

SENATE BILL No. 456

By Committee on Judiciary

1-22

9 AN ACT concerning the Kansas health policy authority; relating to the
10 inspector general; amending K.S.A. 2007 Supp. 75-7427 and repealing
11 the existing section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2007 Supp. 75-7427 is hereby amended to read as
15 follows: 75-7427. (a) As used in this section:

16 (1) "Attorney general" means the attorney general, employees of the
17 attorney general or authorized representatives of the attorney general.

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

20 (3) "Claim" means an electronic, electronic impulse, facsimile, mag-
21 netic, oral, telephonic or written communication that is utilized to identify
22 any goods, service, item, facility or accommodation as reimbursable to
23 the state medicaid program, or its fiscal agents, the state mediKan pro-
24 gram or the state children's health insurance program or which states
25 income or expense.

26 (4) "Client" means past or present beneficiaries or recipients of the
27 state medicaid program, the state mediKan program or the state chil-
28 dren's health insurance program.

29 (5) "Contractor" means any contractor, supplier, vendor or other per-
30 son who, through a contract or other arrangement, has received, is to
31 receive or is receiving public funds or in-kind contributions from the
32 contracting agency as part of the state medicaid program, the state
33 mediKan program or the state children's health insurance program, and
34 shall include any sub-contractor.

35 (6) "Contractor files" means those records of contractors which relate
36 to the state medicaid program, the state mediKan program or the state
37 children's health insurance program.

38 (7) "Fiscal agent" means any corporation, firm, individual, organiza-
39 tion, partnership, professional association or other legal entity which,
40 through a contractual relationship with the state of Kansas receives, proc-
41 esses and pays claims under the state medicaid program, the state
42 mediKan program or the state children's health insurance program.

43 (8) "Health care provider" means a health care provider as defined

1 under K.S.A. 65-4921, and amendments thereto, who has applied to partici-
2 cipate in, who currently participates in, or who has previously partici-
3 pated in the state medicaid program, the state mediKan program or the
4 state children's health insurance program.

5 (9) "Kansas health policy authority" or "authority" means the Kansas
6 health policy authority established under K.S.A. 2007 Supp. 75-7401, and
7 amendments thereto, or its successor agency.

8 (10) "Managed care program" means a program which provides co-
9 ordination, direction and provision of health services to an identified
10 group of individuals by providers, agencies or organizations.

11 (11) "Medicaid program" means the Kansas program of medical as-
12 sistance for which federal or state moneys, or any combination thereof,
13 are expended, or any successor federal or state, or both, health insurance
14 program or waiver granted thereunder.

15 (12) "Person" means any agency, association, corporation, firm, lim-
16 ited liability company, limited liability partnership, natural person, organ-
17 ization, partnership or other legal entity, the agents, employees, inde-
18 pendent contractors, and subcontractors, thereof, and the legal successors
19 thereto.

20 (13) "Provider" means a person who has applied to participate in,
21 who currently participates in, who has previously participated in, who
22 attempts or has attempted to participate in the state medicaid program,
23 the state mediKan program or the state children's health insurance pro-
24 gram, by providing or claiming to have provided goods, services, items,
25 facilities or accommodations.

26 (14) "Recipient" means an individual, either real or fictitious, in
27 whose behalf any person claimed or received any payment or payments
28 from the state medicaid program, or its fiscal agent, the state mediKan
29 program or the state children's health insurance program, whether or not
30 any such individual was eligible for benefits under the state medicaid
31 program, the state mediKan program or the state children's health insur-
32 ance program.

33 (15) "Records" means all written documents and electronic or mag-
34 netic data, including, but not limited to, medical records, X-rays, profes-
35 sional, financial or business records relating to the treatment or care of
36 any recipient; goods, services, items, facilities or accommodations pro-
37 vided to any such recipient; rates paid for such goods, services, items,
38 facilities or accommodations; and goods, services, items, facilities or ac-
39 commodations provided to nonmedicaid recipients to verify rates or
40 amounts of goods, services, items, facilities or accommodations provided
41 to medicaid recipients, as well as any records that the state medicaid
42 program, or its fiscal agents, the state mediKan program or the state
43 children's health insurance program require providers to maintain. "Re-

1 cords” shall not include any report or record in any format which is made
2 pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments
3 thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925,
4 and amendments thereto.

5 (16) “State children’s health insurance program” means the state chil-
6 dren’s health insurance program as provided in K.S.A. 38-2001 et seq.,
7 and amendments thereto.

8 (b) (1) There is hereby established within the Kansas health policy
9 authority the office of inspector general. All budgeting, purchasing and
10 related management functions of the office of inspector general shall be
11 administered under the direction and supervision of the executive direc-
12 tor of the Kansas health policy authority. The purpose of the office of
13 inspector general is to establish a full-time program of audit, investigation
14 and performance review to provide increased accountability, integrity and
15 oversight of the state medicaid program, the state mediKan program and
16 the state children’s health insurance program within the jurisdiction of
17 the Kansas health policy authority and to assist in improving agency and
18 program operations and in deterring and identifying fraud, waste, abuse
19 and illegal acts. The office of inspector general shall be independent and
20 free from political influence and in performing the duties of the office
21 under this section shall conduct investigations, audits, evaluations, in-
22 spections and other reviews in accordance with professional standards
23 that relate to the fields of investigation and auditing in government.

24 (2) (A) The inspector general shall be appointed by the Kansas health
25 policy authority with the advice and consent of the senate and subject to
26 confirmation by the senate as provided in K.S.A. 75-4315b, and amend-
27 ments thereto. Except as provided in K.S.A. 46-2601, and amendments
28 thereto, no person appointed to the position of inspector general shall
29 exercise any power, duty or function of the inspector general until con-
30 firmed by the senate. The inspector general shall be selected without
31 regard to political affiliation and on the basis of integrity and capacity for
32 effectively carrying out the duties of the office of inspector general. The
33 inspector general shall possess demonstrated knowledge, skills, abilities
34 and experience in conducting audits or investigations and shall be familiar
35 with the programs subject to oversight by the office of inspector general.

36 (B) No former or current executive or manager of any program or
37 agency subject to oversight by the office of inspector general may be
38 appointed inspector general within two years of that individual’s period
39 of service with such program or agency. The inspector general shall hold
40 at time of appointment, or shall obtain within one year after appointment,
41 certification as a certified inspector general from a national organization
42 that provides training to inspectors general.

43 (C) The term of the person first appointed to the position of inspector

1 general shall expire on January 15, 2009. Thereafter, a person appointed
2 to the position of inspector general shall serve for a term which shall
3 expire on January 15 of each year in which the whole senate is sworn in
4 for a new term.

5 (D) The inspector general shall be in the classified service and shall
6 receive such compensation as is determined by law, except that such
7 compensation may be increased but not diminished during the term of
8 office of the inspector general. The inspector general may be removed
9 from office prior to the expiration of the inspector general's term of office
10 in accordance with the Kansas civil service act. The inspector general shall
11 exercise independent judgment in carrying out the duties of the office of
12 inspector general under subsection (b). Appropriations for the office of
13 inspector general shall be made to the Kansas health policy authority by
14 separate line item appropriations for the office of inspector general. The
15 inspector general shall report to ~~the executive director of the Kansas~~
16 health policy authority *board*.

17 (E) The inspector general shall have general managerial control over
18 the office of the inspector general and shall establish the organization
19 structure of the office as the inspector general deems appropriate to carry
20 out the responsibilities and functions of the office.

21 (3) Within the limits of appropriations therefor, the inspector general
22 may hire such employees in the unclassified service as are necessary to
23 administer the office of the inspector general. Such employees shall serve
24 at the pleasure of the inspector general. Subject to appropriations, the
25 inspector general may obtain the services of certified public accountants,
26 qualified management consultants, professional auditors, or other profes-
27 sionals necessary to independently perform the functions of the office.

28 (c) (1) In accordance with the provisions of this section, the duties
29 of the office of inspector general shall be to oversee, audit, investigate
30 and make performance reviews of the state medicaid program, the state
31 mediKan program and the state children's health insurance program,
32 which programs are within the jurisdiction of the Kansas health policy
33 authority.

34 (2) In order to carry out the duties of the office, the inspector general
35 shall conduct independent and ongoing evaluation of the Kansas health
36 policy authority and of such programs administered by the Kansas health
37 policy authority, which oversight includes, but is not limited to, the
38 following:

39 (A) Investigation of fraud, waste, abuse and illegal acts by the Kansas
40 health policy authority and its agents, employees, vendors, contractors,
41 consumers, clients and health care providers or other providers.

42 (B) Audits of the Kansas health policy authority, its employees, con-
43 tractors, vendors and health care providers related to ensuring that ap-

1 appropriate payments are made for services rendered and to the recovery
2 of overpayments.

3 (C) Investigations of fraud, waste, abuse or illegal acts committed by
4 clients of the Kansas health policy authority or by consumers of services
5 administered by the Kansas health policy authority.

6 (D) Monitoring adherence to the terms of the contract between the
7 Kansas health policy authority and an organization with which the au-
8 thority has entered into a contract to make claims payments.

9 (3) Upon finding credible evidence of fraud, waste, abuse or illegal
10 acts, the inspector general shall report its findings to the Kansas health
11 policy authority and refer the findings to the attorney general.

12 (d) The inspector general shall have access to all pertinent informa-
13 tion, confidential or otherwise, and to all personnel and facilities of the
14 Kansas health policy authority, their employees, vendors, contractors and
15 health care providers and any federal, state or local governmental agency
16 that are necessary to perform the duties of the office as directly related
17 to such programs administered by the authority. Access to contractor or
18 health care provider files shall be limited to those files necessary to verify
19 the accuracy of the contractor's or health care provider's invoices or their
20 compliance with the contract provisions or program requirements. No
21 health care provider shall be compelled under the provisions of this sec-
22 tion to provide individual medical records of patients who are not clients
23 of the state medicaid program, the state mediKan program or the state
24 children's health insurance program. State and local governmental agen-
25 cies are authorized and directed to provide to the inspector general re-
26 quested information, assistance or cooperation.

27 (e) Except as otherwise provided in this section, the inspector general
28 and all employees and former employees of the office of inspector general
29 shall be subject to the same duty of confidentiality imposed by law on
30 any such person or agency with regard to any such information, and shall
31 be subject to any civil or criminal penalties imposed by law for violations
32 of such duty of confidentiality. The duty of confidentiality imposed on
33 the inspector general and all employees and former employees of the
34 office of inspector general shall be subject to the provisions of subsection
35 (f), and the inspector general may furnish all such information to the
36 attorney general, Kansas bureau of investigation or office of the United
37 States attorney in Kansas pursuant to subsection (f). Upon receipt thereof,
38 the attorney general, Kansas bureau of investigation or office of the
39 United States attorney in Kansas and all assistants and all other employees
40 and former employees of such offices shall be subject to the same duty
41 of confidentiality with the exceptions that any such information may be
42 disclosed in criminal or other proceedings which may be instituted and
43 prosecuted by the attorney general or the United States attorney in Kan-

1 sas, and any such information furnished to the attorney general, the Kan-
2 sas bureau of investigation or the United States attorney in Kansas under
3 subsection (f) may be entered into evidence in any such proceedings.

4 (f) All investigations conducted by the inspector general shall be con-
5 ducted in a manner that ensures the preservation of evidence for use in
6 criminal prosecutions or agency administrative actions. If the inspector
7 general determines that a possible criminal act relating to fraud in the
8 provision or administration of such programs administered by the Kansas
9 health policy authority has been committed, the inspector general shall
10 immediately notify the office of the Kansas attorney general. If the in-
11 spector general determines that a possible criminal act has been com-
12 mitted within the jurisdiction of the office, the inspector general may
13 request the special expertise of the Kansas bureau of investigation. The
14 inspector general may present for prosecution the findings of any criminal
15 investigation to the office of the attorney general or the office of the
16 United States attorney in Kansas.

17 (g) To carry out the duties as described in this section, the inspector
18 general and the inspector general's designees shall have the power to
19 compel by subpoena the attendance and testimony of witnesses and the
20 production of books, electronic records and papers as directly related to
21 such programs administered by the Kansas health policy authority. Access
22 to contractor files shall be limited to those files necessary to verify the
23 accuracy of the contractor's invoices or its compliance with the contract
24 provisions. No health care provider shall be compelled to provide indi-
25 vidual medical records of patients who are not clients of the authority.

26 (h) The inspector general shall report all convictions, terminations
27 and suspensions taken against vendors, contractors and health care pro-
28 viders to the Kansas health policy authority and to any agency responsible
29 for licensing or regulating those persons or entities. If the inspector gen-
30 eral determines reasonable suspicion exists that an act relating to the
31 violation of an agency licensure or regulatory standard has been commit-
32 ted by a vendor, contractor or health care provider who is licensed or
33 regulated by an agency, the inspector general shall immediately notify
34 such agency of the possible violation.

35 (i) The inspector general shall make annual reports, findings and rec-
36 ommendations regarding the office's investigations into reports of fraud,
37 waste, abuse and illegal acts relating to any such programs administered
38 by the Kansas health policy authority to the executive director of the
39 Kansas health policy authority, the legislative post auditor, the committee
40 on ways and means of the senate, the committee on appropriations of the
41 house of representatives, the joint committee on health policy oversight
42 and the governor. These reports shall include, but not be limited to, the
43 following information:

- 1 (1) Aggregate provider billing and payment information;
- 2 (2) the number of audits of such programs administered by the Kan-
3 sas health policy authority and the dollar savings, if any, resulting from
4 those audits;
- 5 (3) health care provider sanctions, in the aggregate, including ter-
6 minations and suspensions; and
- 7 (4) a detailed summary of the investigations undertaken in the pre-
8 vious fiscal year, which summaries shall comply with all laws and rules
9 and regulations regarding maintaining confidentiality in such programs
10 administered by the Kansas health policy authority.
- 11 (j) Based upon the inspector general's findings under subsection (c),
12 the inspector general may make such recommendations to the Kansas
13 health policy authority or the legislature for changes in law, rules and
14 regulations, policy or procedures as the inspector general deems appro-
15 priate to carry out the provisions of law or to improve the efficiency of
16 such programs administered by the Kansas health policy authority. The
17 inspector general shall not be required to obtain permission or approval
18 from any other official or authority prior to making any such
19 recommendation.
- 20 (k) (1) The inspector general shall make provision to solicit and re-
21 ceive reports of fraud, waste, abuse and illegal acts in such programs
22 administered by the Kansas health policy authority from any person or
23 persons who shall possess such information. The inspector general shall
24 not disclose or make public the identity of any person or persons who
25 provide such reports pursuant to this subsection unless such person or
26 persons consent in writing to the disclosure of such person's identity.
27 Disclosure of the identity of any person who makes a report pursuant to
28 this subsection shall not be ordered as part of any administrative or ju-
29 dicial proceeding. Any information received by the inspector general from
30 any person concerning fraud, waste, abuse or illegal acts in such programs
31 administered by the Kansas health policy authority shall be confidential
32 and shall not be disclosed or made public, upon subpoena or otherwise,
33 except such information may be disclosed if (A) release of the information
34 would not result in the identification of the person who provided the
35 information, (B) the person or persons who provided the information to
36 be disclosed consent in writing prior to its disclosure, (C) the disclosure
37 is necessary to protect the public health, or (D) the information to be
38 disclosed is required in an administrative proceeding or court proceeding
39 and appropriate provision has been made to allow disclosure of the in-
40 formation without disclosing to the public the identity of the person or
41 persons who reported such information to the inspector general.
- 42 (2) No person shall:
- 43 (A) Prohibit any agent, employee, contractor or subcontractor from

- 1 reporting any information under subsection (k)(1); or
- 2 (B) require any such agent, employee, contractor or subcontractor to
- 3 give notice to the person prior to making any such report.
- 4 (3) Subsection (k)(2) shall not be construed as:
- 5 (A) Prohibiting an employer from requiring that an employee inform
- 6 the employer as to legislative or auditing agency requests for information
- 7 or the substance of testimony made, or to be made, by the employee to
- 8 legislators or the auditing agency, as the case may be, on behalf of the
- 9 employer;
- 10 (B) permitting an employee to leave the employee's assigned work
- 11 areas during normal work hours without following applicable rules and
- 12 regulations and policies pertaining to leaves, unless the employee is re-
- 13 quested by a legislator or legislative committee to appear before a legis-
- 14 lative committee or by an auditing agency to appear at a meeting with
- 15 officials of the auditing agency;
- 16 (C) authorizing an employee to represent the employee's personal
- 17 opinions as the opinions of the employer; or
- 18 (D) prohibiting disciplinary action of an employee who discloses in-
- 19 formation which (A) the employee knows to be false or which the em-
- 20 ployee discloses with reckless disregard for its truth or falsity, (B) the
- 21 employee knows to be exempt from required disclosure under the open
- 22 records act, or (C) is confidential or privileged under statute or court rule.
- 23 (4) Any agent, employee, contractor or subcontractor who alleges that
- 24 disciplinary action has been taken against such agent, employee, contrac-
- 25 tor or subcontractor in violation of this section may bring an action for
- 26 any damages caused by such violation in district court within 90 days after
- 27 the occurrence of the alleged violation.
- 28 (5) Any disciplinary action taken against an employee of a state agency
- 29 or firm as such terms are defined under subsection (b) of K.S.A. 75-2973,
- 30 and amendments thereto, for making a report under subsection (k)(1)
- 31 shall be governed by the provisions of K.S.A. 75-2973, and amendments
- 32 thereto.
- 33 (l) The scope, timing and completion of any audit or investigation
- 34 conducted by the inspector general shall be within the discretion of the
- 35 inspector general. Any audit conducted by the inspector general's office
- 36 shall adhere and comply with all provisions of generally accepted govern-
- 37 mental auditing standards promulgated by the United States government
- 38 accountability office.
- 39 (m) Nothing in this section shall limit investigations by any state de-
- 40 partment or agency that may otherwise be required by law or that may
- 41 be necessary in carrying out the duties and functions of such agency.
- 42 (n) The Kansas health policy authority, in accordance with K.S.A. 75-
- 43 4319, and amendments thereto, may recess for a closed, executive meet-

1 ing under the open meetings act, K.S.A. 75-4317 through 75-4320a, and
2 amendments thereto, to discuss with the inspector general any informa-
3 tion, records or other matters that are involved in any investigation or
4 audit under this section. All information and records of the inspector
5 general that are obtained or received under any investigation or audit
6 under this section shall be confidential, except as required or authorized
7 pursuant to this section.

8 Sec. 2. K.S.A. 2007 Supp. 75-7427 is hereby repealed.

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