

# Office of Inspector General of Medicaid Services: Title 63J, Chapter 4a, Utah Code Annotated

June 6, 2012

## **63J-4a-101. Title.**

This chapter is known as "Office of Inspector General of Medicaid Services."

## **63J-4a-102. Definitions.**

As used in this chapter:

- (1) "Abuse" means:
  - (a) an action or practice that:
    - (i) is inconsistent with sound fiscal, business, or medical practices; and
    - (ii) results, or may result, in unnecessary Medicaid related costs; or
  - (b) reckless or negligent upcoding.
- (2) "Claimant" means a person that:
  - (a) provides a service; and
  - (b) submits a claim for Medicaid reimbursement for the service.
- (3) "Department" means the Department of Health, created in Section 26-1-4.
- (4) "Division" means the Division of Health Care Financing, created in Section 26-18-2.1.
- (5) "Fraud" means intentional or knowing:
  - (a) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs, a claim, reimbursement, or services; or
  - (b) a violation of a provision of Subsections 26-20-3 through 26-20-7.
- (6) "Fraud unit" means the Medicaid Fraud Control Unit of the attorney general's office.
- (7) "Health care professional" means a person licensed under:
  - (a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;
  - (b) Title 58, Chapter 16a, Utah Optometry Practice Act;
  - (c) Title 58, Chapter 17b, Pharmacy Practice Act;
  - (d) Title 58, Chapter 24b, Physical Therapy Practice Act;
  - (e) Title 58, Chapter 31b, Nurse Practice Act;
  - (f) Title 58, Chapter 40, Recreational Therapy Practice Act;
  - (g) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act;
  - (h) Title 58, Chapter 42a, Occupational Therapy Practice Act;
  - (i) Title 58, Chapter 44a, Nurse Midwife Practice Act;
  - (j) Title 58, Chapter 49, Dietitian Certification Act;
  - (k) Title 58, Chapter 60, Mental Health Professional Practice Act;
  - (l) Title 58, Chapter 67, Utah Medical Practice Act;
  - (m) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
  - (n) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
  - (o) Title 58, Chapter 70a, Physician Assistant Act; and

- (p) Title 58, Chapter 73, Chiropractic Physician Practice Act.
- (8) "Inspector general" means the inspector general of the office, appointed under Section 63J-4a-201.
- (9) "Office" means the Office of Inspector General of Medicaid Services, created in Section 63J-4a-201.
- (10) "Provider" means a person that provides:
  - (a) medical assistance, including supplies or services, in exchange, directly or indirectly, for Medicaid funds; or
  - (b) billing or recordkeeping services relating to Medicaid funds.
- (11) "Upcoding" means assigning an inaccurate billing code for a service that is payable or reimbursable by Medicaid funds, if the correct billing code for the service, taking into account reasonable opinions derived from official published coding definitions, would result in a lower Medicaid payment or reimbursement.
- (12) "Waste" means overutilization of resources or inappropriate payment.

## **63J-4a-201. Creation of office -- Inspector general -- Appointment -- Term.**

- (1) There is created, within the Governor's Office of Planning and Budget, the Office of Inspector General of Medicaid Services.
- (2) The governor shall appoint the inspector general, with the advice and consent of the Senate.
- (3) A person appointed as the inspector general shall:
  - (a) be a certified public accountant or a certified internal auditor; and
  - (b) have the following qualifications:
    - (i) a general knowledge of the type of methodology and controls necessary to audit, investigate, and identify fraud, waste, and abuse;
    - (ii) strong management skills;
    - (iii) extensive knowledge of, and at least seven years experience with, performance audit methodology;
    - (iv) the ability to oversee and execute an audit; and
    - (v) strong interpersonal skills.
- (4) The inspector general:
  - (a) shall serve a term of two years; and
  - (b) may be removed by the governor, for cause.
- (5) If the inspector general is removed for cause, a new inspector general shall be appointed, with the advice and consent of the Senate, to serve a two-year term.

## **63J-4a-202. Duties and powers of inspector general and office.**

- (1) The inspector general shall:
  - (a) administer, direct, and manage the office;

- (b) inspect and monitor the following in relation to the state Medicaid program:
  - (i) the use and expenditure of federal and state funds;
  - (ii) the provision of health benefits and other services;
  - (iii) implementation of, and compliance with, state and federal requirements; and
  - (iv) records and recordkeeping procedures;
- (c) receive reports of potential fraud, waste, or abuse in the state Medicaid program;
- (d) investigate and identify potential or actual fraud, waste, or abuse in the state Medicaid program;
- (e) consult with the Centers for Medicaid and Medicare Services and other states to determine and implement best practices for discovering and eliminating fraud, waste, and abuse of Medicaid funds;
- (f) obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse in the state Medicaid program;
- (g) work closely with the fraud unit to identify and recover improperly or fraudulently expended Medicaid funds;
- (h) audit, inspect, and evaluate the functioning of the division to ensure that the state Medicaid program is managed in the most efficient and cost-effective manner possible;
- (i) regularly advise the department and the division of an action that should be taken to ensure that the state Medicaid program is managed in the most efficient and cost-effective manner possible;
- (j) refer potential criminal conduct, relating to Medicaid funds or the state Medicaid program, to the fraud unit;
- (k) determine ways to:
  - (i) identify, prevent, and reduce fraud, waste, and abuse in the state Medicaid program; and
  - (ii) recoup costs, reduce costs, and avoid or minimize increased costs of the state Medicaid program;
- (l) seek recovery of improperly paid Medicaid funds;
- (m) track recovery of Medicaid funds by the state;
- (n) in accordance with Section 63J-4a-501:
  - (i) report on the actions and findings of the inspector general; and
  - (ii) make recommendations to the Legislature and the governor;
- (o) provide training to agencies and employees on identifying potential fraud, waste, or abuse of Medicaid funds; and
- (p) develop and implement principles and standards for the fulfillment of the duties of the inspector general, based on principles and standards used by:
  - (i) the Federal Offices of Inspector General;
  - (ii) the Association of Inspectors General; and
  - (iii) the United States Government Accountability Office.
- (2) The office may conduct a performance or financial audit of:
  - (a) a state executive branch entity or a local government entity, including an entity described in Subsection

63J-4a-301(3), that:

- (i) manages or oversees a state Medicaid program; or
- (ii) manages or oversees the use or expenditure of state or federal Medicaid funds; or
- (b) Medicaid funds received by a person by a grant from, or under contract with, a state executive branch entity or a local government entity.
- (3) The inspector general, or a designee of the inspector general within the office, may take a sworn statement or administer an oath.

**63J-4a-203. Memorandum of understanding with fraud unit.**

The inspector general shall enter into a memorandum of understanding with the fraud unit to:

- (1) formalize communication, cooperation, coordination of efforts, and the sharing of information, on a regular basis, between the office and the fraud unit;
- (2) provide for reporting criminal activity discovered by the office to the fraud unit;
- (3) ensure that investigations and other actions by the office and the fraud unit do not conflict; and
- (4) provide for the sharing and classification of records between the office and the fraud unit under the Government Records Access and Management Act.

**63J-4a-204. Selection and review of claims.**

- (1) On an annual basis, the office shall select and review a representative sample of claims submitted for reimbursement under the state Medicaid program to determine whether fraud, waste, or abuse occurred.
- (2) The office may directly contact the recipient of record for a Medicaid reimbursed service to determine whether the service for which reimbursement was claimed was actually provided to the recipient of record.
- (3) The office shall generate statistics from the sample described in Subsection (1) to determine the type of fraud, waste, or abuse that is most advantageous to focus on in future audits or investigations.

**63J-4a-205. Placement of hold on claims for reimbursement -- Injunction.**

- (1) The inspector general or the inspector general's designee may, without prior notice, order a hold on the payment of a claim for reimbursement submitted by a claimant if there is reasonable cause to believe that the claim, or payment of the claim, constitutes fraud, waste, or abuse, or is otherwise inaccurate.
- (2) The office shall, within seven days after the day on which a hold described in Subsection (1) is ordered, notify the claimant that the hold has been placed.
- (3) The inspector general or the inspector general's designee may not maintain a hold longer than is necessary to determine whether the claim, or payment of the claim, constitutes fraud, waste, or abuse, or is otherwise inaccurate.
- (4) A claimant may, at any time during which a hold is in place, appeal the hold under Title 63G, Chapter 4, Administrative Procedures Act.
- (5) If a claim is approved or denied before a hearing is held

under Title 63G, Chapter 4, Administrative Procedures Act, the appeal shall be dismissed as moot.

- (6) The inspector general may request that the attorney general's office seek an injunction to prevent a person from disposing of an asset that is potentially subject to recovery by the state to recover funds due to a person's fraud or abuse.
- (7) The department and the division shall fully comply with a hold ordered under this section.

**63J-4a-301. Access to records -- Retention of designation under Government Records Access and Management Act.**

- (1) In order to fulfill the duties described in Section 63J-4a-202, the office shall have unrestricted access to all records of state executive branch entities, all local government entities, and all providers relating, directly or indirectly, to:
  - (a) the state Medicaid program;
  - (b) state or federal Medicaid funds;
  - (c) the provision of Medicaid related services;
  - (d) the regulation or management of any aspect of the state Medicaid program;
  - (e) the use or expenditure of state or federal Medicaid funds;
  - (f) suspected or proven fraud, waste, or abuse of state or federal Medicaid funds;
  - (g) Medicaid program policies, practices, and procedures;
  - (h) monitoring of Medicaid services or funds; or
  - (i) a fatality review of a person who received Medicaid funded services.
- (2) The office shall have access to information in any database maintained by the state or a local government to verify identity, income, employment status, or other factors that affect eligibility for Medicaid services.
- (3) The records described in Subsections (1) and (2) include records held or maintained by the department, the division, the Department of Human Services, the Department of Workforce Services, a local health department, a local mental health authority, or a school district. The records described in Subsection (1) include records held or maintained by a provider. When conducting an audit of a provider, the office shall, to the extent possible, limit the records accessed to the scope of the audit.
- (4) A record, described in Subsection (1) or (2), that is accessed or copied by the office:
  - (a) may be reviewed or copied by the office during normal business hours; and
  - (b) if it is a government record, shall retain the classification made by the entity responsible for the record, under Title 63G, Chapter 2, Government Records Access and Management Act.
- (5) Notwithstanding any provision of state law to the contrary, the office shall have the same access to all records, information, and databases that the department or the division have access to.
- (6) The office shall comply with the requirements of federal law, including the Health Insurance Portability and Accountability Act of 1996 and 42 C.F.R., Part 2, relating to the confidentiality of alcohol and drug abuse records, in the office's:

- (a) access, review, retention, and use of records; and
- (b) use of information included in, or derived from, records.

**63J-4a-302. Access to employees -- Cooperating with investigation or audit.**

- (1) The office shall have access to interview the following persons if the inspector general determines that the interview may assist the inspector general in fulfilling the duties described in Section 63J-4a-202:
  - (a) a state executive branch official, executive director, director, or employee;
  - (b) a local government official or employee;
  - (c) a consultant or contractor of a person described in Subsection (1)(a) or (b); or
  - (d) a provider or an employee of a provider.
- (2) A person described in Subsection (1) and each supervisor of the person shall fully cooperate with the office by:
  - (a) providing the office or the inspector general's designee with access to interview the person;
  - (b) completely and truthfully answering questions asked by the office or the inspector general's designee;
  - (c) providing the records, described in Subsection 63J-4a-301(1), requested by the office or the inspector general's designee; and
  - (d) providing the office or the inspector general's designee with information relating to the office's investigation or audit.
- (3) A person described in Subsection (1)(a) or (b) and each supervisor of the person shall fully cooperate with the office by:
  - (a) providing records requested by the office or the inspector general's designee; and
  - (b) providing the office or the inspector general's designee with information relating to the office's investigation or audit, including information that is classified as private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

**63J-4a-303. Cooperation and support.**

The department, the division, each consultant or contractor of the department or division, and each provider shall provide its full cooperation and support to the inspector general and the office in fulfilling the duties of the inspector general and the office.

**63J-4a-304. Interference with an investigation or audit prohibited.**

No person may:

- (1) interfere with or impede an investigation or audit of the office or fraud unit; or
- (2) interfere with the office relative to the content of a report, the conclusions reached in a report, or the manner of disclosing the results and findings of the office.

**63J-4a-401. Subpoena power -- Enforcement.**

- (1) The inspector general has the power to issue a subpoena to obtain a record or interview a person that the office or inspector general has the right to access under Part 3, Investigation or Audit.

- (2) A person who fails to comply with a subpoena issued by the inspector general or who refuses to testify regarding a matter upon which the person may be lawfully interrogated:
  - (a) is in contempt of the inspector general; and
  - (b) upon request by the inspector general, the attorney general shall:
    - (i) file a motion for an order to compel obedience to the subpoena with the district court;
    - (ii) file, with the district court, a motion for an order to show cause why the penalties established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person named in the subpoena for contempt of the inspector general; or
    - (iii) pursue other legal remedies against the person.
- (3) Upon receipt of a motion under Subsection (2), the court:
  - (a) shall expedite the hearing and decision on the motion; and
  - (b) may:
    - (i) order the person named in the subpoena to comply with the subpoena; and
    - (ii) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon the person named in the subpoena for contempt of the inspector general.
- (4)
  - (a) If a subpoena described in this section requires the production of accounts, books, papers, documents, or other tangible items, the person or entity to whom it is directed may petition a district court to quash or modify the subpoena at or before the time specified in the subpoena for compliance.
  - (b) The inspector general may respond to a motion to quash or modify the subpoena by pursuing any remedy authorized by Subsection (3).
  - (c) If the court finds that a subpoena requiring the production of accounts, books, papers, documents, or other tangible items is unreasonable or oppressive, the court may quash or modify the subpoena.
- (5) Nothing in this section prevents the inspector general from seeking an extraordinary writ to remedy contempt of the inspector general.
- (6) Any party aggrieved by a decision of a court under this section may appeal that decision directly to the Utah Supreme Court.

**63J-4a-501. Duty to report potential Medicaid fraud to the office or fraud unit.**

- (1) A health care professional, a provider, or a state or local government official or employee who becomes aware of fraud, waste, or abuse shall report the fraud, waste, or abuse to the office or the fraud unit.
- (2) A person who makes a report under Subsection (1) may request that the person's name not be released in connection with the investigation.
- (3) If a request is made under Subsection (2), the person's identity may not be released to any person or entity other than the office, the fraud unit, or law enforcement, unless a court of competent jurisdiction orders that the person's identity be released.

**63J-4a-502. Report and recommendations to governor and Executive Appropriations Committee.**

- (1) The inspector general shall, on an annual basis, prepare a written report on the activities of the office for the preceding fiscal year.
- (2) The report shall include:
  - (a) non-identifying information, including statistical information, on:
    - (i) the items described in Subsection 63J-4a-202(1)(b) and Section 63J-4a-204;
    - (ii) action taken by the office and the result of that action;
    - (iii) fraud, waste, and abuse in the state Medicaid program;
    - (iv) the recovery of fraudulent or improper use of state and federal Medicaid funds;
    - (v) measures taken by the state to discover and reduce fraud, waste, and abuse in the state Medicaid program;
    - (vi) audits conducted by the office; and
    - (vii) investigations conducted by the office and the results of those investigations;
  - (b) recommendations on action that should be taken by the Legislature or the governor to:
    - (i) improve the discovery and reduction of fraud, waste, and abuse in the state Medicaid program;
    - (ii) improve the recovery of fraudulently or improperly used Medicaid funds; and
    - (iii) reduce costs and avoid or minimize increased costs in the state Medicaid program;
  - (c) recommendations relating to rules, policies, or procedures of a state or local government entity; and
  - (d) services provided by the state Medicaid program that exceed industry standards.
- (3) The report described in Subsection (1) may not include any information that would interfere with or jeopardize an ongoing criminal investigation or other investigation.
- (4) The inspector general shall provide the report described in Subsection (1) to the Executive Appropriations Committee of the Legislature and to the governor on or before October 1 of each year.
- (5) The inspector general shall present the report described in Subsection (1) to the Executive Appropriations Committee of the Legislature before November 30 of each year.

**63J-4a-601. Provision of contract services to Office of Inspector General of Medicaid Services.**

- (1) The division and the assistant attorneys general assigned to the division shall provide, without charge, contract review, contract enforcement, and other contract management services to the office.
- (2) The division shall ensure that the services described in Subsection (1) are provided in an expeditious manner.
- (3) The attorney general shall designate one of the assistant attorneys general assigned to the division to give first priority to providing the services described in Subsection (1) to the office.
- (4) The office and the division shall enter into a memorandum of understanding in order to execute the requirements of this section in an effective and efficient manner.

**63J-4a-602. Rulemaking authority.**

The office may make rules, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish policies, procedures, and practices, in accordance with the provisions of this chapter, relating to:

- (1) inspecting and monitoring the state Medicaid Program;
- (2) discovering and investigating potential fraud, waste, or abuse in the State Medicaid program;
- (3) developing and implementing the principles and standards described in Subsection 63J-4a-202(1)(p);
- (4) auditing, inspecting, and evaluating the functioning of the division under Subsection 63J-4a-202(1)(h);
- (5) conducting an audit under Subsection 63J-4a-202(1)(h) or (2); or
- (6) ordering a hold on the payment of a claim for reimbursement under Section 63J-4a-205.