

SENATE BILL No. 182

By Committee on Public Health and Welfare

2-10

1 AN ACT concerning the department of health and environment; relating to
2 the inspector general's employee status; amending K.S.A. 2014 Supp.
3 75-7427 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2014 Supp. 75-7427 is hereby amended to read as
7 follows: 75-7427. (a) As used in this section:

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

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

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

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

21 (5) "Contractor" means any contractor, supplier, vendor or other
22 person who, through a contract or other arrangement, has received, is to
23 receive or is receiving public funds or in-kind contributions from the
24 contracting agency as part of the state medicaid program, the state
25 mediKan program or the state children's health insurance program, and
26 shall include any sub-contractor.

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

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

35 (8) "Health care provider" means a health care provider as defined
36 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, or
5 its successor agency.

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

23 (2) (A) The inspector general shall be appointed by the department of
24 health and environment with the advice and consent of the senate and
25 subject to confirmation by the senate as provided in K.S.A. 75-4315b, and
26 amendments thereto. Except as provided in K.S.A. 46-2601, and
27 amendments thereto, no person appointed to the position of inspector
28 general shall exercise any power, duty or function of the inspector general
29 until confirmed by the senate. The inspector general shall be selected
30 without regard to political affiliation and on the basis of integrity and
31 capacity for effectively carrying out the duties of the office of inspector
32 general. The inspector general shall possess demonstrated knowledge,
33 skills, abilities and experience in conducting audits or investigations and
34 shall be familiar with the programs subject to oversight by the office of
35 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 of
39 service with such program or agency. The inspector general shall hold at
40 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 to
2 the position of inspector general shall serve for a term which shall expire
3 on January 15 of each year in which the whole senate is sworn in for a new
4 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 department of health and
14 environment by separate line item appropriations for the office of inspector
15 general. The inspector general shall report to the secretary of health and
16 environment.

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
27 professionals necessary to independently perform the functions of the
28 office.

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

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

40 (A) Investigation of fraud, waste, abuse and illegal acts by the
41 department of health and environment and its agents, employees, vendors,
42 contractors, consumers, clients and health care providers or other
43 providers.

1 (B) Audits of the department of health and environment, its
2 employees, contractors, vendors and health care providers related to
3 ensuring that appropriate payments are made for services rendered and to
4 the recovery of overpayments.

5 (C) Investigations of fraud, waste, abuse or illegal acts committed by
6 clients of the department of health and environment or by consumers of
7 services administered by the department of health and environment.

8 (D) Monitoring adherence to the terms of the contract between the
9 department of health and environment and an organization with which the
10 department has entered into a contract to make claims payments.

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

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

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

1 disclosed in criminal or other proceedings which may be instituted and
2 prosecuted by the attorney general or the United States attorney in Kansas,
3 and any such information furnished to the attorney general, the Kansas
4 bureau of investigation or the United States attorney in Kansas under
5 subsection (f) may be entered into evidence in any such proceedings.

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

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

29 (h) The inspector general shall report all convictions, terminations
30 and suspensions taken against vendors, contractors and health care
31 providers to the department of health and environment and to any agency
32 responsible for licensing or regulating those persons or entities. If the
33 inspector general determines reasonable suspicion exists that an act
34 relating to the violation of an agency licensure or regulatory standard has
35 been committed by a vendor, contractor or health care provider who is
36 licensed or regulated by an agency, the inspector general shall immediately
37 notify such agency of the possible violation.

38 (i) The inspector general shall make annual reports, findings and
39 recommendations regarding the office's investigations into reports of
40 fraud, waste, abuse and illegal acts relating to any such programs
41 administered by the director of health care finance to the secretary of
42 health and environment, the legislative post auditor, the committee on
43 ways and means of the senate, the committee on appropriations of the

1 house of representatives and the governor. These reports shall include, but
2 not be limited to, the following information:

- 3 (1) Aggregate provider billing and payment information;
- 4 (2) the number of audits of such programs administered by the
5 department of health and environment and the dollar savings, if any,
6 resulting from those audits;
- 7 (3) health care provider sanctions, in the aggregate, including
8 terminations and suspensions; and
- 9 (4) a detailed summary of the investigations undertaken in the
10 previous fiscal year, which summaries shall comply with all laws and rules
11 and regulations regarding maintaining confidentiality in such programs
12 administered by the department of health and environment.

13 (j) Based upon the inspector general's findings under subsection (c),
14 the inspector general may make such recommendations to the department
15 of health and environment or the legislature for changes in law, rules and
16 regulations, policy or procedures as the inspector general deems
17 appropriate to carry out the provisions of law or to improve the efficiency
18 of such programs administered by the department of health and
19 environment. The inspector general shall not be required to obtain
20 permission or approval from any other official or department prior to
21 making any such recommendation.

22 (k) (1) The inspector general shall make provision to solicit and
23 receive reports of fraud, waste, abuse and illegal acts in such programs
24 administered by the department of health and environment from any
25 person or persons who shall possess such information. The inspector
26 general shall not disclose or make public the identity of any person or
27 persons who provide such reports pursuant to this subsection unless such
28 person or persons consent in writing to the disclosure of such person's
29 identity. Disclosure of the identity of any person who makes a report
30 pursuant to this subsection shall not be ordered as part of any
31 administrative or judicial proceeding. Any information received by the
32 inspector general from any person concerning fraud, waste, abuse or
33 illegal acts in such programs administered by the department of health and
34 environment shall be confidential and shall not be disclosed or made
35 public, upon subpoena or otherwise, except such information may be
36 disclosed if: (A) Release of the information would not result in the
37 identification of the person who provided the information; (B) the person
38 or persons who provided the information to be disclosed consent in writing
39 prior to its disclosure; (C) the disclosure is necessary to protect the public
40 health; or (D) the information to be disclosed is required in an
41 administrative proceeding or court proceeding and appropriate provision
42 has been made to allow disclosure of the information without disclosing to
43 the public the identity of the person or persons who reported such

1 information to the inspector general.

2 (2) No person shall:

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

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

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

8 (A) Prohibiting an employer from requiring that an employee inform
9 the employer as to legislative or auditing agency requests for information
10 or the substance of testimony made, or to be made, by the employee to
11 legislators or the auditing agency, as the case may be, on behalf of the
12 employer;

13 (B) permitting an employee to leave the employee's assigned work
14 areas during normal work hours without following applicable rules and
15 regulations and policies pertaining to leaves, unless the employee is
16 requested by a legislator or legislative committee to appear before a
17 legislative committee or by an auditing agency to appear at a meeting with
18 officials of the auditing agency;

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

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

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

31 (5) Any disciplinary action taken against an employee of a state
32 agency or firm as such terms are defined under ~~subsection (b) of K.S.A.~~
33 75-2973(b), and amendments thereto, for making a report under subsection
34 (k)(1) shall be governed by the provisions of K.S.A. 75-2973, and
35 amendments thereto.

36 (l) The scope, timing and completion of any audit or investigation
37 conducted by the inspector general shall be within the discretion of the
38 inspector general. Any audit conducted by the inspector general's office
39 shall adhere and comply with all provisions of generally accepted
40 governmental auditing standards promulgated by the United States
41 government accountability office.

42 (m) Nothing in this section shall limit investigations by any state
43 department or agency that may otherwise be required by law or that may

1 be necessary in carrying out the duties and functions of such agency.

2 (n) No contractor who has been convicted of fraud, waste, abuse or
3 illegal acts or whose actions have caused the state of Kansas to pay fines
4 to or reimburse the federal government more than \$1,000,000 in the
5 medicaid program shall be eligible for any state medicaid contracts
6 subsequent to such conviction unless the department of health and
7 environment finds that the contractor is the sole source for such contracts,
8 is the least expensive source for the contract, has reimbursed the state of
9 Kansas for all losses caused by the contractor, or the removal of the
10 contractor would create a substantial loss of access for medicaid
11 beneficiaries, in which case the department after a specific finding to this
12 effect may waive the prohibition of this subsection. Nothing in this section
13 shall be construed to conflict with federal law, or to require or permit the
14 use of federal funds where prohibited.

15 ~~(o) The department of health and environment, in accordance with~~
16 ~~K.S.A. 75-4319, and amendments thereto, may recess for a closed,~~
17 ~~executive meeting under the open meetings act, K.S.A. 75-4317 through~~
18 ~~75-4320a, and amendments thereto, to discuss with the inspector general~~
19 ~~any information, records or other matters that are involved in any~~
20 ~~investigation or audit under this section. All information and records of the~~
21 ~~inspector general that are obtained or received under any investigation or~~
22 ~~audit under this section shall be confidential, except as required or~~
23 ~~authorized pursuant to this section.~~

24 Sec. 2. K.S.A. 2014 Supp. 75-7427 is hereby repealed.

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