

SENATE BILL No. 488

By Committee on Public Health and Welfare

2-8

1 AN ACT concerning the attorney general; relating to the office of the
2 inspector general and the powers, duties and responsibilities thereof;
3 expanding the power of the inspector general to investigate and audit
4 all state cash, food and health assistance programs; amending K.S.A.
5 75-7427 and repealing the existing section.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 75-7427 is hereby amended to read as follows: 75-
9 7427. (a) As used in this section:

10 (1) "Attorney general" means the attorney general of the state of
11 Kansas, employees of the attorney general or authorized representatives of
12 the attorney general.

13 (2) "Benefit" means the receipt of money, goods, items, facilities,
14 accommodations or anything of pecuniary value.

15 (3) *"Cash assistance" means assistance that is administered and*
16 *provided by the secretary for children and families to individuals for a*
17 *family's ongoing basic needs.*

18 (4) "Claim" means an electronic, electronic impulse, facsimile,
19 magnetic, oral, telephonic or written communication that is utilized to
20 identify any goods, service, item, facility or accommodation as
21 reimbursable to ~~the any state medicaid cash, food or health assistance~~
22 ~~program, or its the state's fiscal agents, the state medikAn program or the~~
23 ~~state children's health insurance program or which that states income or~~
24 ~~expense.~~

25 ~~(4)(5) "Client" means past or present beneficiaries or recipients of the~~
26 ~~any state medicaid cash, food or health assistance program, the state~~
27 ~~medikAn program or the state children's health insurance program.~~

28 ~~(5)(6) "Contractor" means any contractor, supplier, vendor or other~~
29 ~~person who, through a contract or other arrangement, has received, is to~~
30 ~~receive or is receiving public funds or in-kind contributions from the~~
31 ~~contracting agency as part of the any state medicaid cash, food or health~~
32 ~~assistance program; the state medikAn program or the state children's~~
33 ~~health insurance program; and shall include includes any subcontractor.~~

34 ~~(6)(7) "Contractor files" means those records of contractors which~~
35 ~~that relate to the any state medicaid cash, food or health assistance~~
36 ~~program, the state medikAn program or the state children's health~~

1 ~~insurance program.~~

2 (7)(8) "Fiscal agent" means any corporation, firm, individual,
3 organization, partnership, professional association or other legal entity
4 ~~which that~~, through a contractual relationship with the state of Kansas,
5 receives, processes and pays claims under ~~the state medicaid program, the~~
6 ~~state medikAn program or the state children's health insurance program~~
7 ~~cash, food or medical assistance programs.~~

8 (8)(9) "Food assistance" means assistance that is administered by the
9 United States department of agriculture and provided by the secretary for
10 children and families to individuals for eligible food products.

11 (10) "Health assistance" means the medicaid program, the state
12 children's health insurance program and the state employee health
13 benefits plan as established by K.S.A. 75-37,162, and amendments thereto.

14 (11) ~~"Health careHealthcare provider"~~ means a ~~health care healthcare~~
15 provider as defined under K.S.A. 65-4921, and amendments thereto, who
16 has applied to participate in, who currently participates in, or who has
17 previously participated in the ~~state medicaid program, the state medikAn~~
18 ~~program or the state children's health insurance~~ health assistance
19 program.

20 (9)(12) "Managed care program" means a program ~~which that~~
21 provides coordination, direction and provision of health services to an
22 identified group of individuals by providers, agencies or organizations.

23 (10)(13) "Medicaid program" means the Kansas program of medical
24 assistance for which federal or state moneys, or any combination thereof,
25 are expended; or any successor federal or state, or both, health insurance
26 program or waiver *are* granted thereunder.

27 (11)(14) "Person" means any agency, association, corporation, firm,
28 limited liability company, limited liability partnership, natural person,
29 organization, partnership or other legal entity, the agents, employees,
30 independent contractors, and subcontractors, thereof, and the legal
31 successors thereto.

32 (12)(15) "Provider" means a person who has applied to participate in,
33 who currently participates in, who has previously participated in, who
34 attempts or has attempted to participate in the ~~state medicaid program, the~~
35 ~~state medikAn program or the state children's health insurance program,~~
36 ~~cash, food or health assistance programs~~ by providing or claiming to have
37 provided goods, services, items, facilities or accommodations.

38 (13)(16) "Recipient" means an individual, either real or fictitious, ~~in~~
39 ~~on~~ whose behalf any person claimed or received any payment or payments
40 from the ~~state medicaid program cash, food or health assistance programs,~~
41 ~~or its the state's fiscal agent agents, the state medikAn program or the state~~
42 ~~children's health insurance program,~~ whether or not any such individual
43 was eligible for benefits under the ~~state medicaid program, the state~~

1 ~~mediKan program or the state children's health insurance program cash,~~
 2 ~~food or health assistance programs.~~

3 ~~(14)(17) "Records" means all written documents and electronic or~~
 4 ~~magnetic data, including, but not limited to, medical records, x-rays,~~
 5 ~~professional, financial or business records relating to the treatment or care~~
 6 ~~of any recipient; goods, services, items, facilities or accommodations~~
 7 ~~provided to any such recipient; rates paid for such goods, services, items,~~
 8 ~~facilities or accommodations; and goods, services, items, facilities or~~
 9 ~~accommodations provided to nonmedicaid recipients to verify rates or~~
 10 ~~amounts of goods, services, items, facilities or accommodations provided~~
 11 ~~to medicaid state cash, food or health assistance recipients, as well as any~~
 12 ~~records that the state medicaid cash, food or health assistance program, or~~
 13 ~~its the state's fiscal agents, the state mediKan program or the state~~
 14 ~~children's health insurance program require providers to maintain.~~
 15 ~~"Records" shall not include any report or record in any format which is~~
 16 ~~made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments~~
 17 ~~thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925,~~
 18 ~~and amendments thereto.~~

19 ~~(15)(18) "State children's health insurance program" means the state~~
 20 ~~children's health insurance program as provided in K.S.A. 38-2001 et seq.,~~
 21 ~~and amendments thereto.~~

22 (b) (1) There is hereby established within the office of the attorney
 23 general the office of inspector general. All budgeting, purchasing, related
 24 management functions and personnel of the office of inspector general
 25 shall be administered under the direction and supervision of the attorney
 26 general. The purpose of the office of inspector general is to establish a full-
 27 time program of audit, investigation and performance review to provide
 28 increased accountability, integrity and oversight of the state ~~medicaid~~
 29 ~~program cash, food or health assistance programs, the state mediKan~~
 30 ~~program and the state children's health insurance program~~ and to assist in
 31 improving agency and program operations and in deterring and identifying
 32 fraud, waste, abuse and *other* illegal acts. The office of inspector general
 33 shall be independent and free from political influence and in performing
 34 the duties of the office under this section shall conduct investigations,
 35 audits, evaluations, inspections and other reviews in accordance with
 36 professional standards that relate to the fields of investigation and auditing
 37 in government.

38 (2) (A) The inspector general shall be appointed by the attorney
 39 general with the advice and consent of the senate and subject to
 40 confirmation by the senate as provided in K.S.A. 75-4315b, and
 41 amendments thereto. Except as provided in K.S.A. 46-2601, and
 42 amendments thereto, no person appointed to the position of inspector
 43 general shall exercise any power, duty or function of the inspector general

1 until confirmed by the senate. The inspector general shall be selected
2 without regard to political affiliation and on the basis of integrity and
3 capacity for effectively carrying out the duties of the office of inspector
4 general. The inspector general shall possess demonstrated knowledge,
5 skills, abilities and experience in conducting audits or investigations and
6 shall be familiar with the programs subject to oversight by the office of
7 inspector general.

8 (B) No former or current executive or manager of any program or
9 agency subject to oversight by the office of inspector general may be
10 appointed inspector general within two years of that individual's period of
11 service with such program or agency. *A former or current inspector*
12 *general shall not be employed as an executive or manager for any*
13 *program or agency subject to the oversight by the office of the inspector*
14 *general for a period of two years after such inspector general's period of*
15 *service as the inspector general has concluded.* The inspector general shall
16 hold at time of appointment, or shall obtain within one year after
17 appointment, certification as a certified inspector general from a national
18 organization that provides training to inspectors general.

19 (C) A person appointed to the position of inspector general shall serve
20 for a term ~~which~~ *that* shall expire on January 15 of each year in which the
21 whole senate is sworn in for a new term.

22 (D) The inspector general shall be in the unclassified service and
23 shall receive an annual salary in an amount equal to the annual salary paid
24 by the state to a district court judge, except that such compensation may be
25 increased but not diminished during the term of office of the inspector
26 general. The inspector general ~~may~~ *shall* be removed from office prior to
27 the expiration of the inspector general's term of office by the attorney
28 general for cause. The inspector general shall exercise independent
29 judgment in carrying out the duties of the office of inspector general under
30 subsection (b). Appropriations for the office of inspector general shall be
31 made to the attorney general by separate line item appropriations for the
32 office of inspector general. The inspector general shall report to the
33 attorney general.

34 (E) Subject to subsection (b)(1), the inspector general shall have
35 general managerial control over the office of the inspector general and
36 shall establish the organization structure of the office as the inspector
37 general deems appropriate to carry out the responsibilities and functions of
38 the office.

39 (3) Within the limits of appropriations therefor, the attorney general
40 may hire such employees in the unclassified service as are necessary to
41 administer the office of the inspector general. Such employees shall serve
42 at the pleasure of the attorney general. Subject to appropriations and to
43 subsection (b)(1), the inspector general may obtain the services of certified

1 public accountants, qualified management consultants, professional
2 auditors, or other professionals necessary to independently perform the
3 functions of the office.

4 (c) (1) In accordance with the provisions of this section, the duties of
5 the office of inspector general shall be to oversee, audit, investigate and
6 make performance reviews of ~~the any state medicaid cash, food or health~~
7 ~~assistance program, the state medikan program and the state children's~~
8 ~~health insurance program or their successor programs.~~

9 (2) In order to carry out the duties of the office, the inspector general
10 shall conduct independent and ongoing evaluation of such programs or
11 their successor programs, ~~which.~~ This oversight includes, but is not limited
12 to, the following:

13 (A) Investigation of fraud, waste, abuse and illegal acts directly
14 relating to such programs.

15 (B) Audits of state programs, contractors, vendors and ~~health care~~
16 ~~healthcare~~ providers related to ensuring that appropriate payments are
17 made for services rendered and to the recovery of overpayments.

18 (C) Investigations of fraud, waste, abuse or illegal acts committed by
19 clients of the programs or by consumers of services of such programs.

20 (D) Monitoring adherence to the terms of any contract between a
21 state agency and an organization, if any, with which the state agency has
22 entered into a contract to make claims payments.

23 (3) Upon finding credible evidence of *significant levels* fraud, waste,
24 abuse or *other* illegal acts, the inspector general shall report ~~its~~ *the* findings
25 to the attorney general.

26 (d) The inspector general shall have access to all pertinent
27 information, confidential or otherwise, and to all personnel and facilities of
28 a state agency, state vendors, contractors and ~~health care~~ *healthcare*
29 providers and any federal, state or local governmental agency that are
30 necessary to perform the duties of the office as directly related to such
31 programs. ~~Access to contractor or health care provider files shall be~~
32 ~~limited to those files necessary to verify the accuracy of the contractor's or~~
33 ~~health care provider's invoices or their compliance with the contract~~
34 ~~provisions or program requirements. No health care provider shall be~~
35 ~~compelled under the provisions of this section to provide individual~~
36 ~~medical records of patients who are not clients of the state medicaid~~
37 ~~program, the state medikan program or the state children's health~~
38 ~~insurance program. State and local governmental agencies are authorized~~
39 and directed to provide to the inspector general requested information,
40 assistance or cooperation.

41 (e) Except as otherwise provided in this section, the inspector general
42 and all employees and former employees of the office of inspector general
43 shall be subject to the same duty of confidentiality imposed by law on any

1 such person or agency with regard to any such information; and shall be
2 subject to any civil or criminal penalties imposed by law for violations of
3 such duty of confidentiality. The duty of confidentiality imposed on the
4 inspector general and all employees and former employees of the office of
5 inspector general shall be subject to the provisions of subsection (f), and
6 the inspector general may furnish all such information to the attorney
7 general, Kansas bureau of investigation or office of the United States
8 attorney in Kansas pursuant to subsection (f). Upon receipt thereof, the
9 attorney general, Kansas bureau of investigation or office of the United
10 States attorney in Kansas and all assistants and all other employees and
11 former employees of such offices shall be subject to the same duty of
12 confidentiality with the exceptions that any such information may be
13 disclosed in criminal or other proceedings—~~which~~ *that* may be instituted
14 and prosecuted by the attorney general or the United States attorney in
15 Kansas, and any such information furnished to the attorney general, the
16 Kansas bureau of investigation or the United States attorney in Kansas
17 under subsection (f) may be entered into evidence in any such
18 proceedings.

19 (f) All investigations conducted by the inspector general shall be
20 conducted in a manner that ensures the preservation of evidence for use in
21 criminal prosecutions, civil actions or agency administrative actions. If the
22 inspector general determines that a possible criminal act or false claim
23 relating to fraud in the provision or administration of such programs has
24 been committed, the inspector general shall immediately notify the
25 attorney general. If the inspector general determines that a possible
26 criminal act has been committed within the jurisdiction of the office, the
27 inspector general may request the special expertise of the Kansas bureau of
28 investigation. The inspector general may present for prosecution the
29 findings of any criminal investigation to the office of the attorney general,
30 *applicable district or county attorney* or the office of the United States
31 attorney in Kansas.

32 (g) To carry out the duties as described in this section, the inspector
33 general and the inspector general's designees shall have:

34 (1) *Original jurisdiction to investigate crimes related to public*
35 *assistance, including those found in K.S.A. 21-5926 through 21-5932, 39-*
36 *709, 39-720 and 75-726, and amendments thereto;*

37 (2) *the power to issue, serve or cause to be served subpoenas or*
38 *other process of service in aid of investigations;*

39 (3) *the power to compel by subpoena the attendance and testimony of*
40 *witnesses and the production of books, electronic records and papers as*
41 *directly related to such state cash, food or health assistance programs;*

42 (4) *the power to administer oaths and take sworn statements under*
43 *penalty of perjury; and*

1 (5) *the power to serve and execute in any county search warrants*
2 *that relate to investigations being executed by the office of the inspector*
3 *general. Access to contractor files shall be limited to those files necessary*
4 *to verify the accuracy of the contractor's invoices or its compliance with*
5 *the contract provisions. No health care provider shall be compelled to*
6 *provide individual medical records of patients who are not clients of such*
7 *a program or programs.*

8 (h) The inspector general shall report all convictions, terminations
9 and suspensions taken against vendors, contractors and ~~health care~~
10 *healthcare* providers to any agency contracting with or responsible for
11 licensing or regulating those persons or entities. If the inspector general
12 determines reasonable suspicion exists that an act relating to the violation
13 of an agency licensure or regulatory standard has been committed by a
14 vendor, contractor or ~~health care~~ *healthcare* provider who is licensed or
15 regulated by an agency, the inspector general shall immediately notify
16 such agency of the possible violation, *unless such notification would*
17 *jeopardize an ongoing criminal investigation.*

18 (i) The inspector general shall make annual reports, findings and
19 recommendations regarding the office's investigations into reports of
20 fraud, waste, abuse and illegal acts relating to any such programs to the
21 appropriate state agency, the legislative post auditor, the committee on
22 ways and means of the senate, the committee on appropriations of the
23 house of representatives, the attorney general and the governor. ~~These~~
24 *Such* reports shall include, but not be limited to, the following information:

25 (1) ~~Aggregate provider billing and payment information;~~(2) The
26 number *and type* of audits ~~of such programs administered by the~~
27 ~~department of health and environment~~ *conducted* and the dollar savings, if
28 any, resulting from those audits;

29 ~~(3)~~(2) ~~health care~~*healthcare* provider sanctions, in the aggregate,
30 including terminations and suspensions; and

31 ~~(4)~~(3) a detailed summary of the investigations undertaken in the
32 previous fiscal year, ~~which summaries~~ *that* shall comply with all laws and
33 rules and regulations regarding maintaining confidentiality in such
34 programs.

35 (j) Based upon the inspector general's findings under subsection (c),
36 the inspector general may make such recommendations to the state agency
37 or agencies ~~which~~ *that* administer such program or programs or the
38 legislature for changes in law, rules and regulations, policy or procedures
39 as the inspector general deems appropriate to carry out the provisions of
40 law or to improve the efficiency of such programs. The inspector general
41 shall not be required to obtain permission or approval from any other
42 official or department prior to making any such recommendation.

43 (k) (1) The inspector general shall make provision to solicit and

1 receive reports of fraud, waste, abuse and illegal acts in such programs
 2 from any person or persons who shall possess such information. The
 3 inspector general shall not disclose or make public the identity of any
 4 person or persons who provide such reports pursuant to this subsection
 5 unless such person or persons consent in writing to the disclosure of such
 6 person's identity. Disclosure of the identity of any person who makes a
 7 report pursuant to this subsection shall not be ordered as part of any
 8 administrative or judicial proceeding. Any information received by the
 9 inspector general from any person concerning fraud, waste, abuse or
 10 illegal acts in such programs shall be confidential and shall not be
 11 disclosed or made public, upon subpoena or otherwise, except such
 12 information may be disclosed if:

13 (A) Release of the information would not result in the identification
 14 of the person who provided the information;

15 (B) the person or persons who provided the information to be
 16 disclosed consent in writing prior to its disclosure;

17 (C) the disclosure is necessary to protect the public health; or

18 (D) the information to be disclosed is required in an administrative
 19 proceeding or court proceeding and appropriate provision has been made
 20 to allow disclosure of the information without disclosing to the public the
 21 identity of the person or persons who reported such information to the
 22 inspector general.

23 (2) No person shall:

24 (A) Prohibit any agent, employee, contractor or subcontractor from
 25 reporting any information under ~~subsection (1)~~ *paragraph (1)*; or

26 (B) require any such agent, employee, contractor or subcontractor to
 27 give notice to the person prior to making any such report.

28 (3) ~~Subsection (1)~~ *Paragraph (2)* shall not be construed as:

29 (A) Prohibiting an employer from requiring that an employee inform
 30 the employer as to legislative or auditing agency requests for information
 31 or the substance of testimony made, or to be made, by the employee to
 32 legislators or the auditing agency, as the case may be, on behalf of the
 33 employer;

34 (B) permitting an employee to leave the employee's assigned work
 35 areas during normal work hours without following applicable rules and
 36 regulations and policies pertaining to leaves, unless the employee is
 37 requested by a legislator or legislative committee to appear before a
 38 legislative committee or by an auditing agency to appear at a meeting with
 39 officials of the auditing agency;

40 (C) authorizing an employee to represent the employee's personal
 41 opinions as the opinions of the employer; or

42 (D) prohibiting disciplinary action of an employee who discloses
 43 information ~~which~~ *that*:

1 (i) The employee knows to be false or which the employee discloses
2 with reckless disregard for its truth or falsity;

3 (ii) the employee knows to be exempt from required disclosure under
4 the open records act; or

5 (iii) is confidential or privileged under statute or court rule.

6 (4) Any agent, employee, contractor or subcontractor who alleges that
7 disciplinary action has been taken against such agent, employee, contractor
8 or subcontractor in violation of this section may bring an action for any
9 damages caused by such violation in district court within 90 days after the
10 occurrence of the alleged violation.

11 (5) Any disciplinary action taken against an employee of a state
12 agency or firm as such terms are defined under K.S.A. 75-2973, and
13 amendments thereto, for making a report under ~~subsection (k)~~ *paragraph*
14 (1) shall be governed by the provisions of K.S.A. 75-2973, and
15 amendments thereto.

16 (l) The scope, timing and completion of any audit or investigation
17 conducted by the inspector general shall be within the discretion of the
18 inspector general. Any audit conducted by the inspector general's office
19 shall adhere and comply with all provisions of generally accepted
20 governmental auditing standards promulgated by the United States
21 government accountability office.

22 (m) Nothing in this section shall limit investigations by any state
23 department or agency that may otherwise be required or permitted by law
24 or that may be necessary in carrying out the duties and functions of such
25 agency.

26 (n) No contractor who has been convicted of fraud, waste, abuse or
27 illegal acts or whose actions have caused the state of Kansas to pay fines
28 to or reimburse the federal government more than \$1,000,000 in the
29 medicaid program shall be eligible for any state medicaid contracts
30 subsequent to such conviction unless the attorney general finds that the
31 contractor is the sole source for such contracts, is the least expensive
32 source for the contract, has reimbursed the state of Kansas for all losses
33 caused by the contractor, or the removal of the contractor would create a
34 substantial loss of access for medicaid beneficiaries, in which case, after a
35 specific finding to this effect, the prohibition of this subsection may be
36 waived by the attorney general. Nothing in this section shall be construed
37 to conflict with federal law; or to require or permit the use of federal funds
38 where prohibited.

39 (o) All information and records of the inspector general that are
40 made, maintained, kept, obtained or received under any investigation or
41 audit under this section shall be confidential, except as required or
42 authorized pursuant to this section.

43 Sec. 2. K.S.A. 75-7427 is hereby repealed.

1 Sec. 3. This act shall take effect and be in force from and after its
2 publication in the statute book.