

HOUSE BILL 1476

P3

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By: **Chair, Health and Government Operations Committee (By Request –
Departmental – Health and Mental Hygiene)**

Introduced and read first time: March 2, 2009

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Program Integrity and Recovery Act of 2009**

3 FOR the purpose of authorizing the Inspector General to provide certain training and
4 assistance to providers; authorizing the Inspector General to require a surety
5 bond; authorizing the Inspector General to assist in implementing regulations
6 and imposing administrative sanctions; prohibiting a provider from engaging in
7 certain actions; providing for certain administrative sanctions and penalties for
8 engaging in the prohibited actions; requiring the Department of Health and
9 Mental Hygiene to pay certain civil money penalties into the General Fund of
10 the State; requiring the Comptroller to make certain deposits and certain
11 credits; providing for certain appeal rights to a person aggrieved by a decision of
12 the Department; authorizing the Inspector General, in collaboration with
13 certain Programs, to adopt certain regulations; requiring the Department to
14 continue certain actions and consult with certain persons regarding the
15 development of certain regulations; and generally relating to powers of the
16 Inspector General.

17 BY repealing and reenacting, with amendments,
18 Article – Health – General
19 Section 2–504 and 2–505
20 Annotated Code of Maryland
21 (2005 Replacement Volume and 2008 Supplement)

22 BY adding to
23 Article – Health – General
24 Section 2–505, 2–506, and 2–507
25 Annotated Code of Maryland
26 (2005 Replacement Volume and 2008 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Health - General**

4 **2-504.**

5 The Inspector General, in collaboration with the appropriate departmental
6 program, may:

7 (1) **PROVIDE EDUCATIONAL TRAINING AND ASSISTANCE TO**
8 **PROVIDERS REGARDING PROGRAM INTEGRITY AND CORPORATE COMPLIANCE**
9 **ACTIVITIES;**

10 (2) Take necessary steps to recover any mistaken claims paid or
11 payments obtained in error or fraudulent claims paid to or obtained by a provider;
12 [and]

13 [(2)] (3) Take necessary steps to recover the cost of benefits
14 mistakenly paid or obtained in error, or fraudulently paid to or obtained by a recipient;

15 (4) **REQUIRE A SURETY BOND FROM A PROVIDER TO ASSURE**
16 **THAT SUFFICIENT FUNDS ARE AVAILABLE TO SATISFY THE RECOVERY OF ANY**
17 **AMOUNTS DUE TO THE DEPARTMENT;**

18 (5) **ASSIST THE DEPARTMENT IN IMPLEMENTING THE**
19 **REGULATIONS ADOPTED UNDER THIS SUBTITLE AND IMPOSING**
20 **ADMINISTRATIVE SANCTIONS AND PENALTIES AUTHORIZED UNDER § 2-506 OF**
21 **THIS SUBTITLE; AND**

22 (6) **ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF**
23 **THIS SUBTITLE.**

24 **2-505.**

25 **A PROVIDER MAY NOT:**

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

29 (2) **KNOWINGLY MAKE, USE, OR CAUSE TO BE MADE OR USED A**
30 **FALSE RECORD OR STATEMENT TO GET A FRAUDULENT CLAIM PAID OR**
31 **APPROVED;**

1 **(3) CONSPIRE TO DEFRAUD THE DEPARTMENT BY GETTING A**
2 **FRAUDULENT CLAIM APPROVED OR PAID; OR**

3 **(4) FAIL TO COOPERATE WITH AN INVESTIGATION BY THE**
4 **DEPARTMENT, INCLUDING:**

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

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

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

12 **2-506.**

13 **(A) A PROVIDER THAT ENGAGES IN ANY OF THE ACTS SET FORTH IN §**
14 **2-505 OF THIS SUBTITLE IS SUBJECT TO THE FOLLOWING ADMINISTRATIVE**
15 **SANCTIONS AND PENALTIES, IN ADDITION TO RECOVERY OF THE FUNDS, WITH**
16 **INTEREST AND THE COSTS OF INVESTIGATING, COLLECTING, AND PLACING A**
17 **LIEN FOR AN IMPROPER CLAIM:**

18 **(1) A CIVIL MONEY PENALTY OF UP TO \$10,000 PER VIOLATION**
19 **OF § 2-505 OF THIS SUBTITLE, WITH A MAXIMUM TOTAL OF \$100,000;**

20 **(2) SUSPENSION OR TERMINATION OF THE PROVIDER'S**
21 **PARTICIPATION IN A PROGRAM; AND**

22 **(3) ANY OTHER SANCTION OR PENALTY AUTHORIZED BY:**

23 **(I) A CONSENT DECREE;**

24 **(II) A CONTRACT;**

25 **(III) A PROVIDER AGREEMENT; OR**

26 **(IV) LICENSING STANDARDS.**

27 **(B) THE SANCTIONS AND PENALTIES SET FORTH IN THIS SECTION ARE**
28 **IN ADDITION TO ANY CRIMINAL, CIVIL, OR ADMINISTRATIVE SANCTIONS OR**
29 **PENALTIES PROVIDED UNDER ANY OTHER STATE OR FEDERAL STATUTE OR**
30 **REGULATION.**

1 **(C) (1) THE DEPARTMENT SHALL PAY ANY CIVIL MONEY PENALTY**
2 **COLLECTED UNDER THIS SECTION INTO THE GENERAL FUND OF THE STATE.**

3 **(2) THE COMPTROLLER SHALL:**

4 **(I) DEPOSIT ANY CIVIL MONEY PENALTY COLLECTED**
5 **UNDER THIS SUBTITLE INTO THE GENERAL FUND OF THE STATE; AND**

6 **(II) RETURN TO OR CREDIT THE RESPECTIVE PROGRAM**
7 **WITH ANY RECOVERY OR OTHER RESTORATION OF FUNDS FOR ACTIONS TAKEN**
8 **UNDER THIS SECTION.**

9 **2-507.**

10 **(A) ANY PERSON AGGRIEVED BY A FINAL DECISION OF THE**
11 **DEPARTMENT UNDER THIS SUBTITLE MAY NOT APPEAL TO THE BOARD OF**
12 **REVIEW BUT MAY TAKE A DIRECT JUDICIAL APPEAL FOLLOWING THE**
13 **EXHAUSTION OF THE ADMINISTRATIVE REMEDIES PERMITTED UNDER THE**
14 **ADMINISTRATIVE PROCEDURE ACT.**

15 **(B) THE APPEAL SHALL BE MADE AS PROVIDED FOR JUDICIAL REVIEW**
16 **OF FINAL DECISIONS OF THE DEPARTMENT IN THE ADMINISTRATIVE**
17 **PROCEDURE ACT.**

18 **(C) A FINAL DECISION OF THE DEPARTMENT MAY NOT BE STAYED**
19 **PENDING REVIEW.**

20 **[2-505.] 2-508.**

21 (a) A person is not civilly liable for:

22 (1) Making a report in good faith of fraud, waste, or abuse; or

23 (2) Participating in any investigation related to fraud, waste, or abuse.

24 (b) (1) This subsection does not apply to an employee as defined in §
25 1-501(c) of the Health Occupations Article or a State employee.

26 (2) A provider may not take a retaliatory action against an employee
27 because the employee:

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

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

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

7 (3) Any employee who is subject to an action in violation of paragraph
8 (2) of this subsection may institute a civil action in the county where:

9 (i) The alleged violation occurred;

10 (ii) The employee resides; or

11 (iii) The provider maintains its principal office in the State.

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

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

16 (i) Issue an injunction to restrain continued violation of this
17 subsection;

18 (ii) Reinstate the employee to the same or an equivalent
19 position held before the violation of paragraph (2) of this subsection;

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

22 (iv) Reinstate full fringe benefits and seniority rights;

23 (v) Require compensation for lost wages, benefits, and other
24 remuneration; and

25 (vi) Assess reasonable attorney's fees and other litigation
26 expenses against:

27 1. The provider, if the employee prevails; or

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

30 (6) A provider shall:

1 (i) Conspicuously display notices of its employee protections
2 under this subsection; and

3 (ii) Use appropriate means to inform its employees of the
4 protections and obligations provided under this subsection.

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

7 (1) continue to build on the progress made in the effort to combat
8 health care fraud by the cooperative provider–departmental workgroup convened
9 under Chapter 70 of the Acts of 2006; and

10 (2) consult with the workgroup and the regulatory class regarding the
11 development of regulations authorized by this legislation:

12 (i) to provide standards of prohibited conduct under this law;

13 (ii) to articulate mitigating and aggravating factors the
14 Department will employ in applying penalties under this Act, including the reduction
15 of penalties in the event of provider self–reporting; and

16 (iii) to specify those circumstances under which a surety bond
17 will be required in order for a provider to bill the Department for services.

18 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2009.