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H.B. 315
2nd Sub. (Gray)

Senator Stephen H. Urquhart proposes the following substitute bill:

OFFICE OF INSPECTOR GENERAL OF MEDICAID SERVICES AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill amends budgeting related to the Office of Inspector General of Medicaid Services.

Highlighted Provisions:

This bill:

- amends the duties and powers of the inspector general;
- amends the period of time in which the inspector general can review claims for waste and abuse;
- amends the manner in which the inspector general accesses records;
- establishes the application of Medicaid policy when there is inconsistency between the state Medicaid plan, administrative rules, and department information bulletins;
- requires the Office of Inspector General of Medicaid Services to adopt administrative rules in consultation with health care providers to develop audit and investigation procedures;
- requires the Office of Inspector General of Medicaid Services to educate health care providers about the audit and investigation procedures; and
- amends the reporting requirements to the Legislature.

2nd Sub. H.B. 315

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63J-4a-202, as enacted by Laws of Utah 2011, Chapter 151

63J-4a-204, as enacted by Laws of Utah 2011, Chapter 151

63J-4a-301, as enacted by Laws of Utah 2011, Chapter 151

63J-4a-302, as enacted by Laws of Utah 2011, Chapter 151

63J-4a-501, as enacted by Laws of Utah 2011, Chapter 151

63J-4a-502, as enacted by Laws of Utah 2011, Chapter 151

63J-4a-602, as enacted by Laws of Utah 2011, Chapter 151

ENACTS:

63J-4a-305, Utah Code Annotated 1953

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

Section 1. Section **63J-4a-202** is amended to read:

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

(1) The inspector general shall:

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

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

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

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

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

(iv) records and recordkeeping procedures;

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

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

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

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

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

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

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

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

(h) audit, inspect, and evaluate the functioning of the division [~~to~~] for the purpose of making recommendations to the Legislature and the department to ensure that the state Medicaid program is managed:

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

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

(i) regularly advise the department and the division of an action that [~~should~~] could 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) refer potential criminal conduct, including relevant data from the controlled substance database, relating to Medicaid fraud, to law enforcement in accordance with Title 58, Chapter 37f, Controlled Substance Database Act;

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

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

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

[~~(l)~~] (m) [~~seek recovery of~~] recover improperly paid Medicaid funds;

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

[~~(n)~~] (o) in accordance with Section [~~63J-4a-501~~] 63J-4a-502:

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

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

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

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

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

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

(i) the Federal Offices of Inspector General;

(ii) the Association of Inspectors General; and

(iii) the United States Government Accountability Office.

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

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

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

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

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

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

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

(iii) Beginning July 1, 2013, the office shall review a Medicaid provider manual and a

Medicaid information bulletin in accordance with Subsection (2)(b)(ii), prior to the department making the provider manual or Medicaid information bulletin available to the public.

(c) Beginning July 1, 2013, the Department of Health shall submit a Medicaid provider manual and a Medicaid information bulletin to the office for the review required by Subsection (2)(b)(ii) prior to releasing the document to the public.

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

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

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

Section 2. Section **63J-4a-204** is amended to read:

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

(1) (a) 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.

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

(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 3. Section **63J-4a-301** is amended to read:

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

(1) In order to fulfill the duties described in Section 63J-4a-202, and in the manner

provided in Subsection (4), the office shall have unrestricted access to all records of state executive branch entities, all local government entities, and all providers relating, directly or indirectly, to:

(a) the state Medicaid program;

(b) state or federal Medicaid funds;

(c) the provision of Medicaid related services;

(d) the regulation or management of any aspect of the state Medicaid program;

(e) the use or expenditure of state or federal Medicaid funds;

(f) suspected or proven fraud, waste, or abuse of state or federal Medicaid funds;

(g) Medicaid program policies, practices, and procedures;

(h) monitoring of Medicaid services or funds; or

(i) a fatality review of a person who received Medicaid funded services.

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

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

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

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

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

(c) may be submitted electronically;

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

[~~(b)~~] (e) 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~~] to which the department or the division have access [~~to~~].

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

(a) access, review, retention, and use of records; and

(b) use of information included in, or derived from, records.

Section 4. Section **63J-4a-302** is amended to read:

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

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

(a) a state executive branch official, executive director, director, or employee;

(b) a local government official or employee;

(c) a consultant or contractor of a person described in Subsection (1)(a) or (b); or

(d) a provider or a health care professional or an employee of a provider or a health care professional.

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

(a) providing the office or the inspector general's designee with access to interview the person;

(b) completely and truthfully answering questions asked by the office or the inspector general's designee;

(c) providing the records, described in Subsection 63J-4a-301(1), in the manner described in Subsection 63J-4a-301(4), 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 in the manner described in Subsection 63J-4a-301(4); 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 5. Section **63J-4a-305** is enacted to read:

63J-4a-305. Audit and investigation procedures.

(1) (a) The office shall, in accordance with Section 63J-4a-602, adopt administrative rules in consultation with providers and health care professionals subject to audit and investigation under this chapter to establish procedures for audits and investigations that are fair and consistent with the duties of the office under this chapter.

(b) If the providers and health care professionals do not agree with the rules proposed or adopted by the office under Subsection (1)(a) or Section 63J-4a-602, the providers or health care professionals may:

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

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

(2) The office shall notify and educate providers and health care professionals subject to audit and investigation under this chapter of the providers' and health care professionals' responsibilities and rights under the administrative rules adopted by the office under the provisions of this section and Section 63J-4a-602.

Section 6. Section **63J-4a-501** is amended to read:

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

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

(b) (i) The reporting exception in this Subsection (1)(b) does not apply to fraud and

abuse.

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

(iii) The person described in Subsection (1)(b)(ii) shall report the suspected waste to the office or the fraud unit unless, within 30 days after the day on which the person reported the suspected waste to the provider, health care professional, or compliance officer, the provider, health care professional, or compliance officer demonstrates to the person that the waste has been corrected.

(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 7. Section **63J-4a-502** is amended to read:

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

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

(2) The report shall include:

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

(i) the items described in Subsection 63J-4a-202(1)(b) and Section 63J-4a-204;

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

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

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

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

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

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

(viii) administrative and educational efforts made by the office and the division to

improve compliance with Medicaid program policies and requirements;

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

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

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

(iii) reduce costs and avoid or minimize increased costs in the state Medicaid program;

(c) recommendations relating to rules, policies, or procedures of a state or local government entity; and

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

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

(4) The inspector general shall provide the report described in Subsection (1) to the Executive Appropriations Committee of the Legislature and to the governor on or before October 1 of each year.

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

Section 8. Section **63J-4a-602** is amended to read:

63J-4a-602. Rulemaking authority.

The office may make rules, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and Section 63J-4a-305, that establish policies, procedures, and practices, in accordance with the provisions of this chapter, relating to:

(1) inspecting and monitoring the state Medicaid Program;

(2) discovering and investigating potential fraud, waste, or abuse in the State Medicaid program;

(3) developing and implementing the principles and standards described in Subsection 63J-4a-202(1)[~~(p)~~](q);

(4) auditing, inspecting, and evaluating the functioning of the division under Subsection 63J-4a-202(1)(h);

(5) conducting an audit under Subsection 63J-4a-202(1)(h) or (2); or

(6) ordering a hold on the payment of a claim for reimbursement under Section

63J-4a-205.