

Senator Curtis S. Bramble proposes the following substitute bill:

MEDICAID INSPECTOR GENERAL AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: Curtis S. Bramble

Cosponsor: James A. Dunnigan

LONG TITLE

General Description:

This bill changes the Office of Inspector General of Medicaid Services from within the Governor's Office of Planning and Budget to an independent entity within the Department of Administrative Services.

Highlighted Provisions:

This bill:

- ▶ moves the Office of Inspector General of Medicaid Services into the Department of Administrative Services as an independent entity within the department;
- ▶ provides for the appointment of the inspector general of Medicaid services by the governor with the advice and consent of the Senate;
- ▶ permits the removal of the inspector general by the governor for cause;
- ▶ preserves the term of the existing inspector general until December 31, 2014;
- ▶ establishes a four-year term of office for the inspector general of Medicaid services;
- ▶ requires the inspector general of Medicaid services to make recommendations to the Legislature and the governor;
- ▶ amends the duties and powers of the inspector general of Medicaid services;



- 25 ▶ amends the period of time in which the inspector general can review claims;
- 26 ▶ amends the manner in which the inspector general accesses records;
- 27 ▶ requires the Office of Inspector General of Medicaid Services to adopt
- 28 administrative rules to develop audit and investigation procedures;
- 29 ▶ requires the Office of Inspector General of Medicaid Services to educate health care
- 30 providers about the audit and investigation procedures;
- 31 ▶ makes technical and conforming amendments; and
- 32 ▶ includes uncodified language to transition the Office of Inspector General of
- 33 Medicaid Services out of the Governor's Office of Planning and Budget.

34 Money Appropriated in this Bill:

35 This bill appropriates for fiscal year 2012-13:

- 36 ▶ to the Governor's Office of Planning and Budget - Inspector General of Medicaid
- 37 Services:

- 38 • From the General Fund, (1,020,200)
- 39 • From Transfers, (1,962,600)
- 40 • From Pass-Through, 733,400
- 41 • From Beginning Nonlapsing Balances, (865,300)
- 42 • Schedule of Programs, Inspector General of Medicaid Services (\$3,114,700)

- 43 ▶ to the Department of Administrative Services - Office of Inspector General of
- 44 Medicaid Services:

- 45 • From General Fund, 1020,200
- 46 • From Transfers, 1,962,600
- 47 • From Pass-through (733,400)
- 48 • From Beginning Nonlapsing Balances, 865,300
- 49 • Schedule of Programs Inspector General of Medicaid Services \$3,114,700.

50 Other Special Clauses:

51 None

52 Utah Code Sections Affected:

53 AMENDS:

54 **58-37f-301**, as last amended by Laws of Utah 2012, Chapters 174 and 239

55 **63G-2-305**, as last amended by Laws of Utah 2012, Chapters 331 and 377

56 **63J-4-202**, as last amended by Laws of Utah 2011, Chapter 151

57 RENUMBERS AND AMENDS:

58 **63A-13-101**, (Renumbered from 63J-4a-101, as enacted by Laws of Utah 2011,
59 Chapters 151 and 151)

60 **63A-13-102**, (Renumbered from 63J-4a-102, as enacted by Laws of Utah 2011, Chapter
61 151)

62 **63A-13-201**, (Renumbered from 63J-4a-201, as enacted by Laws of Utah 2011, Chapter
63 151)

64 **63A-13-202**, (Renumbered from 63J-4a-202, as enacted by Laws of Utah 2011, Chapter
65 151)

66 **63A-13-203**, (Renumbered from 63J-4a-203, as enacted by Laws of Utah 2011, Chapter
67 151)

68 **63A-13-204**, (Renumbered from 63J-4a-204, as enacted by Laws of Utah 2011, Chapter
69 151)

70 **63A-13-205**, (Renumbered from 63J-4a-205, as enacted by Laws of Utah 2011, Chapter
71 151)

72 **63A-13-301**, (Renumbered from 63J-4a-301, as enacted by Laws of Utah 2011, Chapter
73 151)

74 **63A-13-302**, (Renumbered from 63J-4a-302, as enacted by Laws of Utah 2011, Chapter
75 151)

76 **63A-13-303**, (Renumbered from 63J-4a-303, as enacted by Laws of Utah 2011, Chapter
77 151)

78 **63A-13-304**, (Renumbered from 63J-4a-304, as enacted by Laws of Utah 2011, Chapter
79 151)

80 **63A-13-401**, (Renumbered from 63J-4a-401, as enacted by Laws of Utah 2011, Chapter
81 151)

82 **63A-13-501**, (Renumbered from 63J-4a-501, as enacted by Laws of Utah 2011, Chapter
83 151)

84 **63A-13-502**, (Renumbered from 63J-4a-502, as enacted by Laws of Utah 2011, Chapter
85 151)

86 **63A-13-601**, (Renumbered from 63J-4a-601, as enacted by Laws of Utah 2011, Chapter

87 151)

88 **63A-13-602**, (Renumbered from 63J-4a-602, as enacted by Laws of Utah 2011, Chapter

89 151)

90 ENACTS:

91 **63A-13-305**, Utah Code Annotated 1953

92 **Uncodified Material Affected:**

93 ENACTS UNCODIFIED MATERIAL



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

95 Section 1. Section **58-37f-301** is amended to read:

96 **58-37f-301. Access to database.**

97 (1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah

98 Administrative Rulemaking Act, to:

99 (a) effectively enforce the limitations on access to the database as described in this

100 part; and

101 (b) establish standards and procedures to ensure accurate identification of individuals

102 requesting information or receiving information without request from the database.

103 (2) The division shall make information in the database and information obtained from

104 other state or federal prescription monitoring programs by means of the database available only

105 to the following individuals, in accordance with the requirements of this chapter and division

106 rules:

107 (a) personnel of the division specifically assigned to conduct investigations related to

108 controlled substance laws under the jurisdiction of the division;

109 (b) authorized division personnel engaged in analysis of controlled substance

110 prescription information as a part of the assigned duties and responsibilities of their

111 employment;

112 (c) in accordance with a written agreement entered into with the department,

113 employees of the Department of Health:

114 (i) whom the director of the Department of Health assigns to conduct scientific studies

115 regarding the use or abuse of controlled substances, provided that the identity of the individuals

116 and pharmacies in the database are confidential and are not disclosed in any manner to any



118 individual who is not directly involved in the scientific studies; or
119 (ii) when the information is requested by the Department of Health in relation to a
120 person or provider whom the Department of Health suspects may be improperly obtaining or
121 providing a controlled substance;
122 (d) a licensed practitioner having authority to prescribe controlled substances, to the
123 extent the information:
124 (i) (A) relates specifically to a current or prospective patient of the practitioner; and
125 (B) is sought by the practitioner for the purpose of:
126 (I) prescribing or considering prescribing any controlled substance to the current or
127 prospective patient;
128 (II) diagnosing the current or prospective patient;
129 (III) providing medical treatment or medical advice to the current or prospective
130 patient; or
131 (IV) determining whether the current or prospective patient:
132 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;
133 or
134 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
135 substance from the practitioner;
136 (ii) (A) relates specifically to a former patient of the practitioner; and
137 (B) is sought by the practitioner for the purpose of determining whether the former
138 patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled
139 substance from the practitioner;
140 (iii) relates specifically to an individual who has access to the practitioner's Drug
141 Enforcement Administration identification number, and the practitioner suspects that the
142 individual may have used the practitioner's Drug Enforcement Administration identification
143 number to fraudulently acquire or prescribe a controlled substance;
144 (iv) relates to the practitioner's own prescribing practices, except when specifically
145 prohibited by the division by administrative rule;
146 (v) relates to the use of the controlled substance database by an employee of the
147 practitioner, described in Subsection (2)(e); or
148 (vi) relates to any use of the practitioner's Drug Enforcement Administration

149 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
150 controlled substance;

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

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

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

157 (iii) the division:

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

159 (B) provides the employee with a password that is unique to that employee to access
160 the database in order to permit the division to comply with the requirements of Subsection
161 58-37f-203(3)(b) with respect to the employee;

162 (f) an employee of the same business that employs a licensed practitioner under
163 Subsection (2)(d) if:

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

166 (ii) the practitioner and the employing business provide written notice to the division of
167 the identity of the designated employee; and

168 (iii) the division:

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

170 (B) provides the employee with a password that is unique to that employee to access
171 the database in order to permit the division to comply with the requirements of Subsection
172 58-37f-203(3)(b) with respect to the employee;

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

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

176 (ii) determining whether a person:

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

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

- 180 (h) federal, state, and local law enforcement authorities, and state and local
181 prosecutors, engaged as a specified duty of their employment in enforcing laws:
- 182 (i) regulating controlled substances;
 - 183 (ii) investigating insurance fraud, Medicaid fraud, or Medicare fraud; or
 - 184 (iii) providing information about a criminal defendant to defense counsel, upon request
185 during the discovery process, for the purpose of establishing a defense in a criminal case;
- 186 (i) employees of the Office of Internal Audit and Program Integrity within the
187 Department of Health who are engaged in their specified duty of ensuring Medicaid program
188 integrity under Section 26-18-2.3;
- 189 (j) a mental health therapist, if:
- 190 (i) the information relates to a patient who is:
 - 191 (A) enrolled in a licensed substance abuse treatment program; and
 - 192 (B) receiving treatment from, or under the direction of, the mental health therapist as
193 part of the patient's participation in the licensed substance abuse treatment program described
194 in Subsection (2)(j)(i)(A);
 - 195 (ii) the information is sought for the purpose of determining whether the patient is
196 using a controlled substance while the patient is enrolled in the licensed substance abuse
197 treatment program described in Subsection (2)(j)(i)(A); and
 - 198 (iii) the licensed substance abuse treatment program described in Subsection
199 (2)(j)(i)(A) is associated with a practitioner who:
 - 200 (A) is a physician, a physician assistant, an advance practice registered nurse, or a
201 pharmacist; and
 - 202 (B) is available to consult with the mental health therapist regarding the information
203 obtained by the mental health therapist, under this Subsection (2)(j), from the database;
 - 204 (k) an individual who is the recipient of a controlled substance prescription entered into
205 the database, upon providing evidence satisfactory to the division that the individual requesting
206 the information is in fact the individual about whom the data entry was made;
 - 207 (l) the inspector general, or a designee of the inspector general, of the Office of
208 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in
209 Title ~~[63J, Chapter 4a]~~ 63A, Chapter 13, Part 2, Office Duties and Powers; and
 - 210 (m) the following licensed physicians for the purpose of reviewing and offering an

211 opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter
212 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

213 (i) a member of the medical panel described in Section 34A-2-601; or

214 (ii) a physician offering a second opinion regarding treatment.

215 (3) (a) A practitioner described in Subsection (2)(d) may designate up to three
216 employees to access information from the database under Subsection (2)(e), (2)(f), or (4)(c).

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

219 (i) establish background check procedures to determine whether an employee
220 designated under Subsection (2)(e), (2)(f), or (4)(c) should be granted access to the database;
221 and

222 (ii) establish the information to be provided by an emergency room employee under
223 Subsection (4).

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

227 (4) (a) An individual who is employed in the emergency room of a hospital may
228 exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if
229 the individual is designated under Subsection (4)(c) and the licensed practitioner:

230 (i) is employed in the emergency room;

231 (ii) is treating an emergency room patient for an emergency medical condition; and

232 (iii) requests that an individual employed in the emergency room and designated under
233 Subsection (4)(c) obtain information regarding the patient from the database as needed in the
234 course of treatment.

235 (b) The emergency room employee obtaining information from the database shall,
236 when gaining access to the database, provide to the database the name and any additional
237 identifiers regarding the requesting practitioner as required by division administrative rule
238 established under Subsection (3)(b).

239 (c) An individual employed in the emergency room under this Subsection (4) may
240 obtain information from the database as provided in Subsection (4)(a) if:

241 (i) the employee is designated by the practitioner as an individual authorized to access

242 the information on behalf of the practitioner;

243 (ii) the practitioner and the hospital operating the emergency room provide written
244 notice to the division of the identity of the designated employee; and

245 (iii) the division:

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

247 (B) provides the employee with a password that is unique to that employee to access
248 the database in order to permit the division to comply with the requirements of Subsection
249 58-37f-203(3)(b) with respect to the employee.

250 (d) The division may impose a fee, in accordance with Section 63J-1-504, on a
251 practitioner who designates an employee under Subsection (2)(e), (2)(f), or (4)(c) to pay for the
252 costs incurred by the division to conduct the background check and make the determination
253 described in Subsection (3)(b).

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

257 (b) An individual who is granted access to the database based on the fact that the
258 individual is a designated employee of a licensed practitioner shall be denied access to the
259 database when the practitioner is no longer licensed.

260 Section 2. Section **63A-13-101**, which is renumbered from Section 63J-4a-101 is
261 renumbered and amended to read:

262 **CHAPTER 13. OFFICE OF INSPECTOR GENERAL OF MEDICAID SERVICES**

263 **Part 1. General Provisions**

264 ~~[63J-4a-101].~~ **63A-13-101. Title.**

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

266 Section 3. Section **63A-13-102**, which is renumbered from Section 63J-4a-102 is
267 renumbered and amended to read:

268 ~~[63J-4a-102].~~ **63A-13-102. Definitions.**

269 As used in this chapter:

270 (1) "Abuse" means:

271 (a) an action or practice that:

272 (i) is inconsistent with sound fiscal, business, or medical practices; and

- 273 (ii) results, or may result, in unnecessary Medicaid related costs; or
- 274 (b) reckless or negligent upcoding.
- 275 (2) "Claimant" means a person that:
- 276 (a) provides a service; and
- 277 (b) submits a claim for Medicaid reimbursement for the service.
- 278 (3) "Department" means the Department of Health, created in Section 26-1-4.
- 279 (4) "Division" means the Division of Health Care Financing, created in Section
- 280 26-18-2.1.
- 281 (5) "Fraud" means intentional or knowing:
- 282 (a) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs, a
- 283 claim, reimbursement, or services; or
- 284 (b) a violation of a provision of Subsections 26-20-3 through 26-20-7.
- 285 (6) "Fraud unit" means the Medicaid Fraud Control Unit of the attorney general's
- 286 office.
- 287 (7) "Health care professional" means a person licensed under:
- 288 (a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;
- 289 (b) Title 58, Chapter 16a, Utah Optometry Practice Act;
- 290 (c) Title 58, Chapter 17b, Pharmacy Practice Act;
- 291 (d) Title 58, Chapter 24b, Physical Therapy Practice Act;
- 292 (e) Title 58, Chapter 31b, Nurse Practice Act;
- 293 (f) Title 58, Chapter 40, Recreational Therapy Practice Act;
- 294 (g) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act;
- 295 (h) Title 58, Chapter 42a, Occupational Therapy Practice Act;
- 296 (i) Title 58, Chapter 44a, Nurse Midwife Practice Act;
- 297 (j) Title 58, Chapter 49, Dietitian Certification Act;
- 298 (k) Title 58, Chapter 60, Mental Health Professional Practice Act;
- 299 (l) Title 58, Chapter 67, Utah Medical Practice Act;
- 300 (m) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- 301 (n) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
- 302 (o) Title 58, Chapter 70a, Physician Assistant Act; and
- 303 (p) Title 58, Chapter 73, Chiropractic Physician Practice Act.

304 (8) "Inspector general" means the inspector general of the office, appointed under
305 Section ~~[63J-4a-201]~~ 63A-13-201.

306 (9) "Office" means the Office of Inspector General of Medicaid Services, created in
307 Section ~~[63J-4a-201]~~ 63A-13-201.

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

309 (a) medical assistance, including supplies or services, in exchange, directly or
310 indirectly, for Medicaid funds; or

311 (b) billing or recordkeeping services relating to Medicaid funds.

312 (11) "Upcoding" means assigning an inaccurate billing code for a service that is
313 payable or reimbursable by Medicaid funds, if the correct billing code for the service, taking
314 into account reasonable opinions derived from official published coding definitions, would
315 result in a lower Medicaid payment or reimbursement.

316 (12) "Waste" means overutilization of resources or inappropriate payment.

317 Section 4. Section **63A-13-201**, which is renumbered from Section 63J-4a-201 is
318 renumbered and amended to read:

319 **Part 2. Office and Powers**

320 ~~[63J-4a-201]~~. **63A-13-201. Creation of office -- Inspector general --**

321 **Appointment -- Term.**

322 (1) There is created~~[, within the Governor's Office of Planning and Budget, the]~~ an
323 independent entity within the Department of Administrative Services known as the "Office of
324 Inspector General of Medicaid Services."

325 (2) The governor shall appoint the inspector general~~[;]~~ of Medicaid services in
326 accordance with Subsection (5)(b), and with the advice and consent of the Senate.

327 (3) A person appointed as the inspector general shall:

328 (a) be a certified public accountant or a certified internal auditor; and

329 (b) have the following qualifications:

330 (i) a general knowledge of the type of methodology and controls necessary to audit,
331 investigate, and identify fraud, waste, and abuse;

332 (ii) strong management skills;

333 (iii) extensive knowledge of, and at least seven years experience with, performance
334 audit methodology;

335 (iv) the ability to oversee and execute an audit; and
336 (v) strong interpersonal skills.
337 (4) The inspector general of Medicaid services:
338 (a) shall, except as provided in Subsection (5), serve a term of [two] four years; and
339 (b) may be removed by the governor, for cause.
340 (5) (a) If the inspector general is removed for cause, a new inspector general shall be
341 appointed, with the advice and consent of the Senate, to serve [a two-year term:] the remainder
342 of the term of the inspector general of Medicaid services who was removed for cause.
343 (b) The term of office for the inspector general of Medicaid services in office on
344 January 1, 2013, shall end on December 31, 2014. The governor may appoint an inspector
345 general for a four-year term on January 1, 2015.
346 (6) The office of the inspector general for Medicaid services:
347 (a) is not under the supervision of, and does not take direction from, the executive
348 director;
349 (b) may:
350 (i) retain its own legal counsel for purposes of performing the duties under this chapter;
351 or
352 (ii) use the services of the state attorney general's office.
353 (c) shall submit a budget for the office directly to the governor;
354 (d) except as prohibited by federal law, is subject to:
355 (i) Title 51, Chapter 5, Funds Consolidation Act;
356 (ii) Title 51, Chapter 7, State Money Management Act;
357 (iii) Title 63A, Utah Administrative Services Code;
358 (iv) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
359 (v) Title 63G, Chapter 4, Administrative Procedures Act;
360 (vi) Title 63G, Chapter 6a, Utah Procurement Code;
361 (vii) Title 63J, Chapter 1, Budgetary Procedures Act;
362 (viii) Title 63J, Chapter 2, Revenue Procedures and Control Act;
363 (ix) Title 67, Chapter 19, Utah State Personnel Management Act;
364 (x) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;
365 (xi) Title 52, Chapter 4, Open and Public Meetings Act;

366 (xii) Title 63G, Chapter 2, Government Records Access and Management Act; and
367 (xiii) coverage under the Risk Management Fund created under Section 63A-4-201;
368 and

369 (d) when requested, shall provide reports to the governor, the president of the Senate,
370 or the speaker of the House.

371 Section 5. Section **63A-13-202**, which is renumbered from Section 63J-4a-202 is
372 renumbered and amended to read:

373 ~~[63J-4a-202].~~ **63A-13-202. Duties and powers of inspector general and**
374 **office.**

375 (1) The inspector general of Medicaid services shall:

376 (a) administer, direct, and manage the office;

377 (b) inspect and monitor the following in relation to the state Medicaid program:

378 (i) the use and expenditure of federal and state funds;

379 (ii) the provision of health benefits and other services;

380 (iii) implementation of, and compliance with, state and federal requirements; and

381 (iv) records and recordkeeping procedures;

382 (c) receive reports of potential fraud, waste, or abuse in the state Medicaid program;

383 (d) investigate and identify potential or actual fraud, waste, or abuse in the state

384 Medicaid program;

385 (e) consult with the Centers for Medicaid and Medicare Services and other states to
386 determine and implement best practices for:

387 (i) educating and communicating with health care professionals and providers about
388 program and audit policies and procedures;

389 (ii) discovering and eliminating fraud, waste, and abuse of Medicaid funds; and

390 (iii) differentiating between honest mistakes and intentional errors, or fraud, waste, and
391 abuse, if the office enters into settlement negotiations with the provider or health care

392 professional;

393 (f) obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse
394 in the state Medicaid program;

395 (g) work closely with the fraud unit to identify and recover improperly or fraudulently
396 expended Medicaid funds;

397 (h) audit, inspect, and evaluate the functioning of the division for the purpose of
398 making recommendations to the Legislature and the department to ensure that the state
399 Medicaid program is managed;

400 (i) in the most efficient and cost-effective manner possible; and

401 (ii) in a manner that promotes adequate provider and health care professional
402 participation and the provision of appropriate health benefits and services;

403 (i) regularly advise the department and the division of an action that should be taken to
404 ensure that the state Medicaid program is managed in the most efficient and cost-effective
405 manner possible;

406 (j) refer potential criminal conduct, relating to Medicaid funds or the state Medicaid
407 program, to the fraud unit;

408 (k) refer potential criminal conduct, including relevant data from the controlled
409 substance database, relating to Medicaid fraud, to law enforcement in accordance with Title 58,
410 Chapter 37f, Controlled Substance Database Act;

411 [~~(k)~~] (l) determine ways to:

412 (i) identify, prevent, and reduce fraud, waste, and abuse in the state Medicaid program;
413 and

414 (ii) [~~recoup costs;~~] balance efforts to reduce costs[;] and avoid or minimize increased
415 costs of the state Medicaid program with the need to encourage robust health care professional
416 and provider participation in the state Medicaid program;

417 [~~(l)~~ seek recovery of]

418 (m) recover improperly paid Medicaid funds;

419 [~~(m)~~] (n) track recovery of Medicaid funds by the state;

420 [~~(n)~~] (o) in accordance with Section [~~63J-4a-50†~~] 63A-13-502:

421 (i) report on the actions and findings of the inspector general; and

422 (ii) make recommendations to the Legislature and the governor;

423 [~~(o)~~] (p) provide training to:

424 (i) agencies and employees on identifying potential fraud, waste, or abuse of Medicaid
425 funds; and

426 (ii) health care professionals and providers on program and audit policies, procedures,
427 and compliance; and

428 ~~[(p)]~~ (q) develop and implement principles and standards for the fulfillment of the
429 duties of the inspector general, based on principles and standards used by:

- 430 (i) the Federal Offices of Inspector General;
431 (ii) the Association of Inspectors General; and
432 (iii) the United States Government Accountability Office.

433 (2) (a) The office may, in fulfilling the duties under Subsection (1), conduct a
434 performance or financial audit of:

435 ~~[(a)]~~ (i) a state executive branch entity or a local government entity, including an entity
436 described in ~~[Subsection 63J-4a-301(3)]~~ Section 63A-13-301, that:

437 ~~[(i)]~~ (A) manages or oversees a state Medicaid program; or

438 ~~[(i)]~~ (B) manages or oversees the use or expenditure of state or federal Medicaid
439 funds; or

440 ~~[(b)]~~ (ii) Medicaid funds received by a person by a grant from, or under contract with, a
441 state executive branch entity or a local government entity.

442 (b) (i) The office may not, in fulfilling the duties under Subsection (1), amend the state
443 Medicaid program or change the policies and procedures of the state Medicaid program.

444 (ii) The office shall identify conflicts between the state Medicaid plan, department
445 administrative rules, Medicaid provider manuals, and Medicaid information bulletins and
446 recommend that the department reconcile inconsistencies. If the department does not reconcile
447 the inconsistencies, the office shall report the inconsistencies to the Legislature's
448 Administrative Rules Review Committee created in Section 63G-3-501.

449 (iii) The office shall review a Medicaid provider manual and a Medicaid information
450 bulletin in accordance with Subsection (2)(b)(ii), prior to the department making the provider
451 manual or Medicaid information bulletin available to the public.

452 (c) The department shall submit a Medicaid provider manual and a Medicaid
453 information bulletin to the office for the review required by Subsection (2)(b)(ii) prior to
454 releasing the document to the public.

455 (3) (a) The office shall, in fulfilling the duties under this section to investigate,
456 discover, and recover fraud, waste, and abuse in the Medicaid program, apply the state
457 Medicaid plan, department administrative rules, Medicaid provider manuals, and Medicaid
458 information bulletins in effect at the time the medical services were provided.

459 **(b) A health care provider may rely on the policy interpretation included in a current**
460 **Medicaid information bulletin that is available to the public.**

461 ~~[(3)]~~ (4) The inspector general of Medicaid services, or a designee of the inspector
462 general of Medicaid services within the office, may take a sworn statement or administer an
463 oath.

464 Section 6. Section **63A-13-203**, which is renumbered from Section 63J-4a-203 is
465 renumbered and amended to read:

466 ~~**[63J-4a-203].**~~ **63A-13-203. Memorandum of understanding with fraud**
467 **unit.**

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

470 (1) formalize communication, cooperation, coordination of efforts, and the sharing of
471 information, on a regular basis, between the office and the fraud unit;

472 (2) provide for reporting criminal activity discovered by the office to the fraud unit;

473 (3) ensure that investigations and other actions by the office and the fraud unit do not
474 conflict; and

475 (4) provide for the sharing and classification of records between the office and the
476 fraud unit under the Government Records Access and Management Act.

477 Section 7. Section **63A-13-204**, which is renumbered from Section 63J-4a-204 is
478 renumbered and amended to read:

479 ~~**[63J-4a-204].**~~ **63A-13-204. Selection and review of claims.**

480 (1) (a) On an annual basis, the office shall select and review a representative sample of
481 claims submitted for reimbursement under the state Medicaid program to determine whether
482 fraud, waste, or abuse occurred.

483 (b) The office shall limit its review for waste and abuse under Subsection (1)(a) to 36
484 months prior to the date of the inception of the investigation or 72 months if there is a
485 creditable allegation of fraud.

486 (2) The office may directly contact the recipient of record for a Medicaid reimbursed
487 service to determine whether the service for which reimbursement was claimed was actually
488 provided to the recipient of record.

489 (3) The office shall generate statistics from the sample described in Subsection (1) to

490 determine the type of fraud, waste, or abuse that is most advantageous to focus on in future
491 audits or investigations.

492 Section 8. Section **63A-13-205**, which is renumbered from Section 63J-4a-205 is
493 renumbered and amended to read:

494 ~~[63J-4a-205].~~ **63A-13-205. Placement of hold on claims for reimbursement**
495 **-- Injunction.**

496 (1) The inspector general or the inspector general's designee may, without prior notice,
497 order a hold on the payment of a claim for reimbursement submitted by a claimant if there is
498 reasonable cause to believe that the claim, or payment of the claim, constitutes fraud, waste, or
499 abuse, or is otherwise inaccurate.

500 (2) The office shall, within seven days after the day on which a hold described in
501 Subsection (1) is ordered, notify the claimant that the hold has been placed.

502 (3) The inspector general or the inspector general's designee may not maintain a hold
503 longer than is necessary to determine whether the claim, or payment of the claim, constitutes
504 fraud, waste, or abuse, or is otherwise inaccurate.

505 (4) A claimant may, at any time during which a hold is in place, appeal the hold under
506 Title 63G, Chapter 4, Administrative Procedures Act.

507 (5) If a claim is approved or denied before a hearing is held under Title 63G, Chapter 4,
508 Administrative Procedures Act, the appeal shall be dismissed as moot.

509 (6) The inspector general may request that the attorney general's office seek an
510 injunction to prevent a person from disposing of an asset that is potentially subject to recovery
511 by the state to recover funds due to a person's fraud or abuse.

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

514 Section 9. Section **63A-13-301**, which is renumbered from Section 63J-4a-301 is
515 renumbered and amended to read:

516 **Part 3. Investigation or Audit**
517 ~~[63J-4a-301].~~ **63A-13-301. Access to records -- Retention of designation**
518 **under Government Records Access and Management Act.**

519 (1) In order to fulfill the duties described in Section ~~[63J-4a-202,]~~ 63A-13-202, and in
520 the manner provided in Subsection (4), the office shall have unrestricted access to all records of

521 state executive branch entities, all local government entities, and all providers relating, directly
522 or indirectly, to:

- 523 (a) the state Medicaid program;
- 524 (b) state or federal Medicaid funds;
- 525 (c) the provision of Medicaid related services;
- 526 (d) the regulation or management of any aspect of the state Medicaid program;
- 527 (e) the use or expenditure of state or federal Medicaid funds;
- 528 (f) suspected or proven fraud, waste, or abuse of state or federal Medicaid funds;
- 529 (g) Medicaid program policies, practices, and procedures;
- 530 (h) monitoring of Medicaid services or funds; or
- 531 (i) a fatality review of a person who received Medicaid funded services.

532 (2) The office shall have access to information in any database maintained by the state
533 or a local government to verify identity, income, employment status, or other factors that affect
534 eligibility for Medicaid services.

535 (3) The records described in Subsections (1) and (2) include records held or maintained
536 by the department, the division, the Department of Human Services, the Department of
537 Workforce Services, a local health department, a local mental health authority, or a school
538 district. The records described in Subsection (1) include records held or maintained by a
539 provider. When conducting an audit of a provider, the office shall, to the extent possible, limit
540 the records accessed to the scope of the audit.

541 (4) A record, described in Subsection (1) or (2), that is accessed or copied by the
542 office:

543 (a) may be reviewed or copied by the office during normal business hours~~[-and]~~,
544 unless otherwise requested by the provider or health care professional under Subsection (4)(b):

545 (b) unless there is a credible allegation of fraud, shall be accessed, reviewed, and
546 copied in a manner, on a day, and at a time that is minimally disruptive to the health care
547 professional's or provider's care of patients, as requested by the health care professional or
548 provider;

549 (c) may be submitted electronically;

550 (d) may be submitted together with other records for multiple claims; and

551 ~~[(b)]~~ (e) if it is a government record, shall retain the classification made by the entity

552 responsible for the record, under Title 63G, Chapter 2, Government Records Access and
553 Management Act.

554 (5) Notwithstanding any provision of state law to the contrary, the office shall have the
555 same access to all records, information, and databases [~~that~~] to which the department or the
556 division have access [~~to~~].

557 (6) The office shall comply with the requirements of federal law, including the Health
558 Insurance Portability and Accountability Act of 1996 and 42 C.F.R., Part 2, relating to [~~the~~
559 ~~confidentiality of alcohol and drug abuse records, in~~] the office's:

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

562 Section 10. Section **63A-13-302**, which is renumbered from Section 63J-4a-302 is
563 renumbered and amended to read:

564 [~~63J-4a-302~~]. **63A-13-302. Access to employees -- Cooperating with**
565 **investigation or audit.**

566 (1) The office shall have access to interview the following persons if the inspector
567 general determines that the interview may assist the inspector general in fulfilling the duties
568 described in Section [~~63J-4a-202~~] 63A-13-202:

- 569 (a) a state executive branch official, executive director, director, or employee;
570 (b) a local government official or employee;
571 (c) a consultant or contractor of a person described in Subsection (1)(a) or (b); or
572 (d) a provider or a health care professional or an employee of a provider or a health
573 care professional.

574 (2) A person described in Subsection (1) and each supervisor of the person shall fully
575 cooperate with the office by:

- 576 (a) providing the office or the inspector general's designee with access to interview the
577 person;
578 (b) completely and truthfully answering questions asked by the office or the inspector
579 general's designee;
580 (c) providing the records, described in Subsection [~~63J-4a-301(1)~~]; 63A-13-301(1), in
581 the manner described in Subsection 63A-13-301(4), requested by the office or the inspector
582 general's designee; and

583 (d) providing the office or the inspector general's designee with information relating to
584 the office's investigation or audit.

585 (3) A person described in Subsection (1)(a) or (b) and each supervisor of the person
586 shall fully cooperate with the office by:

587 (a) providing records requested by the office or the inspector general's designee in the
588 manner described in Subsection 63A-13-301(4); and

589 (b) providing the office or the inspector general's designee with information relating to
590 the office's investigation or audit, including information that is classified as private, controlled,
591 or protected under Title 63G, Chapter 2, Government Records Access and Management Act.

592 Section 11. Section **63A-13-303**, which is renumbered from Section 63J-4a-303 is
593 renumbered and amended to read:

594 ~~[63J-4a-303].~~ **63A-13-303. Cooperation and support.**

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

598 Section 12. Section **63A-13-304**, which is renumbered from Section 63J-4a-304 is
599 renumbered and amended to read:

600 ~~[63J-4a-304].~~ **63A-13-304. Interference with an investigation or audit**
601 **prohibited.**

602 No person may:

603 (1) interfere with or impede an investigation or audit of the office or fraud unit; or

604 (2) interfere with the office relative to the content of a report, the conclusions reached
605 in a report, or the manner of disclosing the results and findings of the office.

606 Section 13. Section **63A-13-305** is enacted to read:

607 **63A-13-305. Audit and investigation procedures.**

608 (1) (a) The office shall, in accordance with Section 63A-13-602, adopt administrative
609 rules in consultation with providers and health care professionals subject to audit and
610 investigation under this chapter to establish procedures for audits and investigations that are
611 fair and consistent with the duties of the office under this chapter.

612 (b) If the providers and health care professionals do not agree with the rules proposed
613 or adopted by the office under Subsection (1)(a) or Section 63A-13-602, the providers or health

614 care professionals may:

615 (i) request a hearing for the proposed administrative rule or seek any other remedies
616 under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

617 (ii) request a review of the rule by the Legislature's Administrative Rules Review
618 Committee created in Section 63G-3-501.

619 (2) The office shall notify and educate providers and health care professionals subject
620 to audit and investigation under this chapter of the providers' and health care professionals'
621 responsibilities and rights under the administrative rules adopted by the office under the
622 provisions of this section and Section 63A-13-602.

623 Section 14. Section **63A-13-401**, which is renumbered from Section 63J-4a-401 is
624 renumbered and amended to read:

625 **Part 4. Subpoena Power**

626 ~~[63J-4a-401].~~ **63A-13-401. Subpoena power -- Enforcement.**

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

630 (2) A person who fails to comply with a subpoena issued by the inspector general or
631 who refuses to testify regarding a matter upon which the person may be lawfully interrogated:

632 (a) is in contempt of the inspector general; and

633 (b) upon request by the inspector general, the attorney general shall:

634 (i) file a motion for an order to compel obedience to the subpoena with the district
635 court;

636 (ii) file, with the district court, a motion for an order to show cause why the penalties
637 established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person
638 named in the subpoena for contempt of the inspector general; or

639 (iii) pursue other legal remedies against the person.

640 (3) Upon receipt of a motion under Subsection (2), the court:

641 (a) shall expedite the hearing and decision on the motion; and

642 (b) may:

643 (i) order the person named in the subpoena to comply with the subpoena; and

644 (ii) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon

645 the person named in the subpoena for contempt of the inspector general.

646 (4) (a) If a subpoena described in this section requires the production of accounts,
647 books, papers, documents, or other tangible items, the person or entity to whom it is directed
648 may petition a district court to quash or modify the subpoena at or before the time specified in
649 the subpoena for compliance.

650 (b) The inspector general may respond to a motion to quash or modify the subpoena by
651 pursuing any remedy authorized by Subsection (3).

652 (c) If the court finds that a subpoena requiring the production of accounts, books,
653 papers, documents, or other tangible items is unreasonable or oppressive, the court may quash
654 or modify the subpoena.

655 (5) Nothing in this section prevents the inspector general from seeking an extraordinary
656 writ to remedy contempt of the inspector general.

657 (6) Any party aggrieved by a decision of a court under this section may appeal that
658 decision directly to the Utah Supreme Court.

659 Section 15. Section **63A-13-501**, which is renumbered from Section 63J-4a-501 is
660 renumbered and amended to read:

661 **Part 5. Reporting**

662 ~~[63J-4a-501].~~ **63A-13-501. Duty to report potential Medicaid fraud to the**
663 **office or fraud unit.**

664 (1) ~~[A]~~ (a) Except as provided in Subsection (1)(b), a health care professional, a
665 provider, or a state or local government official or employee who becomes aware of fraud,
666 waste, or abuse shall report the fraud, waste, or abuse to the office or the fraud unit.

667 (b) (i) The reporting exception in this Subsection (1)(b) does not apply to fraud and
668 abuse. Suspected fraud and abuse shall be reported in accordance with Subsection (1).

669 (ii) If a person described in Subsection (1)(a) reasonably believes that the suspected
670 waste is a mistake, and is not intentional or knowing, the person may first report the suspected
671 waste to the provider, health care professional, or compliance officer for the provider or health
672 care professional.

673 (iii) The person described in Subsection (1)(b) shall report the suspected waste to the
674 office or the fraud unit unless, within 30 days after the day on which the person reported the
675 suspected waste to the provider, health care professional, or compliance officer, the provider,

676 health care professional, or compliance officer demonstrates to the person that the suspected
 677 waste has been corrected.

678 (2) A person who makes a report under Subsection (1) may request that the person's
 679 name not be released in connection with the investigation.

680 (3) If a request is made under Subsection (2), the person's identity may not be released
 681 to any person or entity other than the office, the fraud unit, or law enforcement, unless a court
 682 of competent jurisdiction orders that the person's identity be released.

683 Section 16. Section **63A-13-502**, which is renumbered from Section 63J-4a-502 is
 684 renumbered and amended to read:

685 ~~[63J-4a-502]~~. **63A-13-502. Report and recommendations to governor and**
 686 **Executive Appropriations Committee.**

687 (1) The inspector general of Medicaid services shall, on an annual basis, prepare a
 688 written report on the activities of the office for the preceding fiscal year.

689 (2) The report shall include:

690 (a) non-identifying information, including statistical information, on:

691 (i) the items described in Subsection ~~[63J-4a-202(1)(b) and Section 63J-4a-204]~~
 692 63A-13-202(1)(b) and Section 63A-13-204;

693 (ii) action taken by the office and the result of that action;

694 (iii) fraud, waste, and abuse in the state Medicaid program;

695 (iv) the recovery of fraudulent or improper use of state and federal Medicaid funds;

696 (v) measures taken by the state to discover and reduce fraud, waste, and abuse in the
 697 state Medicaid program;

698 (vi) audits conducted by the office; ~~[and]~~

699 (vii) investigations conducted by the office and the results of those investigations; and

700 (viii) administrative and educational efforts made by the office and the division to
 701 improve compliance with Medicaid program policies and requirements;

702 (b) recommendations on action that should be taken by the Legislature or the governor
 703 to:

704 (i) improve the discovery and reduction of fraud, waste, and abuse in the state
 705 Medicaid program;

706 (ii) improve the recovery of fraudulently or improperly used Medicaid funds; and

707 (iii) reduce costs and avoid or minimize increased costs in the state Medicaid program;
708 (c) recommendations relating to rules, policies, or procedures of a state or local
709 government entity; and

710 (d) services provided by the state Medicaid program that exceed industry standards.

711 (3) The report described in Subsection (1) may not include any information that would
712 interfere with or jeopardize an ongoing criminal investigation or other investigation.

713 (4) ~~[The inspector general]~~ On or before October 1 of each year, the inspector general
714 of Medicaid services shall provide the report described in Subsection (1) to the Executive
715 Appropriations Committee of the Legislature and to the governor on or before October 1 of
716 each year.

717 (5) The inspector general of Medicaid services shall present the report described in
718 Subsection (1) to the Executive Appropriations Committee of the Legislature before November
719 30 of each year.

720 Section 17. Section **63A-13-601**, which is renumbered from Section 63J-4a-601 is
721 renumbered and amended to read:

722 **Part 6. Miscellaneous Provisions**

723 ~~[63J-4a-601].~~ **63A-13-601. Provision of contract services to Office of**
724 **Inspector General of Medicaid Services.**

725 (1) The division and the assistant attorneys general assigned to the division shall
726 provide, without charge, contract review, contract enforcement, and other contract management
727 services to the office.

728 (2) The division shall ensure that the services described in Subsection (1) are provided
729 in an expeditious manner.

730 (3) The attorney general shall designate one of the assistant attorneys general assigned
731 to the division to give first priority to providing the services described in Subsection (1) to the
732 office.

733 (4) The office and the division shall enter into a memorandum of understanding in
734 order to execute the requirements of this section in an effective and efficient manner.

735 Section 18. Section **63A-13-602**, which is renumbered from Section 63J-4a-602 is
736 renumbered and amended to read:

737 ~~[63J-4a-602].~~ **63A-13-602. Rulemaking authority.**

738 The office may make rules, pursuant to Title 63G, Chapter 3, Utah Administrative
739 Rulemaking Act, and Section 63A-13-305, that establish policies, procedures, and practices, in
740 accordance with the provisions of this chapter, relating to:

- 741 (1) inspecting and monitoring the state Medicaid Program;
- 742 (2) discovering and investigating potential fraud, waste, or abuse in the State Medicaid
743 program;
- 744 (3) developing and implementing the principles and standards described in Subsection
745 [~~63J-4a-202(1)(p)~~] 63A-13-202(1)(q);
- 746 (4) auditing, inspecting, and evaluating the functioning of the division under
747 Subsection [~~63J-4a-202(1)(h)~~] 63A-13-202(1)(h);
- 748 (5) conducting an audit under Subsection [~~63J-4a-202(1)(h)~~] 63A-13-202(1)(h) or (2);
749 or
- 750 (6) ordering a hold on the payment of a claim for reimbursement under Section
751 [~~63J-4a-205~~] 63A-13-205.

752 Section 19. Section **63G-2-305** is amended to read:

753 **63G-2-305. Protected records.**

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

- 755 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
756 has provided the governmental entity with the information specified in Section 63G-2-309;
- 757 (2) commercial information or nonindividual financial information obtained from a
758 person if:
- 759 (a) disclosure of the information could reasonably be expected to result in unfair
760 competitive injury to the person submitting the information or would impair the ability of the
761 governmental entity to obtain necessary information in the future;
- 762 (b) the person submitting the information has a greater interest in prohibiting access
763 than the public in obtaining access; and
- 764 (c) the person submitting the information has provided the governmental entity with
765 the information specified in Section 63G-2-309;
- 766 (3) commercial or financial information acquired or prepared by a governmental entity
767 to the extent that disclosure would lead to financial speculations in currencies, securities, or
768 commodities that will interfere with a planned transaction by the governmental entity or cause

769 substantial financial injury to the governmental entity or state economy;

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

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

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

781 (a) a request for bids;

782 (b) a request for proposals;

783 (c) a grant; or

784 (d) other similar document;

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

788 (a) public interest in obtaining access to the information is greater than or equal to the
789 governmental entity's need to acquire the property on the best terms possible;

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

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

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

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

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

804 (a) the public interest in access is greater than or equal to the interests in restricting
805 access, including the governmental entity's interest in maximizing the financial benefit of the
806 transaction; or

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

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

813 (a) reasonably could be expected to interfere with investigations undertaken for
814 enforcement, discipline, licensing, certification, or registration purposes;

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

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

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

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

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

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

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

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

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

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

844 (16) records that are subject to the attorney client privilege;

845 (17) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
846 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
847 quasi-judicial, or administrative proceeding;

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

850 (ii) notwithstanding Subsection (18)(a)(i), correspondence that gives notice of
851 legislative action or policy may not be classified as protected under this section; and

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

854 (A) members of a legislative body;

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

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

857 (ii) notwithstanding Subsection (18)(b)(i), a communication that gives notice of
858 legislative action or policy may not be classified as protected under this section;

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

862 legislation or course of action, or made the legislation or course of action public; and
863 (b) notwithstanding Subsection (19)(a), the form to request legislation submitted to the
864 Office of Legislative Research and General Counsel is a public document unless a legislator
865 asks that the records requesting the legislation be maintained as protected records until such
866 time as the legislator elects to make the legislation or course of action public;

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

870 (21) drafts, unless otherwise classified as public;

871 (22) records concerning a governmental entity's strategy about:

872 (a) collective bargaining; or
873 (b) imminent or pending litigation;

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

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

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

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

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

891 (28) records of the governor's office, including budget recommendations, legislative
892 proposals, and policy statements, that if disclosed would reveal the governor's contemplated

893 policies or contemplated courses of action before the governor has implemented or rejected
894 those policies or courses of action or made them public;

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

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

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

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

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

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

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

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

922 (a) the donor requests anonymity in writing;

923 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be

924 classified protected by the governmental entity under this Subsection (36); and

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

930 (37) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
931 73-18-13;

932 (38) a notification of workers' compensation insurance coverage described in Section
933 34A-2-205;

934 (39) (a) the following records of an institution within the state system of higher
935 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
936 or received by or on behalf of faculty, staff, employees, or students of the institution:

937 (i) unpublished lecture notes;

938 (ii) unpublished notes, data, and information:

939 (A) relating to research; and

940 (B) of:

941 (I) the institution within the state system of higher education defined in Section
942 53B-1-102; or

943 (II) a sponsor of sponsored research;

944 (iii) unpublished manuscripts;

945 (iv) creative works in process;

946 (v) scholarly correspondence; and

947 (vi) confidential information contained in research proposals;

948 (b) Subsection (39)(a) may not be construed to prohibit disclosure of public
949 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

950 (c) Subsection (39)(a) may not be construed to affect the ownership of a record;

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

954 (b) notwithstanding Subsection (40)(a), a request for a legislative audit submitted to the

955 Office of the Legislative Auditor General is a public document unless the legislator asks that
956 the records in the custody or control of the Office of Legislative Auditor General that would
957 reveal the name of a particular legislator who requests a legislative audit be maintained as
958 protected records until the audit is completed and made public;

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

961 (a) a production facility; or

962 (b) a magazine;

963 (42) information:

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

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

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

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

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

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

977 (47) except to the extent that the record is exempt from this chapter pursuant to Section
978 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or
979 prepared or maintained by the Division of Emergency Management, and the disclosure of
980 which would jeopardize:

981 (a) the safety of the general public; or

982 (b) the security of:

983 (i) governmental property;

984 (ii) governmental programs; or

985 (iii) the property of a private person who provides the Division of Emergency

986 Management information;

987 (48) records of the Department of Agriculture and Food that provides for the
988 identification, tracing, or control of livestock diseases, including any program established under
989 Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Control of
990 Animal Disease;

991 (49) as provided in Section 26-39-501:

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

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

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

1000 (a) the individual is required to provide the information in order to comply with a law,
1001 ordinance, rule, or order of a government entity; and

1002 (b) the subject of the record has a reasonable expectation that this information will be
1003 kept confidential due to:

1004 (i) the nature of the law, ordinance, rule, or order; and

1005 (ii) the individual complying with the law, ordinance, rule, or order;

1006 (51) the name, home address, work addresses, and telephone numbers of an individual
1007 that is engaged in, or that provides goods or services for, medical or scientific research that is:

1008 (a) conducted within the state system of higher education, as defined in Section
1009 53B-1-102; and

1010 (b) conducted using animals;

1011 (52) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
1012 Private Proposal Program, to the extent not made public by rules made under that chapter;

1013 (53) in accordance with Section 78A-12-203, any record of the Judicial Performance
1014 Evaluation Commission concerning an individual commissioner's vote on whether or not to
1015 recommend that the voters retain a judge;

1016 (54) information collected and a report prepared by the Judicial Performance

1017 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
1018 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
1019 the information or report;

1020 (55) records contained in the Management Information System created in Section
1021 62A-4a-1003;

1022 (56) records provided or received by the Public Lands Policy Coordinating Office in
1023 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

1024 (57) information requested by and provided to the Utah State 911 Committee under
1025 Section 53-10-602;

1026 (58) recorded Children's Justice Center investigative interviews, both video and audio,
1027 the release of which are governed by Section 77-37-4;

1028 (59) in accordance with Section 73-10-33:

1029 (a) a management plan for a water conveyance facility in the possession of the Division
1030 of Water Resources or the Board of Water Resources; or

1031 (b) an outline of an emergency response plan in possession of the state or a county or
1032 municipality;

1033 (60) the following records in the custody or control of the Office of Inspector General
1034 of Medicaid Services, created in Section [~~63J-4a-201~~] 63A-13-201:

1035 (a) records that would disclose information relating to allegations of personal
1036 misconduct, gross mismanagement, or illegal activity of a person if the information or
1037 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
1038 through other documents or evidence, and the records relating to the allegation are not relied
1039 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
1040 report or final audit report;

1041 (b) records and audit workpapers to the extent they would disclose the identity of a
1042 person who, during the course of an investigation or audit, communicated the existence of any
1043 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
1044 regulation adopted under the laws of this state, a political subdivision of the state, or any
1045 recognized entity of the United States, if the information was disclosed on the condition that
1046 the identity of the person be protected;

1047 (c) before the time that an investigation or audit is completed and the final

1048 investigation or final audit report is released, records or drafts circulated to a person who is not
1049 an employee or head of a governmental entity for the person's response or information;

1050 (d) records that would disclose an outline or part of any investigation, audit survey
1051 plan, or audit program; or

1052 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
1053 investigation or audit;

1054 (61) records that reveal methods used by the Office of Inspector General of Medicaid
1055 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or
1056 abuse;

1057 (62) information provided to the Department of Health or the Division of Occupational
1058 and Professional Licensing under Subsection 58-68-304(3) or (4); and

1059 (63) a record described in Section 63G-12-210.

1060 Section 20. Section **63J-4-202** is amended to read:

1061 **63J-4-202. Appointment of director and state planning coordinator.**

1062 (1) (a) The governor shall appoint, to serve at the governor's pleasure:

1063 (i) a director of the Governor's Office of Planning and Budget; and

1064 (ii) a state planning coordinator.

1065 (b) The state planning coordinator is considered part of the office for purposes of
1066 administration.

1067 (2) The governor shall establish the director's salary within the salary range fixed by
1068 the Legislature in Title 67, Chapter 22, State Officer Compensation.

1069 ~~[(3) (a) In accordance with Section 63J-4a-201, the governor shall appoint, with the
1070 advice and consent of the Senate, the inspector general of the Office of Inspector General of
1071 Medicaid Services.]~~

1072 ~~[(b) The Office of Inspector General of Medicaid Services is considered part of the
1073 office for purposes of administration.]~~

1074 Section 21. **Transition of Office of Inspector General of Medicaid Services to the
1075 Department of Administrative Services.**

1076 (1) The inspector general for Medicaid services in office on January 1, 2103, shall
1077 serve as the transition director for the transition of the office of the inspector general of
1078 medicaid services into the Department of Administrative Services and shall transition the office

1079 of the inspector general of Medicaid services into the Department of Administrative Services
1080 on or before July 1, 2013.

1081 (2) Notwithstanding the provisions of Subsection 63J-1-206, all records, personnel,
1082 property, equipment, grants, unexpended and unexpired balances of appropriations, allocations,
1083 and other funds used, held, employed, available, or to be made available to the office of the
1084 inspector general within the Governor's Office of Planning and Budget for the activities,
1085 powers, duties, functions, and responsibilities transferred to the office of the inspector general
1086 of Medicaid Services within the Department of Administrative Services by this bill shall
1087 transfer to the office of the inspector general of Medicaid Services within the Department of
1088 Administrative Services.

1089 (3) The transition director shall administer the functions of this bill in a manner that
1090 promotes efficient administration and shall make internal organizational changes as necessary
1091 to complete the realignment of responsibilities required by this bill.

1092 (4) The transition director and other individuals designated by the governor may
1093 request the assistance of any executive branch agency with respect to personnel, budgeting,
1094 procurement, information systems, and other management related functions, and the executive
1095 branch agency shall provide the requested assistance.

1096 (5) All rules, orders, contracts, grants, and agreements relating to the functions of the
1097 office of the inspector general of Medicaid services lawfully adopted prior to the effective date
1098 of this bill by the responsible state executive branch agency shall continue to be effective until
1099 revised, amended, or rescinded.

1100 (6) Any suit, action, or other proceeding lawfully commenced by, against, or before
1101 any entity affected by this chapter shall not abate by reason of this bill.

1102 (7) This uncodified section "Transition of Inspector General of Medicaid Services" is
1103 repealed on July 1, 2014.

1104 **Section 22. Appropriation.**

1105 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for
1106 the fiscal year beginning July 1, 2012, and ending June 30, 2013, the following sums of money
1107 are appropriated from resources not otherwise appropriated, or reduced from amounts
1108 previously appropriated, out of the funds or accounts indicated. These sums of money are in
1109 addition to any amounts previously appropriated for fiscal year 2013.

1110	<u>To Governor's Office of Planning and Budget - Inspector General of Medicaid Services</u>	
1111	<u>From General Fund</u>	<u>(1,020,200)</u>
1112	<u>From Transfers</u>	<u>(1,962,600)</u>
1113	<u>From Pass-through</u>	<u>733,400</u>
1114	<u>From Beginning Nonlapsing Balances</u>	<u>(865,300)</u>
1115	<u>Schedule of Programs</u>	
1116	<u>Inspector General of Medicaid Services</u>	<u>(\$3,114,700)</u>
1117	<u>The Legislature intends that the Division of Finance transfer unexpended appropriations</u>	
1118	<u>and balances of appropriations, up to the amounts shown above, from the Governor's Office of</u>	
1119	<u>Planning and Budget to the Department of Administrative Services for fiscal year 2013.</u>	
1120	<u>To Department of Administrative Services - Inspector General of Medicaid Services</u>	
1121	<u>From General Fund</u>	<u>1,020,200</u>
1122	<u>From Transfers</u>	<u>1,962,600</u>
1123	<u>From Pass-through</u>	<u>(733,400)</u>
1124	<u>From Beginning Nonlapsing Balances</u>	<u>865,300</u>
1125	<u>Schedule of Programs</u>	
1126	<u>Inspector General of Medicaid Services</u>	<u>\$3,114,700</u>
1127	<u>The Legislature intends that the Division of Finance transfer unexpended appropriations</u>	
1128	<u>and balances of appropriations, up to the amounts shown above, from the Governor's Office of</u>	
1129	<u>Planning and Budget to the Department of Administrative Services for fiscal year 2013.</u>	