

HOUSE BILL No. 2217

By Committee on Health and Human Services

Requested by Representative Bryce on behalf of the Attorney General's Office

2-3

1 AN ACT concerning the attorney general; relating to the office of the
2 inspector general and the powers, duties and responsibilities thereof;
3 expanding the power of the inspector general to investigate and audit
4 all state cash, food and health assistance programs; amending K.S.A.
5 75-7427 and repealing the existing section.
6

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

8 Section 1. K.S.A. 75-7427 is hereby amended to read as follows: 75-
9 7427. (a) As used in this section:

10 (1) "Attorney general" means the attorney general of the state of
11 Kansas, employees of the attorney general or authorized representatives of
12 the attorney general.

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

15 (3) *"Cash assistance" means assistance that is administered and*
16 *provided by the secretary for children and families to individuals for a*
17 *family's ongoing basic needs.*

18 (4) "Claim" means an electronic, electronic impulse, facsimile,
19 magnetic, oral, telephonic or written communication that is utilized to
20 identify any goods, service, item, facility or accommodation as
21 reimbursable to ~~the any state-medicaid cash, food or health assistance~~
22 ~~program, or its the state's fiscal agents, the state medikAn program or the~~
23 ~~state children's health insurance program or which that states income or~~
24 ~~expense.~~

25 ~~(4)(5) "Client" means past or present beneficiaries or recipients of the~~
26 ~~any state-medicaid cash, food or health assistance program, the state~~
27 ~~medikAn program or the state children's health insurance program.~~

28 ~~(5)(6) "Contractor" means any contractor, supplier, vendor or other~~
29 ~~person who, through a contract or other arrangement, has received, is to~~
30 ~~receive or is receiving public funds or in-kind contributions from the~~
31 ~~contracting agency as part of the any state-medicaid cash, food or health~~
32 ~~assistance program, the state medikAn program or the state children's~~
33 ~~health insurance program, and shall include includes any subcontractor.~~

34 ~~(6)(7) "Contractor files" means those records of contractors which~~
35 ~~that relate to the any state-medicaid cash, food or health assistance~~

1 program, ~~the state mediKan program or the state children's health~~
 2 ~~insurance program.~~

3 (7)(8) "Fiscal agent" means any corporation, firm, individual,
 4 organization, partnership, professional association or other legal entity
 5 ~~which that~~, through a contractual relationship with the state of Kansas,
 6 receives, processes and pays claims under ~~the state medicaid program, the~~
 7 ~~state mediKan program or the state children's health insurance~~
 8 ~~program~~ *cash, food or medical assistance programs.*

9 (8)(9) "Food assistance" means assistance that is administered by the
 10 United States department of agriculture and provided by the secretary for
 11 children and families to individuals for eligible food products.

12 (10) "Health assistance" means the medicaid program, the state
 13 children's health insurance program and the state employee health
 14 benefits plan as established by K.S.A. 75-37,162, and amendments thereto.

15 (11) ~~Health care~~ *Healthcare provider* means a ~~health care~~ *healthcare*
 16 provider as defined under K.S.A. 65-4921, and amendments thereto, who
 17 has applied to participate in, who currently participates in, or who has
 18 previously participated in the ~~state medicaid program, the state mediKan~~
 19 ~~program or the state children's health insurance~~ *health assistance* program.

20 (9)(12) "Managed care program" means a program ~~which that~~
 21 provides coordination, direction and provision of health services to an
 22 identified group of individuals by providers, agencies or organizations.

23 (10)(13) "Medicaid program" means the Kansas program of medical
 24 assistance for which federal or state moneys, or any combination thereof,
 25 are expended; or any successor federal or state, or both, health insurance
 26 program or waiver granted thereunder.

27 (11)(14) "Person" means any agency, association, corporation, firm,
 28 limited liability company, limited liability partnership, natural person,
 29 organization, partnership or other legal entity, the agents, employees,
 30 independent contractors, and subcontractors, thereof, and the legal
 31 successors thereto.

32 (12)(15) "Provider" means a person who has applied to participate in,
 33 who currently participates in, who has previously participated in, who
 34 attempts or has attempted to participate in the ~~state medicaid program, the~~
 35 ~~state mediKan program or the state children's health insurance program,~~
 36 *cash, food or health assistance programs* by providing or claiming to have
 37 provided goods, services, items, facilities or accommodations.

38 (13)(16) "Recipient" means an individual, either real or fictitious, ~~in~~
 39 ~~on~~ whose behalf any person claimed or received any payment or payments
 40 from the ~~state medicaid program~~ *cash, food or health assistance programs,*
 41 ~~or its the state's fiscal agent agents, the state mediKan program or the state~~
 42 ~~children's health insurance program,~~ whether or not any such individual
 43 was eligible for benefits under the ~~state medicaid program, the state~~

1 ~~mediKan program or the state children's health insurance program cash,~~
2 ~~food or health assistance programs.~~

3 ~~(14)(17) "Records" means all written documents and electronic or~~
4 ~~magnetic data, including, but not limited to, medical records, x-rays,~~
5 ~~professional, financial or business records relating to the treatment or care~~
6 ~~of any recipient; goods, services, items, facilities or accommodations~~
7 ~~provided to any such recipient; rates paid for such goods, services, items,~~
8 ~~facilities or accommodations; and goods, services, items, facilities or~~
9 ~~accommodations provided to nonmedicaid recipients to verify rates or~~
10 ~~amounts of goods, services, items, facilities or accommodations provided~~
11 ~~to medicaid state cash, food or health assistance recipients, as well as any~~
12 ~~records that the state medicaid cash, food or health assistance program, or~~
13 ~~its the state's fiscal agents, the state mediKan program or the state~~
14 ~~children's health insurance program require providers to maintain.~~
15 ~~"Records" shall not include any report or record in any format which is~~
16 ~~made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments~~
17 ~~thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925,~~
18 ~~and amendments thereto.~~

19 ~~(15)(18) "State children's health insurance program" means the state~~
20 ~~children's health insurance program as provided in K.S.A. 38-2001 et seq.,~~
21 ~~and amendments thereto.~~

22 (b) (1) There is hereby established within the office of the attorney
23 general the office of inspector general. All budgeting, purchasing, related
24 management functions and personnel of the office of inspector general
25 shall be administered under the direction and supervision of the attorney
26 general. The purpose of the office of inspector general is to establish a full-
27 time program of audit, investigation and performance review to provide
28 increased accountability, integrity and oversight of the state ~~medicaid~~
29 ~~program cash, food or health assistance programs, the state mediKan~~
30 ~~program and the state children's health insurance program~~ and to assist in
31 improving agency and program operations and in deterring and identifying
32 fraud, waste, abuse and *other* illegal acts. The office of inspector general
33 shall be independent and free from political influence and in performing
34 the duties of the office under this section shall conduct investigations,
35 audits, evaluations, inspections and other reviews in accordance with
36 professional standards that relate to the fields of investigation and auditing
37 in government.

38 (2) (A) The inspector general shall be appointed by the attorney
39 general with the advice and consent of the senate and subject to
40 confirmation by the senate as provided in K.S.A. 75-4315b, and
41 amendments thereto. Except as provided in K.S.A. 46-2601, and
42 amendments thereto, no person appointed to the position of inspector
43 general shall exercise any power, duty or function of the inspector general

1 until confirmed by the senate. The inspector general shall be selected
2 without regard to political affiliation and on the basis of integrity and
3 capacity for effectively carrying out the duties of the office of inspector
4 general. The inspector general shall possess demonstrated knowledge,
5 skills, abilities and experience in conducting audits or investigations and
6 shall be familiar with the programs subject to oversight by the office of
7 inspector general.

8 (B) No former or current executive or manager of any program or
9 agency subject to oversight by the office of inspector general may be
10 appointed inspector general within two years of that individual's period of
11 service with such program or agency. *A former or current inspector*
12 *general shall not be employed as an executive or manager for any*
13 *program or agency subject to the oversight by the office of the inspector*
14 *general for a period of two years after such inspector general's period of*
15 *service as the inspector general has concluded.* The inspector general shall
16 hold at time of appointment, or shall obtain within one year after
17 appointment, certification as a certified inspector general from a national
18 organization that provides training to inspectors general.

19 (C) A person appointed to the position of inspector general shall serve
20 for a term ~~which~~ *that* shall expire on January 15 of each year in which the
21 whole senate is sworn in for a new term.

22 (D) The inspector general shall be in the unclassified service and
23 shall receive an annual salary in an amount equal to the annual salary paid
24 by the state to a district court judge, except that such compensation may be
25 increased but not diminished during the term of office of the inspector
26 general. The inspector general ~~may~~ *shall* be removed from office prior to
27 the expiration of the inspector general's term of office by the attorney
28 general for cause. The inspector general shall exercise independent
29 judgment in carrying out the duties of the office of inspector general under
30 subsection (b). Appropriations for the office of inspector general shall be
31 made to the attorney general by separate line item appropriations for the
32 office of inspector general. The inspector general shall report to the
33 attorney general.

34 (E) Subject to subsection (b)(1), the inspector general shall have
35 general managerial control over the office of the inspector general and
36 shall establish the organization structure of the office as the inspector
37 general deems appropriate to carry out the responsibilities and functions of
38 the office.

39 (3) Within the limits of appropriations therefor, *and as provided*
40 *further*, the attorney general may hire such employees in the unclassified
41 service as are necessary to administer the office of the inspector general.
42 Such employees shall serve at the pleasure of the attorney general. Subject
43 to appropriations and to subsection (b)(1), the inspector general may

1 obtain the services of certified public accountants, qualified management
2 consultants, professional auditors, or other professionals necessary to
3 independently perform the functions of the office.

4 (c) (1) In accordance with the provisions of this section, the duties of
5 the office of inspector general shall be to oversee, audit, investigate and
6 make performance reviews of ~~the any state-medicaid cash, food or health~~
7 ~~assistance program, the state-medicaid program and the state children's~~
8 ~~health insurance program or their successor programs.~~

9 (2) In order to carry out the duties of the office, the inspector general
10 shall conduct independent and ongoing evaluation of such programs or
11 their successor programs, ~~which.~~ This oversight includes, but is not limited
12 to, the following:

13 (A) Investigation of fraud, waste, abuse and illegal acts directly
14 relating to such programs.

15 (B) Audits of state programs, contractors, vendors and ~~health-care~~
16 ~~healthcare~~ providers related to ensuring that appropriate payments are
17 made for services rendered and to the recovery of overpayments.

18 (C) Investigations of fraud, waste, abuse or illegal acts committed by
19 clients of the programs or by consumers of services of such programs.

20 (D) Monitoring adherence to the terms of any contract between a
21 state agency and an organization, if any, with which the state agency has
22 entered into a contract to make claims payments.

23 (3) Upon finding credible evidence of *significant levels of* fraud,
24 waste, abuse or *other* illegal acts, the inspector general shall report ~~its~~ *the*
25 findings to the attorney general.

26 (d) (1) The inspector general shall have access to all pertinent
27 information, confidential or otherwise, and to all personnel and facilities of
28 a state agency, state vendors, contractors and ~~health-care~~ *healthcare*
29 providers and any federal, state or local governmental agency that are
30 necessary to perform the duties of the office as directly related to such
31 programs. Access to contractor or ~~health-care~~ *healthcare* provider files
32 shall be limited to those files necessary to verify the accuracy of the
33 contractor's or ~~health-care~~ *healthcare* provider's invoices or their
34 compliance with the contract provisions or program requirements. No
35 ~~health-care~~ *healthcare* provider shall be compelled under the provisions of
36 this section to provide individual medical records of patients who are not
37 clients of ~~the a state-medicaid health assistance program, the state-~~
38 ~~medicaid program or the state children's health insurance program.~~ State
39 and local governmental agencies are authorized and directed to provide to
40 the inspector general requested information, assistance or cooperation.

41 (e) Except as otherwise provided in this section, the inspector general
42 and all employees and former employees of the office of inspector general
43 shall be subject to the same duty of confidentiality imposed by law on any

1 such person or agency with regard to any such information; and ~~shall be~~
2 ~~subject to~~ any civil or criminal penalties imposed by law for violations of
3 such duty of confidentiality. The duty of confidentiality imposed on the
4 inspector general and all employees and former employees of the office of
5 inspector general shall be subject to the provisions of subsection (f), and
6 the inspector general may furnish all such information to the attorney
7 general, Kansas bureau of investigation or office of the United States
8 attorney in Kansas pursuant to subsection (f). Upon receipt thereof, the
9 attorney general, Kansas bureau of investigation or office of the United
10 States attorney in Kansas and all assistants and all other employees and
11 former employees of such offices shall be subject to the same duty of
12 confidentiality with the exceptions that any such information may be
13 disclosed in criminal or other proceedings ~~which~~ *that* may be instituted
14 and prosecuted by the attorney general or the United States attorney in
15 Kansas, and any such information furnished to the attorney general, the
16 Kansas bureau of investigation or the United States attorney in Kansas
17 under subsection (f) may be entered into evidence in any such
18 proceedings.

19 (f) All investigations conducted by the inspector general shall be
20 conducted in a manner that ensures the preservation of evidence for use in
21 criminal prosecutions, civil actions or agency administrative actions. If the
22 inspector general determines that a possible criminal act or false claim
23 relating to fraud in the provision or administration of such programs has
24 been committed, the inspector general shall immediately notify the
25 attorney general. If the inspector general determines that a possible
26 criminal act has been committed within the jurisdiction of the office, the
27 inspector general may request the special expertise of the Kansas bureau of
28 investigation. The inspector general may present for prosecution the
29 findings of any criminal investigation to the office of the attorney general,
30 *applicable district or county attorney* or the office of the United States
31 attorney in Kansas.

32 (g) (1) To carry out the duties as described in this section, the
33 inspector general and the inspector general's designees shall have:

34 (A) *Original jurisdiction to investigate crimes related to public*
35 *assistance, including those found in K.S.A. 21-5926 through 21-5932, 39-*
36 *709, 39-720 and 75-726, and amendments thereto;*

37 (B) *the power to issue, serve or cause to be served subpoenas or*
38 *other process of service in aid of investigations;*

39 (C) *the power to compel by subpoena the attendance and testimony of*
40 *witnesses and the production of books, electronic records and papers as*
41 *directly related to ~~such~~ state cash, food or health assistance programs;*

42 (D) *the power to administer oaths and take sworn statements under*
43 *penalty of perjury;*

1 (E) *the power to serve and execute in any county search warrants*
 2 *that relate to investigations being executed by the office of the inspector*
 3 *general. Access to contractor files shall be limited to those files necessary*
 4 *to verify the accuracy of the contractor's invoices or its compliance with*
 5 *the contract provisions. No health care provider shall be compelled to*
 6 *provide individual medical records of patients who are not clients of such*
 7 *a program or programs.*

8 (2) *Access to contractor files shall be limited to those files necessary*
 9 *to verify the accuracy of the contractor's invoices or its compliance with*
 10 *the contract provisions. No healthcare provider shall be compelled to*
 11 *provide individual medical records of patients who are not clients of such*
 12 *a program or programs.*

13 (h) The inspector general shall report all convictions, terminations
 14 and suspensions taken against vendors, contractors and ~~health care~~
 15 *healthcare* providers to any agency contracting with or responsible for
 16 licensing or regulating those persons or entities. If the inspector general
 17 determines reasonable suspicion exists that an act relating to the violation
 18 of an agency licensure or regulatory standard has been committed by a
 19 vendor, contractor or ~~health care~~ *healthcare* provider who is licensed or
 20 regulated by an agency, the inspector general shall immediately notify
 21 such agency of the possible violation, *unless such notification would*
 22 *jeopardize an ongoing criminal investigation.*

23 (i) The inspector general shall make annual reports, findings and
 24 recommendations regarding the office's investigations into reports of
 25 fraud, waste, abuse and illegal acts relating to any such programs to the
 26 appropriate state agency, the legislative post auditor, the committee on
 27 ways and means of the senate, the committee on appropriations of the
 28 house of representatives, the attorney general and the governor. ~~These~~
 29 *Such* reports shall include, but not be limited to, the following information:

30 (1) ~~Aggregate provider billing and payment information;~~(2) ~~The~~
 31 *number and type of audits of such programs administered by the*
 32 *department of health and environment conducted and the dollar savings, if*
 33 *any, resulting from those audits;*

34 ~~(3)~~(2) ~~health care~~*healthcare* provider sanctions, in the aggregate,
 35 including terminations and suspensions; and

36 ~~(4)~~(3) a detailed summary of the investigations undertaken in the
 37 previous fiscal year, ~~which summaries~~ *that* shall comply with all laws and
 38 rules and regulations regarding maintaining confidentiality in such
 39 programs.

40 (j) Based upon the inspector general's findings under subsection (c),
 41 the inspector general may make such recommendations to the state agency
 42 or agencies ~~which~~ *that* administer such program or programs or the
 43 legislature for changes in law, rules and regulations, policy or procedures

1 as the inspector general deems appropriate to carry out the provisions of
2 law or to improve the efficiency of such programs. The inspector general
3 shall not be required to obtain permission or approval from any other
4 official or department prior to making any such recommendation.

5 (k) (1) The inspector general shall make provision to solicit and
6 receive reports of fraud, waste, abuse and illegal acts in such programs
7 from any person or persons who shall possess such information. The
8 inspector general shall not disclose or make public the identity of any
9 person or persons who provide such reports pursuant to this subsection
10 unless such person or persons consent in writing to the disclosure of such
11 person's identity. Disclosure of the identity of any person who makes a
12 report pursuant to this subsection shall not be ordered as part of any
13 administrative or judicial proceeding. Any information received by the
14 inspector general from any person concerning fraud, waste, abuse or
15 illegal acts in such programs shall be confidential and shall not be
16 disclosed or made public, upon subpoena or otherwise, except such
17 information may be disclosed if:

18 (A) Release of the information would not result in the identification
19 of the person who provided the information;

20 (B) the person or persons who provided the information to be
21 disclosed consent in writing prior to its disclosure;

22 (C) the disclosure is necessary to protect the public health; or

23 (D) the information to be disclosed is required in an administrative
24 proceeding or court proceeding and appropriate provision has been made
25 to allow disclosure of the information without disclosing to the public the
26 identity of the person or persons who reported such information to the
27 inspector general.

28 (2) No person shall:

29 (A) Prohibit any agent, employee, contractor or subcontractor from
30 reporting any information under ~~subsection (k)~~ *paragraph (1)*; or

31 (B) require any such agent, employee, contractor or subcontractor to
32 give notice to the person prior to making any such report.

33 (3) ~~Subsection (k)~~ *Paragraph (2)* shall not be construed as:

34 (A) Prohibiting an employer from requiring that an employee inform
35 the employer as to legislative or auditing agency requests for information
36 or the substance of testimony made, or to be made, by the employee to
37 legislators or the auditing agency, as the case may be, on behalf of the
38 employer;

39 (B) permitting an employee to leave the employee's assigned work
40 areas during normal work hours without following applicable rules and
41 regulations and policies pertaining to leaves, unless the employee is
42 requested by a legislator or legislative committee to appear before a
43 legislative committee or by an auditing agency to appear at a meeting with

1 officials of the auditing agency;

2 (C) authorizing an employee to represent the employee's personal
3 opinions as the opinions of the employer; or

4 (D) prohibiting disciplinary action of an employee who discloses
5 information ~~which~~ *that*:

6 (i) The employee knows to be false or which the employee discloses
7 with reckless disregard for its truth or falsity;

8 (ii) the employee knows to be exempt from required disclosure under
9 the open records act; or

10 (iii) is confidential or privileged under statute or court rule.

11 (4) Any agent, employee, contractor or subcontractor who alleges that
12 disciplinary action has been taken against such agent, employee, contractor
13 or subcontractor in violation of this section may bring an action for any
14 damages caused by such violation in district court within 90 days after the
15 occurrence of the alleged violation.

16 (5) Any disciplinary action taken against an employee of a state
17 agency or firm as such terms are defined under K.S.A. 75-2973, and
18 amendments thereto, for making a report under ~~subsection (k)~~ *paragraph*
19 (1) shall be governed by the provisions of K.S.A. 75-2973, and
20 amendments thereto.

21 (l) The scope, timing and completion of any audit or investigation
22 conducted by the inspector general shall be within the discretion of the
23 inspector general. Any audit conducted by the inspector general's office
24 shall adhere and comply with all provisions of generally accepted
25 governmental auditing standards promulgated by the United States
26 government accountability office.

27 (m) Nothing in this section shall limit investigations by any state
28 department or agency that may otherwise be required or permitted by law
29 or that may be necessary in carrying out the duties and functions of such
30 agency.

31 (n) No contractor who has been convicted of fraud, waste, abuse or
32 illegal acts or whose actions have caused the state of Kansas to pay fines
33 to or reimburse the federal government more than \$1,000,000 in the
34 medicaid program shall be eligible for any state medicaid contracts
35 subsequent to such conviction unless the attorney general finds that the
36 contractor is the sole source for such contracts, is the least expensive
37 source for the contract, has reimbursed the state of Kansas for all losses
38 caused by the contractor, or the removal of the contractor would create a
39 substantial loss of access for medicaid beneficiaries, in which case, after a
40 specific finding to this effect, the prohibition of this subsection may be
41 waived by the attorney general. Nothing in this section shall be construed
42 to conflict with federal law; or to require or permit the use of federal funds
43 where prohibited.

1 (o) All information and records of the inspector general that are
2 made, maintained, kept, obtained or received under any investigation or
3 audit under this section shall be confidential, except as required or
4 authorized pursuant to this section.

5 Sec. 2. K.S.A. 75-7427 is hereby repealed.

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