

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.



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

Article – Health – General

2–504.

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

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

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

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

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

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

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

2–505.

A PROVIDER MAY NOT:

(1) **KNOWINGLY PRESENT OR CAUSE TO BE PRESENTED TO A PROGRAM, OFFICER, OR EMPLOYEE OF THE DEPARTMENT A 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 FRAUDULENT CLAIM PAID OR 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;

(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.

(3) 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) Reinstate 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) Reinstate 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.

(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.