

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1316 (Chairman, Health, and Government Operations Committee)
(By Request – Departmental – Health and Mental Hygiene)

Health and Government Operations

**Department of Health and Mental Hygiene - Office of the Inspector General -
Health Program Integrity and Recovery Act**

This departmental bill clarifies and centralizes the Secretary of Health and Mental Hygiene's authority to investigate and combat fraud, waste, and abuse in the Department of Health and Mental Hygiene (DHMH). It codifies the existing Office of the Inspector General (OIG) within DHMH and authorizes the Inspector General, on DHMH's behalf, to audit providers, coordinate investigative efforts among various DHMH bill-paying programs, and take other necessary steps to reduce fraud, waste, and abuse, which the Inspector General already does.

Fiscal Summary

State Effect: Potential significant increase in general fund revenues due to the bill's administrative penalty provisions. Potential recovery to DHMH of funds awarded to fraudulent providers. No effect on expenditures.

Local Effect: None.

Small Business Effect: DHMH has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: The Inspector General must cooperate and coordinate investigative efforts with the State Medicaid Fraud Control Unit, and where a preliminary investigation establishes a sufficient basis to warrant referral, must refer such matters to the unit. The

Inspector General also must cooperate and coordinate investigative efforts with DHMH programs and other State and federal agencies. The Inspector General already performs these functions.

The bill codifies the Inspector General's current practice of being able to collaborate with the appropriate DHMH program to: (1) take necessary steps to recover mistaken, wrong, or fraudulent claims paid to or obtained by a provider; (2) take necessary steps to recover the cost of benefits mistakenly, wrongfully, or fraudulently paid to or obtained by a recipient; (3) perform provider audits and inspections; (4) work with providers to reduce mistaken claims, fraud, waste, and abuse in the health care system; and (5) coordinate investigative and recovery efforts with other departments and agencies.

The bill adds to the Inspector General's powers by allowing the Inspector General to: (1) issue an administrative subpoena that may assist in the investigation of potential fraud, waste, abuse, and mistaken or wrong claims; (2) administer to and accept an oath, affirmation, or affidavit from an individual; (3) require a provider seeking payment from a State health program to adopt and adhere to a corporate integrity plan; (4) when a provider's fiscal situation warrants, require a surety bond from a provider; (5) enforce the penalties established under this bill; and (6) adopt regulations to carry out this bill. *Many of these powers currently exist for the Secretary but not specifically for the Inspector General.*

The bill also prohibits a person from defrauding DHMH, engaging in practices that violate federal or State law or regulations, failing to cooperate with an investigation, failing to maintain records for a specified period of time, making a false statement, and failing to provide statements under oath.

If a provider has a reasonable indication of fraud, waste, or abuse, the provider must immediately notify in writing the appropriate program, the Inspector General, or the Medicaid Fraud Control Unit of the Office of the Attorney General (OAG). If the Inspector General receives 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. This notification does not limit DHMH's authority to investigate mistaken claims, fraud, waste, and abuse in absence of notification. In deciding whether to proceed with an action and a penalty, DHMH must take into account whether the provider self-reported and has a corporate integrity plan.

Administrative Penalties

This bill allows the Inspector General to impose the following administrative penalties on a provider who violates any provision of this bill: recovery of any DHMH funds; costs of

investigating and collecting wrongfully paid funds; interest on any funds paid; imposition of a lien on assets to recover DHMH funds; a fine levied by DHMH of up to \$10,000 per incident with a maximum of \$100,000; suspension or termination of a provider's participation in a program; or any other penalties, limits, conditions, or controls imposed by DHMH regarding providing health care services or the provider's participation in a DHMH program.

The Comptroller must deposit any monetary penalty into the general fund and return to or credit the respective program with any recovery or other restoration of funds for actions taken under this bill. These penalties are in addition to any existing criminal, civil, or administrative penalties under State or federal laws or regulations.

An action under this bill may not be brought after the later of: (1) more than five years after the date the violation occurs; or (2) more than three years after the date when material facts are known or reasonably should have been known by the official of DHMH or the State charged with acting under the circumstances.

DHMH must give a person against whom an action is contemplated notice and an opportunity for a hearing. Federal authority to immediately suspend payment to a provider receiving funds under the Medicaid program for fraudulent activity is expressly retained. A person may take a direct judicial appeal of a DHMH final decision. DHMH's final decision may not be stayed pending review.

Award and Protections for Individuals Reporting Alleged Fraud, Waste, or Abuse

DHMH may award a person who is instrumental in recovering DHMH funds an amount not greater than 10% of the recovered proceeds. An employee or contractor of federal, State, or local government is not eligible for an award. DHMH may not award a person who knowingly participated in the violation upon which the action was based.

A person is not civilly liable for making a report in good faith of a mistaken claim, fraud, waste, or abuse, or for participating in a related investigation. A provider may not take retaliatory action against an employee who: discloses or threatens to disclose an alleged practice prohibited under this bill; provides information to or testifies before a public body conducting an investigation, hearing, or inquiry into a suspected violation; or objects to or refuses to participate in any activity that the employee reasonably believes would be a violation of this bill.

If an employer takes retaliatory action against an employee, the employee may file a civil action against an employer. This does not apply to a State employee or a supervisor in State government, an appointing authority in State government, or the head of a principal unit in State government. A State employee subject to a retaliatory action may file a

complaint under the State Personnel and Pensions Article but may not file a civil action. An employer must conspicuously display notices of employee protections and must use appropriate means to inform employees of protections and obligations under this bill. Nothing in this bill contravenes the Health Care Whistleblower Protection provisions of the Health Occupation Article.

Current Law: The Secretary of Health and Mental Hygiene is responsible for DHMH's operation and must establish guidelines and procedures to promote the orderly and efficient administration of DHMH. The Secretary may establish, reorganize, or abolish areas of responsibility in DHMH as necessary to fulfill the Secretary's duties. The Secretary, or the Secretary's designee, may subpoena any person or evidence, administer oaths, and take depositions and other testimony. If a person fails to comply with a lawful order or subpoena, on petition of the Secretary or Secretary's designee, a court of competent jurisdiction may compel obedience to the order of the subpoena or compel testimony or the production of evidence.

The Health General and Health Occupations statutes currently include many provisions listed in this bill that pertain to prohibiting wrong or fraudulent claims; recovering funds that were wrongfully, fraudulently, or mistakenly paid to a service provider; and protecting individuals who in good faith report allegations of a mistaken claim, fraud, waste, or abuse. In assisting in the investigations of wrong or fraudulent claims, the Inspector General generally operates under the authority of a program, such as Medicaid, to inspect records and other documents. When an OAG employee visits a program provider to conduct an inspection, the inspector does so with an employee from the DHMH program under which the provider is funded.

Background: DHMH currently has limited authority to combat mistaken, wrong or fraudulent billing in its health care programs. Much of that authority is scattered throughout various DHMH regulations and has not been tested as a tool for recovering mistaken or fraudulent overpayments to providers. In 2003, OIG began a joint initiative with several bill-paying programs and the Medicaid Fraud Control Unit of OAG. This joint effort has led to the termination of several providers for fraudulent or abusive billing practices. This has resulted in cost avoidance for those programs and in some cases, modest recovery of overpayments. This bill would enhance, clarify, and centralize those cost avoidance and recovery efforts. It would also help to ensure the continued appropriate expenditure of State funds by giving the department the clear authority to stop abusive providers from depleting already scarce resources.

State Revenues: General fund revenues could increase significantly under the bill's monetary administrative penalty provisions for those cases heard in the District Court or the circuit courts. Any penalties collected would be paid into the State's general fund.

DHMH also could recover funds given to fraudulent providers which would be credited back to the DHMH program from which the funds were awarded that experienced the fraud, waste, or abuse. DHMH did not provide any information upon which to base a reliable estimate of the amount of funds that could be recovered from fraudulent providers. However, DHMH advises that it could recover as much as \$1 million in general funds annually. Any federal fund expenditures recovered would be returned to the federal government. DHMH further advises that the amount of any actual recovery is difficult to determine because most providers who commit fraud render themselves judgment-proof by going out of business or fleeing the State.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Legislative Services

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