

## HB0084S03 compared with HB0084S02

~~{deleted text}~~ shows text that was in HB0084S02 but was deleted in HB0084S03.

inserted text shows text that was not in HB0084S02 but was inserted into HB0084S03.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

~~{Representative David Clark}~~Senator Wayne L. Niederhauser proposes the following substitute bill:

### OFFICE OF INSPECTOR GENERAL OF MEDICAID SERVICES

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David Clark**

Senate Sponsor: ~~{~~Wayne L. Niederhauser

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#### LONG TITLE

##### General Description:

This bill creates, within the ~~{governor's office}~~Office of the State Auditor, the Office of Inspector General of Medicaid Services.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates, within the ~~{Governor's}~~ Office of ~~{Planning and Budget}~~the State Auditor, the Office of Inspector General of Medicaid Services (office);
- ▶ describes and provides for the qualifications, appointment, term of office, and

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removal of the Inspector General of Medicaid Services (inspector general);

- ▶ describes the duties and powers of the inspector general and the office;
- ▶ requires the inspector general to enter into a memorandum of understanding with the Medicaid Fraud Control Unit of the attorney general's office (fraud unit);
- ▶ requires the office to annually select and review a representative sample of claims submitted for reimbursement under the state Medicaid program to determine whether fraud, waste, or abuse occurred;
- ▶ provides for the transfer of ~~{FTEs}~~ full-time equivalents from the Department of Health to the ~~{Governor's}~~ Office of ~~{Planning and Budget}~~ the State Auditor to staff the office;
- ▶ establishes a process where the inspector general can 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;
- ▶ grants the office full access to records and employees when investigating or auditing the use or expenditure of Medicaid funds or the provision of services;
- ▶ grants the office access to the Controlled Substance Database and to all records, information, and databases that the Department of Health and the Division of Health Care Financing have access to;
- ▶ requires the Department of Health, the Division of Health Care Financing, and others to fully cooperate with and support the inspector general and the office in fulfilling the duties of the inspector general and the office;
- ▶ prohibits a person from interfering with or impeding an investigation or audit of the office or fraud unit and from interfering with the content or conclusion of a report;
- ▶ grants subpoena power to the inspector general;
- ▶ requires a health care professional, a Medicaid provider, and a state or local government official or employee to report any Medicaid fraud, waste, or abuse of which they become aware;
- ▶ requires the inspector general to, on an annual basis, prepare a written report on the activities of the office for the preceding fiscal year, to provide the report to the governor, and to provide and present the report to the Executive Appropriations

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Committee of the Legislature;

- ▶ requires the provision of contract services to the office by the attorney general's office and the Division of Health Care Financing;
- ▶ classifies certain records relating to an investigation or audit by the office as protected;
- ▶ grants rulemaking authority to the office; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

This bill appropriates, as ongoing appropriations:

- ▶ to Department of Health - Executive Director's Operations:
  - from the General Fund, \$(694,900);
  - from the Federal Fund, \$(1,037,000); and
  - from Revenue Transfers - Within Agency, \$(81,500);
- ▶ to Medicaid Mandatory Services:
  - from the General Fund, \$(300,000); and
  - from the Federal Fund, \$(519,100); and
- ▶ to Office of Inspector General of Medicaid Services:
  - from the General Fund, \$994,900;
  - from the Federal Fund, \$1,556,100; and
  - from Revenue Transfers - Health, \$81,500.

### Other Special Clauses:

This bill takes effect on July 1, 2011.

### Utah Code Sections Affected:

AMENDS:

**26-18-2.3**, as last amended by Laws of Utah 2010, Chapter 149

**26-18-3**, as last amended by Laws of Utah 2010, Chapters 149, 323, 340, and 391

**58-37f-301**, as enacted by Laws of Utah 2010, Chapter 287 and last amended by  
Coordination Clause, Laws of Utah 2010, Chapter 312

**63G-2-305**, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247

**63I-2-263**, as last amended by Laws of Utah 2010, Chapter 224

~~{63J-4-202}~~ 67-3-1, as ~~{renumbered and}~~ last amended by Laws of Utah 2008,

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~~{Chapter}~~ Chapters 360 and 382

ENACTS:

~~{63J-4a-101}~~ 67-3a-101, Utah Code Annotated 1953

~~{63J-4a-102}~~ 67-3a-102, Utah Code Annotated 1953

~~{63J-4a-201}~~ 67-3a-201, Utah Code Annotated 1953

~~{63J-4a-202}~~ 67-3a-202, Utah Code Annotated 1953

~~{63J-4a-203}~~ 67-3a-203, Utah Code Annotated 1953

~~{63J-4a-204}~~ 67-3a-204, Utah Code Annotated 1953

~~{63J-4a-205}~~ 67-3a-205, Utah Code Annotated 1953

~~{63J-4a-206}~~ 67-3a-206, Utah Code Annotated 1953

~~{63J-4a-207}~~ 67-3a-207, Utah Code Annotated 1953

~~{63J-4a-301}~~ 67-3a-301, Utah Code Annotated 1953

~~{63J-4a-302}~~ 67-3a-302, Utah Code Annotated 1953

~~{63J-4a-303}~~ 67-3a-303, Utah Code Annotated 1953

~~{63J-4a-304}~~ 67-3a-304, Utah Code Annotated 1953

~~{63J-4a-401}~~ 67-3a-401, Utah Code Annotated 1953

~~{63J-4a-501}~~ 67-3a-501, Utah Code Annotated 1953

~~{63J-4a-502}~~ 67-3a-502, Utah Code Annotated 1953

~~{63J-4a-601}~~ 67-3a-601, Utah Code Annotated 1953

67-3a-602, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **26-18-2.3** is amended to read:

**26-18-2.3. Division responsibilities -- Emphasis -- Periodic assessment.**

(1) In accordance with the requirements of Title XIX of the Social Security Act and applicable federal regulations, the division is responsible for the effective and impartial administration of this chapter in an efficient, economical manner. The division shall:

(a) establish, on a statewide basis, a program to safeguard against unnecessary or inappropriate use of Medicaid services, excessive payments, and unnecessary or inappropriate hospital admissions or lengths of stay;

(b) deny any provider claim for services that fail to meet criteria established by the

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division concerning medical necessity or appropriateness; and

(c) place its emphasis on high quality care to recipients in the most economical and cost-effective manner possible, with regard to both publicly and privately provided services.

(2) The division shall implement and utilize cost-containment methods, where possible, which may include:

(a) prepayment and postpayment review systems to determine if utilization is reasonable and necessary;

(b) preadmission certification of nonemergency admissions;

(c) mandatory outpatient, rather than inpatient, surgery in appropriate cases;

(d) second surgical opinions;

(e) procedures for encouraging the use of outpatient services;

(f) consistent with Sections 26-18-2.4 and 58-17b-606, a Medicaid drug program;

(g) coordination of benefits; and

(h) review and exclusion of providers who are not cost effective or who have abused the Medicaid program, in accordance with the procedures and provisions of federal law and regulation.

(3) The director of the division shall periodically assess the cost effectiveness and health implications of the existing Medicaid program, and consider alternative approaches to the provision of covered health and medical services through the Medicaid program, in order to reduce unnecessary or unreasonable utilization.

(4) The department shall ensure Medicaid program integrity by conducting internal audits of the Medicaid program for efficiencies, best practices, fraud, waste, abuse, and cost recovery~~[, at least in proportion to the percent of funding for the program that comes from state funds]~~.

(5) The department shall, by December 31 of each year, report to the Health and Human Services Appropriations Subcommittee regarding:

(a) measures taken under this section to increase:

(i) efficiencies within the program; and

(ii) cost avoidance and cost recovery efforts in the program; and

(b) results of program integrity efforts under Subsection (4).

Section 2. Section **26-18-3** is amended to read:

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### **26-18-3. Administration of Medicaid program by department -- Reporting to the Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility standards -- Internal audits -- Studies -- Health opportunity accounts.**

(1) The department shall be the single state agency responsible for the administration of the Medicaid program in connection with the United States Department of Health and Human Services pursuant to Title XIX of the Social Security Act.

(2) (a) The department shall implement the Medicaid program through administrative rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements of Title XIX, and applicable federal regulations.

(b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules necessary to implement the program:

(i) the standards used by the department for determining eligibility for Medicaid services;

(ii) the services and benefits to be covered by the Medicaid program; and

(iii) reimbursement methodologies for providers under the Medicaid program.

(3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health and Human Services Appropriations Subcommittee when the department:

(i) implements a change in the Medicaid State Plan;

(ii) initiates a new Medicaid waiver;

(iii) initiates an amendment to an existing Medicaid waiver;

(iv) applies for an extension of an application for a waiver or an existing Medicaid waiver; or

(v) initiates a rate change that requires public notice under state or federal law.

(b) The report required by Subsection (3)(a) shall:

(i) be submitted to the Health and Human Services Appropriations Subcommittee prior to the department implementing the proposed change; and

(ii) include:

(A) a description of the department's current practice or policy that the department is proposing to change;

(B) an explanation of why the department is proposing the change;

(C) the proposed change in services or reimbursement, including a description of the

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effect of the change;

(D) the effect of an increase or decrease in services or benefits on individuals and families;

(E) the degree to which any proposed cut may result in cost-shifting to more expensive services in health or human service programs; and

(F) the fiscal impact of the proposed change, including:

(I) the effect of the proposed change on current or future appropriations from the Legislature to the department;

(II) the effect the proposed change may have on federal matching dollars received by the state Medicaid program;

(III) any cost shifting or cost savings within the department's budget that may result from the proposed change; and

(IV) identification of the funds that will be used for the proposed change, including any transfer of funds within the department's budget.

(4) (a) The Department of Human Services shall report to the Legislative Health and Human Services Appropriations Subcommittee no later than December 31, 2010 in accordance with Subsection (4)(b).

(b) The report required by Subsection (4)(a) shall include:

(i) changes made by the division or the department beginning July 1, 2010 that effect the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid services or funding, that relate to care for children and youth in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services;

(ii) the history and impact of the changes under Subsection (4)(b)(i);

(iii) the Department of Human Service's plans for addressing the impact of the changes under Subsection (4)(b)(i); and

(iv) ways to consolidate administrative functions within the Department of Human Services, the Department of Health, the Division of Child and Family Services, and the Division of Juvenile Justice Services to more efficiently meet the needs of children and youth with mental health and substance disorder treatment needs.

(5) Any rules adopted by the department under Subsection (2) are subject to review and reauthorization by the Legislature in accordance with Section 63G-3-502.

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(6) The department may, in its discretion, contract with the Department of Human Services or other qualified agencies for services in connection with the administration of the Medicaid program, including:

- (a) the determination of the eligibility of individuals for the program;
- (b) recovery of overpayments; and
- (c) consistent with Section 26-20-13, and to the extent permitted by law and quality control services, enforcement of fraud and abuse laws.

(7) The department shall provide, by rule, disciplinary measures and sanctions for Medicaid providers who fail to comply with the rules and procedures of the program, provided that sanctions imposed administratively may not extend beyond:

- (a) termination from the program;
- (b) recovery of claim reimbursements incorrectly paid; and
- (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

(8) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to be used by the division in accordance with the requirements of Section 1919 of Title XIX of the federal Social Security Act.

(9) (a) In determining whether an applicant or recipient is eligible for a service or benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle designated by the applicant or recipient.

(b) Before Subsection (9)(a) may be applied:

(i) the federal government must:

(A) determine that Subsection (9)(a) may be implemented within the state's existing public assistance-related waivers as of January 1, 1999;

(B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or

(C) determine that the state's waivers that permit dual eligibility determinations for cash assistance and Medicaid are no longer valid; and

(ii) the department must determine that Subsection (9)(a) can be implemented within existing funding.

(10) (a) For purposes of this Subsection (10):

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(i) "aged, blind, or disabled" shall be defined by administrative rule; and

(ii) "spend down" means an amount of income in excess of the allowable income standard that must be paid in cash to the department or incurred through the medical services not paid by Medicaid.

(b) In determining whether an applicant or recipient who is aged, blind, or disabled is eligible for a service or benefit under this chapter, the department shall use 100% of the federal poverty level as:

(i) the allowable income standard for eligibility for services or benefits; and

(ii) the allowable income standard for eligibility as a result of spend down.

(11) The department shall conduct internal audits of the Medicaid program ~~in proportion to at least the level of funding it receives from Medicaid to conduct internal audits~~.

(12) In order to determine the feasibility of contracting for direct Medicaid providers for primary care services, the department shall:

(a) issue a request for information for direct contracting for primary services that shall provide that a provider shall exclusively serve all Medicaid clients:

(i) in a geographic area;

(ii) for a defined range of primary care services; and

(iii) for a predetermined total contracted amount; and

(b) by February 1, 2011, report to the Health and Human Services Appropriations Subcommittee on the response to the request for information under Subsection (12)(a).

(13) (a) By December 31, 2010, the department shall:

(i) determine the feasibility of implementing a three year patient-centered medical home demonstration project in an area of the state using existing budget funds; and

(ii) report the department's findings and recommendations under Subsection (13)(a)(i) to the Health and Human Services Appropriations Subcommittee.

(b) If the department determines that the medical home demonstration project described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations Subcommittee recommends that the demonstration project be implemented, the department shall:

(i) implement the demonstration project; and

(ii) by December 1, 2012, make recommendations to the Health and Human Services

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Appropriations Subcommittee regarding the:

- (A) continuation of the demonstration project;
- (B) expansion of the demonstration project to other areas of the state; and
- (C) cost savings incurred by the implementation of the demonstration project.

(14) (a) The department may apply for and, if approved, implement a demonstration program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

(b) A health opportunity account established under Subsection (14)(a) shall be an alternative to the existing benefits received by an individual eligible to receive Medicaid under this chapter.

(c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid program.

Section 3. Section **58-37f-301** is amended to read:

### **58-37f-301. Access to database.**

(1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) effectively enforce the limitations on access to the database as described in this part; and

(b) establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information without request from the database.

(2) The division shall make information in the database available only to the following individuals, in accordance with the requirements of this chapter and division rules:

(a) personnel of the division specifically assigned to conduct investigations related to controlled substance laws under the jurisdiction of the division;

(b) authorized division personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment;

(c) in accordance with a written agreement entered into with the department, employees of the Department of Health:

(i) whom the director of the Department of Health assigns to conduct scientific studies regarding the use or abuse of controlled substances, provided that the identity of the individuals and pharmacies in the database are confidential and are not disclosed in any manner to any individual who is not directly involved in the scientific studies; or

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(ii) when the information is requested by the Department of Health in relation to a person whom the Department of Health suspects may be improperly obtaining or providing a controlled substance;

(d) a licensed practitioner having authority to prescribe controlled substances, to the extent the information:

(i) (A) relates specifically to a current or prospective patient of the practitioner; and

(B) is sought by the practitioner for the purpose of:

(I) prescribing or considering prescribing any controlled substance to the current or prospective patient;

(II) diagnosing the current or prospective patient;

(III) providing medical treatment or medical advice to the current or prospective patient; or

(IV) determining whether the current or prospective patient:

(Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;

or

(Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the practitioner;

(ii) (A) relates specifically to a former patient of the practitioner; and

(B) is sought by the practitioner for the purpose of determining whether the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled substance from the practitioner;

(iii) relates specifically to an individual who has access to the practitioner's Drug Enforcement Administration identification number, and the practitioner suspects that the individual may have used the practitioner's Drug Enforcement Administration identification number to fraudulently acquire or prescribe a controlled substance;

(iv) relates to the practitioner's own prescribing practices, except when specifically prohibited by the division by administrative rule;

(v) relates to the use of the controlled substance database by an employee of the practitioner, described in Subsection (2)(e); or

(vi) relates to any use of the practitioner's Drug Enforcement Administration identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a

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controlled substance;

(e) in accordance with Subsection (3)(a), an employee of a practitioner described in Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner provides written notice to the division of the identity of the employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(3)(b) with respect to the employee;

(f) a licensed pharmacist having authority to dispense a controlled substance to the extent the information is sought for the purpose of:

(i) dispensing or considering dispensing any controlled substance; or

(ii) determining whether a person:

(A) is attempting to fraudulently obtain a controlled substance from the pharmacist; or

(B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the pharmacist;

(g) federal, state, and local law enforcement authorities, and state and local prosecutors, engaged as a specified duty of their employment in enforcing laws:

(i) regulating controlled substances; or

(ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud;

(h) a mental health therapist, if:

(i) the information relates to a patient who is:

(A) enrolled in a licensed substance abuse treatment program; and

(B) receiving treatment from, or under the direction of, the mental health therapist as part of the patient's participation in the licensed substance abuse treatment program described in Subsection (2)(h)(i)(A);

(ii) the information is sought for the purpose of determining whether the patient is using a controlled substance while the patient is enrolled in the licensed substance abuse

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treatment program described in Subsection (2)(h)(i)(A); and

(iii) the licensed substance abuse treatment program described in Subsection (2)(h)(i)(A) is associated with a practitioner who:

(A) is a physician, a physician assistant, an advance practice registered nurse, or a pharmacist; and

(B) is available to consult with the mental health therapist regarding the information obtained by the mental health therapist, under this Subsection (2)(h), from the database; ~~and~~

(i) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the division that the individual requesting the information is in fact the individual about whom the data entry was made~~[-]~~; and

(j) the inspector general, or a designee of the inspector general, of the Office of Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in Title ~~63J~~67, Chapter ~~4a~~3a, Part 2, Office Duties and Powers.

(3) (a) A practitioner described in Subsection (2)(d) may designate up to three employees to access information from the database under Subsection (2)(e).

(b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish background check procedures to determine whether an employee designated under Subsection (2)(e)(i) should be granted access to the database.

(c) The division shall grant an employee designated under Subsection (2)(e)(i) access to the database, unless the division determines, based on a background check, that the employee poses a security risk to the information contained in the database.

(d) The division may impose a fee, in accordance with Section 63J-1-504, on a practitioner who designates an employee under Subsection (2)(e)(i), to pay for the costs incurred by the division to conduct the background check and make the determination described in Subsection (3)(b).

(4) (a) An individual who is granted access to the database based on the fact that the individual is a licensed practitioner or a mental health therapist shall be denied access to the database when the individual is no longer licensed.

(b) An individual who is granted access to the database based on the fact that the individual is a designated employee of a licensed practitioner shall be denied access to the

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database when the practitioner is no longer licensed.

Section 4. Section **63G-2-305** is amended to read:

### **63G-2-305. Protected records.**

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, once the contract or grant has been awarded, a bid, proposal, or application submitted to or by a governmental entity in response to:

(a) a request for bids;

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(b) a request for proposals;

(c) a grant; or

(d) other similar document;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for

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enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of

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litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78B-1-137;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or

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pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

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(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher

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education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

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(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program prepared or maintained by the Division of Homeland Security the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Homeland Security information;

(49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and Quarantine;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

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(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

(54) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(55) (a) records of the Utah Educational Savings Plan created under Section 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

(b) proposals submitted to the Utah Educational Savings Plan; and

(c) contracts entered into by the Utah Educational Savings Plan and the related payments;

(56) records contained in the Management Information System created in Section 62A-4a-1003;

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

(58) information requested by and provided to the Utah State 911 Committee under Section 53-10-602;

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(59) recorded Children's Justice Center investigative interviews, both video and audio, the release of which are governed by Section 77-37-4; ~~[and]~~

(60) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality[-];

(61) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section ~~{63J-4a-201}~~67-3a-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit; and

(62) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse.

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Section 5. Section **63I-2-263** is amended to read:

**63I-2-263. Repeal dates, Title 63A to Title 63M.**

(1) Subsection 63G-1-401(5) is repealed on May 10, 2011.

(2) Sections ~~{63J-4a-206}~~67-3a-206 and ~~{63J-4a-207}~~67-3a-207 are repealed on December 31, 2011.

Section 6. Section ~~{63J-4-202}~~67-3-1 is amended to read:

~~{63J-4-202. Appointment of director, state planning coordinator, and inspector general of Medicaid Services}~~67-3-1. Functions and duties.

(1) (a) The ~~{governor shall appoint, to serve at the governor's pleasure:~~

~~— (i) a director of the Governor's Office of Planning and Budget; and~~

~~— (ii) a state planning coordinator}~~state auditor is the auditor of public accounts and is independent of any executive or administrative officers of the state.

(b) The state ~~{planning coordinator is considered part of the office for purposes of administration:~~

~~— (2) The governor shall establish the director's salary within the salary range fixed by}~~auditor is not limited in the selection of personnel or in the determination of the reasonable and necessary expenses of the state auditor's office.

(2) The state auditor shall examine and certify annually in respect to each fiscal year, financial statements showing:

(a) the condition of the state's finances;

(b) the revenues received or accrued;

(c) expenditures paid or accrued;

(d) the amount of unexpended or unencumbered balances of the appropriations to the agencies, departments, divisions, commissions, and institutions; and

(e) the cash balances of the funds in the custody of the state treasurer.

(3) (a) The state auditor shall:

(i) audit each permanent fund, each special fund, the General Fund, and the accounts of any department of state government or any independent agency or public corporation as the law requires, as the auditor determines is necessary, or upon request of the governor or the Legislature~~{ in Title 67, Chapter 22, State Officer Compensation:~~

~~— (3) (a):~~

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(ii) perform the audits in accordance with generally accepted auditing standards and other auditing procedures as promulgated by recognized authoritative bodies;

(iii) as the auditor determines is necessary, conduct the audits to determine:

(A) honesty and integrity in fiscal affairs;

(B) accuracy and reliability of financial statements;

(C) effectiveness and adequacy of financial controls; and

(D) compliance with the law.

(b) If any state entity receives federal funding, the state auditor shall ensure that the audit is performed in accordance with federal audit requirements.

(c) (i) The costs of the federal compliance portion of the audit may be paid from an appropriation to the state auditor from the General Fund.

(ii) If an appropriation is not provided, or if the federal government does not specifically provide for payment of audit costs, the costs of the federal compliance portions of the audit shall be allocated on the basis of the percentage that each state entity's federal funding bears to the total federal funds received by the state.

(iii) The allocation shall be adjusted to reflect any reduced audit time required to audit funds passed through the state to local governments and to reflect any reduction in audit time obtained through the use of internal auditors working under the direction of the state auditor.

(4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to financial audits, and as the auditor determines is necessary, conduct performance and special purpose audits, examinations, and reviews of any entity that receives public funds, including a determination of any or all of the following:

(i) the honesty and integrity of all its fiscal affairs;

(ii) whether or not its administrators have faithfully complied with legislative intent;

(iii) whether or not its operations have been conducted in an efficient, effective, and cost-efficient manner;

(iv) whether or not its programs have been effective in accomplishing the intended objectives; and

(v) whether or not its management, control, and information systems are adequate and effective.

(b) The auditor may not conduct performance and special purpose audits,

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examinations, and reviews of any entity that receives public funds if the entity:

(i) has an elected auditor; and

(ii) has, within the entity's last budget year, had its financial statements or performance formally reviewed by another outside auditor.

(c) In accordance with Section ~~{63J-4a-201}~~ 67-3a-201, the governor shall appoint, with the advice and consent of the Senate, the inspector general of the Office of Inspector General ~~and~~ of Medicaid Services.

~~(b)~~(d) The Office of Inspector General ~~and~~ of Medicaid Services is considered part of the state auditor's office for purposes of administration.

(e) The Office of Inspector General of Medicaid Services may audit work performed by the state auditor before becoming the state auditor, if:

(i) the audit is permitted under Chapter 3a, Office of Inspector General of Medicaid Services;

(ii) the state auditor is screened from any involvement in, and any information or oversight related to, the audit; and

(iii) the inspector general reports directly to the governor in relation to the audit.

(5) The state auditor shall administer any oath or affirmation necessary to the performance of the duties of the auditor's office, and may subpoena witnesses and documents, whether electronic or otherwise, and examine into any matter that the auditor considers necessary.

(6) The state auditor may require all persons who have had the disposition or management of any property of this state or its political subdivisions to submit statements regarding it at the time and in the form that the auditor requires.

(7) The state auditor shall:

(a) except where otherwise provided by law, institute suits in Salt Lake County in relation to the assessment, collection, and payment of its revenues against:

(i) persons who by any means have become entrusted with public monies or property and have failed to pay over or deliver those monies or property; and

(ii) all debtors of the state;

(b) collect and pay into the state treasury all fees received by the state auditor;

(c) perform the duties of a member of all boards of which the state auditor is a member

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by the constitution or laws of the state, and any other duties that are prescribed by the constitution and by law:

(d) stop the payment of the salary of any state official or state employee who:

(i) refuses to settle accounts or provide required statements about the custody and disposition of public funds or other state property;

(ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling board or department head with respect to the manner of keeping prescribed accounts or funds;

or

(iii) fails to correct any delinquencies, improper procedures, and errors brought to the official's or employee's attention;

(e) establish accounting systems, methods, and forms for public accounts in all taxing or fee-assessing units of the state in the interest of uniformity, efficiency, and economy;

(f) superintend the contractual auditing of all state accounts;

(g) subject to Subsection (8), withhold state allocated funds or the disbursement of property taxes from any state taxing or fee-assessing unit, if necessary, to ensure that officials and employees in those taxing units of the state comply with state laws and procedures in the budgeting, expenditures, and financial reporting of public funds; and

(h) subject to Subsection (9), withhold the disbursement of tax monies from any county, if necessary, to ensure that officials and employees in the county comply with Section 59-2-303.1.

(8) Except as otherwise provided by law, the state auditor may not withhold funds under Subsection (7)(g) until a taxing or fee-assessing unit has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(9) The state auditor may not withhold funds under Subsection (7)(h) until a county has received formal written notice of noncompliance from the auditor and has been given 60 days to make the specified corrections.

(10) The state auditor shall:

(a) establish audit guidelines and procedures for audits of local mental health and substance abuse authorities and their contract providers, conducted pursuant to Title 17, Chapter 43, Parts 2, Local Substance Abuse Authorities and 3, Local Mental Health

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Authorities, Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, and Title 62A, Chapter 15, Substance Abuse and Mental Health Act; and

(b) ensure that those guidelines and procedures provide assurances to the state that:

(i) state and federal funds appropriated to local mental health authorities are used for mental health purposes;

(ii) a private provider under an annual or otherwise ongoing contract to provide comprehensive mental health programs or services for a local mental health authority is in compliance with state and local contract requirements, and state and federal law;

(iii) state and federal funds appropriated to local substance abuse authorities are used for substance abuse programs and services; and

(iv) a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for a local substance abuse authority is in compliance with state and local contract requirements, and state and federal law.

(11) The state auditor may, in accordance with the auditor's responsibilities for political subdivisions of the state as provided in Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or investigations of any political subdivision that are necessary to determine honesty and integrity in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of financial controls and compliance with the law.

(12) Except as provided in Subsection (4)(e):

~~(12)~~ (a) ~~[The]~~ the state auditor may not audit work that the state auditor performed before becoming state auditor~~[-];~~ and

(b) ~~[If]~~ if the state auditor has previously been a responsible official in state government whose work has not yet been audited, the Legislature shall:

(i) designate how that work shall be audited; and

(ii) provide additional funding for those audits, if necessary.

(13) The state auditor shall:

(a) with the assistance, advice, and recommendations of an advisory committee appointed by the state auditor from among local district boards of trustees, officers, and employees and special service district boards, officers, and employees:

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(i) prepare a Uniform Accounting Manual for Local Districts that:

(A) prescribes a uniform system of accounting and uniform budgeting and reporting procedures for local districts under Title 17B, Limited Purpose Local Government Entities - Local Districts, and special service districts under Title 17D, Chapter 1, Special Service District Act;

(B) conforms with generally accepted accounting principles; and

(C) prescribes reasonable exceptions and modifications for smaller districts to the uniform system of accounting, budgeting, and reporting;

(ii) maintain the manual under Subsection (13)(a) so that it continues to reflect generally accepted accounting principles;

(iii) conduct a continuing review and modification of procedures in order to improve them;

(iv) prepare and supply each district with suitable budget and reporting forms; and

(v) prepare instructional materials, conduct training programs, and render other services considered necessary to assist local districts and special service districts in implementing the uniform accounting, budgeting, and reporting procedures; and

(b) continually analyze and evaluate the accounting, budgeting, and reporting practices and experiences of specific local districts and special service districts selected by the state auditor and make the information available to all districts.

(14) (a) The following records in the custody or control of the state auditor are protected records under Title 63G, Chapter 2, Government Records Access and Management Act:

(i) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a past or present governmental employee if the information or allegation cannot be corroborated by the state auditor through other documents or evidence, and the records relating to the allegation are not relied upon by the state auditor in preparing a final audit report;

(ii) records and audit workpapers to the extent they would disclose the identity of a person who during the course of an audit, communicated the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity

## HB0084S03 compared with HB0084S02

of the United States, if the information was disclosed on the condition that the identity of the person be protected:

(iii) before an audit is completed and the final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for their response or information;

(iv) records that would disclose an outline or part of any audit survey plans or audit program; and

(v) requests for audits, if disclosure would risk circumvention of an audit.

(b) The provisions of Subsections (14)(a)(i), (ii), and (iii) do not prohibit the disclosure of records or information that relate to a violation of the law by a governmental entity or employee to a government prosecutor or peace officer.

(c) The provisions of this Subsection (14) do not limit the authority otherwise given to the state auditor to classify a document as public, private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

Section 7. Section ~~{63J-4a-101}~~67-3a-101 is enacted to read:

### CHAPTER ~~{4a}~~3a. OFFICE OF INSPECTOR GENERAL OF MEDICAID SERVICES

#### Part 1. General Provisions

~~{63J-4a-101}~~67-3a-101. Title.

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

Section 8. Section ~~{63J-4a-102}~~67-3a-102 is enacted to read:

~~{63J-4a-102}~~67-3a-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.

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(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~~ 67-3a-201.

(9) "Office" means the Office of Inspector General of Medicaid Services, created in Section ~~63J-4a-201~~ 67-3a-201.

(10) "Provider" means a person that provides:

(a) medical assistance, including supplies or services, in exchange, directly or

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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.

Section 9. Section ~~{63J-4a-201}~~67-3a-201 is enacted to read:

### Part 2. Office Duties and Powers

~~{63J-4a-201}~~67-3a-201. **Creation of office -- Inspector general -- Appointment --**

**Term.**

(1) There is created, within the ~~{Governor's}~~ Office of ~~{Planning and Budget}~~ the State Auditor, 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 ~~{specific}~~ type of methodology and controls necessary to audit, investigate, and identify ~~{Medicaid}~~ 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 ~~{, and}~~;

~~{~~ (vi) experience in making presentations to government officials.

~~}~~ (4) The inspector general:

(a) shall serve a term of six 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 six-year term.

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Section 10. Section ~~{63J-4a-202}~~67-3a-202 is enacted to read:

~~{63J-4a-202}~~67-3a-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, ~~with fairness and accuracy,~~ 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;

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- (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}~~67-3a-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 ~~{Inspector's}~~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}~~67-3a-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.

Section 11. Section ~~{63J-4a-203}~~67-3a-203 is enacted to read:

~~{63J-4a-203}~~67-3a-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 ~~{action}~~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

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fraud unit under the Government Records Access and Management Act.

Section 12. Section ~~{63J-4a-204}~~67-3a-204 is enacted to read:

~~{63J-4a-204}~~67-3a-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.

Section 13. Section ~~{63J-4a-205}~~67-3a-205 is enacted to read:

~~{63J-4a-205}~~67-3a-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.

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(7) The department and the division shall fully comply with a hold ordered under this section.

Section 14. Section ~~{63J-4a-206}~~67-3a-206 is enacted to read:

~~{63J-4a-206}~~67-3a-206. **Transfer of full-time equivalents to staff office.**

The office shall be staffed by transferring from the Office of Internal Audit and Program Integrity to the office all full-time equivalents for the following positions, as they existed and were organized within the Office of Internal Audit and Program Integrity on September 28, 2010, as shown in Appendix B of the Performance Audit of Utah Medicaid Provider Cost Control, dated December 2010 and published by the Office of the Legislative Auditor General:

- (1) the director of the Office of Internal Audit and Program Integrity;
- (2) the executive secretary to the director of the Office of Internal Audit and Program Integrity;
- (3) two positions of program manager of Program Integrity Post Payment Review;
- (4) all positions under the positions described in Subsection (~~{1}(c)3~~), including:
  - (a) four RN III positions;
  - (b) the position of RN III that was vacant on September 28, 2010;
  - (c) the position of office specialist I that was vacant on September 28, 2010;
  - (d) doctor (0.2 FTE);
  - (e) two positions of doctor (0.5 FTE each);
  - (f) data HPS III;
  - (g) the position of data HPS II that was vacant on September 28, 2010;
  - (h) collections HPS II;
  - (i) PERM Lead;
  - (j) PERM HPS II; and
  - (k) PERM HPS II;
- (5) the audit manager (performance audit); and
- (6) all positions under the position described in Subsection (5), including:
  - (a) two positions of Lead Auditor;
  - (b) two positions of Auditor II, including the one that was vacant on September 28, 2010; and

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(c) OIAS Support.

Section 15. Section ~~{63J-4a-207}~~67-3a-207 is enacted to read:

~~{63J-4a-207}~~67-3a-207. **Filling of transferred positions.**

The executive director of the department and the inspector general shall meet to determine which individuals, if any, who currently hold the positions represented by the full-time equivalents described in Section ~~{63J-4a-206}~~67-3a-206, will fill positions in the office. Any disagreement regarding transferring of personnel shall be resolved by the governor.

Section 16. Section ~~{63J-4a-301}~~67-3a-301 is enacted to read:

### **Part 3. Investigation or Audit**

~~{63J-4a-301}~~67-3a-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}~~67-3a-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

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### 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 ~~CFR~~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.

Section 17. Section ~~{63J-4a-302}~~67-3a-302 is enacted to read:

~~{63J-4a-302}~~67-3a-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}~~67-3a-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;

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(c) providing the records, described in Subsection ~~{63J-4a-301}~~67-3a-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.

Section 18. Section ~~{63J-4a-303}~~67-3a-303 is enacted to read:

~~{63J-4a-303}~~67-3a-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.

Section 19. Section ~~{63J-4a-304}~~67-3a-304 is enacted to read:

~~{63J-4a-304}~~67-3a-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.

Section 20. Section ~~{63J-4a-401}~~67-3a-401 is enacted to read:

### **Part 4. Subpoena Power**

~~{63J-4a-401}~~67-3a-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:

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(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.

Section 21. Section ~~{63J-4a-501}~~67-3a-501 is enacted to read:

### **Part 5. Reporting**

~~{63J-4a-501}~~67-3a-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

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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.

Section 22. Section ~~{63J-4a-502}~~67-3a-502 is enacted to read:

### ~~{63J-4a-502}~~67-3a-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}~~67-3a-202(1)(b) and Section ~~{63J-4a-204}~~67-3a-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.

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(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.

Section 23. Section ~~{63J-4a-601}~~67-3a-601 is enacted to read:

### **Part 6. Miscellaneous Provisions**

~~{63J-4a-601}~~67-3a-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.

Section 24. Section ~~67-3a-602~~ is enacted to read:

#### **67-3a-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 ~~67-3a-202(1)(p)~~;

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(4) auditing, inspecting, and evaluating the functioning of the division under Subsection 67-3a-202(1)(h):

(5) conducting an audit under Subsection 67-3a-202(1)(h) or (2); or

(6) ordering a hold on the payment of a claim for reimbursement under Section 67-3a-205.

### Section ~~{24}~~25. **Appropriation.**

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the following sums of money are appropriated from resources not otherwise appropriated out of the funds or accounts indicated for the fiscal year beginning July 1, 2011, and ending June 30, 2012. These are additions to amounts previously appropriated for fiscal year 2012.

<del>{}</del>	<u>Item 1 To Department of Health - Executive Director's Operations</u>	
<del>{}</del>	<u>From General Fund</u>	<u>\$(694,900)</u>
<del>{}</del>	<u>From Federal Fund</u>	<u>\$(1,037,000)</u>
<del>{}</del>	<u>From Revenue Transfers - Within Agency</u>	<u>\$(81,500)</u>
<del>{}</del>	<u>Schedule of Programs:</u>	
<del>{}</del>	<u>Internal Audit and Program Integrity</u>	<u>\$(1,813,400)</u>
<del>{}</del>	<u>Item 2 To Medicaid Mandatory Services</u>	
<del>{}</del>	<u>From General Fund</u>	<u>\$(300,000)</u>
<del>{}</del>	<u>From Federal Fund</u>	<u>\$(519,100)</u>
<del>{}</del>	<u>Schedule of Programs:</u>	
<del>{}</del>	<u>Other Mandatory Services</u>	<u>\$(819,100)</u>
	<u>Item 3 To Office of Inspector General of Medicaid Services</u>	
	<u>From General Fund</u>	<u>\$994,900</u>
	<u>From Federal Fund</u>	<u>\$1,556,100</u>
	<u>From Revenue Transfers - Health</u>	<u>\$81,500</u>
	<u>Schedule of Programs:</u>	
	<u>Office of Inspector General of Medicaid Services</u>	<u>\$2,632,500</u>

### Section ~~{25}~~26. **Effective date.**

This bill takes effect on July 1, 2011.