

SB0279/323628/1

BY: Delegate Shank

AMENDMENTS TO SENATE BILL 279
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “False Health Claims Act of 2010” and substitute “Recovery Audits of State Health Plans and State Health Programs”.

On pages 1 and 2, strike beginning with “prohibiting” in line 3 on page 1 through “regulations” in line 15 on page 2 and substitute “requiring the Secretary of Budget and Management to contract with certain consultants to conduct recovery audits of payments made by State agencies to individuals, vendors, and other entities; providing for certain authorizations under a certain contract; requiring the Secretary or a State agency to provide a certain person with certain information; requiring a certain person to be subject to certain prohibitions; providing that a certain person is subject to prosecution; requiring the Secretary to adopt certain regulations; requiring a State agency to expend or return to the federal government certain federal funds; requiring the Secretary to provide copies of certain reports received from a certain consultant to certain entities by a certain time; requiring the Secretary to submit a certain report to the General Assembly by a certain date each year; requiring a certain report to be posted on the Department of Budget and Management’s website”.

On page 2, in lines 15 and 16, strike “false claims against” and substitute “recovery audits of”; in line 19, strike “2-611” and substitute “2-605”; and in lines 19 and 20, strike “False Claims Against” and substitute “Recovery Audits of”.

AMENDMENT NO. 2

On page 2, in line 26, strike “**FALSE CLAIMS AGAINST**” and substitute “**RECOVERY AUDITS OF**”.

On pages 2 through 26, strike in their entirety the lines beginning with line 31 on page 2 through line 8 on page 26, inclusive, and substitute:

(Over)

“(B) “CONSULTANT” MEANS A PRIVATE CONTRACTOR WITH EXPERTISE IN RECOVERY AUDITS OF STATE HEALTH PLANS AND STATE HEALTH PROGRAMS.

(C) (1) “OVERPAYMENT” MEANS AN INADVERTENT ERROR RESULTING IN AN INDIVIDUAL, VENDOR, OR ANY OTHER ENTITY RECEIVING A PAYMENT OVER AND ABOVE THE AMOUNT TO WHICH THE INDIVIDUAL, VENDOR, OR ANY OTHER ENTITY IS ENTITLED.

(2) “OVERPAYMENT” INCLUDES A PAYMENT MADE TO AN INDIVIDUAL, VENDOR, OR ANY OTHER ENTITY THAT:

(I) FAILS TO MEET ELIGIBILITY REQUIREMENTS;

(II) RECEIVES DUPLICATE PAYMENTS;

(III) BENEFITS MONETARILY FROM INVOICE AND PRICING ERRORS;

(IV) FAILS TO APPLY DISCOUNTS, REBATES, OR OTHER ALLOWANCES; AND

(V) FAILS TO COMPLY WITH PURCHASING AGREEMENTS.

(D) “RECOVERY AUDIT” MEANS A FINANCIAL MANAGEMENT SERVICE USED TO IDENTIFY OVERPAYMENTS MADE BY A STATE AGENCY WITH RESPECT TO INDIVIDUALS, VENDORS, AND OTHER ENTITIES IN CONNECTION WITH A PAYMENT ACTIVITY UNDER A STATE HEALTH PLAN OR STATE HEALTH PROGRAM.

(E) “SECRETARY” MEANS THE SECRETARY OF BUDGET AND MANAGEMENT.

(F) (1) “STATE AGENCY” MEANS A DEPARTMENT, OFFICE, BOARD, COMMISSION, BUREAU, DIVISION, OR INSTITUTION OF HIGHER EDUCATION IN THE STATE.

(2) “STATE AGENCY” INCLUDES A UNIT IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT AND THE GENERAL ASSEMBLY.

(G) (1) “STATE HEALTH PLAN” MEANS:

(I) THE STATE MEDICAL ASSISTANCE PLAN ESTABLISHED IN ACCORDANCE WITH THE FEDERAL SOCIAL SECURITY ACT OF 1939;

(II) A MEDICAL ASSISTANCE PLAN ESTABLISHED BY THE STATE; OR

(III) A PRIVATE HEALTH INSURANCE CARRIER, HEALTH MAINTENANCE ORGANIZATION, MANAGED CARE ORGANIZATION AS DEFINED IN § 15-101 OF THIS ARTICLE, HEALTH CARE COOPERATIVE OR ALLIANCE, OR ANOTHER PERSON THAT PROVIDES OR CONTRACTS TO PROVIDE HEALTH CARE SERVICES THAT ARE WHOLLY OR PARTIALLY REIMBURSED BY, OR ARE A REQUIRED BENEFIT OF, A HEALTH PLAN ESTABLISHED IN ACCORDANCE WITH THE FEDERAL SOCIAL SECURITY ACT OF 1939 OR BY THE STATE.

(2) “STATE HEALTH PLAN” INCLUDES A PERSON WHO PROVIDES OR CONTRACTS OR SUBCONTRACTS TO PROVIDE HEALTH CARE SERVICES FOR AN ENTITY DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION.

(H) "STATE HEALTH PROGRAM" MEANS THE MEDICAL ASSISTANCE PROGRAM, THE CIGARETTE RESTITUTION FUND PROGRAM, THE MENTAL HYGIENE ADMINISTRATION, THE DEVELOPMENTAL DISABILITIES ADMINISTRATION, THE ALCOHOL AND DRUG ABUSE ADMINISTRATION, THE FAMILY HEALTH ADMINISTRATION, THE COMMUNITY INFECTIOUS DISEASE AND ENVIRONMENTAL HEALTH ADMINISTRATION, OR ANY OTHER UNIT OF THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE THAT PAYS A PROVIDER FOR A SERVICE RENDERED OR CLAIMED TO HAVE BEEN RENDERED TO A RECIPIENT.

2-602.

(A) THE SECRETARY SHALL CONTRACT WITH A CONSULTANT TO CONDUCT RECOVERY AUDITS OF PAYMENTS MADE UNDER A STATE HEALTH PLAN OR STATE HEALTH PROGRAM BY A STATE AGENCY TO INDIVIDUALS, VENDORS, AND OTHER ENTITIES.

(B) A CONTRACT UNDER THIS SECTION:

(1) MAY PROVIDE FOR REASONABLE COMPENSATION FOR SERVICES PROVIDED UNDER THE CONTRACT, INCLUDING COMPENSATION DETERMINED BY THE APPLICATION OF A SPECIFIED PERCENTAGE OF THE TOTAL AMOUNT RECOVERED UNDER THE RECOVERY AUDIT ACTIVITIES OF THE CONSULTANT;

(2) MAY PERMIT OR REQUIRE THE CONSULTANT TO PURSUE A JUDICIAL ACTION IN A COURT TO RECOVER AN OVERPAYMENT; AND

(3) MAY NOT ALLOW A RECOVERY AUDIT OF A PAYMENT DURING THE 90-DAY PERIOD AFTER THE DATE THE PAYMENT WAS MADE TO ALLOW TIME FOR THE PERFORMANCE OF EXISTING STATE PAYMENT AUDITING PROCEDURES.

(c) (1) THE SECRETARY OR THE STATE AGENCY WHOSE PAYMENTS ARE BEING AUDITED SHALL PROVIDE A PERSON ACTING UNDER A CONTRACT UNDER SUBSECTION (A) OF THIS SECTION WITH CONFIDENTIAL INFORMATION IN THE CUSTODY OF THE SECRETARY OR STATE AGENCY THAT IS NECESSARY FOR THE PERFORMANCE OF THE RECOVERY AUDIT OF AN OVERPAYMENT, TO THE EXTENT THE SECRETARY AND THE STATE AGENCY ARE NOT PROHIBITED FROM SHARING THE INFORMATION UNDER AN AGREEMENT WITH ANOTHER STATE OR THE FEDERAL GOVERNMENT.

(2) A PERSON ACTING UNDER A CONTRACT UNDER SUBSECTION (A) OF THIS SECTION, AND EACH EMPLOYEE OR AGENT OF THE PERSON, IS SUBJECT TO ALL PROHIBITIONS AGAINST THE DISCLOSURE OF CONFIDENTIAL INFORMATION OBTAINED FROM THE STATE THAT APPLY TO THE SECRETARY OR APPLICABLE STATE AGENCY OR AN EMPLOYEE OF THE SECRETARY OR APPLICABLE STATE AGENCY.

(3) A PERSON ACTING UNDER A CONTRACT UNDER SUBSECTION (A) OF THIS SECTION OR AN EMPLOYEE OR AGENT OF THE PERSON WHO DISCLOSES CONFIDENTIAL INFORMATION IN VIOLATION OF A PROHIBITION UNDER THIS SUBSECTION IS SUBJECT TO PROSECUTION FOR A MISDEMEANOR.

2-603.

(Over)

(A) THE SECRETARY SHALL ADOPT REGULATIONS FOR THE REASONABLE COMPENSATION FOR SERVICES PROVIDED UNDER RECOVERY AUDIT CONTRACTS BASED ON A SPECIFIED PERCENTAGE OF THE TOTAL AMOUNT RECOVERED UNDER THE AUDIT ACTIVITIES OF THE CONSULTANT.

(B) (1) A STATE AGENCY SHALL EXPEND OR RETURN TO THE FEDERAL GOVERNMENT ANY FEDERAL MONEY THAT IS RECOVERED THROUGH A RECOVERY AUDIT CONDUCTED UNDER THIS SUBTITLE.

(2) THE STATE AGENCY SHALL EXPEND OR RETURN THE FEDERAL MONEY IN ACCORDANCE WITH THE RULES OF THE FEDERAL PROGRAM THROUGH WHICH THE AGENCY RECEIVED THE FEDERAL MONEY.

2-604.

(A) THE SECRETARY SHALL PROVIDE COPIES, INCLUDING ELECTRONIC COPIES, OF REPORTS RECEIVED FROM A CONSULTANT CONTRACTING UNDER THIS SUBTITLE TO THE GOVERNOR, THE COMPTROLLER, AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

(B) THE SECRETARY SHALL PROVIDE THE COPIES REQUIRED UNDER SUBSECTION (A) OF THIS SECTION NO LATER THAN 7 BUSINESS DAYS AFTER THE DATE THE SECRETARY RECEIVES THE REPORT OF THE CONSULTANT.

(C) ON OR BEFORE DECEMBER 31 OF EACH YEAR, THE SECRETARY SHALL ISSUE A REPORT, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY SUMMARIZING THE

CONTENTS OF THE REPORTS RECEIVED UNDER THIS SUBTITLE DURING THE PREVIOUS FISCAL YEAR.

(D) THE REPORT REQUIRED UNDER SUBSECTION (C) OF THIS SECTION SHALL BE POSTED ON THE WEBSITE OF THE DEPARTMENT OF BUDGET AND MANAGEMENT.

2-605.

(A) THE SECRETARY SHALL ADOPT REGULATIONS NECESSARY TO IMPLEMENT THIS SUBTITLE.

(B) BY OCTOBER 1, 2010, THE SECRETARY SHALL BEGIN CONTRACTING WITH CONSULTANTS UNDER THIS SUBTITLE.”.

On page 26, in line 10, strike “October” and substitute “July”.