

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 963
 Finance

(Senator Hettleman)

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 for the office, including the IG’s salary, must be as provided in the State budget. By December 1 annually, the office must submit a report to the Governor and specified committees of the General Assembly on its activities during the immediately preceding fiscal year, specified recoveries made by the office, and any regulatory or statutory changes necessary to ensure compliance with applicable federal and State law.

Fiscal Summary

State Effect: General fund expenditures increase by \$446,900 in FY 2021 to provide services required for establishing the Maryland Office of the Inspector General for Health as an independent office. Future years reflect annualization and ongoing costs. Revenues recovered for MDH by the IG are not affected.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	446,900	536,500	549,100	567,600	586,600
Net Effect	(\$446,900)	(\$536,500)	(\$549,100)	(\$567,600)	(\$586,600)

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

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.

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: General fund expenditures increase by a net of \$446,857 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. Currently, OIG
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resides in the Office of the Secretary of Health and has access to MDH’s information technology (IT), human resources, and legal counsel. Creating the independent Maryland Office of the Inspector General for Health requires additional staff to perform the services currently supported by MDH. This estimate reflects the cost of hiring two human resources administrators, three IT positions, and one assistant Attorney General to provide necessary services to the Maryland Office of the Inspector General for Health. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	6
Salaries and Fringe Benefits	\$403,409
Operating Expenses	<u>43,448</u>
Total FY 2021 State Expenditures	\$446,857

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

This estimate assumes that all current OIG staff and related funding for them transfer to the new Maryland Office of the Inspector General for Health (with a corresponding decrease in costs for MDH), and that all personnel remain located in MDH facilities. If the Maryland Office of the Inspector General for Health is housed at a new location, general fund expenditures for such a move increase further. Additionally, if some or all current OIG staff are not transferred to the new office, general fund expenditures increase, potentially significantly, to provide sufficient staff to handle current operations.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 609 (Delegate Barron, *et al.*) - Health and Government Operations.

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

Fiscal Note History: First Reader - February 18, 2020
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