

**Representative James A. Dunnigan** proposes the following substitute bill:

**OFFICE OF INSPECTOR GENERAL OF MEDICAID**

**SERVICES AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: Stephen H. Urquhart

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ amends the duties and powers of the inspector general;
- ▶ amends the period of time in which the inspector general can review claims for waste and abuse;
- ▶ amends the manner in which the inspector general accesses records;
- ▶ establishes the application of Medicaid policy when there is inconsistency between the state Medicaid plan, administrative rules, and department information bulletins;
- ▶ requires the Office of Inspector General of Medicaid Services to adopt administrative rules in consultation with health care providers to develop audit and investigation procedures;
- ▶ requires the Office of Inspector General of Medicaid Services to educate health care providers about the audit and investigation procedures; and
- ▶ 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, including relevant data from the controlled  
79 substance database, relating to Medicaid fraud, to law enforcement in accordance with Title 58,  
80 Chapter 37f, Controlled Substance Database Act;

81 (k) determine ways to:

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

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

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

- 88 (m) track recovery of Medicaid funds by the state;
- 89 (n) in accordance with Section 63J-4a-501:
- 90 (i) report on the actions and findings of the inspector general; and
- 91 (ii) make recommendations to the Legislature and the governor;
- 92 (o) provide training to:
- 93 (i) agencies and employees on identifying potential fraud, waste, or abuse of Medicaid
- 94 funds; and
- 95 (ii) health care professionals and providers on program and audit policies, procedures,
- 96 and compliance; and
- 97 (p) develop and implement principles and standards for the fulfillment of the duties of
- 98 the inspector general, based on principles and standards used by:
- 99 (i) the Federal Offices of Inspector General;
- 100 (ii) the Association of Inspectors General; and
- 101 (iii) the United States Government Accountability Office.
- 102 (2) (a) The office may, in fulfilling the duties under Subsection (1), conduct a
- 103 performance or financial audit of:
- 104 ~~[(a)]~~ (i) a state executive branch entity or a local government entity, including an entity
- 105 described in Subsection 63J-4a-301(3), that:
- 106 ~~[(i)]~~ (A) manages or oversees a state Medicaid program; or
- 107 ~~[(ii)]~~ (B) manages or oversees the use or expenditure of state or federal Medicaid
- 108 funds; or
- 109 ~~[(b)]~~ (ii) Medicaid funds received by a person by a grant from, or under contract with, a
- 110 state executive branch entity or a local government entity.
- 111 (b) (i) The office may not, in fulfilling the duties under Subsection (1), amend the
- 112 Medicaid state program or change the policies and procedures of the Medicaid state program.
- 113 (ii) The office may identify conflicts between the state Medicaid plan, department
- 114 administrative rules, Medicaid provider manuals, and Medicaid information bulletins and
- 115 recommend that the department reconcile inconsistencies. If the department does not reconcile
- 116 the inconsistencies, the office shall report the inconsistencies to the Legislature's
- 117 Administrative Rules Review Committee created in Section 63G-3-501.
- 118 (3) (a) The office shall, in fulfilling the duties under this section to investigate,

119 discover, and recover fraud, waste, and abuse in the Medicaid program, apply the state  
 120 Medicaid plan, department administrative rules, Medicaid provider manuals, and Medicaid  
 121 information bulletins in effect at the time the medical services were provided.

122 (b) If there is a conflict between the Medicaid state plan, administrative rules,  
 123 Medicaid provider manuals, or a Medicaid information bulletin issued by the department, a  
 124 health care provider may rely on the policy interpretation included in a current ~~H~~→ [Medicaid  
 125 provider manual or current] ←~~H~~ Medicaid information bulletin that is available to the public.

126 [(3)] (4) The inspector general, or a designee of the inspector general within the office,  
 127 may take a sworn statement or administer an oath.

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

129 **63J-4a-204. Selection and review of claims.**

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

133 (b) The office shall limit its review for waste and abuse under Subsection (1)(a) to 36  
 134 months prior to the date of the inception of the investigation ~~H~~→ or 72 months if fraud is  
 134a suspected ←~~H~~ .

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

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

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

142 **63J-4a-301. Access to records -- Retention of designation under Government**  
 143 **Records Access and Management Act.**

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

- 148 (a) the state Medicaid program;
- 149 (b) state or federal Medicaid funds;

- 150 (c) the provision of Medicaid related services;
- 151 (d) the regulation or management of any aspect of the state Medicaid program;
- 152 (e) the use or expenditure of state or federal Medicaid funds;
- 153 (f) suspected or proven fraud, waste, or abuse of state or federal Medicaid funds;
- 154 (g) Medicaid program policies, practices, and procedures;
- 155 (h) monitoring of Medicaid services or funds; or
- 156 (i) a fatality review of a person who received Medicaid funded services.

157 (2) The office shall have access to information in any database maintained by the state  
158 or a local government to verify identity, income, employment status, or other factors that affect  
159 eligibility for Medicaid services.

160 (3) The records described in Subsections (1) and (2) include records held or maintained  
161 by the department, the division, the Department of Human Services, the Department of  
162 Workforce Services, a local health department, a local mental health authority, or a school  
163 district. The records described in Subsection (1) include records held or maintained by a  
164 provider. When conducting an audit of a provider, the office shall, to the extent possible, limit  
165 the records accessed to the scope of the audit.

166 (4) A record, described in Subsection (1) or (2), that is accessed or copied by the  
167 office:

168 (a) may be reviewed or copied by the office during normal business hours, unless  
169 otherwise requested by the provider or health care professional under Subsection (4)(b); [and]

170 (b) unless there is a credible allegation of fraud, shall be accessed, reviewed, and  
171 copied in a manner, on a day, and at a time that is minimally disruptive to the health care  
172 professional's or provider's care of patients, as requested by the health care professional or  
173 provider;

174 (c) may be submitted electronically;

175 (d) may be submitted together with other records for multiple claims; and

176 ~~(b)~~ (e) if it is a government record, shall retain the classification made by the entity  
177 responsible for the record, under Title 63G, Chapter 2, Government Records Access and  
178 Management Act.

179 (5) Notwithstanding any provision of state law to the contrary, the office shall have the  
180 same access to all records, information, and databases ~~that~~ to which the department or the

181 division have access [to].

182 (6) The office shall comply with the requirements of federal law, including the Health  
183 Insurance Portability and Accountability Act of 1996 and 42 C.F.R., Part 2, relating to [the  
184 confidentiality of alcohol and drug abuse records, in] the office's:

- 185 (a) access, review, retention, and use of records; and
- 186 (b) use of information included in, or derived from, records.

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

188 **63J-4a-302. Access to employees -- Cooperating with investigation or audit.**

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

- 192 (a) a state executive branch official, executive director, director, or employee;
- 193 (b) a local government official or employee;
- 194 (c) a consultant or contractor of a person described in Subsection (1)(a) or (b); or
- 195 (d) a provider or a health care professional or an employee of a provider or a health  
196 care professional.

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

- 199 (a) providing the office or the inspector general's designee with access to interview the  
200 person;
- 201 (b) completely and truthfully answering questions asked by the office or the inspector  
202 general's designee;
- 203 (c) providing the records, described in Subsection 63J-4a-301(1), in the manner  
204 described in Subsection 63J-4a-301(4), requested by the office or the inspector general's  
205 designee; and
- 206 (d) providing the office or the inspector general's designee with information relating to  
207 the office's investigation or audit.

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

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

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

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

216 **63J-4a-305. Audit and investigation procedures.**

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

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

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

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

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

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

233 **63J-4a-501. Duty to report potential Medicaid fraud to the office or fraud unit.**

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

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

240 (ii) The person described in Subsection (1)(b) shall report the waste to the office or the  
241 fraud unit unless, within 30 days after the day on which the person reported the waste to the  
242 provider, health care professional, or compliance officer, the provider, health care professional,

243 or compliance officer demonstrates to the person that the waste has been corrected.

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

246 (3) If a request is made under Subsection (2), the person's identity may not be released  
247 to any person or entity other than the office, the fraud unit, or law enforcement, unless a court  
248 of competent jurisdiction orders that the person's identity be released.

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

250 **63J-4a-502. Report and recommendations to governor and Executive**  
251 **Appropriations Committee.**

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

254 (2) The report shall include:

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

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

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

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

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

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

262 (vi) audits conducted by the office; [~~and~~]

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

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

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

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

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

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

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

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

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

277 (4) The inspector general shall provide the report described in Subsection (1) to the  
278 Executive Appropriations Committee of the Legislature and to the governor on or before  
279 October 1 of each year.

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

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

283 **63J-4a-602. Rulemaking authority.**

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

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

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

290 (3) developing and implementing the principles and standards described in Subsection  
291 63J-4a-202(1)(~~p~~)(o);

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

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

295 (6) ordering a hold on the payment of a claim for reimbursement under Section  
296 63J-4a-205.