

Approved: January 24, 2008

Date

MINUTES OF THE HOUSE GOVERNMENT EFFICIENCY AND TECHNOLOGY COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 3:36 P.M. on January 23, 2008, in Room 526-S of the Capitol.

All members were present except Representatives Johnson, Siegfried, Sloan, Wilk, Frownfelter, and Ruiz, all of whom were excused.

Committee staff present:

Mary Galligan, Kansas Legislative Research
Jennifer Thierer, Kansas Legislative Research
Rena Jefferies, Office of Revisor of Statutes
Gary Deeter, Committee Assistant

Conferees appearing before the committee:

Robin Kempf, Office of the Inspector General, Kansas Health Policy Authority

Others attending:

See attached list.

The Chairman, passing around a sign-up sheet, announced that the taxpayer transparency bill would be re-introduced to allow individual sponsors to be included in the bill.

Robin Kempf, Office of the Inspector General (OIG), Kansas Health Policy Authority (KHPA), briefed the Committee on the new position of the OIG created by **SB 11** passed last session (Attachment 1). Noting her previous experience with Legislative Post Audit and as legal counsel for the Kansas Board of Regents, she said she was appointed to her present position in September 2007 and confirmed by the Kansas Senate in October 2007. She explained that the OIG was created to provide an independent office to review and investigate KHPA's delivery of health care services. She stated that her goal for the OIG is to create a high-quality investigative office to provide relevant information that will improve Kansas government and provide a significant step in reforming public health care.

Referencing the OIG's 2008 annual report, Ms. Kempf said she is presently recruiting staff, building an infrastructure for the Office, building bridges with relevant agencies (Kansas Department of Social and Rehabilitation Services, Kansas Attorney General, U.S. Attorney's Office) and networking with counties and other states' OIGs (Attachment 2). She commented that she is developing measurements to validate the effect of her work and is preparing to launch an agency-wide risk assessment which will identify high-risk areas in order to target OIG resources.

Ms. Kempf noted various statistics regarding Medicaid-supported health care in Kansas. She recommended an adjustment in the OIG statute to clarify the OIG's organizational independence, a change which would direct the Inspector General to report to the KHPA Board rather than to the KHPA Executive Director..

Ms. Kempf responded to questions from Committee members:

CONTINUATION SHEET

MINUTES OF THE House Government Efficiency and Technology Committee at 3:36 P.M. on January 23, 2008, in Room 526-S of the Capitol.

- Members can assist her work by connecting the OIG with constituents who encounter problems in dealing with Medicaid programs.
- The objectives of the OIG include increasing accountability, improving programs, and identifying and deterring fraud, waste, and abuse.
- The state health insurance plans are under the purview of the OIG, as are the HBCS (Home and Community-Based Services) waivers; but foster care is not.
- The OIG presents its findings to the KHPA Board and to the Kansas Legislature. The Board decides what actions to take regarding reports from the OIG.
- The state-wide agency risk assessment will generate most audits; however, the OIG will also accept requests from individuals.
- The OIG is considered an independent entity with a separate line-item budget and periodic confirmation by the Senate.

The meeting was adjourned at 4:07 p.m. The next meeting is scheduled for Thursday, January 24, 2008.

Testimony to the House Committee on Government Efficiency and Technology
From
Robin J. Kempf, Inspector General
January 23, 2008

Overview of the Kansas Health Policy Authority Office of Inspector General

Good afternoon Chairman Morrison and Committee members. My name is Robin Kempf. I am the first and newly appointed Inspector General of the Kansas Health Policy Authority (KHPA). I would like to thank the Chair for inviting me to provide the Committee with an overview of the KHPA Office of Inspector General (OIG). For your information, in addition to this testimony, I am providing you with a copy of my annual report, which I presented to the KHPA Board yesterday.

I was appointed to the position of Inspector General by the KHPA Board on September 17, 2007 and approved for confirmation by the Senate Confirmation Oversight Committee on Oct. 16, 2007. I am very excited as I begin my work to establish the first statutorily created Office of Inspector General in Kansas.

As you know, the KHPA OIG was created last session as part of a larger health care reform bill, 2007 Senate Bill (SB) 11. The OIG was created in SB 11 § 15 and is codified at K.S.A. 75-7427. Frankly, I consider the creation of an independent oversight body with the authority to review and investigate the performance of KHPA's delivery of health services is a significant step in reforming public health care in the state of Kansas.

My goal is to create a professional government evaluation office that is a source of relevant, credible, useful information, which will provide the KHPA Board, KHPA management and the Legislature good guidance in their decisions. Although I am proud to have the opportunity to contribute to the important effort of improving government and health care, starting a new governmental office can be a daunting task. Nevertheless, I hope that I will be able to report great success from my office in a year's time.

I would like to highlight some of the information in my annual report for you at this time, but first, I would like to thank you again for the opportunity to appear before you today.



KHPA

Kansas Health Policy Authority

Coordinating health & health care for a thriving Kansas

OFFICE OF
INSPECTOR GENERAL

Kansas Health Policy Authority

Office of the Inspector General

2008 Annual Report

Presented by:
Robin J. Kempf
Inspector General

**Kansas Health Policy Authority
Office of Inspector General**

Mission Statement

The mission of the Office of Inspector General is to provide increased accountability and integrity in the Kansas Health Policy Authority's programs and operations, to help improve those programs and operations, and to identify and deter fraud, waste, abuse and illegal acts in the state Medicaid Program, the State MediKan Program and the State Children's Health Insurance Program. The Office will do so through performance reviews, audits, and investigations.

January 2008

Dear Reader:

This annual report has been prepared by the Kansas Health Policy Authority (KHPA) Office of Inspector General (OIG) pursuant to the requirements of K.S.A. 75-7427 and is respectfully submitted to:

- Honorable members of the Kansas Health Policy Authority Board
- Dr. Marcia J. Nielsen, PhD, MPH, Executive Director of the Kansas Health Policy Authority
- The Honorable Kathleen Sebelius, Governor of the State of Kansas
- Honorable members of the Kansas Senate's Committee on Ways and Means
- Honorable members of the Kansas House of Representative's Committee on Appropriations
- Honorable members of the Kansas Legislature's Joint Committee on Health Policy Oversight
- Ms. Barbara J. Hinton, Legislative Post Auditor
- The general public of the State of Kansas

The report provides an introduction to the new KHPA OIG, describes the OIG's recent activities and plans for the upcoming year, provides some general statistics about some of the programs at the KHPA, and finally, recommends to the Legislature a change in the OIG's enabling legislation.

As the first Inspector General of the KHPA OIG, I am pleased to make myself available to discuss the contents of this report upon request.

Sincerely,

Robin J. Kempf
Inspector General

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Introduction to the Kansas Health Policy Authority Office of Inspector General

The Kansas Health Policy Authority (KHPA) Office of Inspector General (OIG) was created by the 2007 Kansas Legislature as a part of a much larger health reform bill, commonly referred to Senate Bill 11. In fact, the creation of an independent oversight body with the authority to review and investigate the performance of the KHPA's delivery of health services represents a significant step in reforming public health care in the state of Kansas.

The KHPA OIG, whose creation is found in K.S.A. 75-7427, is the first statutorily created Office of Inspector General in Kansas. Its mission is:

- to provide increased accountability and integrity in the Kansas Health Policy Authority's programs and operations;
- to help improve those programs and operations; and
- to identify and deter fraud, waste, abuse and illegal acts in the Kansas Medicaid Program, the MediKan Program and the State Children's Health Insurance Program.

The Office will do so through performance reviews, audits, and investigations. Any evidence of potential fraud or other illegal acts that might be uncovered will be forwarded to appropriate law enforcement agencies in the state.

Robin J. Kempf was appointed as the first Inspector General by the KHPA Board in September 2007. She was subsequently approved for confirmation by the Senate Confirmation Oversight Committee in October 2007. Robin is an attorney with over 10 years experience in state government including legal representation of the Kansas Board of Regents and auditing work with the Kansas Legislative Division of Post Audit. She is enthusiastic to have a hand in the creation of a professional government evaluation office that is a source of relevant, credible, useful information to decision makers.

Activities of the KHPA OIG

Given that the KHPA OIG has been in existence for only a quarter of a year, this year's activities have been limited to those relating directly to building the infrastructure of the office and planning for future audits and investigations. In future years, this report will address the number of audits of such programs and the dollar savings, if any, as well as a detailed summary of the investigations undertaken in the previous fiscal year.

Infrastructure-building activities have included:

- developing policies for audits and investigations to provide guidelines for the work of the OIG
- drafting communications protocols which outline how the OIG will communicate with the KHPA Board, the KHPA staff, the Kansas Department on Aging and the Kansas Department of Social and Rehabilitation Services
- building a working relationship with law enforcement agencies such as the Kansas Attorney General's Office and the U.S. Attorney's Office
- recruiting staff with professional qualifications that will assure the OIG can produce accurate and to-the-point audit and investigative reports
- networking with other Offices of Inspector General throughout the country, as well as other auditing organizations such as the Kansas Legislative Division of Post Audit, the Johnson County Auditor and the U.S. Government Accountability Office (GAO)

Other immediate goals relating to the infrastructure of the office include:

- developing appropriate metrics to determine whether and to what extent the OIG is truly adding value to KHPA programs and operations
- developing outreach strategies to inform potential fraud victims, state employees or other whistle blowers of their option to contact the KHPA OIG
- ensuring that OIG staff are properly trained as auditors and investigators
- creating regular instruction for staff regarding the criminal laws relevant to KHPA programs, how staff should collect the appropriate amount of creditable evidence of wrong doing, and how to properly preserve that evidence and hand it off to appropriate law enforcement agencies

Audit-planning activities include:

- the launch of an agency-wide risk assessment
- building a one-year audit plan that anticipates the work the OIG will complete over the course of 12 months, yet allowing time for the OIG to be responsive to investigative and other unanticipated auditing needs
- developing a three- to five-year strategic plan to target areas that should be audited within that timeframe

The agency-wide risk assessment serves as the cornerstone of these planning activities. The process is modeled after the assessments regularly done by the GAO to identify federal government programs and functions that have a greater vulnerability to waste, fraud, abuse, and mismanagement. By performing this risk assessment and identifying high risk areas at the KHPA, the OIG can focus attention and resources in areas that will likely have the most positive impact. Thus, the results of the risk assessment will flow directly into a one-year audit plan and a longer term strategic plan, both of which will serve to guide the activities of the OIG.

The timeframe for completion of the risk assessment and presentation of the one-year audit plan is April 2008.

Statistics

K.S.A. 75-7427 requires that this report include certain statistics from the previous state fiscal year for your information. Those data, which are unaudited, are provided below. The OIG will be reviewing these numbers over the next year and will be in a position to provide greater context in the next annual report.

Health Care Provider Sanctions in the Aggregate

Three broad types of health care providers who provide services to the Medicaid program and the State Children's Health Insurance Plan (SCHIP or HealthWave) may be sanctioned for improper behavior: (1) nursing facilities; (2) providers contracting with the managed care organizations (MCOs) providing coverage; and (3) fee-for-service providers, including those providers who provide services for Medicaid waiver participants. The reported statistics for each type of provider are found below.

Sanctions of *nursing facilities* are handled by the Kansas Department on Aging (KDOA). KDOA staff report that in state fiscal year (FY) 2007, no Medicaid-only nursing facility's enrollment was terminated; however, four civil monetary penalties were assessed.

Sanctions of *providers who are credentialed by the MCOs* are imposed by the MCO with whom a provider has a direct relationship. Statistics for these sanctions are not available.

Sanctions of *providers in the fee-for-service and waiver programs* are handled by staff at the KHPA. Staff responsible for sanctions reported:

- At the end of FY 2007, five providers were on "pre-pay review" status, which means that before receiving payment, these providers are required to send in treatment records that support the service provided. The pre-pay status for two of the five providers began during FY 2007, whereas others' status began earlier.
- During FY 2007, KHPA acted to terminate six providers' enrollment. Five terminations were completed, but one provider was placed on a corrective action plan, which means the provider must comply with a plan that addresses both quality of care and quality and sufficiency of treatment records.
- During FY 2007, 33 providers were referred to the Kansas Attorney General's Medicaid Fraud and Abuse Division for further investigation.

Aggregate Provider Billing and Payment Information.

The fiscal agent, Electronic Data Systems Corporation (EDS), which processes claims for the KHPA, reported that there were 13.98 million claims processed in the fee-for-service and waiver Medicaid programs during FY 2007, which resulted in payments of \$2.12 billion. Services provided by the MCOs are not billed separately per service, and therefore, are not included here.

Recommendations for Changes in Law

Pursuant to K.S.A. 75-7427(j), the OIG has authority to make recommendations to the Kansas Legislature relating to changes in law that the Inspector General deems appropriate. The Inspector General has identified one technical, but necessary amendment to the legislation that created the OIG and strongly recommends that the Legislature consider passing such amendment in the 2008 Legislative Session.

The proposed amendment relates to the lines of reporting for the OIG, which under existing statutory language requires the Inspector General to report directly to the Executive Director of the KHPA for both administrative and substantive purposes. The problem with this reporting structure is that it prevents the OIG from being organizationally independent from the agency it oversees.

According to Generally Accepted Government Auditing Standards, audit organizations must be free from organizational impairments to independence so that their opinions, findings, conclusions, judgments, and recommendations will be impartial. Audit organizations can be presumed to be free from organizations impairments to independence if the unit is appointed by, accountable to, reports to and can only be removed by a statutorily created governing body, the majority of whose members are independently elected or appointed and come from outside the organization being audited. Therefore, the KHPA OIG would be organizationally independent if the Inspector General reported to the KHPA Board for substantive purposes as opposed to the Executive Director.

Therefore, the OIG recommends that the language in K.S.A. 75-7427(b) be amended to clarify the OIG's organizational independence as follows (amendments are shown with struck and underlined text):

Proposed Amendment:

K.S.A. 75-7427(b) (1): There is hereby established within the Kansas health policy authority the office of inspector general. All budgeting, purchasing and related management functions of the office of inspector general shall be administered under the direction and supervision of the executive director of the Kansas health policy authority.

(D) . . . The inspector general shall exercise independent judgment in carrying out the duties of the office of inspector general under subsection (b). . . . The inspector general shall report to ~~the executive director of the Kansas health policy authority~~ board.