

MEDICAID INSPECTOR GENERAL AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: Melissa G. Ballard

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines "waste";
 - ▶ directs the Office of Inspector General of Medicaid Services (office) to submit a budget for the office directly to the Department of Administrative Services;
 - ▶ amends required reporting of the office;
 - ▶ requires the office to report to the Infrastructure and General Government Appropriations Subcommittee instead of the Executive Appropriations Committee;
- and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63A-13-102, as last amended by Laws of Utah 2015, Chapter 135

63A-13-201, as last amended by Laws of Utah 2015, First Special Session, Chapter 4

63A-13-502, as last amended by Laws of Utah 2016, Chapter 222

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31 *Be it enacted by the Legislature of the state of Utah:*32 Section 1. Section **63A-13-102** is amended to read:33 **63A-13-102. Definitions.**

34 As used in this chapter:

35 (1) "Abuse" means:

36 (a) an action or practice that:

37 (i) is inconsistent with sound fiscal, business, or medical practices; and

38 (ii) results, or may result, in unnecessary Medicaid related costs; or

39 (b) reckless or negligent upcoding.

40 (2) "Claimant" means a person that:

41 (a) provides a service; and

42 (b) submits a claim for Medicaid reimbursement for the service.

43 (3) "Department" means the Department of Health, created in Section [26-1-4](#).

44 (4) "Division" means the Division of Health Care Financing, created in Section

45 [26-18-2.1](#).46 (5) "Extrapolation" means a method of using a mathematical formula that takes the
47 audit results from a small sample of Medicaid claims and projects those results over a much
48 larger group of Medicaid claims.

49 (6) "Fraud" means intentional or knowing:

50 (a) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs, a
51 claim, reimbursement, or services; or52 (b) a violation of a provision of Sections [26-20-3](#) through [26-20-7](#).53 (7) "Fraud unit" means the Medicaid Fraud Control Unit of the attorney general's
54 office.

55 (8) "Health care professional" means a person licensed under:

56 (a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;

57 (b) Title 58, Chapter 16a, Utah Optometry Practice Act;

- 58 (c) Title 58, Chapter 17b, Pharmacy Practice Act;
- 59 (d) Title 58, Chapter 24b, Physical Therapy Practice Act;
- 60 (e) Title 58, Chapter 31b, Nurse Practice Act;
- 61 (f) Title 58, Chapter 40, Recreational Therapy Practice Act;
- 62 (g) Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act;
- 63 (h) Title 58, Chapter 42a, Occupational Therapy Practice Act;
- 64 (i) Title 58, Chapter 44a, Nurse Midwife Practice Act;
- 65 (j) Title 58, Chapter 49, Dietitian Certification Act;
- 66 (k) Title 58, Chapter 60, Mental Health Professional Practice Act;
- 67 (l) Title 58, Chapter 67, Utah Medical Practice Act;
- 68 (m) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- 69 (n) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
- 70 (o) Title 58, Chapter 70a, Physician Assistant Act; and
- 71 (p) Title 58, Chapter 73, Chiropractic Physician Practice Act.

72 (9) "Inspector general" means the inspector general of the office, appointed under

73 Section [63A-13-201](#).

74 (10) "Office" means the Office of Inspector General of Medicaid Services, created in

75 Section [63A-13-201](#).

76 (11) "Provider" means a person that provides:

77 (a) medical assistance, including supplies or services, in exchange, directly or
78 indirectly, for Medicaid funds; or

79 (b) billing or recordkeeping services relating to Medicaid funds.

80 (12) "Upcoding" means assigning an inaccurate billing code for a service that is
81 payable or reimbursable by Medicaid funds, if the correct billing code for the service, taking
82 into account reasonable opinions derived from official published coding definitions, would
83 result in a lower Medicaid payment or reimbursement.

84 [~~(13) "Waste" means overutilization of resources or inappropriate payment.~~]

85 (13) (a) "Waste" means the act of using or expending a resource carelessly,

86 extravagantly, or to no purpose.

87 (b) "Waste" includes an activity that:

88 (i) does not constitute abuse or necessarily involve a violation of law; and

89 (ii) relates primarily to mismanagement, an inappropriate action, or inadequate
90 oversight.

91 Section 2. Section **63A-13-201** is amended to read:

92 **63A-13-201. Creation of office -- Inspector general -- Appointment -- Term.**

93 (1) There is created an independent entity within the Department of Administrative
94 Services known as the "Office of Inspector General of Medicaid Services."

95 (2) The governor shall:

96 (a) appoint the inspector general of Medicaid services with the advice and consent of
97 the Senate; and

98 (b) establish the salary for the inspector general of Medicaid services based upon a
99 recommendation from the Department of Human Resource Management which shall be based
100 on a market salary survey conducted by the Department of Human Resource Management.

101 (3) A person appointed as the inspector general shall have the following qualifications:

102 (a) a general knowledge of the type of methodology and controls necessary to audit,
103 investigate, and identify fraud, waste, and abuse;

104 (b) strong management skills;

105 (c) extensive knowledge of performance audit methodology;

106 (d) the ability to oversee and execute an audit; and

107 (e) strong interpersonal skills.

108 (4) The inspector general of Medicaid services:

109 (a) shall serve a term of four years; and

110 (b) may be removed by the governor, for cause.

111 (5) If the inspector general is removed for cause, a new inspector general shall be
112 appointed, with the advice and consent of the Senate, to serve the remainder of the term of the
113 inspector general of Medicaid services who was removed for cause.

- 114 (6) The Office of Inspector General of Medicaid Services:
115 (a) is not under the supervision of, and does not take direction from, the executive
116 director, except for administrative purposes;
117 (b) shall use the legal services of the state attorney general's office;
118 (c) shall submit a budget for the office directly to the [governor] Department of
119 Administrative Services;
120 (d) except as prohibited by federal law, is subject to:
121 (i) Title 51, Chapter 5, Funds Consolidation Act;
122 (ii) Title 51, Chapter 7, State Money Management Act;
123 (iii) Title 63A, Utah Administrative Services Code;
124 (iv) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
125 (v) Title 63G, Chapter 4, Administrative Procedures Act;
126 (vi) Title 63G, Chapter 6a, Utah Procurement Code;
127 (vii) Title 63J, Chapter 1, Budgetary Procedures Act;
128 (viii) Title 63J, Chapter 2, Revenue Procedures and Control Act;
129 (ix) Title 67, Chapter 19, Utah State Personnel Management Act;
130 (x) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;
131 (xi) Title 52, Chapter 4, Open and Public Meetings Act;
132 (xii) Title 63G, Chapter 2, Government Records Access and Management Act; and
133 (xiii) coverage under the Risk Management Fund created under Section 63A-4-201;
134 (e) when requested, shall provide reports to the governor, the president of the Senate,
135 or the speaker of the House; and
136 (f) shall adopt administrative rules to establish policies for employees that are
137 substantially similar to the administrative rules adopted by the Department of Human Resource
138 Management.

139 Section 3. Section **63A-13-502** is amended to read:

140 **63A-13-502. Report and recommendations to governor and Infrastructure and**
141 **General Government Appropriations Subcommittee.**

- 142 (1) The inspector general of Medicaid services shall, on an annual basis, prepare an
143 electronic report on the activities of the office for the preceding fiscal year.
- 144 (2) The report shall include:
- 145 (a) non-identifying information, including statistical information, on:
- 146 (i) the items described in Subsection [63A-13-202\(1\)\(b\)](#) and Section [63A-13-204](#);
- 147 (ii) action taken by the office and the result of that action;
- 148 (iii) fraud, waste, and abuse in the state Medicaid program, including emerging trends
149 of Medicaid fraud, waste, and abuse and the office's actions to identify and address the
150 emerging trends;
- 151 (iv) the recovery of fraudulent or improper use of state and federal Medicaid funds,
152 including total dollars recovered through cash recovery, credit adjustments, and rebilled claims;
- 153 (v) measures taken by the state to discover and reduce fraud, waste, and abuse in the
154 state Medicaid program;
- 155 (vi) audits conducted by the office, including performance and financial audits;
- 156 (vii) investigations conducted by the office and the results of those investigations[;
157 ~~and~~], including preliminary investigations;
- 158 (viii) administrative and educational efforts made by the office and the division to
159 improve compliance with Medicaid program policies and requirements;
- 160 (ix) total cost avoidance attributed to an office policy or action;
- 161 (x) the number of complaints against Medicaid recipients received and disposition of
162 those complaints;
- 163 (xi) the number of educational activities that the office provided to a provider or a state
164 agency;
- 165 (xii) the number of credible allegations of fraud referred to the Medicaid fraud control
166 unit under Section [63A-13-501](#); and
- 167 (xiii) the number of data pulls performed and general results of those pulls;
- 168 (b) recommendations on action that should be taken by the Legislature or the governor
169 to:

- 170 (i) improve the discovery and reduction of fraud, waste, and abuse in the state
171 Medicaid program;
- 172 (ii) improve the recovery of fraudulently or improperly used Medicaid funds; and
173 (iii) reduce costs and avoid or minimize increased costs in the state Medicaid program;
- 174 (c) recommendations relating to rules, policies, or procedures of a state or local
175 government entity; and
- 176 (d) services provided by the state Medicaid program that exceed industry standards.
- 177 (3) The report described in Subsection (1) may not include any information that would
178 interfere with or jeopardize an ongoing criminal investigation or other investigation.
- 179 (4) On or before November 1 of each year, the inspector general of Medicaid services
180 shall provide the electronic report described in Subsection (1) to the [~~Executive Appropriations~~
181 ~~Committee~~] Infrastructure and General Government Appropriations Subcommittee of the
182 Legislature and to the governor.