

1 **OFFICE OF INSPECTOR GENERAL OF MEDICAID**

2 **SERVICES AMENDMENTS**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: James A. Dunnigan**

6 Senate Sponsor: _____

8 **LONG TITLE**

9 **General Description:**

10 This bill amends budgeting related to the Office of Inspector General of Medicaid
11 Services.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends the duties and powers of the inspector general;
- 15 ▶ amends the period of time in which the inspector general can review claims for
16 waste and abuse;
- 17 ▶ amends the manner in which the inspector general accesses records;
- 18 ▶ establishes the application of Medicaid policy when there is inconsistency between
19 the state Medicaid plan, administrative rules, and department information bulletins;
- 20 ▶ requires the Office of Inspector General of Medicaid Services to adopt
21 administrative rules in consultation with health care providers to develop audit and
22 investigation procedures;
- 23 ▶ requires the Office of Inspector General of Medicaid Services to educate health care
24 providers about the audit and investigation procedures; and
- 25 ▶ amends the reporting requirements to the Legislature.

26 **Money Appropriated in this Bill:**

27 None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **63J-4a-202**, as enacted by Laws of Utah 2011, Chapter 151

33 **63J-4a-204**, as enacted by Laws of Utah 2011, Chapter 151

34 **63J-4a-301**, as enacted by Laws of Utah 2011, Chapter 151

35 **63J-4a-302**, as enacted by Laws of Utah 2011, Chapter 151

36 **63J-4a-501**, as enacted by Laws of Utah 2011, Chapter 151

37 **63J-4a-502**, as enacted by Laws of Utah 2011, Chapter 151

38 **63J-4a-602**, as enacted by Laws of Utah 2011, Chapter 151

39 ENACTS:

40 **63J-4a-305**, Utah Code Annotated 1953



42 *Be it enacted by the Legislature of the state of Utah:*

43 Section 1. Section **63J-4a-202** is amended to read:

44 **63J-4a-202. Duties and powers of inspector general and office.**

45 (1) The inspector general shall:

46 (a) administer, direct, and manage the office;

47 (b) inspect and monitor the following in relation to the state Medicaid program:

48 (i) the use and expenditure of federal and state funds;

49 (ii) the provision of health benefits and other services;

50 (iii) implementation of, and compliance with, state and federal requirements; and

51 (iv) records and recordkeeping procedures;

52 (c) receive reports of potential fraud, waste, or abuse in the state Medicaid program;

53 (d) investigate and identify potential or actual fraud, waste, or abuse in the state

54 Medicaid program;

55 (e) consult with the Centers for Medicaid and Medicare Services and other states to

56 determine and implement best practices for:

57 (i) educating and communicating with health care professionals and providers about

58 program and audit policies and procedures;

59 (ii) discovering and eliminating fraud, waste, and abuse of Medicaid funds; and
60 (iii) differentiating between honest mistakes and intentional errors, or fraud, waste, and
61 abuse, for the purpose of entering into settlement negotiations with the provider or health care
62 professional;

63 (f) obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse
64 in the state Medicaid program;

65 (g) work closely with the fraud unit to identify and recover improperly or fraudulently
66 expended Medicaid funds;

67 (h) audit, inspect, and evaluate the functioning of the division [to] for the purpose of
68 making recommendations to the Legislature and the department to ensure that the state
69 Medicaid program is managed;

70 (i) in the most efficient and cost-effective manner possible; and

71 (ii) in a manner that promotes adequate provider and health care professional
72 participation and the provision of appropriate health benefits and services;

73 ~~[(i) regularly advise the department and the division of an action that should be taken~~
74 ~~to ensure that the state Medicaid program is managed in the most efficient and cost-effective~~
75 ~~manner possible;]~~

76 ~~[(j)]~~ (i) refer potential criminal conduct, relating to Medicaid funds or the state
77 Medicaid program, to the fraud unit;

78 (j) refer potential criminal conduct, relating to Medicaid fraud, to law enforcement in
79 accordance with Title 58, Chapter 37f, Controlled Substance Database Act;

80 (k) determine ways to:

81 (i) identify, prevent, and reduce fraud, waste, and abuse in the state Medicaid program;
82 and

83 (ii) balance efforts to recoup costs, reduce costs, and avoid or minimize increased costs
84 of the state Medicaid program with the need to encourage robust health care professional and
85 provider participation in the state Medicaid program;

86 (l) ~~[seek recovery of]~~ recover improperly paid Medicaid funds;

87 (m) track recovery of Medicaid funds by the state;

88 (n) in accordance with Section 63J-4a-501:

89 (i) report on the actions and findings of the inspector general; and

90 (ii) make recommendations to the Legislature and the governor;

91 (o) provide training to;

92 (i) agencies and employees on identifying potential fraud, waste, or abuse of Medicaid
93 funds; and

94 (ii) health care professionals and providers on program and audit policies, procedures,
95 and compliance; and

96 (p) develop and implement principles and standards for the fulfillment of the duties of
97 the inspector general, based on principles and standards used by:

98 (i) the Federal Offices of Inspector General;

99 (ii) the Association of Inspectors General; and

100 (iii) the United States Government Accountability Office.

101 (2) (a) The office may, in fulfilling the duties under Subsection (1), conduct a
102 performance or financial audit of:

103 [~~(a)~~] (i) a state executive branch entity or a local government entity, including an entity
104 described in Subsection 63J-4a-301(3), that:

105 [~~(i)~~] (A) manages or oversees a state Medicaid program; or

106 [~~(ii)~~] (B) manages or oversees the use or expenditure of state or federal Medicaid
107 funds; or

108 [~~(b)~~] (ii) Medicaid funds received by a person by a grant from, or under contract with, a
109 state executive branch entity or a local government entity.

110 (b) (i) The office may not, in fulfilling the duties under Subsection (1), amend the
111 Medicaid state program or change the policies and procedures of the Medicaid state program.

112 (ii) The office may identify conflicts between the state Medicaid plan, department
113 administrative rules, and Medicaid information bulletins and recommend that the department
114 reconcile inconsistencies.

115 (3) (a) The office shall, in fulfilling the duties under this section to investigate,
116 discover, and recover fraud, waste, and abuse in the Medicaid program, apply the state
117 Medicaid plan, department administrative rules, and published and publicly available Medicaid
118 information bulletins in effect at the time the medical services were provided.

119 (b) If there is a conflict between the Medicaid state plan, administrative rules, or a
120 Medicaid information bulletin issued by the department, a health care provider may rely on the

121 policy interpretation included in a published Medicaid information bulletin that is available to
122 the public.

123 [~~3~~] (4) The inspector general, or a designee of the inspector general within the office,
124 may take a sworn statement or administer an oath.

125 Section 2. Section **63J-4a-204** is amended to read:

126 **63J-4a-204. Selection and review of claims.**

127 (1) (a) On an annual basis, the office shall select and review a representative sample of
128 claims submitted for reimbursement under the state Medicaid program to determine whether
129 fraud, waste, or abuse occurred.

130 (b) The office shall limit its review for waste and abuse under Subsection (1)(a) to 36
131 months prior to the date of the inception of the investigation.

132 (2) The office may directly contact the recipient of record for a Medicaid reimbursed
133 service to determine whether the service for which reimbursement was claimed was actually
134 provided to the recipient of record.

135 (3) The office shall generate statistics from the sample described in Subsection (1) to
136 determine the type of fraud, waste, or abuse that is most advantageous to focus on in future
137 audits or investigations.

138 Section 3. Section **63J-4a-301** is amended to read:

139 **63J-4a-301. Access to records -- Retention of designation under Government**
140 **Records Access and Management Act.**

141 (1) In order to fulfill the duties described in Section 63J-4a-202, and in the manner
142 provided in Subsection (4), the office shall have unrestricted access to all records of state
143 executive branch entities, all local government entities, and all providers relating, directly or
144 indirectly, to:

- 145 (a) the state Medicaid program;
- 146 (b) state or federal Medicaid funds;
- 147 (c) the provision of Medicaid related services;
- 148 (d) the regulation or management of any aspect of the state Medicaid program;
- 149 (e) the use or expenditure of state or federal Medicaid funds;
- 150 (f) suspected or proven fraud, waste, or abuse of state or federal Medicaid funds;
- 151 (g) Medicaid program policies, practices, and procedures;

- 152 (h) monitoring of Medicaid services or funds; or
- 153 (i) a fatality review of a person who received Medicaid funded services.
- 154 (2) The office shall have access to information in any database maintained by the state
- 155 or a local government to verify identity, income, employment status, or other factors that affect
- 156 eligibility for Medicaid services.
- 157 (3) The records described in Subsections (1) and (2) include records held or maintained
- 158 by the department, the division, the Department of Human Services, the Department of
- 159 Workforce Services, a local health department, a local mental health authority, or a school
- 160 district. The records described in Subsection (1) include records held or maintained by a
- 161 provider. When conducting an audit of a provider, the office shall, to the extent possible, limit
- 162 the records accessed to the scope of the audit.
- 163 (4) A record, described in Subsection (1) or (2), that is accessed or copied by the
- 164 office:
- 165 (a) may be reviewed or copied by the office during normal business hours, unless
- 166 otherwise requested by the provider or health care professional under Subsection (4)(b); [and]
- 167 (b) unless there is a credible allegation of fraud, shall be accessed, reviewed, and
- 168 copied in a manner, on a day, and at a time that is minimally disruptive to the health care
- 169 professional's or provider's care of patients, as requested by the health care professional or
- 170 provider;
- 171 (c) may be submitted electronically;
- 172 (d) may be submitted together with other records for multiple claims; and
- 173 ~~(b)~~ (e) if it is a government record, shall retain the classification made by the entity
- 174 responsible for the record, under Title 63G, Chapter 2, Government Records Access and
- 175 Management Act.
- 176 (5) Notwithstanding any provision of state law to the contrary, the office shall have the
- 177 same access to all records, information, and databases ~~that~~ to which the department or the
- 178 division have access ~~to~~.
- 179 (6) The office shall comply with the requirements of federal law, including the Health
- 180 Insurance Portability and Accountability Act of 1996 and 42 C.F.R., Part 2, relating to ~~the~~
- 181 ~~confidentiality of alcohol and drug abuse records, in~~ the office's:
- 182 (a) access, review, retention, and use of records; and

183 (b) use of information included in, or derived from, records.

184 Section 4. Section **63J-4a-302** is amended to read:

185 **63J-4a-302. Access to employees -- Cooperating with investigation or audit.**

186 (1) The office shall have access to interview the following persons if the inspector
187 general determines that the interview may assist the inspector general in fulfilling the duties
188 described in Section 63J-4a-202:

189 (a) a state executive branch official, executive director, director, or employee;

190 (b) a local government official or employee;

191 (c) a consultant or contractor of a person described in Subsection (1)(a) or (b); or

192 (d) a provider or a health care professional or an employee of a provider or a health
193 care professional.

194 (2) A person described in Subsection (1) and each supervisor of the person shall fully
195 cooperate with the office by:

196 (a) providing the office or the inspector general's designee with access to interview the
197 person;

198 (b) completely and truthfully answering questions asked by the office or the inspector
199 general's designee;

200 (c) providing the records, described in Subsection 63J-4a-301(1), in the manner
201 described in Subsection 63J-4a-301(4), requested by the office or the inspector general's
202 designee; and

203 (d) providing the office or the inspector general's designee with information relating to
204 the office's investigation or audit.

205 (3) A person described in Subsection (1)(a) or (b) and each supervisor of the person
206 shall fully cooperate with the office by:

207 (a) providing records requested by the office or the inspector general's designee in the
208 manner described in Subsection 63J-4a-301(4); and

209 (b) providing the office or the inspector general's designee with information relating to
210 the office's investigation or audit, including information that is classified as private, controlled,
211 or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

212 Section 5. Section **63J-4a-305** is enacted to read:

213 **63J-4a-305. Audit and investigation procedures.**

214 (1) (a) The office shall, in accordance with Section 63J-4a-602, adopt administrative
215 rules in consultation with providers and health care professionals subject to audit and
216 investigation under this chapter to establish procedures for audits and investigations that are
217 fair and consistent with the duties of the office under this chapter.

218 (b) If the providers and health care professionals do not agree with the rules proposed
219 or adopted by the office under Subsection (1)(a) or Section 63J-4a-602, the providers or health
220 care professionals may:

221 (i) request a hearing for the proposed administrative rule or seek any other remedies
222 under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

223 (ii) request a review of the rule by the Legislature's Administrative Rules Review
224 Committee created in Section 63G-3-501.

225 (2) The office shall notify and educate providers and health care professionals subject
226 to audit and investigation under this chapter of the providers' and health care professionals'
227 responsibilities and rights under the administrative rules adopted by the office under the
228 provisions of this section and Section 63J-4a-602.

229 Section 6. Section **63J-4a-501** is amended to read:

230 **63J-4a-501. Duty to report potential Medicaid fraud to the office or fraud unit.**

231 (1) [A] (a) Except as provided in Subsection (1)(b), a health care professional, a
232 provider, or a state or local government official or employee who becomes aware of fraud,
233 waste, or abuse shall report the fraud, waste, or abuse to the office or the fraud unit.

234 (b) (i) If a person described in Subsection (1)(a) reasonably believes that the waste is a
235 mistake and is not intentional or knowing, the person may first report the waste to the provider,
236 health care professional, or compliance officer for the provider or health care professional.

237 (ii) The person described in Subsection (1)(b) shall report the waste to the office or the
238 fraud unit unless, within 30 days after the day on which the person reported the waste to the
239 provider, health care professional, or compliance officer, the provider, health care professional,
240 or compliance officer demonstrates to the person that the waste has been corrected.

241 (2) A person who makes a report under Subsection (1) may request that the person's
242 name not be released in connection with the investigation.

243 (3) If a request is made under Subsection (2), the person's identity may not be released
244 to any person or entity other than the office, the fraud unit, or law enforcement, unless a court

245 of competent jurisdiction orders that the person's identity be released.

246 Section 7. Section **63J-4a-502** is amended to read:

247 **63J-4a-502. Report and recommendations to governor and Executive**
248 **Appropriations Committee.**

249 (1) The inspector general shall, on an annual basis, prepare a written report on the
250 activities of the office for the preceding fiscal year.

251 (2) The report shall include:

252 (a) non-identifying information, including statistical information, on:

253 (i) the items described in Subsection 63J-4a-202(1)(b) and Section 63J-4a-204;

254 (ii) action taken by the office and the result of that action;

255 (iii) fraud, waste, and abuse in the state Medicaid program;

256 (iv) the recovery of fraudulent or improper use of state and federal Medicaid funds;

257 (v) measures taken by the state to discover and reduce fraud, waste, and abuse in the
258 state Medicaid program;

259 (vi) audits conducted by the office; ~~and~~

260 (vii) investigations conducted by the office and the results of those investigations; and

261 (viii) administrative and educational efforts made by the office and the division to
262 improve compliance with Medicaid program policies and requirements;

263 (b) recommendations on action that should be taken by the Legislature or the governor
264 to:

265 (i) improve the discovery and reduction of fraud, waste, and abuse in the state
266 Medicaid program;

267 (ii) improve the recovery of fraudulently or improperly used Medicaid funds; and

268 (iii) reduce costs and avoid or minimize increased costs in the state Medicaid program;

269 (c) recommendations relating to rules, policies, or procedures of a state or local
270 government entity; and

271 (d) services provided by the state Medicaid program that exceed industry standards.

272 (3) The report described in Subsection (1) may not include any information that would
273 interfere with or jeopardize an ongoing criminal investigation or other investigation.

274 (4) The inspector general shall provide the report described in Subsection (1) to the
275 Executive Appropriations Committee of the Legislature and to the governor on or before

276 October 1 of each year.

277 (5) The inspector general shall present the report described in Subsection (1) to the
278 Executive Appropriations Committee of the Legislature before November 30 of each year.

279 Section 8. Section **63J-4a-602** is amended to read:

280 **63J-4a-602. Rulemaking authority.**

281 The office may make rules, pursuant to Title 63G, Chapter 3, Utah Administrative
282 Rulemaking Act, and Section 63J-4a-305, that establish policies, procedures, and practices, in
283 accordance with the provisions of this chapter, relating to:

284 (1) inspecting and monitoring the state Medicaid Program;

285 (2) discovering and investigating potential fraud, waste, or abuse in the State Medicaid
286 program;

287 (3) developing and implementing the principles and standards described in Subsection
288 63J-4a-202(1)(~~p~~)(o);

289 (4) auditing, inspecting, and evaluating the functioning of the division under
290 Subsection 63J-4a-202(1)(h);

291 (5) conducting an audit under Subsection 63J-4a-202(1)(h) or (2); or

292 (6) ordering a hold on the payment of a claim for reimbursement under Section
293 63J-4a-205.

Legislative Review Note
as of **2-13-13 11:34 AM**

Office of Legislative Research and General Counsel