

HOUSE BILL 1220

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By: **Chair, Health and Government Operations Committee (By Request –
Departmental – Health and Mental Hygiene)**

Introduced and read first time: February 12, 2016

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Department of Health and Mental Hygiene – Health Program Integrity and**
3 **Recovery Activities**

4 FOR the purpose of authorizing the Inspector General or a certain Assistant Inspector
5 General in the Department of Health and Mental Hygiene to subpoena any person
6 or evidence, administer oaths, and take depositions and other testimony for the
7 purpose of investigating fraud, waste, or abuse of departmental health program
8 funds; authorizing a certain court to take certain actions under certain
9 circumstances if a person fails to comply with a certain order or subpoena;
10 authorizing the Inspector General to impose a civil money remedy against a provider
11 for a certain violation under certain circumstances; establishing the maximum
12 amount of a civil money remedy; specifying the factors that must be considered in
13 setting the amount of a civil money remedy; requiring the Inspector General to
14 provide certain notice and order to a provider of the imposition of a civil money
15 remedy; requiring the notice and order to be served in a certain manner and to
16 include certain information; establishing a certain right to appeal from an order
17 imposing a civil money remedy; requiring a provider to pay a civil money remedy
18 within a certain period under certain circumstances; requiring the Inspector General
19 to adopt certain regulations; authorizing the Inspector General or a certain person
20 acting on behalf of the Inspector General to use extrapolation to determine the rate
21 of error or overpayment under certain circumstances; providing that an audit of a
22 provider may be conducted using extrapolation to determine the rate of error or
23 overpayment for certain claims made by the provider; specifying the types of claims
24 that may not be included in a sample to be used for extrapolation; specifying the
25 qualifications of certain individuals conducting an audit for the Inspector General;
26 requiring the Inspector General to provide certain notice of an audit within a certain
27 time frame to a provider; requiring the Inspector General to conduct an exit
28 conference and provide certain information to a provider under certain
29 circumstances; authorizing a provider to challenge certain findings and conclusions
30 within a certain period of time after the exit conference; requiring the Inspector

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 General to review certain additional documentation and to issue a final report and
 2 recovery letter; authorizing a health care provider to appeal a final determination by
 3 the Inspector General in a certain manner; authorizing a provider to challenge the
 4 accuracy of a certain audit; authorizing the Department to adopt certain findings of
 5 the federal government under certain circumstances; requiring the Department to
 6 provide a provider with an audit report of the federal government and certain other
 7 information under certain circumstances; authorizing a provider to challenge certain
 8 findings and conclusions within a certain period of time after receipt of a certain
 9 recovery letter; defining certain terms; and generally relating to the Department of
 10 Health and Mental Hygiene and health program integrity and recovery activities.

11 BY repealing and reenacting, with amendments,
 12 Article – Health – General
 13 Section 2–503
 14 Annotated Code of Maryland
 15 (2015 Replacement Volume)

16 BY adding to
 17 Article – Health – General
 18 Section 2–504.1; and 2–701 through 2–705 to be under the new subtitle “Subtitle 7.
 19 Use of Extrapolation in Recovery of Health Claim Overpayments”
 20 Annotated Code of Maryland
 21 (2015 Replacement Volume)

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

24 **Article – Health – General**

25 2–503.

26 **(A)** The Inspector General:

27 (1) May investigate fraud, waste, and abuse of departmental funds;

28 (2) Shall cooperate with and coordinate investigative efforts with the
 29 Medicaid Fraud Control Unit and where a preliminary investigation establishes a sufficient
 30 basis to warrant referral, shall refer such matters to the Medicaid Fraud Control Unit; and

31 (3) Shall cooperate with and coordinate investigative efforts with
 32 departmental programs and other State and federal agencies to ensure a provider is not
 33 subject to duplicative audits.

34 **(B) (1) THE INSPECTOR GENERAL OR A DESIGNATED ASSISTANT**
 35 **INSPECTOR GENERAL MAY SUBPOENA ANY PERSON OR EVIDENCE, ADMINISTER**
 36 **OATHS, AND TAKE DEPOSITIONS AND OTHER TESTIMONY FOR THE PURPOSE OF**
 37 **INVESTIGATING FRAUD, WASTE, OR ABUSE OF DEPARTMENTAL FUNDS.**

1 **(2) IF A PERSON FAILS TO COMPLY WITH A LAWFUL ORDER OR**
2 **SUBPOENA ISSUED UNDER THIS SUBSECTION, ON PETITION OF THE INSPECTOR**
3 **GENERAL OR A DESIGNATED ASSISTANT INSPECTOR GENERAL, A COURT OF**
4 **COMPETENT JURISDICTION MAY COMPEL:**

5 **(I) COMPLIANCE WITH THE ORDER OR SUBPOENA; OR**

6 **(II) TESTIMONY OR THE PRODUCTION OF EVIDENCE.**

7 **2-504.1.**

8 **(A) EXCEPT AS OTHERWISE PROHIBITED BY STATE OR FEDERAL LAW, IN**
9 **THE SOLE DISCRETION OF THE INSPECTOR GENERAL, THE INSPECTOR GENERAL**
10 **MAY IMPOSE A CIVIL MONEY REMEDY AGAINST A PROVIDER FOR A VIOLATION OF**
11 **STATE OR FEDERAL LAW GOVERNING THE CONDITIONS OF PAYMENT FOR ANY**
12 **SERVICE OR ITEM FOR WHICH THE PROVIDER SUBMITTED A CLAIM FOR PAYMENT**
13 **AND RECEIVED PAYMENT.**

14 **(B) A CIVIL MONEY REMEDY IMPOSED UNDER THIS SECTION:**

15 **(1) IS IN LIEU OF FULL PAYMENT OR FULL ADJUSTMENT OF THE PAID**
16 **CLAIM AND NOT IN ADDITION TO REPAYMENT OF THE CLAIM;**

17 **(2) MAY NOT BE LESS THAN THE FEDERAL FINANCIAL**
18 **PARTICIPATION SHARE OF THE IDENTIFIED IMPROPER CLAIM AMOUNT;**

19 **(3) MAY NOT BE IMPOSED IF THE CLAIM WAS INCLUDED IN THE**
20 **UNIVERSE OF CLAIMS UNDER AN EXTRAPOLATION CALCULATION; AND**

21 **(4) IS ONLY AVAILABLE IF THE PROVIDER HAS NOT BEEN SUBJECTED**
22 **TO A REPAYMENT PENALTY OR FINE, A CRIMINAL ACTION, OR A CIVIL FALSE CLAIMS**
23 **ACTION UNDER EITHER FEDERAL OR STATE LAW FOR THE SAME CLAIM.**

24 **(C) (1) A CIVIL MONEY REMEDY MAY NOT EXCEED THE AMOUNT OF**
25 **REIMBURSEMENT THAT THE PROVIDER RECEIVED FOR THE PAID CLAIM.**

26 **(2) IN DETERMINING WHETHER TO IMPOSE A CIVIL MONEY REMEDY**
27 **UNDER THIS SECTION AND IN SETTING THE AMOUNT OF THE CIVIL MONEY REMEDY,**
28 **THE INSPECTOR GENERAL SHALL CONSIDER:**

29 **(I) THE NUMBER, NATURE, AND SERIOUSNESS OF THE**
30 **VIOLATIONS;**

1 (II) THE PROVIDER'S HISTORY OF COMPLIANCE;

2 (III) THE EFFORTS MADE BY THE PROVIDER TO CORRECT THE
3 VIOLATIONS AND ANY CONTINUATION OF CONDUCT AFTER NOTIFICATION OF
4 POSSIBLE VIOLATIONS;

5 (IV) THE PROVIDER'S LEVEL OF COOPERATION WITH THE
6 DEPARTMENT OR INSPECTOR GENERAL AS IT RELATES TO THE REVIEW OF THE
7 CLAIM;

8 (V) THE DEGREE OF RISK TO THE HEALTH, LIFE, OR SAFETY OF
9 CONSUMERS AS A RESULT OF THE VIOLATIONS; AND

10 (VI) ANY OTHER REASONABLE FACTORS AS FAIRNESS MAY
11 REQUIRE.

12 (3) IN WEIGHING THE FACTORS SET FORTH IN PARAGRAPH (2) OF
13 THIS SUBSECTION, THE INSPECTOR GENERAL SHALL, IF APPROPRIATE, GIVE
14 SPECIAL CONSIDERATION TO THE EXTENT TO WHICH THE PROVIDER'S SIZE,
15 OPERATIONS, OR FINANCIAL CONDITION:

16 (I) MAY HAVE CONTRIBUTED TO THE VIOLATIONS; AND

17 (II) MAY AFFECT THE PROVIDER'S ABILITY TO PROVIDE CARE
18 AND CONTINUE OPERATIONS AFTER PAYMENT OF A CIVIL MONEY REMEDY.

19 (D) IF A CIVIL MONEY REMEDY IS IMPOSED UNDER THIS SECTION, THE
20 INSPECTOR GENERAL SHALL ISSUE A WRITTEN NOTICE AND ORDER TO THE
21 PROVIDER THAT:

22 (1) STATES THE TOTAL AMOUNT OF THE CIVIL MONEY REMEDY; AND

23 (2) INCLUDES THE FOLLOWING INFORMATION:

24 (I) THE BASIS ON WHICH THE ORDER IS MADE;

25 (II) EACH REGULATION OR STATUTE VIOLATED;

26 (III) THE AMOUNT OF EACH CIVIL MONEY REMEDY IMPOSED FOR
27 EACH VIOLATION;

1 (IV) THE NUMBER OF CLAIMS AND TOTAL VALUE OF THE CLAIMS
2 IDENTIFIED WITH ERRORS; AND

3 (V) THE MANNER IN WHICH THE AMOUNT OF THE CIVIL MONEY
4 REMEDY WAS CALCULATED.

5 (E) THE NOTICE AND ORDER SHALL BE SERVED ON THE PROVIDER BY
6 CERTIFIED MAIL AND SHALL INCLUDE A STATEMENT THAT EXPLAINS THE
7 PROVIDER'S RIGHT TO APPEAL THE ORDER IN ACCORDANCE WITH TITLE 10,
8 SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

9 (F) (1) AN ORDER THAT IMPOSES A CIVIL MONEY REMEDY IS FINAL WHEN
10 THE PROVIDER HAS EXHAUSTED ALL OPPORTUNITIES TO CONTEST THE CIVIL
11 MONEY REMEDY IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE
12 GOVERNMENT ARTICLE.

13 (2) AFTER EXHAUSTION OF ALL APPEALS, A PROVIDER SHALL PAY A
14 CIVIL MONEY REMEDY TO THE DEPARTMENT WITHIN 10 DAYS AFTER THE PROVIDER
15 RECEIVES A FINAL ORDER THAT AFFIRMS THE IMPOSITION OF THE CIVIL MONEY
16 REMEDY UNLESS THE INSPECTOR GENERAL NEGOTIATES AND APPROVES A
17 REPAYMENT SCHEDULE.

18 (G) THE INSPECTOR GENERAL, IN CONSULTATION WITH STAKEHOLDERS,
19 SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

20 SUBTITLE 7. USE OF EXTRAPOLATION IN RECOVERY OF HEALTH CLAIM
21 OVERPAYMENTS.

22 2-701.

23 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
24 INDICATED.

25 (B) "CLAIM" HAS THE MEANING STATED IN § 2-501 OF THIS TITLE.

26 (C) "EXTRAPOLATION" MEANS THE PROCESS OF ESTIMATING AN UNKNOWN
27 VALUE BY PROJECTING, WITH A CALCULATED PRECISION OR MARGIN OF ERROR,
28 THE RESULTS OF THE REVIEW OF A SAMPLE TO THE UNIVERSE FROM WHICH THE
29 SAMPLE WAS DRAWN USING A STATISTICALLY VALID SAMPLING METHODOLOGY.

30 (D) "FEDERAL GOVERNMENT" MEANS AN AGENCY OF THE UNITED STATES
31 GOVERNMENT OR A CONTRACTOR RETAINED BY THE AGENCY OF THE UNITED
32 STATES GOVERNMENT.

1 (E) "OVERPAYMENT" MEANS A PAYMENT THAT:

2 (1) IS MADE BY THE DEPARTMENT TO A PROVIDER FOR SERVICES OR
3 GOODS FOR WHICH THE PROVIDER SUBMITTED A CLAIM TO THE DEPARTMENT;

4 (2) IS FOUND TO BE INCORRECT; AND

5 (3) RESULTS IN A PAYMENT GREATER THAN THAT TO WHICH THE
6 PROVIDER IS ENTITLED.

7 (F) "PROGRAM" HAS THE MEANING STATED IN § 2-501 OF THIS TITLE.

8 (G) "PROVIDER" HAS THE MEANING STATED IN § 2-501 OF THIS TITLE.

9 (H) "STATISTICALLY VALID SAMPLING METHODOLOGY" MEANS A
10 METHODOLOGY USED FOR EXTRAPOLATION THAT HAS A CONFIDENCE LEVEL OF
11 90% OR GREATER AND IS VALIDATED BY A STATISTICIAN WHO POSSESSES AT LEAST
12 A MASTER'S DEGREE IN STATISTICS.

13 (I) "UNIVERSE" MEANS A DEFINED POPULATION OF CLAIMS SUBMITTED BY
14 A PROVIDER TO THE DEPARTMENT AND PAID TO THE PROVIDER BY THE
15 DEPARTMENT DURING A SPECIFIED TIME PERIOD.

16 2-702.

17 (A) SUBJECT TO THE REQUIREMENTS OF THIS SUBTITLE, THE INSPECTOR
18 GENERAL, OR A CONTRACTOR OR AN AGENT ACTING ON BEHALF OF THE INSPECTOR
19 GENERAL, MAY USE EXTRAPOLATION DURING AN AUDIT TO RECOVER AN
20 OVERPAYMENT FROM A PROVIDER IF:

21 (1) THE FEDERAL GOVERNMENT HAS ALSO CONDUCTED AN AUDIT OF
22 THE PROGRAM FOR OVERPAYMENT; AND

23 (2) THE MONETARY RECOVERY AMOUNT DETERMINED TO BE DUE BY
24 THE PROGRAM TO THE FEDERAL GOVERNMENT IS BASED ON THE FEDERAL
25 GOVERNMENT'S USE OF EXTRAPOLATION.

26 (B) AN AUDIT CONDUCTED BY THE INSPECTOR GENERAL OR A
27 CONTRACTOR OR AGENT ACTING ON BEHALF OF THE INSPECTOR GENERAL UNDER
28 SUBSECTION (A) OF THIS SECTION SHALL BE LIMITED TO THE SCOPE OF THE
29 FEDERAL AUDIT, INCLUDING CLAIMS FOR THE SAME AUDIT TIME PERIOD AND THE
30 SAME TYPE OF CLAIMS.

1 **2-703.**

2 (A) ON A FINDING OF AN OVERPAYMENT TO A PROVIDER, THE INSPECTOR
3 GENERAL MAY NOT USE EXTRAPOLATION UNLESS THERE IS A DETERMINATION OF A
4 SUSTAINED OR HIGH LEVEL OF PAYMENT ERROR, AS DEFINED BY REGULATION.

5 (B) WHEN USING EXTRAPOLATION TO DETERMINE AN OVERPAYMENT, THE
6 SAMPLE TO BE USED MAY NOT INCLUDE CLAIMS:

7 (1) IN WHICH THE ALLEGED OVERPAYMENT WOULD HAVE NO FISCAL
8 IMPACT ON THE ENTIRE SAMPLE;

9 (2) THAT WERE SUBMITTED IN ACCORDANCE WITH THE
10 DEPARTMENT'S, INSPECTOR GENERAL'S, OR PROGRAM'S DIRECTIVES, POLICIES,
11 GUIDELINES, OR REGULATIONS; OR

12 (3) THAT ARE THE RESULT OF AN UNINTENTIONAL OVERLAP IN
13 SERVICES AMONG UNRELATED PROVIDERS CAUSED BY CIRCUMSTANCES BEYOND
14 THE CONTROL OF THE PROVIDER THAT IS SUBJECT TO THE AUDIT, IN WHICH CASE
15 THE INSPECTOR GENERAL MAY RECOVER THE ORIGINAL OVERPAYMENT.

16 **2-704.**

17 (A) THE INSPECTOR GENERAL OR A CONTRACTOR OR AN AGENT OF THE
18 INSPECTOR GENERAL THAT CONDUCTS AN AUDIT UNDER THIS SUBTITLE IN WHICH
19 EXTRAPOLATION MAY BE USED SHALL:

20 (1) PERFORM THE AUDIT IN ACCORDANCE WITH A METHODOLOGY
21 USED BY THE FEDERAL GOVERNMENT OR CONDUCTED IN ACCORDANCE WITH
22 GENERALLY ACCEPTED AUDITING STANDARDS (GAAS) AND THE STATEMENT ON
23 ACCOUNTING STANDARDS (SAS);

24 (2) USE A STATISTICALLY VALID SAMPLING METHODOLOGY; AND

25 (3) MEET THE FOLLOWING QUALIFICATIONS:

26 (I) HAVE AT LEAST 3 YEARS OF AUDITING EXPERIENCE;

27 (II) HAVE EXPERIENCE IN THE PROCEDURAL CODING PROGRAM
28 USED FOR THE CLAIM;

1 (III) BE FAMILIAR, EITHER INDEPENDENTLY OR THROUGH
2 TRAINING BY THE PROVIDER, WITH THE FORMAT AND CONTENT OF PAPER AND
3 ELECTRONIC MEDICAL RECORDS AND CLAIM FORMS USED BY THE PROVIDER; AND

4 (IV) HAVE GENERAL KNOWLEDGE OF THE PARTICULAR HEALTH
5 CARE ITEM OR SERVICE THAT IS THE SUBJECT OF THE AUDIT AND THE PROGRAM
6 RULES THAT GOVERN THE HEALTH CARE ITEM OR SERVICE AT THE TIME THE ITEM
7 OR SERVICE WAS PROVIDED.

8 (B) (1) IF THE MEDICAL NECESSITY OF THE CLAIM IS THE SUBJECT OF
9 THE AUDIT, THE ENTITY THAT CONDUCTS THE AUDIT SHALL INCLUDE AS PART OF
10 THE AUDIT TEAM AN INDIVIDUAL LICENSED IN THE SAME HEALTH OCCUPATION AS
11 THE PROVIDER.

12 (2) THE INDIVIDUAL INCLUDED IN THE AUDIT TEAM UNDER
13 PARAGRAPH (1) OF THIS SUBSECTION SHALL HAVE SIGNIFICANT KNOWLEDGE OF
14 THE AUDITED PROCEDURE BUT IS NOT REQUIRED TO BE IN THE SAME SPECIALTY OR
15 PRACTICE AREA AS THE AUDITED PROVIDER.

16 **2-705.**

17 (A) NOT LESS THAN 15 CALENDAR DAYS BEFORE COMMENCEMENT OF AN
18 AUDIT BY THE INSPECTOR GENERAL UNDER THIS SUBTITLE, THE INSPECTOR
19 GENERAL SHALL GIVE TO THE PROVIDER WRITTEN NOTICE OF THE AUDIT,
20 INCLUDING:

21 (1) THE STATISTICALLY VALID SAMPLING METHODOLOGY TO BE
22 USED;

23 (2) THE NAME, CONTACT INFORMATION, AND CREDENTIALS OF EACH
24 INDIVIDUAL CONDUCTING THE AUDIT, INCLUDING THE INDIVIDUAL VALIDATING
25 THE METHODOLOGY;

26 (3) THE AUDIT LOCATION, INCLUDING WHETHER THE AUDIT WILL BE
27 CONDUCTED ON-SITE AT THE LOCATION OF THE PROVIDER OR THROUGH RECORD
28 SUBMISSION; AND

29 (4) THE MANNER IN WHICH THE INFORMATION REQUESTED MUST BE
30 SUBMITTED.

31 (B) (1) EXCEPT IN CASES WHERE THE INSPECTOR GENERAL REFERS THE
32 AUDIT FINDINGS AND CONCLUSIONS TO THE OFFICE OF THE ATTORNEY GENERAL
33 MEDICAID FRAUD CONTROL UNIT OR OTHER APPLICABLE LAW ENFORCEMENT

1 AGENCY, THE INSPECTOR GENERAL SHALL, ON COMPLETION OF THE AUDIT,
2 CONDUCT AN EXIT CONFERENCE WITH THE PROVIDER THAT IS THE SUBJECT OF THE
3 AUDIT.

4 (2) DURING THE EXIT CONFERENCE, THE INSPECTOR GENERAL
5 SHALL:

6 (I) PRESENT THE PROVIDER WITH THE AUDIT DRAFT WRITTEN
7 FINDINGS AND CONCLUSIONS AND THE ESTIMATED AMOUNT OF RECOVERY DUE AS
8 A RESULT OF OVERPAYMENT TO THE PROVIDER; AND

9 (II) GIVE THE PROVIDER THE FOLLOWING INFORMATION IN
10 WRITING:

11 1. A CLEAR DESCRIPTION OF THE UNIVERSE FROM
12 WHICH THE SAMPLE WAS DRAWN;

13 2. THE SAMPLE SIZE AND THE METHOD USED TO SELECT
14 THE SAMPLE;

15 3. THE FORMULAS AND CALCULATION PROCEDURES
16 USED TO DETERMINE THE AMOUNT TO BE RECOVERED;

17 4. THE LIST OF CLAIMS THAT WERE REVIEWED;

18 5. A DESCRIPTION OF EACH CLAIM, NOTING THE
19 ERRORS THAT RESULTED IN AN OVERPAYMENT; AND

20 6. A SPECIFIC LIST OF THE REGULATIONS, STATUTES,
21 AND TRANSMITTALS ON WHICH THE INSPECTOR GENERAL RELIED IN DETERMINING
22 THAT THE CLAIM WAS IMPROPER.

23 (3) (I) A PROVIDER MAY CHALLENGE THE DRAFT FINDINGS AND
24 CONCLUSIONS WITHIN 30 DAYS AFTER THE EXIT CONFERENCE UNLESS, BECAUSE OF
25 THE SIZE AND SCOPE OF THE AUDIT, THE PROVIDER:

26 1. HAS NEGOTIATED A LONGER PERIOD WITH THE
27 INSPECTOR GENERAL THROUGH A MUTUAL GOOD FAITH PROCESS; AND

28 2. HAS SUBMITTED ADDITIONAL INFORMATION
29 REGARDING THE CLAIMS TO THE INSPECTOR GENERAL.

1 **(II) THE ADDITIONAL INFORMATION SUBMITTED UNDER**
2 **SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY INCLUDE EVIDENCE SHOWING THAT:**

3 **1. THE CLAIMS USED IN THE SAMPLE WERE EITHER PAID**
4 **PROPERLY OR PAID IN ACCORDANCE WITH § 2-703 OF THIS SUBTITLE; OR**

5 **2. THE AUDIT DOES NOT MEET APPLICABLE**
6 **REQUIREMENTS OR REACH VALID FINDINGS AND CONCLUSIONS.**

7 **(4) FAILURE TO CHALLENGE THE DRAFT FINDINGS AND**
8 **CONCLUSIONS CONTAINED IN THE PRELIMINARY REPORT DOES NOT PRECLUDE A**
9 **PROVIDER FROM APPEALING THE FINAL REPORT AND RECOVERY LETTER UNDER**
10 **SUBSECTION (D) OF THIS SECTION.**

11 **(C) (1) THE INSPECTOR GENERAL SHALL REVIEW ANY ADDITIONAL**
12 **DOCUMENTATION SUBMITTED BY THE PROVIDER UNDER SUBSECTION (B) OF THIS**
13 **SECTION OR PRESENTED AT ANY TIME DURING THE AUDIT.**

14 **(2) AFTER REVIEW OF ANY ADDITIONAL DOCUMENTATION**
15 **SUBMITTED BY THE PROVIDER, THE INSPECTOR GENERAL SHALL, WHEN**
16 **APPROPRIATE, RECALCULATE THE ERROR RATE USED IN EXTRAPOLATION AND**
17 **ISSUE ITS FINAL REPORT AND RECOVERY LETTER.**

18 **(3) THE FINAL REPORT AND RECOVERY LETTER SHALL STATE THAT**
19 **THE PROVIDER HAS 30 DAYS AFTER THE DATE OF THE RECOVERY LETTER TO**
20 **APPEAL THE FINDINGS IN THE REPORT IN ACCORDANCE WITH § 2-207 OF THIS**
21 **ARTICLE, TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE, AND**
22 **COMAR 10.01.03 AND 28.02.01.**

23 **(D) (1) ON APPEAL, THE PROVIDER MAY PRESENT EVIDENCE OF A**
24 **SECOND AUDIT USING THE SAME SAMPLING METHODOLOGY BUT BASED ON A**
25 **DIFFERENT SAMPLE OF CLAIMS IDENTIFIED AND PRODUCED BY THE INSPECTOR**
26 **GENERAL.**

27 **(2) ON REQUEST OF THE PROVIDER, THE INSPECTOR GENERAL**
28 **SHALL PROVIDE A NEW SAMPLE OF CLAIMS TO THE PROVIDER WITHIN 30 DAYS**
29 **AFTER RECEIPT OF THE REQUEST.**

30 **(3) THE PROVIDER SHALL HAVE 60 DAYS AFTER RECEIPT OF THE NEW**
31 **SAMPLE TO CONDUCT THE AUDIT AND PROVIDE THE RESULTS TO THE INSPECTOR**
32 **GENERAL, UNLESS THE PROVIDER HAS NEGOTIATED A LONGER PERIOD WITH THE**
33 **INSPECTOR GENERAL.**

1 **(4) THE INSPECTOR GENERAL MAY REVIEW THE PROVIDER'S AUDIT**
2 **FOR COMPLIANCE WITH THE REQUIREMENTS OF THIS SUBTITLE.**

3 **(E) THE RECOVERY SHALL BE STAYED UNTIL COMPLETION OF THE**
4 **ADMINISTRATIVE APPEAL PROCESS.**

5 **(F) THIS SUBTITLE DOES NOT LIMIT A PROVIDER FROM CHALLENGING THE**
6 **ACCURACY OF THE INSPECTOR GENERAL'S AUDIT, INCLUDING:**

7 **(1) THE STATISTICAL AND EXTRAPOLATION METHODOLOGY USED IN**
8 **THE AUDIT;**

9 **(2) THE CREDENTIALS OF ANY INDIVIDUAL WHO PERFORMED OR**
10 **REVIEWED THE AUDIT; OR**

11 **(3) ANY OTHER REASONABLE BASIS.**

12 **(G) (1) THE DEPARTMENT MAY ADOPT THE FINDINGS OF THE FEDERAL**
13 **GOVERNMENT, INCLUDING THE ERROR RATE, IF THE FEDERAL GOVERNMENT**
14 **CONDUCTS AN AUDIT THAT:**

15 **(I) CONCLUDES THAT A PROVIDER RECEIVED AN**
16 **OVERPAYMENT;**

17 **(II) USES AN ERROR RATE THAT IS SPECIFIC TO A SINGLE**
18 **PROVIDER;**

19 **(III) DERIVES THE OVERPAYMENT FROM A STATISTICALLY**
20 **VALID SAMPLE; AND**

21 **(IV) PROVIDES ALL SUPPORTING DOCUMENTATION OF THE**
22 **AUDIT.**

23 **(2) IF THE DEPARTMENT ADOPTS THE FINDINGS OF THE FEDERAL**
24 **GOVERNMENT, THE DEPARTMENT SHALL PROVIDE TO THE PROVIDER A COPY OF**
25 **THE FEDERAL GOVERNMENT'S AUDIT REPORT AND SUPPORTING DOCUMENTATION**
26 **WITH THE PRELIMINARY RECOVERY LETTER STATING THE AMOUNT DUE TO THE**
27 **STATE AND THE PROVIDER'S APPEAL RIGHTS.**

28 **(3) (I) WITHIN 30 DAYS AFTER RECEIPT OF THE PRELIMINARY**
29 **RECOVERY LETTER, THE PROVIDER MAY CHALLENGE THE DRAFT FINDINGS AND**
30 **CONCLUSIONS UNLESS, DUE TO THE SIZE AND SCOPE OF THE AUDIT, THE PROVIDER:**

1 1. **HAS NEGOTIATED A LONGER PERIOD WITH THE**
2 **INSPECTOR GENERAL THROUGH A MUTUAL GOOD FAITH PROCESS; AND**

3 2. **HAS SUBMITTED ADDITIONAL INFORMATION TO THE**
4 **INSPECTOR GENERAL.**

5 **(II) THE ADDITIONAL INFORMATION SUBMITTED UNDER**
6 **SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY INCLUDE EVIDENCE SHOWING THAT:**

7 1. **THE CLAIMS USED IN THE SAMPLE WERE EITHER PAID**
8 **PROPERLY OR PAID IN ACCORDANCE WITH § 2-703 OF THIS SUBTITLE; OR**

9 2. **THE AUDIT DID NOT MEET APPLICABLE**
10 **REQUIREMENTS OR REACH VALID FINDINGS AND CONCLUSIONS.**

11 **(4) FAILURE TO CHALLENGE THE DRAFT FINDINGS AND**
12 **CONCLUSIONS CONTAINED IN THE PRELIMINARY RECOVERY LETTER DOES NOT**
13 **PRECLUDE A PROVIDER FROM APPEALING THE FINAL REPORT AND RECOVERY**
14 **LETTER UNDER SUBSECTION (D) OF THIS SECTION.**

15 **(H) THIS SUBTITLE DOES NOT APPLY TO AUDITS CONDUCTED IN RESPONSE**
16 **TO FEDERAL AUDITS INITIATED BEFORE OCTOBER 1, 2016.**

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2016.