OF HEALTH SERVICES IF:

(1) THE STATE OR DEPARTMENT PROVIDES ANY PORTION OF THE MONEY OR PROPERTY THAT IS REQUESTED OR DEMANDED; OR

(2) THE STATE OR DEPARTMENT REIMBURSES THE CONTRACTOR, GRANTEE, PROVIDER, OR OTHER PERSON FOR ANY PORTION OF THE MONEY OR PROPERTY THAT IS REQUESTED OR DEMANDED.

(D) "CORPORATE COMPLIANCE PROGRAM" MEANS A FORMAL ORGANIZATIONAL PROGRAM THAT:

(1) PROMOTES PREVENTION, DETECTION, AND RESOLUTION OF CONDUCT THAT DOES NOT CONFORM TO THE REQUIREMENTS OF THIS SUBTITLE; AND

(2) MAY INCLUDE THE FOLLOWING ELEMENTS:

(1) DESIGNATION OF AN INDIVIDUAL WITHIN THE ORGANIZATION AS THE ORGANIZATION'S COMPLIANCE OFFICER;

(II) A TRAINING PROGRAM REGARDING REIMBURSEMENT PRINCIPLES;

(III) A HOTLINE TO PROMOTE EFFECTIVE COMMUNICATION;
(IV) PUBLISHED GUIDANCE REGARDING DISCIPLINARY ACTION FOR CORPORATE OFFICERS, MANAGERS, AND EMPLOYEES WHO FAIL TO COMPLY WITH THE ORGANIZATION’S BILLING STANDARDS;

(V) PERIODIC REPORTING OF DATA NOT ORDINARILY REQUIRED TO BE REPORTED; AND

(VI) OTHER PROVISIONS THAT ARE NECESSARY TO COMBAT MISTAKEN CLAIMS AND FRAUD, WASTE, AND ABUSE. "EMPLOYEE" MEANS ANY INDIVIDUAL WHO PERFORMS SERVICES FOR, OR UNDER THE CONTROL OR DIRECTION OF, A PROVIDER FOR WAGES OR OTHER REMUNERATION.

(E) (1) "FRAUD" MEANS AN INTENTIONAL MATERIAL DECEPTION OR MISREPRESENTATION MADE BY A PERSON WITH THE KNOWLEDGE THAT THE DECEPTION OR MISREPRESENTATION COULD RESULT IN SOME UNAUTHORIZED BENEFIT OR PAYMENT.

(2) "FRAUD" INCLUDES ANY ACT THAT CONSTITUTES FRAUD UNDER APPLICABLE STATE OR FEDERAL LAW.

(F) "KNOWING" OR "KNOWINGLY" MEANS THAT, WITH RESPECT TO INFORMATION, A PERSON:

(1) HAS ACTUAL KNOWLEDGE OF THE INFORMATION;

(2) ACTS IN DELIBERATE IGNORANCE OF THE TRUTH OR FALSITY OF THE INFORMATION; OR

(3) ACTS IN RECKLESS DISREGARD OF THE TRUTH OR FALSITY OF THE INFORMATION, AND NO PROOF OF SPECIFIC INTENT TO DEFRAUD IS REQUIRED.


(H) (G) (1) "PROVIDER" MEANS:

(I) AN INDIVIDUAL LICENSED OR CERTIFIED UNDER THE HEALTH OCCUPATIONS ARTICLE TO PROVIDE HEALTH CARE;

(II) A LICENSED FACILITY THAT PROVIDES HEALTH CARE TO INDIVIDUALS; OR

(III) ANY OTHER PERSON WHO OR ENTITY THAT PROVIDES HEALTH CARE, PRODUCTS, OR SERVICES TO A PROGRAM RECIPIENT; OR
"PROVIDER" INCLUDES:

(I) A FACILITY AS DEFINED IN § 15-101 OF THE HEALTH—GENERAL ARTICLE;

(II) A HISTORIC PROVIDER AS DEFINED IN § 15-101 OF THE HEALTH—GENERAL ARTICLE;

(III) A MANAGED CARE ORGANIZATION AS DEFINED IN § 15-101 OF THE HEALTH—GENERAL ARTICLE;

(IV) A HEALTH MAINTENANCE ORGANIZATION AS DEFINED IN § 19-701 OF THE HEALTH—GENERAL ARTICLE;

(V) A FEDERALLY QUALIFIED HEALTH CENTER AS DEFINED IN § 13-1101 OF THE HEALTH—GENERAL ARTICLE; AND

(VI) A CONTRACTOR, SUBCONTRACTOR, OR VENDOR WHO DIRECTLY OR INDIRECTLY PROVIDES THE DEPARTMENT OR ITS RECIPIENTS SUPPLIES, DRUGS, EQUIPMENT, OR SERVICES.

"PROVIDER" DOES NOT INCLUDE A STATE AGENCY THAT RECEIVES GRANT FUNDING FROM OR THROUGH THE DEPARTMENT IF THAT AGENCY HAS IN PLACE A CORPORATE COMPLIANCE PROGRAM THAT MEETS DEPARTMENTAL REQUIREMENTS.

"REASONABLE" MEANS FAIR, PROPER, OR SUITABLE UNDER THE CIRCUMSTANCES.

"RECIPIENT" MEANS AN INDIVIDUAL WHO RECEIVES BENEFITS UNDER A PROGRAM.

"RECOVERY" MEANS THE REPAYMENT OF MONEYS TO THE DEPARTMENT BY A PROVIDER THROUGH RETURN, REIMBURSEMENT, RECOUPMENT, WITHHOLDING OF FUTURE PAYMENTS, OFFSETS, OR ANY OTHER METHOD.

THERE IS AN OFFICE OF THE INSPECTOR GENERAL IN THE DEPARTMENT.

THE INSPECTOR GENERAL:

(1) MAY INVESTIGATE MISTAKEN CLAIMS, AND FRAUD, WASTE, AND ABUSE OF DEPARTMENTAL FUNDS;

(2) SHALL COOPERATE WITH AND COORDINATE INVESTIGATIVE EFFORTS WITH THE MEDICAID FRAUD CONTROL UNIT AND WHERE A PRELIMINARY INVESTIGATION ESTABLISHES A SUFFICIENT BASIS TO WARRANT REFERRAL, SHALL REFER SUCH MATTERS TO THE MEDICAID FRAUD CONTROL UNIT; AND
SHALL COOPERATE WITH AND COORDINATE INVESTIGATIVE EFFORTS WITH DEPARTMENTAL PROGRAMS AND OTHER STATE AND FEDERAL AGENCIES TO ENSURE A PROVIDER IS NOT SUBJECT TO DUPLICATIVE AUDITS.

THE INSPECTOR GENERAL, IN COLLABORATION WITH THE APPROPRIATE DEPARTMENTAL PROGRAM, MAY:

(1) TAKE NECESSARY STEPS TO RECOVER ANY MISTAKEN, WRONGFUL, MISTAKEN CLAIMS PAID OR PAYMENTS OBTAINED IN ERROR OR FRAUDULENT CLAIMS PAID TO OR OBTAINED BY A PROVIDER; AND

(2) TAKE NECESSARY STEPS TO RECOVER THE COST OF BENEFITS MISTAKENLY, WRONGFULLY, MISTAKENLY PAID OR OBTAINED IN ERROR, OR FRAUDULENTLY PAID TO OR OBTAINED BY A RECIPIENT;

(3) PERFORM AUDITS AND INSPECTIONS OF PROVIDERS;

(4) WORK WITH PROVIDERS TO REDUCE MISTAKEN CLAIMS AND FRAUD, WASTE, AND ABUSE IN THE HEALTH CARE SYSTEM;

(5) COORDINATE INVESTIGATIVE AND RECOVERY EFFORTS WITH OTHER DEPARTMENTS AND AGENCIES;

(6) ISSUE AN ADMINISTRATIVE SUBPOENA FOR THE PRODUCTION OF ALL INFORMATION, DOCUMENTS, REPORTS, ANSWERS, RECORDS, ACCOUNTS, PAPERS, ELECTRONIC MEDIA, AND OTHER DATA AND DOCUMENTARY EVIDENCE THAT MAY ASSIST IN THE INVESTIGATION OF POTENTIAL FRAUD, WASTE, ABUSE, AND MISTAKEN OR WRONGFUL CLAIMS;

(7) ADMINISTER TO AND ACCEPT FROM AN INDIVIDUAL AN OATH, AFFIRMATION, OR AFFIDAVIT;

(8) REQUIRE A PROVIDER SEEKING PAYMENT FROM A STATE HEALTH PROGRAM TO ADOPT AND HAVE IN PLACE A CORPORATE COMPLIANCE PROGRAM;

(9) WHEN A PROVIDER’S FISCAL SITUATION WARRANTS, REQUIRE A SURETY BOND FROM A PROVIDER TO ASSURE THAT SUFFICIENT FUNDS ARE AVAILABLE TO SATISFY ANY RECOVERY AMOUNTS DUE TO THE DEPARTMENT;

(10) ENFORCE THE PENALTIES IN § 2-507 OF THIS SUBTITLE; AND

(11) ADOPT REGULATIONS TO CARRY OUT THIS SUBTITLE.
A PERSON MAY NOT:

(1) KNOWINGLY PRESENT, OR CAUSE TO BE PRESENTED, TO A PROGRAM, OFFICER, OR EMPLOYEE OF THE DEPARTMENT A WRONGFUL OR FRAUDULENT CLAIM FOR PAYMENT OR APPROVAL;

(2) KNOWINGLY MAKE, USE, OR CAUSE TO BE MADE OR USED A FALSE RECORD OR STATEMENT TO GET A WRONGFUL OR FRAUDULENT CLAIM PAID OR APPROVED BY THE STATE;

(3) CONSPIRE TO DEFRAUD A PROGRAM BY GETTING A WRONGFUL OR FRAUDULENT CLAIM APPROVED OR PAID;

(4) KNOWINGLY MAKE A WRONGFUL OR FRAUDULENT CLAIM AGAINST A PROGRAM;

(5) ENGAGE IN PRACTICES PROHIBITED UNDER THIS SECTION OR BY FEDERAL OR STATE LAW OR REGULATION REGARDING PARTICIPATION IN A PROGRAM OR PROVIDING HEALTH CARE SERVICES TO A RECIPIENT; OR

(6) FAIL TO COOPERATE WITH AN INVESTIGATION BY THE DEPARTMENT, INCLUDING:

(I) FAILURE TO PROVIDE ACCESS TO THE PREMISES FOR INSPECTION, AUDIT, AND COPYING OF RECORDS OF A PROVIDER;

(II) FAILURE TO RESPOND TO A REQUEST FOR PRODUCTION OF DOCUMENTS IN A TIMELY MANNER;

(III) FAILURE TO MAINTAIN RECORDS FOR 5 YEARS AFTER A CLAIM IS SUBMITTED FOR PAYMENT, OR THE PERIOD OF TIME REQUIRED BY THE PAYING PROGRAM, WHICHEVER IS GREATER;

(IV) MAKING A FALSE STATEMENT; OR

(V) FAILURE TO PROVIDE STATEMENTS UNDER OATH.


(B) ON RECEIPT OF NOTIFICATION, THE INSPECTOR GENERAL MAY:

(1) CONDUCT AN INVESTIGATION;
(2) REFER THE MATTER TO THE APPROPRIATE PROGRAM FOR INVESTIGATION OR RECOVERY; OR

(3) REFER THE MATTER TO THE MEDICAID FRAUD CONTROL UNIT OF THE OFFICE OF THE ATTORNEY GENERAL.

(C) THE NOTIFICATION REQUIRED UNDER THIS SUBSECTION DOES NOT LIMIT THE DEPARTMENT'S AUTHORITY TO INVESTIGATE MISTAKEN CLAIMS AND FRAUD, WASTE, AND ABUSE IN ABSENCE OF NOTIFICATION.

(D) IN DETERMINING WHETHER TO PROCEED WITH AN ACTION, AND AN APPROPRIATE PENALTY, THE DEPARTMENT SHALL TAKE INTO ACCOUNT WHETHER THE PROVIDER:

(1) SELF-REPORTED; AND

(2) HAS A CORPORATE COMPLIANCE PROGRAM.

(A) A PROVIDER WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS SUBJECT TO THE FOLLOWING ADMINISTRATIVE PENALTIES:

(1) RECOVERY OF ANY DEPARTMENTAL FUNDS WRONGFULLY, FRAUDULENTLY, OR MISTAKENLY PAID TO THE PROVIDER;

(2) COSTS OF COLLECTION AND INVESTIGATION OF THE MISTAKEN CLAIM AND FRAUD, WASTE, OR ABUSE;

(3) INTEREST ON ANY MONEYS MISTAKENLY, WRONGFULLY, OR FRAUDULENTLY OBTAINED BY THE PERSON;

(4) IMPOSITION OF A LIEN ON ASSETS TO ENSURE SUFFICIENT FUNDS ARE AVAILABLE TO SATISFY ANY RECOVERY AMOUNT DUE TO THE DEPARTMENT;

(5) A FINE TO BE LEVIED BY THE DEPARTMENT OF UP TO $10,000 PER INCIDENT WITH A MAXIMUM OF $100,000;

(6) SUSPENSION OF THE PROVIDER'S PARTICIPATION IN A PROGRAM;

(7) TERMINATION OF THE PROVIDER'S PARTICIPATION IN A PROGRAM;

OR

(8) ANY OTHER PENALTIES, LIMITS, CONDITIONS, OR CONTROLS IMPOSED BY THE DEPARTMENT REGARDING THE PROVISION OF HEALTH CARE SERVICES TO A RECIPIENT OR THE PROVIDER'S PARTICIPATION IN A DEPARTMENTAL PROGRAM.

(B) THE PENALTIES PROVIDED IN THIS SECTION ARE IN ADDITION TO ANY CRIMINAL, CIVIL, OR ADMINISTRATIVE PENALTIES PROVIDED UNDER ANY OTHER STATE OR FEDERAL STATUTE OR REGULATION.
THE DEPARTMENT SHALL PAY ANY FINE COLLECTED UNDER THIS SECTION INTO THE GENERAL FUND OF THE STATE.

THE COMPTROLLER SHALL:

1. DEPOSIT ANY FINE COLLECTED UNDER THIS SUBTITLE INTO THE GENERAL FUND OF THE STATE; AND
2. RETURN TO OR CREDIT THE RESPECTIVE PROGRAM WITH ANY RECOVERY OR OTHER RESTORATION OF FUNDS FOR ACTIONS TAKEN UNDER THIS SECTION.

AN ACTION UNDER THIS SUBTITLE MAY NOT BE BROUGHT AFTER THE LATER OF:

1. 5 YEARS AFTER THE DATE ON WHICH THE VIOLATION OCCURS; OR
2. 3 YEARS AFTER THE DATE WHEN FACTS MATERIAL TO THE ACTION ARE KNOWN OR REASONABLY SHOULD HAVE BEEN KNOWN BY THE OFFICIAL OF THE STATE OR DEPARTMENT CHARGED WITH THE RESPONSIBILITY FOR ACTING UNDER THE CIRCUMSTANCES.

EXCEPT AS OTHERWISE PROVIDED IN THE ADMINISTRATIVE PROCEDURE ACT AND IN PARAGRAPH (3) OF THIS SUBSECTION, THE DEPARTMENT SHALL GIVE A PERSON AGAINST WHOM AN ACTION IS CONTEMPLATED NOTICE AND AN OPPORTUNITY FOR A HEARING.

THE HEARING SHALL BE CONDUCTED IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

FEDERAL AUTHORITY TO IMMEDIATELY SUSPEND PAYMENT TO A PROVIDER RECEIVING FUNDS UNDER THE MEDICAID PROGRAM FOR FRAUDULENT ACTIVITY IS EXPRESSLY RETAINED.

A PERSON AGGRIEVED BY A FINAL DECISION OF THE DEPARTMENT MAY TAKE A DIRECT JUDICIAL APPEAL.

THE APPEAL SHALL BE MADE AS PROVIDED FOR JUDICIAL REVIEW OF A FINAL DECISION UNDER THE ADMINISTRATIVE PROCEDURE ACT.

A FINAL DECISION OF THE DEPARTMENT MAY NOT BE STAYED PENDING REVIEW.

FOR ANY ACTION BROUGHT UNDER THIS SUBTITLE, THE PROVISIONS OF § 10-224 OF THE STATE GOVERNMENT ARTICLE ARE APPLICABLE ONLY TO RECOVERY ACTIONS THAT ARE CLEARLY FRIVOLOUS, VEXATIOUS, OR BROUGHT PRIMARILY FOR THE PURPOSES OF HARASSMENT.
(A) The Department may award a person who is instrumental in the recovery of Departmental funds an amount not greater than 10% of the proceeds actually recovered.

(B) An employee or contractor of Federal, State, or local government is not eligible for an award under this section.

(C) The Department may not award a person who knowingly participated in the violation on which the action was based.

(D) A person is not civilly liable for:

1. Making a report in good faith of a mistaken claim and fraud, waste, or abuse; or

2. Participating in any investigation related to a mistaken claim and fraud, waste, or abuse.

(E) (1) This subsection does not apply to an employee as defined in § 1-501(C) of the Health Occupations Article or a State employee.

2. A provider may not take a retaliatory action against an employee because the employee:

   (I)Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of the provider that the employee reasonably believes is in violation of this subtitle or a regulation adopted under this subtitle;

   (II)Provides information to, or testifies before, a public body conducting an investigation, hearing, or inquiry into a suspected violation by the provider under this subtitle or a regulation adopted under this subtitle; or

   (III)Objects to or refuses to participate in any activity, policy, or practice that the employee reasonably believes is in violation of this subtitle or regulations adopted under this subtitle.

2. If the provider takes a retaliatory action against the employee, an employee, other than a state employee, may file a civil action against an employer, other than a supervisor in state government, an appointing authority in state government, or the head of a principal unit in state government.

3. The cause of action and remedies available against an employer that retaliates shall be as are available to individuals under Title 1, subtitle 5 of the Health Occupations Article.
(4) A state employee who is subject to a retaliatory action:

(i) May file a complaint under Title 5, Subtitle 3 of the State Personnel and Pensions Article, but

(ii) May not file a civil action under this subsection any employee who is subject to an action in violation of paragraph (2) of this subsection may institute a civil action in the county where:

(I) The alleged violation occurred;

(II) The employee resides; or

(III) The provider maintains its principal office in the state.

(4) The action shall be brought within 1 year after the alleged violation of paragraph (2) of this subsection or within 1 year after the employee first became aware of the alleged violation of paragraph (1) of this subsection.

(5) In any action brought under this subsection, a court may:

(I) Issue an injunction to restrain continued violation of this subsection;

(II) Reinstates the employee to the same or an equivalent position held before the violation of paragraph (2) of this subsection;

(III) Remove any adverse personnel record entries based on or related to the violation of paragraph (2) of this subsection;

(IV) Reinstates full fringe benefits and seniority rights;

(V) Require compensation for lost wages, benefits, and other remuneration; and

(VI) Assess reasonable attorney's fees and other litigation expenses against:

1. The provider, if the employee prevails; or

2. The employee, if the court determines that the action was brought by the employee in bad faith and without basis in law or fact.

(5) (6) An employer a provider shall:

(I) Conspicuously display notices of its employee protections under this section; and
11 UNOFFICIAL COPY OF SENATE BILL 117

(II) USE APPROPRIATE MEANS TO INFORM ITS EMPLOYEES OF THE PROTECTIONS AND OBLIGATIONS PROVIDED UNDER THIS SECTION SUBSECTION.

(6) THIS SECTION MAY NOT BE CONSTRUED TO CONTRAVENE THE HEALTH CARE WHISTLEBLOWER PROTECTION PROVISIONS OF TITLE 1, SUBTITLE 5 OF THE HEALTH OCCUPATIONS ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That the Department of Health and Mental Hygiene shall:

(1) establish a task force composed of all interested parties for the purpose of consolidating departmental authority over fraud, waste, and abuse by reviewing Maryland laws governing the Department, and regulations issued by the Department, to eliminate overlapping and duplicate administrative authority within the Department as a result of establishing the Office of Inspector General; and

(2) in accordance with § 2-1246 of the State Government Article, report its findings and recommendations to the Senate Finance Committee and the House Health and Government Operations Committee on or before December 1, 2006.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2006.