

As Amended by House Committee

Session of 2017

HOUSE BILL No. 2047

By Committee on Health and Human Services

1-12

1 AN ACT concerning the office of inspector general; amending K.S.A.
2 2016 Supp. 75-7427 and repealing the existing section.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 New Section 1. (a) On and after the effective date of this act, all of
6 the powers, duties, functions, records and property of the office of the
7 inspector general—~~within~~ **within** the department of health and
8 environment are hereby transferred to the office of inspector general
9 within the office of the attorney general, except as is otherwise provided.

10 (b) (1) The office of inspector general within the office of the
11 attorney general shall be the successor in every way of the powers, duties
12 and functions of the office of the inspector general within the department
13 of health and environment in which the same were vested prior to the
14 effective date of this act, except as otherwise provided.

15 (2) Whenever the office of the inspector general within the
16 department of health and environment, or words of like effect, is referred
17 to or designated by a statute, contract or other document, such reference or
18 designation shall be deemed to apply to the office of inspector general
19 within the office of the attorney general.

20 (3) All orders or directives of the office of the inspector general
21 within the department of health and environment in existence on the
22 effective date of this act shall continue to be effective and shall be deemed
23 to be the orders or directives of the office of inspector general within the
24 office of the attorney general, until revised, amended, repealed or nullified
25 pursuant to law.

26 (c) On the effective date of this act, all unexpended balances of
27 appropriations of the office of the inspector general within the department
28 of health and environment shall be transferred to the office of the attorney
29 general to be used by the office of inspector general within the office of
30 the attorney general to carry out the powers, duties and functions
31 transferred to the office of the inspector general within the office of the
32 attorney general by the provisions of this act.

33 (d) (1) No suit, action or other proceeding, judicial or administrative,
34 lawfully commenced, or which could have been commenced, by or against
35 any existing state agency mentioned in this act, or by or against any officer
36 of the state in the officer's official capacity or in relation to the discharge

1 of the officer's official duties, shall abate by reason of the taking effect of
2 this act. The court may allow any such suit, action or other proceeding to
3 be maintained by or against the successor of any such existing state
4 agency, or any officer affected.

5 (2) No criminal action commenced or which could have been
6 commenced by the state shall abate by the taking effect of this act.

7 (e) Whenever any conflict arises as to the disposition of any power,
8 function or duty or the unexpended balance of any appropriation as a result
9 of any abolishment, transfer, attachment or other change made by this act,
10 or under authority of this act, the conflict shall be resolved by the governor
11 and such decision of the governor shall be final.

12 Sec. 2. K.S.A. 2016 Supp. 75-7427 is hereby amended to read as
13 follows: 75-7427. (a) As used in this section:

14 (1) "Attorney general" means the attorney general *of the state of*
15 *Kansas*, employees of the attorney general or authorized representatives of
16 the attorney general.

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

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

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

28 (5) "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 state medicaid program, the state
32 mediKan program or the state children's health insurance program, and
33 shall include any sub-contractor.

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

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

42 (8) "Health care provider" means a health care provider as defined
43 under K.S.A. 65-4921, and amendments thereto, who has applied to

1 participate in, who currently participates in, or who has previously
2 participated in the state medicaid program, the state mediKan program or
3 the state children's health insurance program.

4 ~~(9) "Department" means the department of health and environment,~~
5 ~~or its successor agency.~~

6 ~~(10)~~ (10) "Managed care program" means a program which provides
7 coordination, direction and provision of health services to an identified
8 group of individuals by providers, agencies or organizations.

9 ~~(11)~~ (11) "Medicaid program" means the Kansas program of medical
10 assistance for which federal or state moneys, or any combination thereof,
11 are expended, or any successor federal or state, or both, health insurance
12 program or waiver granted thereunder.

13 ~~(12)~~ (12) "Person" means any agency, association, corporation, firm,
14 limited liability company, limited liability partnership, natural person,
15 organization, partnership or other legal entity, the agents, employees,
16 independent contractors, and subcontractors, thereof, and the legal
17 successors thereto.

18 ~~(13)~~ (13) "Provider" means a person who has applied to participate in,
19 who currently participates in, who has previously participated in, who
20 attempts or has attempted to participate in the state medicaid program, the
21 state mediKan program or the state children's health insurance program, by
22 providing or claiming to have provided goods, services, items, facilities or
23 accommodations.

24 ~~(14)~~ (14) "Recipient" means an individual, either real or fictitious, in
25 whose behalf any person claimed or received any payment or payments
26 from the state medicaid program, or its fiscal agent, the state mediKan
27 program or the state children's health insurance program, whether or not
28 any such individual was eligible for benefits under the state medicaid
29 program, the state mediKan program or the state children's health
30 insurance program.

31 ~~(15)~~ (15) "Records" means all written documents and electronic or
32 magnetic data, including, but not limited to, medical records, x-rays,
33 professional, financial or business records relating to the treatment or care
34 of any recipient; goods, services, items, facilities or accommodations
35 provided to any such recipient; rates paid for such goods, services, items,
36 facilities or accommodations; and goods, services, items, facilities or
37 accommodations provided to nonmedicaid recipients to verify rates or
38 amounts of goods, services, items, facilities or accommodations provided
39 to medicaid recipients, as well as any records that the state medicaid
40 program, or its fiscal agents, the state mediKan program or the state
41 children's health insurance program require providers to maintain.
42 "Records" shall not include any report or record in any format which is
43 made pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments

1 thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925,
2 and amendments thereto.

3 ~~(16)~~ (15) "State children's health insurance program" means the state
4 children's health insurance program as provided in K.S.A. 38-2001 et seq.,
5 and amendments thereto.

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

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

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

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

6 (D) The inspector general shall be in the ~~classified~~ *unclassified*
7 service and shall receive ~~such compensation as is determined by law an~~
8 *annual salary in an amount equal to the annual salary paid by the state to*
9 *a district court judge*, except that such compensation may be increased but
10 not diminished during the term of office of the inspector general. The
11 inspector general may be removed from office prior to the expiration of the
12 inspector general's term of office ~~in accordance with the Kansas civil~~
13 ~~service act by the attorney general for cause~~. The inspector general shall
14 exercise independent judgment in carrying out the duties of the office of
15 inspector general under subsection (b). Appropriations for the office of
16 inspector general shall be made to the ~~department of health and~~
17 ~~environment~~ *attorney general* by separate line item appropriations for the
18 office of inspector general. The inspector general shall report to the
19 ~~secretary of health and environment~~ *attorney general*.

20 (E) *Subject to subsection (b)(1)*, the inspector general shall have
21 general managerial control over the office of the inspector general and
22 shall establish the organization structure of the office as the inspector
23 general deems appropriate to carry out the responsibilities and functions of
24 the office.

25 (3) Within the limits of appropriations therefor, the ~~inspector~~ *attorney*
26 general may hire such employees in the unclassified service as are
27 necessary to administer the office of the inspector general. Such
28 employees shall serve at the pleasure of the ~~inspector~~ *attorney* general.
29 Subject to appropriations *and to subsection (b)(1)*, the inspector general
30 may obtain the services of certified public accountants, qualified
31 management consultants, professional auditors, or other professionals
32 necessary to independently perform the functions of the office.

33 (c) (1) In accordance with the provisions of this section, the duties of
34 the office of inspector general shall be to oversee, audit, investigate and
35 make performance reviews of the state medicaid program, the state
36 mediKan program and the state children's health insurance program, ~~which~~
37 ~~programs are within the jurisdiction of the department of health and~~
38 ~~environment or their successor programs~~.

39 (2) In order to carry out the duties of the office, the inspector general
40 shall conduct independent and ongoing evaluation of ~~the department of~~
41 ~~health and environment and of such programs administered by the~~
42 ~~department of health and environment or their successor programs~~, which
43 oversight includes, but is not limited to, the following:

1 (A) Investigation of fraud, waste, abuse and illegal acts ~~by the~~
2 ~~department of health and environment and its agents, employees, vendors,~~
3 ~~contractors, consumers, clients and health care providers or other providers~~
4 ~~directly relating to such programs.~~

5 (B) Audits of ~~the department of health and environment, its~~
6 ~~employees state programs,~~ contractors, vendors and health care providers
7 related to ensuring that appropriate payments are made for services
8 rendered and to the recovery of overpayments.

9 (C) Investigations of fraud, waste, abuse or illegal acts committed by
10 clients of the ~~department of health and environment programs~~ or by
11 consumers of services ~~administered by the department of health and~~
12 ~~environment of such programs.~~

13 (D) Monitoring adherence to the terms of ~~the any~~ contract between
14 ~~the department of health and environment a state agency~~ and an
15 organization, *if any*, with which the ~~department state agency~~ has entered
16 into a contract to make claims payments.

17 (3) Upon finding credible evidence of fraud, waste, abuse or illegal
18 acts, the inspector general shall report its findings to the ~~department of~~
19 ~~health and environment and refer the findings to the attorney general.~~

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

36 (e) Except as otherwise provided in this section, the inspector general
37 and all employees and former employees of the office of inspector general
38 shall be subject to the same duty of confidentiality imposed by law on any
39 such person or agency with regard to any such information, and shall be
40 subject to any civil or criminal penalties imposed by law for violations of
41 such duty of confidentiality. The duty of confidentiality imposed on the
42 inspector general and all employees and former employees of the office of
43 inspector general shall be subject to the provisions of subsection (f), and

1 the inspector general may furnish all such information to the attorney
2 general, Kansas bureau of investigation or office of the United States
3 attorney in Kansas pursuant to subsection (f). Upon receipt thereof, the
4 attorney general, Kansas bureau of investigation or office of the United
5 States attorney in Kansas and all assistants and all other employees and
6 former employees of such offices shall be subject to the same duty of
7 confidentiality with the exceptions that any such information may be
8 disclosed in criminal or other proceedings which may be instituted and
9 prosecuted by the attorney general or the United States attorney in Kansas,
10 and any such information furnished to the attorney general, the Kansas
11 bureau of investigation or the United States attorney in Kansas under
12 subsection (f) may be entered into evidence in any such proceedings.

13 (f) All investigations conducted by the inspector general shall be
14 conducted in a manner that ensures the preservation of evidence for use in
15 criminal prosecutions, *civil actions* or agency administrative actions. If the
16 inspector general determines that a possible criminal act *or false claim*
17 relating to fraud in the provision or administration of such programs
18 ~~administered by the department of health and environment~~ has been
19 committed, the inspector general shall immediately notify the ~~office of the~~
20 ~~Kansas~~ attorney general. If the inspector general determines that a possible
21 criminal act has been committed within the jurisdiction of the office, the
22 inspector general may request the special expertise of the Kansas bureau of
23 investigation. The inspector general may present for prosecution the
24 findings of any criminal investigation to the office of the attorney general
25 or the office of the United States attorney in Kansas.

26 (g) To carry out the duties as described in this section, the inspector
27 general and the inspector general's designees shall have the power to
28 compel by subpoena the attendance and testimony of witnesses and the
29 production of books, electronic records and papers as directly related to
30 such programs ~~administered by the department of health and environment~~.
31 Access to contractor files shall be limited to those files necessary to verify
32 the accuracy of the contractor's invoices or its compliance with the
33 contract provisions. No health care provider shall be compelled to provide
34 individual medical records of patients who are not clients of ~~the~~
35 ~~department~~ *such a program or programs*.

36 (h) The inspector general shall report all convictions, terminations
37 and suspensions taken against vendors, contractors and health care
38 providers to ~~the department of health and environment and to any agency~~
39 *contracting with or* responsible for licensing or regulating those persons or
40 entities. If the inspector general determines reasonable suspicion exists
41 that an act relating to the violation of an agency licensure or regulatory
42 standard has been committed by a vendor, contractor or health care
43 provider who is licensed or regulated by an agency, the inspector general

1 shall immediately notify such agency of the possible violation.

2 (i) The inspector general shall make annual reports, findings and
3 recommendations regarding the office's investigations into reports of
4 fraud, waste, abuse and illegal acts relating to any such programs
5 ~~administered by the director of health care finance to the secretary of~~
6 ~~health and environment~~ *to the appropriate state agency*, the legislative post
7 auditor, the committee on ways and means of the senate, the committee on
8 appropriations of the house of representatives, *the attorney general* and the
9 governor. These reports shall include, but not be limited to, the following
10 information:

11 (1) Aggregate provider billing and payment information;

12 (2) the number of audits of such programs administered by the
13 department of health and environment and the dollar savings, if any,
14 resulting from those audits;

15 (3) health care provider sanctions, in the aggregate, including
16 terminations and suspensions; and

17 (4) a detailed summary of the investigations undertaken in the
18 previous fiscal year, which summaries shall comply with all laws and rules
19 and regulations regarding maintaining confidentiality in such programs
20 ~~administered by the department of health and environment~~.

21 (j) Based upon the inspector general's findings under subsection (c),
22 the inspector general may make such recommendations to the ~~department~~
23 ~~of health and environment~~ *state agency or agencies which administer such*
24 *program or programs* or the legislature for changes in law, rules and
25 regulations, policy or procedures as the inspector general deems
26 appropriate to carry out the provisions of law or to improve the efficiency
27 of such programs ~~administered by the department of health and~~
28 ~~environment~~. The inspector general shall not be required to obtain
29 permission or approval from any other official or department prior to
30 making any such recommendation.

31 (k) (1) The inspector general shall make provision to solicit and
32 receive reports of fraud, waste, abuse and illegal acts in such programs
33 ~~administered by the department of health and environment~~ from any
34 person or persons who shall possess such information. The inspector
35 general shall not disclose or make public the identity of any person or
36 persons who provide such reports pursuant to this subsection unless such
37 person or persons consent in writing to the disclosure of such person's
38 identity. Disclosure of the identity of any person who makes a report
39 pursuant to this subsection shall not be ordered as part of any
40 administrative or judicial proceeding. Any information received by the
41 inspector general from any person concerning fraud, waste, abuse or
42 illegal acts in such programs ~~administered by the department of health and~~
43 ~~environment~~ shall be confidential and shall not be disclosed or made

1 public, upon subpoena or otherwise, except such information may be
2 disclosed if: (A) Release of the information would not result in the
3 identification of the person who provided the information; (B) the person
4 or persons who provided the information to be disclosed consent in writing
5 prior to its disclosure; (C) the disclosure is necessary to protect the public
6 health; or (D) the information to be disclosed is required in an
7 administrative proceeding or court proceeding and appropriate provision
8 has been made to allow disclosure of the information without disclosing to
9 the public the identity of the person or persons who reported such
10 information to the inspector general.

11 (2) No person shall:

12 (A) Prohibit any agent, employee, contractor or subcontractor from
13 reporting any information under subsection (k)(1); or

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

16 (3) Subsection (k)(2) shall not be construed as:

17 (A) Prohibiting an employer from requiring that an employee inform
18 the employer as to legislative or auditing agency requests for information
19 or the substance of testimony made, or to be made, by the employee to
20 legislators or the auditing agency, as the case may be, on behalf of the
21 employer;

22 (B) permitting an employee to leave the employee's assigned work
23 areas during normal work hours without following applicable rules and
24 regulations and policies pertaining to leaves, unless the employee is
25 requested by a legislator or legislative committee to appear before a
26 legislative committee or by an auditing agency to appear at a meeting with
27 officials of the auditing agency;

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

30 (D) prohibiting disciplinary action of an employee who discloses
31 information which: (i) The employee knows to be false or which the
32 employee discloses with reckless disregard for its truth or falsity; (ii) the
33 employee knows to be exempt from required disclosure under the open
34 records act; or (iii) is confidential or privileged under statute or court rule.

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

40 (5) Any disciplinary action taken against an employee of a state
41 agency or firm as such terms are defined under ~~subsection (b) of~~ K.S.A.
42 75-2973, and amendments thereto, for making a report under subsection
43 (k)(1) shall be governed by the provisions of K.S.A. 75-2973, and

1 amendments thereto.

2 (l) The scope, timing and completion of any audit or investigation
3 conducted by the inspector general shall be within the discretion of the
4 inspector general. Any audit conducted by the inspector general's office
5 shall adhere and comply with all provisions of generally accepted
6 governmental auditing standards promulgated by the United States
7 government accountability office.

8 (m) Nothing in this section shall limit investigations by any state
9 department or agency that may otherwise be required *or permitted* by law
10 or that may be necessary in carrying out the duties and functions of such
11 agency.

12 (n) No contractor who has been convicted of fraud, waste, abuse or
13 illegal acts or whose actions have caused the state of Kansas to pay fines
14 to or reimburse the federal government more than \$1,000,000 in the
15 medicaid program shall be eligible for any state medicaid contracts
16 subsequent to such conviction unless the ~~department of health and~~
17 ~~environment~~ *attorney general* finds that the contractor is the sole source
18 for such contracts, is the least expensive source for the contract, has
19 reimbursed the state of Kansas for all losses caused by the contractor, or
20 the removal of the contractor would create a substantial loss of access for
21 medicaid beneficiaries, in which case ~~the department~~ after a specific
22 finding to this effect ~~may waive~~ the prohibition of this subsection *may be*
23 *waived by the attorney general*. Nothing in this section shall be construed
24 to conflict with federal law, or to require or permit the use of federal funds
25 where prohibited.

26 (o) ~~The department of health and environment, in accordance with~~
27 ~~K.S.A. 75-4319, and amendments thereto, may recess for a closed,~~
28 ~~executive meeting under the open meetings act, K.S.A. 75-4317 through~~
29 ~~75-4320a, and amendments thereto, to discuss with the inspector general~~
30 ~~any information, records or other matters that are involved in any~~
31 ~~investigation or audit under this section.~~ All information and records of the
32 inspector general that are *made, maintained, kept*, obtained or received
33 under any investigation or audit under this section shall be confidential,
34 except as required or authorized pursuant to this section.

35 Sec. 3. K.S.A. 2016 Supp. 75-7427 is hereby repealed.

36 Sec. 4. This act shall take effect and be in force from and after its
37 publication in the statute book.