

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 510  
Finance

(Senator Shank)

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Maryland Medical Assistance Program - Recovery Audits

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This bill requires the Department of Health and Mental Hygiene (DHMH) to enter into contracts with private consultants to conduct periodic recovery audits of Medicaid payments. Recovery audits must audit medical, pharmaceutical, and dental claims. A recovery audit may not take place during the 90-day period after the date a Medicaid payment was made. By December 31 of each year, DHMH must issue a report to the General Assembly describing the contents of all recovery audits conducted during the previous fiscal year.

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Fiscal Summary

**State Effect:** DHMH currently contracts with a consultant to conduct Medicaid recovery audits on a contingency basis. To the extent that the bill enhances audit activities, there may be additional State recoveries. Any additional reporting requirements under the bill can be handled within existing budgeted resources. The bill's penalty provisions are not expected to materially affect State finances.

**Local Effect:** The bill's penalty provisions are not expected to materially affect local government finances.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** DHMH must provide recovery audit contractors with any confidential information necessary for the performance of the audit, unless otherwise prohibited. A contractor may not disclose any confidential information obtained from Medicaid,

except as legally authorized. Violation of this provision is a misdemeanor and on conviction a violator is subject to imprisonment for up to one year and/or a fine of up to \$5,000.

A recovery audit contract may permit or require a private consultant to pursue judicial action to recover an amount overpaid by Medicaid. DHMH must adopt regulations that specify reasonable compensation for a recovery audit based on a specified percentage of the total amount recovered from the audit. DHMH must return any federal funds recovered through an audit. Within seven business days after receipt of a recovery audit report, DHMH must provide a copy of the report to the Governor, the Office of Legislative Audits, and specified committees of the General Assembly.

**Current Law/Background:** Section 6411 of the federal Patient Protection and Affordable Care Act requires states to contract with at least one recovery audit contractor (RAC) by December 31, 2010. RACs review Medicaid claims submitted by providers to identify underpayments and to identify and collect overpayments from providers. Medicaid RACs are a supplemental approach to Medicaid program integrity efforts (preventing errors in payment and eligibility as well as service utilization review) already underway to ensure that states make proper payments to providers.

Under proposed federal rules regarding Medicaid RACs, states must fully implement their Medicaid RAC programs by April 1, 2011. Payments to RACs must be made on a contingent basis for collecting overpayments and only from the amounts recovered. Federal matching funds will be provided for a State's contingency fee up to the highest Medicare RAC contingency fee rate in effect at the time (currently 12.5%). Federal matching funds are also available for State expenses related to operating a Medicaid RAC program. States must require RACs to employ trained medical professionals to review Medicaid claims and have an adequate appeals process to allow entities to challenge adverse RAC determinations. States may consider requiring the documentation of good cause to review a claim.

The Maryland Medicaid program has conducted recovery audits for more than 20 years through a contractor on a contingency basis. The audits examine hospital inpatient and outpatient services, professional services, and other medical claims. In addition to these audits, Medicaid's dental administrative services organization conducts utilization review and audits of dental claims. DHMH's Office of the Inspector General also works with the Medicaid pharmacy program to audit claims for prescription drugs.

DHMH has a number of other efforts in place to improve Medicaid program integrity. A recent independent review detailed a significant level of activity regarding claims/payments, eligibility, and utilization review, including post-payment hospital bill

auditing, a third-party liability initiative, and a Payment Error Rate Measurement corrective action plan.

The bill reflects model legislation from the American Legislative Exchange Commission.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 28, 2011  
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Analysis by: Jennifer B. Chasse

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510