

Chapter 136

(House Bill 1220)

AN ACT concerning

Department of Health and Mental Hygiene – Health Program Integrity and Recovery Activities

FOR the purpose of authorizing the Inspector General or a certain Assistant Inspector General in the Department of Health and Mental Hygiene to subpoena any person or evidence, administer oaths, and take depositions and other testimony for the purpose of investigating fraud, waste, or abuse of departmental health program funds; authorizing a certain court to take certain actions under certain circumstances if a person fails to comply with a certain order or subpoena; authorizing the Inspector General to impose a civil money remedy against a provider for a certain violation under certain circumstances; establishing the maximum amount of a civil money remedy; specifying the factors that must be considered in setting the amount of a civil money remedy; requiring the Inspector General to provide certain notice and order to a provider of the imposition of a civil money remedy; requiring the notice and order to be served in a certain manner and to include certain information; establishing a certain right to appeal from an order imposing a civil money remedy; requiring a provider to pay a civil money remedy within a certain period under certain circumstances; requiring the Inspector General to adopt certain regulations; authorizing the Inspector General or a certain person acting on behalf of the Inspector General to use extrapolation to determine the rate of error or overpayment under certain circumstances; providing that an audit of a provider may be conducted using extrapolation to determine the rate of error or overpayment for certain claims made by the provider; specifying the types of claims that may not be included in a sample to be used for extrapolation; specifying the qualifications of certain individuals conducting an audit for the Inspector General; requiring the Inspector General to provide certain notice of an audit within a certain time frame to a provider; requiring the Inspector General to conduct an exit conference and provide certain information to a provider under certain circumstances; authorizing a provider to challenge certain findings and conclusions within a certain period of time after the exit conference; requiring the Inspector General to review certain additional documentation and to issue a final report and recovery letter; authorizing a health care provider to appeal a final determination by the Inspector General in a certain manner; authorizing a provider to challenge the accuracy of a certain audit; authorizing the Department to adopt certain findings of the federal government under certain circumstances; requiring the Department to provide a provider with an audit report of the federal government and certain other information under certain circumstances; authorizing a provider to challenge certain findings and conclusions within a certain period of time after receipt of a certain recovery letter; defining certain terms; and generally relating to the Department of Health and Mental Hygiene and health program integrity and recovery activities.

BY repealing and reenacting, with amendments,

Article – Health – General
 Section 2–503
 Annotated Code of Maryland
 (2015 Replacement Volume)

BY adding to

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

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

Article – Health – General

2–503.

(A) The Inspector General:

- (1) May investigate fraud, waste, and abuse of departmental funds;
- (2) Shall cooperate with and coordinate investigative efforts with the Medicaid Fraud Control Unit and where a preliminary investigation establishes a sufficient basis to warrant referral, shall refer such matters to the Medicaid Fraud Control Unit; and
- (3) Shall cooperate with and coordinate investigative efforts with departmental programs and other State and federal agencies to ensure a provider is not subject to duplicative audits.

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

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

- (I) COMPLIANCE WITH THE ORDER OR SUBPOENA; OR**
- (II) TESTIMONY OR THE PRODUCTION OF EVIDENCE.**

2-504.1.

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

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

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

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

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

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

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

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

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

(II) THE PROVIDER'S HISTORY OF COMPLIANCE;

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

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

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

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

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

(I) MAY HAVE CONTRIBUTED TO THE VIOLATIONS; AND

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

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

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

(2) INCLUDES THE FOLLOWING INFORMATION:

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

(II) EACH REGULATION OR STATUTE VIOLATED;

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

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

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

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

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

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

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

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

2-701.

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

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

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

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

(E) "OVERPAYMENT" MEANS A PAYMENT THAT:

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

(2) IS FOUND TO BE INCORRECT; AND

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

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

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

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

(I) “UNIVERSE” MEANS A DEFINED POPULATION OF CLAIMS SUBMITTED BY A PROVIDER TO THE DEPARTMENT AND PAID TO THE PROVIDER BY THE DEPARTMENT DURING A SPECIFIED TIME PERIOD.

2-702.

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

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

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

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

2-703.

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

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

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

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

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

2-704.

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

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

(2) USE A STATISTICALLY VALID SAMPLING METHODOLOGY; AND

(3) MEET THE FOLLOWING QUALIFICATIONS:

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

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

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

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

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

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

2-705.

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

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

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

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

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

(B) (1) EXCEPT IN CASES WHERE THE INSPECTOR GENERAL REFERS THE AUDIT FINDINGS AND CONCLUSIONS TO THE OFFICE OF THE ATTORNEY GENERAL MEDICAID FRAUD CONTROL UNIT OR OTHER APPLICABLE LAW ENFORCEMENT AGENCY, THE INSPECTOR GENERAL SHALL, ON COMPLETION OF THE AUDIT, CONDUCT AN EXIT CONFERENCE WITH THE PROVIDER THAT IS THE SUBJECT OF THE AUDIT.

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

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

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

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

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

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

4. THE LIST OF CLAIMS THAT WERE REVIEWED;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) ANY OTHER REASONABLE BASIS.

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

(I) CONCLUDES THAT A PROVIDER RECEIVED AN OVERPAYMENT;

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

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

(IV) PROVIDES ALL SUPPORTING DOCUMENTATION OF THE AUDIT.

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

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

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

2. HAS SUBMITTED ADDITIONAL INFORMATION TO THE INSPECTOR GENERAL.

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

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

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

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

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

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

Approved by the Governor, April 12, 2016.