

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**

House Bill 1476 (Chair, Health and Government Operations Committee)(By  
Request - Departmental - Health and Mental Hygiene)

Health and Government Operations

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

This departmental bill establishes civil fines and other penalties for health care providers that defraud a State health care program. It also provides the Department of Health and Mental Hygiene's (DHMH) Office of the Inspector General (OIG) with expanded authority to penalize health care providers guilty of fraud or abuse against the State.

**Fiscal Summary**

**State Effect:** Special fund revenues for DHMH increase annually by approximately \$1.0 million beginning in FY 2010 due to increased recovery of fraudulent or erroneous claims. Special fund expenditures increase by \$1.0 million, and general fund expenditures decrease by the same amount, to reflect the substitution of special fund expenditures for general fund expenditures to match federal Medicaid dollars. The general fund expenditure reductions are already assumed in the FY 2010 budget and are contingent on this bill. General fund revenues increase by an indeterminate amount to reflect an increase in civil fines levied against fraudulent Medicaid providers.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	-	-	-	-	-
SF Revenue	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
GF Expenditure	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)	(\$1,000,000)
SF Expenditure	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Net Effect	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**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.

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## Analysis

**Bill Summary:** A health care provider may not knowingly submit fraudulent claims, knowingly provide false information to get a claim paid, conspire to defraud DHMH, or fail to cooperate in a fraud investigation by DHMH. In addition to recovery of false claims paid with interest, a provider who violates those provisions is subject to a civil penalty of up to \$10,000 per violation, up to a total of \$100,000, suspension or termination of the provider's participation in a State health program, and payment of the costs of investigating, collecting, and placing a lien for an improper claim. The provider is also subject to other sanctions or penalties authorized by consent decrees, contracts, existing agreements, standards, regulations, or laws. Civil penalties are paid to the State's general fund.

OIG may provide educational training and assistance to providers regarding program integrity and compliance issues. It may also require a surety bond from a provider to assure that sufficient funds are available to satisfy any State claims against the provider. DHMH must continue to build on existing efforts to combat health care fraud by the workgroup convened under Chapter 70 of 2006.

Any individual subject to the civil or administrative penalties allowed by the bill may, after the conclusion of the administrative hearing process, file a direct judicial appeal. DHMH's final decision may not be stayed pending judicial review.

**Current Law:** OIG is authorized to take any necessary steps to recover mistaken or fraudulent claims paid to a provider under a State health program. The office may also take necessary steps to recover the cost of benefits mistakenly or fraudulently paid to a program participant. It is not authorized to assess civil penalties or pursue criminal charges. Additional information on current law related to health care fraud is provided in Background (below).

**Background:** Chapter 70 of 2006 established OIG in statute and authorized it to recover funds paid in error or due to fraud. Chapter 70 also provides whistleblower protection for employees who report fraud, waste, and abuse to OIG. Last, Chapter 70 established a task force composed of all interested parties to consolidate departmental authority within DHMH and to eliminate overlapping and duplicative authority within the department. The task force's report to the General Assembly was due by December 1, 2006. The task force met six times and, after receiving a brief extension, issued its report on January 10, 2007.

In its report, the task force noted that a “patchwork” of laws, regulations, and other provisions govern DHMH’s ability to combat fraud, including the basic Medicaid Provider Agreement, isolated statutes, and regulations scattered throughout Title 10 of the Code of Maryland Regulations (COMAR). For services provided under a “State health plan,” which includes Medicaid, State-only Medicaid, private insurance carriers, health maintenance organizations, and managed care organizations, Maryland criminal law prohibits health care fraud, conversion, bribe and kickbacks, referral rebates, false provider representations, and recipient fraud.

The Medicaid Fraud Control Unit of the Attorney General’s Office investigates and prosecutes provider fraud in State Medicaid programs. In addition to any other penalties provided by law, a health care provider that violates a provision of the Medicaid Fraud part of the Criminal Law Article is liable to the State for a civil penalty of not more than triple the amount of the overpayment. For monetary violations in excess of \$500, the crime is a felony and punishable by up to five years in prison and/or a fine of up to \$100,000. For violations below \$500, the crime is a misdemeanor and punishable by up to three years in prison and/or a fine of up to \$50,000. If a violation results in the death of or serious physical injury to a person, the violator is subject to enhanced penalties.

After reviewing existing statutes, regulations, and other provisions, the task force agreed that a single process for combating fraud should be consolidated within OIG. However, it determined that such a change could not be accomplished through the regulatory process, but required statutory revisions that expand and clarify OIG’s authority. Those revisions are reflected in this bill.

Working closely with the Medicaid Fraud Unit, OIG identified cost avoidance (claims the State would have erroneously paid) totaling \$13.4 million in fiscal 2006, \$17.5 million in fiscal 2007, and \$20.9 million in fiscal 2008.

**State Fiscal Effect:** Based on its enhanced authority to impose and collect civil penalties, and on the current level of claims recoveries, OIG projects that recovery of erroneous or fraudulent claims increases by \$2.0 million. Under Medicaid’s cost-sharing arrangement, the State retains one-half of the additional revenues in a special fund and remits the other half to the federal government. Therefore, DHMH special fund revenues increase annually by \$1.0 million beginning in fiscal 2010.

The Governor’s fiscal 2010 proposed budget includes a general fund expenditure reduction of \$1.0 million, which is contingent on the passage of this bill. The contingent reduction reflects the anticipated substitution of \$1.0 million in special fund expenditures from DHMH’s enhanced recovery of fraudulent and erroneous claims for general fund claims expenditures. Out-year estimates reflect a constant level of claim recoveries and substitution for general fund expenditures.

General fund revenues increase, potentially significantly, based on OIG's enhanced authority to levy civil fines against fraudulent Medicaid providers.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General, Department of Health and Mental Hygiene, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Department of Legislative Services

**Fiscal Note History:** First Reader - March 23, 2009  
mcp/mwc

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## ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Health Program Integrity and Recovery Act of 2009

BILL NUMBER: HB 1476

PREPARED BY: Department of Health and Mental Hygiene

### PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

☒ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESS

OR

☐ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND  
SMALL BUSINESSES

### PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.