

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 609

(Delegate Barron, *et al.*)

Health and Government Operations

Finance

Maryland Office of the Inspector General for Health

This bill renames the Office of the Inspector General (OIG) in the Maryland Department of Health (MDH) to be the Maryland Office of the Inspector General for Health and establishes it as an independent unit of the State. The bill specifies there is an Inspector General (IG) position in the office, the IG's appointment process, term limits, and required qualifications. Funding and staff from the current OIG will transfer to the new office. By December 1 annually, the office must submit a report to the Governor, specified committees of the General Assembly, and the Secretary of Health on its activities during the immediately preceding fiscal year, specified recoveries made by the office, a summary of matters referred to prosecutive authorities and resulting prosecutions and convictions, and any regulatory or statutory changes necessary to ensure compliance with applicable federal and State law. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources. Revenues recovered for MDH by the IG are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: Subject to the advice and consent of the Senate, the Governor, the Attorney General, and the State Treasurer must unanimously appoint the IG for a five-year term, which begins July 1 after initial appointment. At the end of the term, the IG must

continue to serve until a successor is appointed. If a vacancy occurs in the office, an interim IG must be appointed as successor to serve for the remainder of the unexpired term.

The IG must have professional experience or education in law, auditing, government operations, financial management, or health policy. If the IG has a background in health policy, professional experience or education in one of the other specified areas is also required.

To be eligible to be the IG, an individual must execute an affidavit stating that the individual will not accept appointment to, or be a candidate for, a State or local office during the period of service as the IG and for at least three years immediately after serving as IG. Once in office, the IG must renew the affidavit every two years; failure to do so subjects the IG to removal from office. Additionally, the IG may be removed unanimously by the Governor, the Attorney General, and the State Treasurer for (1) misconduct in office; (2) persistent failure to perform the duties of the office; or (3) conduct prejudicial to the proper administration of justice.

The office must have access to specified services as provided by MDH, including (1) information technology; (2) budget and finance; (3) human resources; (4) police; (5) procurement; and (6) support services. In consultation with MDH, the office must develop policies and adopt regulations regarding the use and confidentiality of these services. The office must maintain a physical location within MDH and develop policies and regulations regarding the use and confidentiality of the location of the office. Funding for the office, including the IG's salary, must be as provided in the State budget.

Uncodified language requires the Governor to transfer one position and \$100,000 in general funds and any related positions and funding for OIG as of July 1, 2021, from M00A01.01 Executive Direction – Office of the Secretary for the Department of Health to the Office of the Inspector General for Health.

Current Law: Chapter 70 of 2006 codified the existing OIG within MDH and authorized the IG to investigate fraud, waste, and abuse of departmental funds. OIG must cooperate and coordinate investigative efforts with the Medicaid Fraud Control Unit, departmental programs, and other State and federal agencies to ensure a provider is not subject to duplicative audits. The IG may take necessary steps to recover (1) mistaken claims paid or payments obtained in error or fraudulent claims paid to or obtained by a provider and (2) the cost of benefits mistakenly paid or obtained in error or fraudulently paid to or obtained by a recipient.

Chapter 136 of 2016 authorized the IG to subpoena any person or evidence, administer oaths, and take depositions and other testimony as part of an investigation of fraud, waste, or abuse of departmental funds. The IG may use extrapolation during an audit to recover

an overpayment from a provider. The IG 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 and received payment.

Background:

Maryland Department of Health Office of Inspector General

The IG manages a professional staff that includes attorneys, clinicians, auditors, investigators, and administrators dedicated to promoting efficiency, effectiveness and compliance in MDH programs. OIG comprises the Program Integrity Division, Audit Division, and Institutional Review Board (IRB).

- The Program Integrity Division audits and investigates health care providers and suppliers of medical equipment who are suspected of overbilling or defrauding the Maryland Medicaid program. Findings of fraud and abuse may result in referral to the Office of the Attorney General (OAG) Medicaid Fraud Control Unit for civil or criminal prosecution. The division also investigates allegations related to Medicaid consumer eligibility and misuse of benefits to recover Medicaid funds. MDH receives Medicaid funding (general and federal funds) to support the Program Integrity Division.
- The Audit Division performs periodic examinations of the accounts, records, procedures, and policies of MDH and the Medicaid program. The division prepares for legislative and federal audits and reviews problem areas to prevent future audit deficiencies. The Audit Division also assures MDH complies with the code of conduct, corporate compliance policies, and the Health Insurance Portability and Accountability Act. This division is supported with State general funds.
- IRB reviews and approves all proposed research projects involving human subjects to protect the rights and dignity of individuals who volunteer to participate in human subject research. This division is supported with State general funds.

MDH advises that there are approximately 62 staff members in OIG; including the IG, the assistant Inspector General, 20 Audit Division staff members, 30 Program Integrity Division staff members, and 10 administrative staff members.

Medicaid Fraud Control Unit

The OAG Medicaid Fraud Control Unit is required by federal statute and partially funded by the federal government. The unit complies with federal guidelines regarding Medicaid

fraud and abuse, investigating both Medicaid providers and the administration of the Maryland Medicaid program.

State Expenditures: The bill requires current OIG funding and staff to transfer from MDH to the independent Maryland Office of the Inspector General for Health, as well as, one staff position and \$100,000 in general funds. This analysis assumes the position and general funds will be used to hire one assistant Attorney General necessary to support the new independent office.

The bill also requires MDH to provide specified services to the new independent office. Typically, the State's health occupations boards and health regulatory commissions share similar services as provided by MDH, and reimburse the department accordingly. To the extent that MDH requires the Office of the Inspector General for Health to pay for these services, general fund expenditures increase correspondingly. Additionally, the bill requires the new office to maintain a physical location within the department.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 963 (Senator Hettleman) - Finance.

Information Source(s): Department of Budget and Management; Maryland Department of Health; Department of Legislative Services

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