

# HOUSE BILL 1101

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

Introduced and read first time: February 16, 2015

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

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

4 BY authorizing the Inspector General in the Department of Health and Mental Hygiene or  
5 a designee of the Inspector General to subpoena certain persons or evidence,  
6 administer oaths, and take depositions and other testimony for the purpose of  
7 investigating fraud, waste, or abuse of departmental health program funds;  
8 authorizing a certain court to take certain actions if a person fails to comply with a  
9 certain order or subpoena; authorizing the Department, the Inspector General, or a  
10 contractor or an agent acting on behalf of the Department to use extrapolation to  
11 determine the rate of error or overpayment under certain circumstances; providing  
12 that an audit of a provider may be conducted using extrapolation to determine the  
13 rate of error or overpayment for certain claims made by the provider; authorizing the  
14 Secretary of Health and Mental Hygiene or the Inspector General to impose a civil  
15 money penalty against a provider for a certain violation; establishing the maximum  
16 amount of a civil money penalty; specifying the factors that must be considered in  
17 setting the amount of a civil money penalty; requiring the Secretary or the Inspector  
18 General to issue a certain order if a civil money penalty is imposed; requiring the  
19 Department to provide a certain notice to a provider of the imposition of a civil money  
20 penalty; requiring the notice to be served in a certain manner and to include the  
21 order and a certain statement; establishing a certain right to appeal from an order  
22 imposing a civil money penalty; requiring a provider to pay a civil money penalty  
23 within a certain period of time; authorizing the Department to file a civil action to  
24 recover a civil money penalty under certain circumstances; requiring the  
25 Department to deposit all civil money penalties collected into the General Fund;  
26 authorizing the Secretary to require a Medical Assistance provider or a Medical  
27 Assistance provider applicant to provide a certain surety bond or other security when  
28 applying for enrollment or continued enrollment; requiring the Department to adopt  
29 regulations to implement certain provisions of this Act; defining certain terms;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 altering a certain definition; and generally relating to the Department of Health and  
2 Mental Hygiene and health program integrity and recovery activities.

3 BY repealing and reenacting, with amendments,  
4 Article – Health – General  
5 Section 2–501 and 2–503  
6 Annotated Code of Maryland  
7 (2009 Replacement Volume and 2014 Supplement)

8 BY adding to  
9 Article – Health – General  
10 Section 2–504.1, 2–504.2, and 15–105.3  
11 Annotated Code of Maryland  
12 (2009 Replacement Volume and 2014 Supplement)

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

15 **Article – Health – General**

16 2–501.

17 (a) In this subtitle the following words have the meanings indicated.

18 (b) “Abuse” means provider practices that are inconsistent with sound fiscal,  
19 business, or medical practices and result in unnecessary costs to a program, or in  
20 reimbursement for services that are not medically necessary or that fail to meet  
21 professionally recognized health care standards.

22 (c) “Claim” means a request or demand for money, property, or services made  
23 under contract or otherwise, by a contractor, grantee, provider, or other person seeking  
24 money for the provision of health services if:

25 (1) The State or Department provides any portion of the money or property  
26 that is requested or demanded; or

27 (2) The State or Department reimburses the contractor, grantee, provider,  
28 or other person for any portion of the money or property that is requested or demanded.

29 (d) “Employee” means any individual who performs services for, or under the  
30 control or direction of, a provider for wages or other remuneration.

31 **(E) “EXTRAPOLATION” MEANS A METHODOLOGY OF ESTIMATING AN**  
32 **UNKNOWN VALUE BY PROJECTING, WITH A CALCULATED PRECISION OR MARGIN OF**  
33 **ERROR, THE RESULTS OF A PROBABILITY SAMPLE TO THE UNIVERSE FROM WHICH**  
34 **THE SAMPLE WAS DRAWN.**

1            ~~[(e)]~~ **(F)**    (1)    “Fraud” means an intentional material deception or  
2 misrepresentation made by a person with the knowledge that the deception or  
3 misrepresentation could result in some unauthorized benefit or payment.

4                    (2)    “Fraud” includes any act that constitutes fraud under applicable State  
5 or federal law.

6            **(G)    (1)    “OVERPAYMENT” MEANS A PAYMENT THAT:**

7                            **(I)    IS MADE BY THE DEPARTMENT TO A PROVIDER AS**  
8 **REIMBURSEMENT FOR A HEALTH CARE SERVICE OR A HEALTH CARE ITEM PROVIDED**  
9 **TO A PARTICIPANT; AND**

10                            **(II)   IS DETERMINED, AT THE TIME OF PAYMENT OR AT A**  
11 **SUBSEQUENT DATE, TO BE INACCURATE, IN EXCESS OF THE CORRECT AMOUNT, OR**  
12 **BOTH, FOR THE PROCEDURAL CODE BILLED OR THE HEALTH CARE SERVICE OR**  
13 **HEALTH CARE ITEM PROVIDED.**

14                    **(2)    “OVERPAYMENT” INCLUDES A PAYMENT THAT RESULTS FROM:**

15                            **(I)    FAILURE TO COMPLY WITH STATE OR FEDERAL LAW**  
16 **REGARDING THE SERVICE OR ITEM PROVIDED;**

17                            **(II)   INACCURATE OR IMPROPER COST REPORTING; OR**

18                            **(III) UNACCEPTABLE PRACTICES, FRAUD, ABUSE, OR MISTAKE.**

19            ~~[(f)]~~ **(H)    (1)    “Program” means the Medical Assistance Program, the Cigarette**  
20 **Restitution Fund Program, the Developmental Disabilities Administration, the Behavioral**  
21 **Health Administration, the Prevention and Health Promotion Administration, or any other**  
22 **unit of the Department that pays a provider for a service rendered or claimed to have been**  
23 **rendered to a recipient.**

24                    **(2)    “PROGRAM” INCLUDES A MANAGED CARE ORGANIZATION UNDER**  
25 **HEALTHCHOICE.**

26            ~~[(g)]~~ **(I)    (1)    “Provider” means:**

27                            (i)    An individual licensed or certified under the Health Occupations  
28 Article to provide health care;

29                            (ii)   A licensed facility that provides health care to individuals;

30                            (iii) Any other person who or entity that provides health care,  
31 products, or services to a program recipient; or

1 (iv) A contractor, subcontractor, or vendor who directly or indirectly  
2 provides the Department or its recipients supplies, drugs, equipment, or services.

3 (2) "Provider" does not include a State agency that receives grant funding  
4 from or through the Department if that agency has in place a corporate compliance program  
5 that meets departmental requirements.

6 [(h)] (J) "Recipient" means an individual who receives benefits under a  
7 program.

8 [(i)] (K) "Recovery" means the repayment of moneys to the Department by a  
9 provider through return, reimbursement, recoupment, withholding of future payments,  
10 offsets, or any other method.

11 2-503.

12 (A) The Inspector General:

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

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

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

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

24 (2) **IF A PERSON FAILS TO COMPLY WITH A LAWFUL ORDER OR**  
25 **SUBPOENA ISSUED UNDER THIS SUBSECTION, ON PETITION OF THE INSPECTOR**  
26 **GENERAL OR A DESIGNEE OF THE INSPECTOR GENERAL, A COURT OF COMPETENT**  
27 **JURISDICTION MAY COMPEL:**

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

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

30 2-504.1.

1           (A) EXCEPT AS OTHERWISE PROVIDED BY STATE OR FEDERAL LAW, THE  
2 DEPARTMENT, THE INSPECTOR GENERAL, OR A CONTRACTOR OR AN AGENT ACTING  
3 ON BEHALF OF THE DEPARTMENT MAY USE EXTRAPOLATION TO DETERMINE THE  
4 RATE OF ERROR OR OVERPAYMENT IF:

5           (1) REQUIRED BY FEDERAL LAW;

6           (2) THERE IS A DETERMINATION OF A SUSTAINED OR HIGH RATE OF  
7 PAYMENT ERROR; OR

8           (3) THERE IS DOCUMENTATION THAT EDUCATIONAL INTERVENTION  
9 OR OTHER ACTION BY THE DEPARTMENT OR ITS AGENT HAS FAILED TO CORRECT  
10 THE PAYMENT ERROR.

11          (B) EXCEPT AS OTHERWISE PROVIDED BY STATE OR FEDERAL LAW, AN  
12 AUDIT OF A PROVIDER MAY BE CONDUCTED USING EXTRAPOLATION TO DETERMINE  
13 THE RATE OF ERROR OR OVERPAYMENT FOR CLAIMS MADE BY THE PROVIDER  
14 DURING THE 36-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE AUDIT IS  
15 INITIATED.

16   **2-504.2.**

17          (A) EXCEPT AS OTHERWISE PROVIDED BY STATE OR FEDERAL LAW, THE  
18 SECRETARY OR THE INSPECTOR GENERAL MAY IMPOSE A CIVIL MONEY PENALTY  
19 AGAINST A PROVIDER FOR A VIOLATION OF STATE OR FEDERAL LAW GOVERNING  
20 THE SERVICE OR ITEM FOR WHICH THE PROVIDER SUBMITTED A CLAIM AND  
21 RECEIVED PAYMENT.

22          (B) A CIVIL MONEY PENALTY IMPOSED UNDER THIS SECTION:

23           (1) MAY NOT EXCEED THE AMOUNT OF REIMBURSEMENT RECEIVED  
24 FOR THE PAID CLAIM; AND

25           (2) IS IN LIEU OF RETRACTION OR ADJUSTMENT OF THE PAID CLAIM.

26          (C) IN SETTING THE AMOUNT OF A CIVIL MONEY PENALTY IMPOSED UNDER  
27 THIS SECTION, THE FOLLOWING FACTORS MUST BE CONSIDERED:

28           (1) THE NUMBER, NATURE, AND SERIOUSNESS OF THE VIOLATIONS;

29           (2) PRIOR ACTIONS, INCLUDING REQUIRING THE PROVIDER TO  
30 PARTICIPATE IN AN EDUCATIONAL PROGRAM, TAKEN AGAINST THE PROVIDER FOR

1 A VIOLATION OF STATE OR FEDERAL LAW GOVERNING THE SERVICE OR ITEM FOR  
2 WHICH THE PROVIDER SUBMITTED A CLAIM AND RECEIVED PAYMENT; AND

3 (3) ANY OTHER REASONABLE FACTORS AS DETERMINED BY THE  
4 SECRETARY OR THE INSPECTOR GENERAL.

5 (D) IF A CIVIL MONEY PENALTY IS IMPOSED UNDER THIS SECTION, THE  
6 SECRETARY OR THE INSPECTOR GENERAL SHALL ISSUE AN ORDER STATING:

7 (1) THE BASIS ON WHICH THE ORDER IS MADE;

8 (2) EACH STATE OR FEDERAL LAW VIOLATED;

9 (3) EACH CIVIL MONEY PENALTY IMPOSED AND THE TOTAL AMOUNT  
10 OF THE CIVIL MONEY PENALTY IMPOSED;

11 (4) THE NUMBER OF CLAIMS AND TOTAL VALUE OF THE CLAIMS  
12 IDENTIFIED WITH ERRORS; AND

13 (5) THE MANNER IN WHICH THE AMOUNT OF THE CIVIL MONEY  
14 PENALTY WAS CALCULATED.

15 (E) (1) THE DEPARTMENT SHALL PROVIDE WRITTEN NOTICE TO A  
16 PROVIDER OF THE IMPOSITION OF A CIVIL MONEY PENALTY.

17 (2) THE NOTICE SHALL BE SERVED ON THE PROVIDER BY CERTIFIED  
18 MAIL AND SHALL INCLUDE THE ORDER AND A STATEMENT EXPLAINING THE  
19 PROCESS FOR FILING AN ADMINISTRATIVE APPEAL.

20 (F) IF A CIVIL MONEY PENALTY IS IMPOSED UNDER THIS SECTION, THE  
21 PROVIDER HAS THE RIGHT TO APPEAL FROM THE ORDER IN ACCORDANCE WITH  
22 TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

23 (G) (1) A PROVIDER SHALL PAY A CIVIL MONEY PENALTY IMPOSED  
24 UNDER THIS SECTION TO THE DEPARTMENT WITHIN 10 DAYS AFTER THE PROVIDER  
25 RECEIVES A FINAL ORDER IMPOSING THE CIVIL MONEY PENALTY.

26 (2) AN ORDER IMPOSING A CIVIL MONEY PENALTY IS FINAL WHEN  
27 THE PROVIDER HAS EXHAUSTED ALL OPPORTUNITIES TO CONTEST THE CIVIL  
28 MONEY PENALTY IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE  
29 GOVERNMENT ARTICLE.

1           **(3) IF A PROVIDER DOES NOT COMPLY WITH PARAGRAPH (1) OF THIS**  
2 **SUBSECTION, THE DEPARTMENT MAY FILE A CIVIL ACTION TO RECOVER THE CIVIL**  
3 **MONEY PENALTY.**

4           **(4) THE DEPARTMENT SHALL DEPOSIT ALL CIVIL MONEY PENALTIES**  
5 **COLLECTED UNDER THIS SECTION INTO THE GENERAL FUND.**

6 **15-105.3.**

7           **(A) THE SECRETARY MAY REQUIRE A MEDICAL ASSISTANCE PROVIDER OR**  
8 **MEDICAL ASSISTANCE PROVIDER APPLICANT, WHEN APPLYING FOR ENROLLMENT**  
9 **OR CONTINUED ENROLLMENT, TO PROVIDE TO THE DEPARTMENT A SURETY BOND**  
10 **OR OTHER SECURITY SATISFACTORY TO THE DEPARTMENT IN AN AMOUNT**  
11 **DETERMINED BY THE DEPARTMENT.**

12           **(B) THE DEPARTMENT SHALL ADOPT REGULATIONS TO IMPLEMENT THIS**  
13 **SECTION, INCLUDING ESTABLISHING:**

14           **(1) THE CLASSES OF PROVIDERS SUBJECT TO THIS SECTION; AND**

15           **(2) THE AMOUNT REQUIRED FOR THE SURETY BOND OR OTHER**  
16 **SECURITY THAT:**

17           **(i) FOR A PROVIDER TYPE REQUIRED BY MEDICARE TO HAVE A**  
18 **SURETY BOND, MUST EQUAL THE AMOUNT REQUIRED BY MEDICARE; AND**

19           **(ii) FOR A PROVIDER TYPE NOT REQUIRED BY MEDICARE TO**  
20 **HAVE A SURETY BOND:**

21                   **1. MUST BE DIFFERENTIATED BASED ON PROVIDER**  
22 **TYPE, NUMBER OF PROVIDER LOCATIONS, AND AVERAGE ANNUAL MEDICAID**  
23 **REVENUE OF THE PROVIDER; AND**

24                   **2. MAY NOT EXCEED \$50,000 PER PROVIDER LOCATION.**

25           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2015.