

**Department of Legislative Services**  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 117 (Chairman, Finance Committee)  
(By Request – Departmental – Health and Mental Hygiene)

Finance

Health and Government Operations

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

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This departmental bill codifies the existing Office of the Inspector General (OIG) within the Department of Health and Mental Hygiene (DHMH) and authorizes the Inspector General, collaborating with a DHMH program, to take necessary steps to reduce fraud, waste, and abuse, which the Inspector General already does. It also requires DHMH to establish a task force to examine consolidating departmental authority over fraud, waste, and abuse by reviewing State laws governing DHMH and DHMH-issued regulations to eliminate overlapping and duplicate administrative authority as a result of establishing OIG. By December 1, 2006, the task force must issue a report of its findings and recommendations to the specified legislative committees.

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**Fiscal Summary**

**State Effect:** Potential recovery to DHMH of funds awarded to fraudulent providers. Any expense reimbursements for task force members and related staffing costs are assumed to be minimal and absorbable within existing budgeted resources.

**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. (The attached assessment does not reflect amendments to the bill.)

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## 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 to ensure a provider is not subject to duplicative audits. *The Inspector General already performs these functions.*

The bill codifies the Inspector General's current practice of collaborating with the appropriate DHMH program to: (1) take necessary steps to recover 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 paid or obtained in error or fraudulently paid to or obtained by a recipient.

### *Protections for Individuals Reporting Alleged Fraud, Waste, or Abuse*

A person is not civilly liable for making a report in good faith of fraud, waste, or abuse, or for participating in a related investigation. This does not apply to an individual licensed or certified by a board under the Health Occupations Article who performs services for and under the control and direction of an employer for wages or other remuneration or to a State employee. 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.

Any employee who is subject to a retaliatory action by a provider may institute a civil action in the county where the alleged violation occurred, the employee lives, or the provider maintains its principal office in Maryland. The action must be brought within one year after the alleged violation or within one year after the employee first became aware of the alleged violation. In any action, a court may: • issue an injunction to restrain continued violation; • reinstate the employee to the same or equivalent position held before the violation occurred; • remove any adverse personnel record entries based on or related to the violation; • reinstate full fringe benefits and seniority rights; • require compensation for lost wages, benefits, and other remuneration; and • assess reasonable attorney's fees and other litigation expenses against the provider, if the employee prevails, or the employee, if the court determines the action was brought by the employee in bad faith and without basis in law or fact. A provider must conspicuously display notices of employee protections and must use appropriate means to inform employees of protections and obligations under this bill.

**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. DHMH states that the bill also would help ensure the continued appropriate expenditure of State funds by giving the department the clear authority to stop abusive providers from depleting scarce resources.

**State Revenues:** DHMH 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 advises that it could recover as much as \$1 million in general funds annually, based on the initial results of an OIG/Office of Attorney General Medicaid fraud initiative. 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:** A similar bill, HB 1316 of 2005, had a hearing in the Health and Government Operations Committee, but no further action was taken.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - January 31, 2006  
nas/jr Revised - Senate Third Reader - March 23, 2006

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