

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 393

(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, 2022.**

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing budgeted resources – as necessary funding and positions are to be transferred from MDH. 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, 2022, 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.

State Expenditures: The bill requires one staff position and \$100,000 in general funds as well as any related OIG funding and staff to transfer from MDH to the independent Maryland Office of the Inspector General for Health. MDH advises that the office has approximately 62 staff. This analysis assumes the one staff position and \$100,000 will be used to hire an assistant Attorney General necessary to support the new independent office. MDH advises that at least three other (and as many as nine) additional positions are needed to ensure that the new office is *fully independent* from MDH. However, as the bill requires any related positions and funding to be transferred, any such additional positions are assumed to be encompassed within those that must be transferred.

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: SB 963 of 2020 passed second reading in the Senate, but no further action was taken. Its cross file, HB 609, passed in the House but received no further action from the Senate Finance Committee.

Designated Cross File: SB 12 (Senator Hettleman) - Finance.

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

Fiscal Note History: First Reader - January 18, 2021
rh/jc Third Reader - February 12, 2021

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