

Representative David Clark proposes the following substitute bill:

**OFFICE OF INSPECTOR GENERAL OF MEDICAID
SERVICES**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Clark

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill creates, within the governor's office, the Office of Inspector General of Medicaid Services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates, within the Governor's Office of Planning and Budget, the Office of Inspector General of Medicaid Services (office);
- ▶ describes and provides for the qualifications, appointment, term of office, and removal of the Inspector General of Medicaid Services (inspector general);
- ▶ describes the duties and powers of the inspector general and the office;
- ▶ requires the inspector general to enter into a memorandum of understanding with the Medicaid Fraud Control Unit of the attorney general's office (fraud unit);
- ▶ requires the office to annually select and review a representative sample of claims submitted for reimbursement under the state Medicaid program to determine whether fraud, waste, or abuse occurred;
- ▶ provides for the transfer of FTEs from the Department of Health to the Governor's



26 Office of Planning and Budget to staff the office;

27 ▶ establishes a process where the inspector general can order a hold on the payment of
28 a claim for reimbursement submitted by a claimant if there is reasonable cause to
29 believe that the claim, or payment of the claim, constitutes fraud, waste, or abuse, or
30 is otherwise inaccurate;

31 ▶ grants the office full access to records and employees when investigating or auditing
32 the use or expenditure of Medicaid funds or the provision of services;

33 ▶ grants the office access to the Controlled Substance Database and to all records,
34 information, and databases that the Department of Health and the Division of Health
35 Care Financing have access to;

36 ▶ requires the Department of Health, the Division of Health Care Financing, and
37 others to fully cooperate with and support the inspector general and the office in
38 fulfilling the duties of the inspector general and the office;

39 ▶ prohibits a person from interfering with or impeding an investigation or audit of the
40 office or fraud unit and from interfering with the content or conclusion of a report;

41 ▶ grants subpoena power to the inspector general;

42 ▶ requires a health care professional, a Medicaid provider, and a state or local
43 government official or employee to report any Medicaid fraud, waste, or abuse of
44 which they become aware;

45 ▶ requires the inspector general to, on an annual basis, prepare a written report on the
46 activities of the office for the preceding fiscal year, to provide the report to the
47 governor, and to provide and present the report to the Executive Appropriations
48 Committee of the Legislature;

49 ▶ requires the provision of contract services to the office by the attorney general's
50 office and the Division of Health Care Financing;

51 ▶ classifies certain records relating to an investigation or audit by the office as
52 protected; and

53 ▶ makes technical changes.

54 **Money Appropriated in this Bill:**

55 This bill appropriates, as ongoing appropriations:

56 ▶ to Department of Health - Executive Director's Operations:

- 57 • from the General Fund, \$(694,900);
- 58 • from the Federal Fund, \$(1,037,000); and
- 59 • from Revenue Transfers - Within Agency, \$(81,500);
- 60 ▶ to Medicaid Mandatory Services:
- 61 • from the General Fund, \$(300,000); and
- 62 • from the Federal Fund, \$(519,100); and
- 63 ▶ to Office of Inspector General of Medicaid Services:
- 64 • from the General Fund, \$994,900;
- 65 • from the Federal Fund, \$1,556,100; and
- 66 • from Revenue Transfers - Health, \$81,500.

67 **Other Special Clauses:**

68 This bill takes effect on July 1, 2011.

69 **Utah Code Sections Affected:**

70 AMENDS:

- 71 **26-18-2.3**, as last amended by Laws of Utah 2010, Chapter 149
- 72 **26-18-3**, as last amended by Laws of Utah 2010, Chapters 149, 323, 340, and 391
- 73 **58-37f-301**, as enacted by Laws of Utah 2010, Chapter 287 and last amended by
- 74 Coordination Clause, Laws of Utah 2010, Chapter 312
- 75 **63G-2-305**, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247
- 76 **63I-2-263**, as last amended by Laws of Utah 2010, Chapter 224
- 77 **63J-4-202**, as renumbered and amended by Laws of Utah 2008, Chapter 382

78 ENACTS:

- 79 **63J-4a-101**, Utah Code Annotated 1953
- 80 **63J-4a-102**, Utah Code Annotated 1953
- 81 **63J-4a-201**, Utah Code Annotated 1953
- 82 **63J-4a-202**, Utah Code Annotated 1953
- 83 **63J-4a-203**, Utah Code Annotated 1953
- 84 **63J-4a-204**, Utah Code Annotated 1953
- 85 **63J-4a-205**, Utah Code Annotated 1953
- 86 **63J-4a-206**, Utah Code Annotated 1953
- 87 **63J-4a-207**, Utah Code Annotated 1953

- 88 **63J-4a-301**, Utah Code Annotated 1953
- 89 **63J-4a-302**, Utah Code Annotated 1953
- 90 **63J-4a-303**, Utah Code Annotated 1953
- 91 **63J-4a-304**, Utah Code Annotated 1953
- 92 **63J-4a-401**, Utah Code Annotated 1953
- 93 **63J-4a-501**, Utah Code Annotated 1953
- 94 **63J-4a-502**, Utah Code Annotated 1953
- 95 **63J-4a-601**, Utah Code Annotated 1953



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

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

99 **26-18-2.3. Division responsibilities -- Emphasis -- Periodic assessment.**

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

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

106 (b) deny any provider claim for services that fail to meet criteria established by the
107 division concerning medical necessity or appropriateness; and

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

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

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

114 (b) preadmission certification of nonemergency admissions;

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

116 (d) second surgical opinions;

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

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

119 (g) coordination of benefits; and

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

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

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

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

133 (a) measures taken under this section to increase:

134 (i) efficiencies within the program; and

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

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

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

138 **26-18-3. Administration of Medicaid program by department -- Reporting to the**
139 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
140 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

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

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

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

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

150 services;

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

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

153 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health

154 and Human Services Appropriations Subcommittee when the department:

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

156 (ii) initiates a new Medicaid waiver;

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

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

159 waiver; or

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

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

162 (i) be submitted to the Health and Human Services Appropriations Subcommittee prior

163 to the department implementing the proposed change; and

164 (ii) include:

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

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

168 (C) the proposed change in services or reimbursement, including a description of the
169 effect of the change;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

203 (a) the determination of the eligibility of individuals for the program;

204 (b) recovery of overpayments; and

205 (c) consistent with Section 26-20-13, and to the extent permitted by law and quality
206 control services, enforcement of fraud and abuse laws.

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

210 (a) termination from the program;

211 (b) recovery of claim reimbursements incorrectly paid; and

212 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

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

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

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

222 (i) the federal government must:

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

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

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

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

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

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

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

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

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

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

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

242 (12) In order to determine the feasibility of contracting for direct Medicaid providers

243 for primary care services, the department shall:

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

246 (i) in a geographic area;

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

248 (iii) for a predetermined total contracted amount; and

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

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

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

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

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

260 (i) implement the demonstration project; and

261 (ii) by December 1, 2012, make recommendations to the Health and Human Services
262 Appropriations Subcommittee regarding the:

263 (A) continuation of the demonstration project;

264 (B) expansion of the demonstration project to other areas of the state; and

265 (C) cost savings incurred by the implementation of the demonstration project.

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

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

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

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

273 **58-37f-301. Access to database.**

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

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

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

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

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

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

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

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

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

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

298 (i) (A) relates specifically to a current or prospective patient of the practitioner; and
299 (B) is sought by the practitioner for the purpose of:

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

302 (II) diagnosing the current or prospective patient;

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

305 (IV) determining whether the current or prospective patient:
306 (Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;
307 or
308 (Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled
309 substance from the practitioner;
310 (ii) (A) relates specifically to a former patient of the practitioner; and
311 (B) is sought by the practitioner for the purpose of determining whether the former
312 patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled
313 substance from the practitioner;
314 (iii) relates specifically to an individual who has access to the practitioner's Drug
315 Enforcement Administration identification number, and the practitioner suspects that the
316 individual may have used the practitioner's Drug Enforcement Administration identification
317 number to fraudulently acquire or prescribe a controlled substance;
318 (iv) relates to the practitioner's own prescribing practices, except when specifically
319 prohibited by the division by administrative rule;
320 (v) relates to the use of the controlled substance database by an employee of the
321 practitioner, described in Subsection (2)(e); or
322 (vi) relates to any use of the practitioner's Drug Enforcement Administration
323 identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a
324 controlled substance;
325 (e) in accordance with Subsection (3)(a), an employee of a practitioner described in
326 Subsection (2)(d), for a purpose described in Subsection (2)(d)(i) or (ii), if:
327 (i) the employee is designated by the practitioner as an individual authorized to access
328 the information on behalf of the practitioner;
329 (ii) the practitioner provides written notice to the division of the identity of the
330 employee; and
331 (iii) the division:
332 (A) grants the employee access to the database; and
333 (B) provides the employee with a password that is unique to that employee to access
334 the database in order to permit the division to comply with the requirements of Subsection
335 58-37f-203(3)(b) with respect to the employee;

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

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

339 (ii) determining whether a person:

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

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

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

345 (i) regulating controlled substances; or

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

347 (h) a mental health therapist, if:

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

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

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

353 (ii) the information is sought for the purpose of determining whether the patient is
354 using a controlled substance while the patient is enrolled in the licensed substance abuse
355 treatment program described in Subsection (2)(h)(i)(A); and

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

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

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

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

365 (j) the inspector general, or a designee of the inspector general, of the Office of
366 Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in

367 Title 63J, Chapter 4a, Part 2, Office Duties and Powers.

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

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

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

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

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

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

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

388 **63G-2-305. Protected records.**

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

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

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

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

397 (b) the person submitting the information has a greater interest in prohibiting access

398 than the public in obtaining access; and

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

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

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

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

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

416 (a) a request for bids;

417 (b) a request for proposals;

418 (c) a grant; or

419 (d) other similar document;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

478 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
479 litigation that are not available under the rules of discovery;

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

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

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

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

490 (b) (i) an internal communication that is part of the deliberative process in connection

491 with the preparation of legislation between:

492 (A) members of a legislative body;

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

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

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

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

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

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

508 (22) drafts, unless otherwise classified as public;

509 (23) records concerning a governmental entity's strategy about collective bargaining or
510 pending litigation;

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

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

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

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

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

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

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

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

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

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

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

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

552 (36) materials to which access must be limited for purposes of securing or maintaining

553 the governmental entity's proprietary protection of intellectual property rights including patents,
554 copyrights, and trade secrets;

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

559 (a) the donor requests anonymity in writing;

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

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

567 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
568 73-18-13;

569 (39) a notification of workers' compensation insurance coverage described in Section
570 34A-2-205;

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

574 (i) unpublished lecture notes;

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

576 (A) relating to research; and

577 (B) of:

578 (I) the institution within the state system of higher education defined in Section
579 53B-1-102; or

580 (II) a sponsor of sponsored research;

581 (iii) unpublished manuscripts;

582 (iv) creative works in process;

583 (v) scholarly correspondence; and

- 584 (vi) confidential information contained in research proposals;
- 585 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 586 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 587 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 588 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 589 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 590 date that audit is completed and made public; and
- 591 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 592 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 593 the records in the custody or control of the Office of Legislative Auditor General that would
- 594 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 595 protected records until the audit is completed and made public;
- 596 (42) records that provide detail as to the location of an explosive, including a map or
- 597 other document that indicates the location of:
- 598 (a) a production facility; or
- 599 (b) a magazine;
- 600 (43) information:
- 601 (a) contained in the statewide database of the Division of Aging and Adult Services
- 602 created by Section 62A-3-311.1; or
- 603 (b) received or maintained in relation to the Identity Theft Reporting Information
- 604 System (IRIS) established under Section 67-5-22;
- 605 (44) information contained in the Management Information System and Licensing
- 606 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 607 (45) information regarding National Guard operations or activities in support of the
- 608 National Guard's federal mission;
- 609 (46) records provided by any pawn or secondhand business to a law enforcement
- 610 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
- 611 Secondhand Merchandise Transaction Information Act;
- 612 (47) information regarding food security, risk, and vulnerability assessments performed
- 613 by the Department of Agriculture and Food;
- 614 (48) except to the extent that the record is exempt from this chapter pursuant to Section

615 63G-2-106, records related to an emergency plan or program prepared or maintained by the
616 Division of Homeland Security the disclosure of which would jeopardize:

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

618 (b) the security of:

619 (i) governmental property;

620 (ii) governmental programs; or

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

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

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

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

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

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

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

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

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

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

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

645 (a) conducted within the state system of higher education, as defined in Section

646 53B-1-102; and
647 (b) conducted using animals;
648 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
649 Private Proposal Program, to the extent not made public by rules made under that chapter;
650 (54) information collected and a report prepared by the Judicial Performance
651 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
652 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
653 the information or report;
654 (55) (a) records of the Utah Educational Savings Plan created under Section
655 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;
656 (b) proposals submitted to the Utah Educational Savings Plan; and
657 (c) contracts entered into by the Utah Educational Savings Plan and the related
658 payments;
659 (56) records contained in the Management Information System created in Section
660 62A-4a-1003;
661 (57) records provided or received by the Public Lands Policy Coordinating Office in
662 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
663 (58) information requested by and provided to the Utah State 911 Committee under
664 Section 53-10-602;
665 (59) recorded Children's Justice Center investigative interviews, both video and audio,
666 the release of which are governed by Section 77-37-4; ~~and~~
667 (60) in accordance with Section 73-10-33:
668 (a) a management plan for a water conveyance facility in the possession of the Division
669 of Water Resources or the Board of Water Resources; or
670 (b) an outline of an emergency response plan in possession of the state or a county or
671 municipality[:];
672 (61) the following records in the custody or control of the Office of Inspector General
673 of Medicaid Services, created in Section 63J-4a-201:
674 (a) records that would disclose information relating to allegations of personal
675 misconduct, gross mismanagement, or illegal activity of a person if the information or
676 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services

677 through other documents or evidence, and the records relating to the allegation are not relied
678 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
679 report or final audit report;

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

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

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

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

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

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

697 **63I-2-263. Repeal dates, Title 63A to Title 63M.**

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

699 (2) Sections 63J-4a-206 and 63J-4a-207 are repealed on December 31, 2011.

700 Section 6. Section **63J-4-202** is amended to read:

701 **63J-4-202. Appointment of director, state planning coordinator, and inspector**
702 **general of Medicaid Services.**

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

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

705 (ii) a state planning coordinator.

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

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

710 (3) (a) In accordance with Section 63J-4a-201, the governor shall appoint, with the
711 advice and consent of the Senate, the inspector general of the Office of Inspector General and
712 Medicaid Services.

713 (b) The Office of Inspector General and Medicaid Services is considered part of the
714 office for purposes of administration.

715 Section 7. Section **63J-4a-101** is enacted to read:

716 **CHAPTER 4a. OFFICE OF INSPECTOR GENERAL OF MEDICAID SERVICES**

717 **Part 1. General Provisions**

718 **63J-4a-101. Title.**

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

720 Section 8. Section **63J-4a-102** is enacted to read:

721 **63J-4a-102. Definitions.**

722 As used in this chapter:

723 (1) "Abuse" means:

724 (a) an action or practice that:

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

726 (ii) results, or may result, in unnecessary Medicaid related costs; or

727 (b) reckless or negligent upcoding.

728 (2) "Claimant" means a person that:

729 (a) provides a service; and

730 (b) submits a claim for Medicaid reimbursement for the service.

731 (3) "Department" means the Department of Health, created in Section 26-1-4.

732 (4) "Division" means the Division of Health Care Financing, created in Section
733 26-18-2.1.

734 (5) "Fraud" means intentional or knowing:

735 (a) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs, a
736 claim, reimbursement, or services; or

737 (b) a violation of a provision of Subsections 26-20-3 through 26-20-7.

738 (6) "Fraud unit" means the Medicaid Fraud Control Unit of the attorney general's

739 office.

740 (7) "Health care professional" means a person licensed under:

741 (a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;

742 (b) Title 58, Chapter 16a, Utah Optometry Practice Act;

743 (c) Title 58, Chapter 17b, Pharmacy Practice Act;

744 (d) Title 58, Chapter 24b, Physical Therapy Practice Act;

745 (e) Title 58, Chapter 31b, Nurse Practice Act;

746 (f) Title 58, Chapter 40, Recreational Therapy Practice Act;

747 (g) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act;

748 (h) Title 58, Chapter 42a, Occupational Therapy Practice Act;

749 (i) Title 58, Chapter 44a, Nurse Midwife Practice Act;

750 (j) Title 58, Chapter 49, Dietitian Certification Act;

751 (k) Title 58, Chapter 60, Mental Health Professional Practice Act;

752 (l) Title 58, Chapter 67, Utah Medical Practice Act;

753 (m) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

754 (n) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;

755 (o) Title 58, Chapter 70a, Physician Assistant Act; and

756 (p) Title 58, Chapter 73, Chiropractic Physician Practice Act.

757 (8) "Inspector general" means the inspector general of the office, appointed under

758 Section 63J-4a-201.

759 (9) "Office" means the Office of Inspector General of Medicaid Services, created in

760 Section 63J-4a-201.

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

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

763 indirectly, for Medicaid funds; or

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

765 (11) "Upcoding" means assigning an inaccurate billing code for a service that is

766 payable or reimbursable by Medicaid funds, if the correct billing code for the service would

767 result in a lower Medicaid payment or reimbursement.

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

769 Section 9. Section **63J-4a-201** is enacted to read:

770 **Part 2. Office Duties and Powers**

771 **63J-4a-201. Creation of office -- Inspector general -- Appointment -- Term.**

772 (1) There is created, within the Governor's Office of Planning and Budget, the Office
773 of Inspector General of Medicaid Services.

774 (2) The governor shall appoint the inspector general, with the advice and consent of the
775 Senate.

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

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

778 (b) have the following qualifications:

779 (i) a general knowledge of the specific methodology and controls necessary to audit,
780 investigate, and identify Medicaid fraud, waste, and abuse;

781 (ii) strong management skills;

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

784 (iv) the ability to oversee and execute an audit;

785 (v) strong interpersonal skills; and

786 (vi) experience in making presentations to government officials.

787 (4) The inspector general:

788 (a) shall serve a term of six years; and

789 (b) may be removed by the governor, for cause.

790 (5) If the inspector general is removed for cause, a new inspector general shall be
791 appointed, with the advice and consent of the Senate, to serve a six-year term.

792 Section 10. Section **63J-4a-202** is enacted to read:

793 **63J-4a-202. Duties and powers of inspector general and office.**

794 (1) The inspector general shall:

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

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

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

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

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

800 (iv) records and recordkeeping procedures;

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

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

803 Medicaid program;

804 (e) consult with the Centers for Medicaid and Medicare Services and other states to

805 determine and implement best practices for discovering and eliminating fraud, waste, and

806 abuse of Medicaid funds;

807 (f) obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse

808 in the state Medicaid program;

809 (g) work closely with the fraud unit to identify and recover improperly or fraudulently

810 expended Medicaid funds;

811 (h) audit, inspect, and evaluate the functioning of the division to ensure that the state

812 Medicaid program is managed in the most efficient and cost-effective manner possible;

813 (i) regularly advise the department and the division of an action that should be taken to

814 ensure that the state Medicaid program is managed in the most efficient and cost-effective

815 manner possible;

816 (j) refer potential criminal conduct, relating to Medicaid funds or the state Medicaid

817 program, to the fraud unit;

818 (k) determine ways to:

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

820 and

821 (ii) recoup costs, reduce costs, and avoid or minimize increased costs of the state

822 Medicaid program;

823 (l) seek recovery of improperly paid Medicaid funds;

824 (m) track recovery of Medicaid funds by the state;

825 (n) in accordance with Section 63J-4a-501:

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

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

828 (o) provide training to agencies and employees on identifying potential fraud, waste, or

829 abuse of Medicaid funds; and

830 (p) develop and implement principles and standards for the fulfillment of the duties of

831 the inspector general, based on principles and standards used by:

- 832 (i) the Federal Offices of Inspector General;
- 833 (ii) the Association of Inspector's General; and
- 834 (iii) the United States Government Accountability Office.
- 835 (2) The office may conduct a performance or financial audit of:
- 836 (a) a state executive branch entity or a local government entity, including an entity
- 837 described in Subsection 63J-4a-301(3), that:
- 838 (i) manages or oversees a state Medicaid program; or
- 839 (ii) manages or oversees the use or expenditure of state or federal Medicaid funds; or
- 840 (b) Medicaid funds received by a person by a grant from, or under contract with, a state
- 841 executive branch entity or a local government entity.

842 (3) The inspector general may take a sworn statement or administer an oath.

843 Section 11. Section **63J-4a-203** is enacted to read:

844 **63J-4a-203. Memorandum of understanding with fraud unit.**

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

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

854 Section 12. Section **63J-4a-204** is enacted to read:

855 **63J-4a-204. Selection and review of claims.**

- 856 (1) On an annual basis, the office shall select and review a representative sample of
- 857 claims submitted for reimbursement under the state Medicaid program to determine whether
- 858 fraud, waste, or abuse occurred.
- 859 (2) The office may directly contact the recipient of record for a Medicaid reimbursed
- 860 service to determine whether the service for which reimbursement was claimed was actually
- 861 provided to the recipient of record.
- 862 (3) The office shall generate statistics from the sample described in Subsection (1) to

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

865 Section 13. Section **63J-4a-205** is enacted to read:

866 **63J-4a-205. Placement of hold on claims for reimbursement -- Injunction.**

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

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

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

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

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

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

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

885 Section 14. Section **63J-4a-206** is enacted to read:

886 **63J-4a-206. Transfer of full-time equivalents to staff office.**

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

893 (1) the director of the Office of Internal Audit and Program Integrity;

894 (2) the executive secretary to the director of the Office of Internal Audit and Program
895 Integrity;

896 (3) two positions of program manager of Program Integrity Post Payment Review;

897 (4) all positions under the positions described in Subsection (1)(c), including:

898 (a) four RN III positions;

899 (b) the position of RN III that was vacant on September 28, 2010;

900 (c) the position of office specialist I that was vacant on September 28, 2010;

901 (d) doctor (0.2 FTE);

902 (e) two positions of doctor (0.5 FTE each);

903 (f) data HPS III;

904 (g) the position of data HPS II that was vacant on September 28, 2010;

905 (h) collections HPS II;

906 (i) PERM Lead;

907 (j) PERM HPS II; and

908 (k) PERM HPS II;

909 (5) the audit manager (performance audit); and

910 (6) all positions under the position described in Subsection (5), including:

911 (a) two positions of Lead Auditor;

912 (b) two positions of Auditor II, including the one that was vacant on September 28,
913 2010; and

914 (c) OIAS Support.

915 Section 15. Section **63J-4a-207** is enacted to read:

916 **63J-4a-207. Filling of transferred positions.**

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

921 Section 16. Section **63J-4a-301** is enacted to read:

922 **Part 3. Investigation or Audit**

923 **63J-4a-301. Access to records -- Retention of designation under Government**

924 **Records Access and Management Act.**

925 (1) In order to fulfill the duties described in Section 63J-4a-202, the office shall have
926 unrestricted access to all records of state executive branch entities, all local government
927 entities, and all providers relating, directly or indirectly, to:

- 928 (a) the state Medicaid program;
929 (b) state or federal Medicaid funds;
930 (c) the provision of Medicaid related services;
931 (d) the regulation or management of any aspect of the state Medicaid program;
932 (e) the use or expenditure of state or federal Medicaid funds;
933 (f) suspected or proven fraud, waste, or abuse of state or federal Medicaid funds;
934 (g) Medicaid program policies, practices, and procedures;
935 (h) monitoring of Medicaid services or funds; or
936 (i) a fatality review of a person who received Medicaid funded services.

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

940 (3) The records described in Subsections (1) and (2) include records held or maintained
941 by the department, the division, the Department of Human Services, the Department of
942 Workforce Services, a local health department, a local mental health authority, or a school
943 district. The records described in Subsection (1) include records held or maintained by a
944 provider.

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

- 947 (a) may be reviewed or copied by the office during normal business hours; and
948 (b) if it is a government record, shall retain the classification made by the entity
949 responsible for the record, under Title 63G, Chapter 2, Government Records Access and
950 Management Act.

951 (5) Notwithstanding any provision of state law to the contrary, the office shall have the
952 same access to all records, information, and databases that the department or the division have
953 access to.

954 (6) The office shall comply with the requirements of federal law, including the Health
955 Insurance Portability and Accountability Act of 1996 and 42 CFR, Part 2, relating to the

956 confidentiality of alcohol and drug abuse records, in the office's:

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

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

959 Section 17. Section **63J-4a-302** is enacted to read:

960 **63J-4a-302. Access to employees -- Cooperating with investigation or audit.**

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

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

965 (b) a local government official or employee;

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

967 (d) a provider or an employee of a provider.

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

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

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

974 (c) providing the records, described in Subsection 63J-4a-301(1), requested by the
975 office or the inspector general's designee; and

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

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

980 (a) providing records requested by the office or the inspector general's designee; and

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

984 Section 18. Section **63J-4a-303** is enacted to read:

985 **63J-4a-303. Cooperation and support.**

986 The department, the division, each consultant or contractor of the department or

987 division, and each provider shall provide its full cooperation and support to the inspector
988 general and the office in fulfilling the duties of the inspector general and the office.

989 Section 19. Section **63J-4a-304** is enacted to read:

990 **63J-4a-304. Interference with an investigation or audit prohibited.**

991 No person may:

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

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

995 Section 20. Section **63J-4a-401** is enacted to read:

996 **Part 4. Subpoena Power**

997 **63J-4a-401. Subpoena power -- Enforcement.**

998 (1) The inspector general has the power to issue a subpoena to obtain a record or
999 interview a person that the office or inspector general has the right to access under Part 3,
1000 Investigation or Audit.

1001 (2) A person who fails to comply with a subpoena issued by the inspector general or
1002 who refuses to testify regarding a matter upon which the person may be lawfully interrogated:

1003 (a) is in contempt of the inspector general; and

1004 (b) upon request by the inspector general, the attorney general shall:

1005 (i) file a motion for an order to compel obedience to the subpoena with the district
1006 court;

1007 (ii) file, with the district court, a motion for an order to show cause why the penalties
1008 established in Title 78B, Chapter 6, Part 3, Contempt, should not be imposed upon the person
1009 named in the subpoena for contempt of the inspector general; or

1010 (iii) pursue other legal remedies against the person.

1011 (3) Upon receipt of a motion under Subsection (2), the court:

1012 (a) shall expedite the hearing and decision on the motion; and

1013 (b) may:

1014 (i) order the person named in the subpoena to comply with the subpoena; and

1015 (ii) impose any penalties authorized by Title 78B, Chapter 6, Part 3, Contempt, upon
1016 the person named in the subpoena for contempt of the inspector general.

1017 (4) (a) If a subpoena described in this section requires the production of accounts,

1018 books, papers, documents, or other tangible items, the person or entity to whom it is directed
1019 may petition a district court to quash or modify the subpoena at or before the time specified in
1020 the subpoena for compliance.

1021 (b) The inspector general may respond to a motion to quash or modify the subpoena by
1022 pursuing any remedy authorized by Subsection (3).

1023 (c) If the court finds that a subpoena requiring the production of accounts, books,
1024 papers, documents, or other tangible items is unreasonable or oppressive, the court may quash
1025 or modify the subpoena.

1026 (5) Nothing in this section prevents the inspector general from seeking an extraordinary
1027 writ to remedy contempt of the inspector general.

1028 (6) Any party aggrieved by a decision of a court under this section may appeal that
1029 decision directly to the Utah Supreme Court.

1030 Section 21. Section **63J-4a-501** is enacted to read:

1031 **Part 5. Reporting**

1032 **63J-4a-501. Duty to report potential Medicaid fraud to the office or fraud unit.**

1033 (1) A health care professional, a provider, or a state or local government official or
1034 employee who becomes aware of fraud, waste, or abuse shall report the fraud, waste, or abuse
1035 to the office or the fraud unit.

1036 (2) A person who makes a report under Subsection (1) may request that the person's
1037 name not be released in connection with the investigation.

1038 (3) If a request is made under Subsection (2), the person's identity may not be released
1039 to any person or entity other than the office, the fraud unit, or law enforcement, unless a court
1040 of competent jurisdiction orders that the person's identity be released.

1041 Section 22. Section **63J-4a-502** is enacted to read:

1042 **63J-4a-502. Report and recommendations to governor and Executive**
1043 **Appropriations Committee.**

1044 (1) The inspector general shall, on an annual basis, prepare a written report on the
1045 activities of the office for the preceding fiscal year.

1046 (2) The report shall include:

1047 (a) non-identifying information, including statistical information, on:

1048 (i) the items described in Subsection 63J-4a-202(1)(b) and Section 63J-4a-204;

- 1049 (ii) action taken by the office and the result of that action;
1050 (iii) fraud, waste, and abuse in the state Medicaid program;
1051 (iv) the recovery of fraudulent or improper use of state and federal Medicaid funds;
1052 (v) measures taken by the state to discover and reduce fraud, waste, and abuse in the
1053 state Medicaid program;
1054 (vi) audits conducted by the office; and
1055 (vii) investigations conducted by the office and the results of those investigations;
1056 (b) recommendations on action that should be taken by the Legislature or the governor
1057 to:
1058 (i) improve the discovery and reduction of fraud, waste, and abuse in the state
1059 Medicaid program;
1060 (ii) improve the recovery of fraudulently or improperly used Medicaid funds; and
1061 (iii) reduce costs and avoid or minimize increased costs in the state Medicaid program;
1062 (c) recommendations relating to rules, policies, or procedures of a state or local
1063 government entity; and
1064 (d) services provided by the state Medicaid program that exceed industry standards.
1065 (3) The report described in Subsection (1) may not include any information that would
1066 interfere with or jeopardize an ongoing criminal investigation or other investigation.
1067 (4) The inspector general shall provide the report described in Subsection (1) to the
1068 Executive Appropriations Committee of the Legislature and to the governor on or before
1069 October 1 of each year.
1070 (5) The inspector general shall present the report described in Subsection (1) to the
1071 Executive Appropriations Committee of the Legislature before November 30 of each year.

1072 Section 23. Section **63J-4a-601** is enacted to read:

1073 **Part 6. Miscellaneous Provisions**

1074 **63J-4a-601. Provision of contract services to Office of Inspector General of**
1075 **Medicaid Services.**

- 1076 (1) The division and the assistant attorneys general assigned to the division shall
1077 provide, without charge, contract review, contract enforcement, and other contract management
1078 services to the office.
1079 (2) The division shall ensure that the services described in Subsection (1) are provided

1080 in an expeditious manner.

1081 (3) The attorney general shall designate one of the assistant attorneys general assigned
 1082 to the division to give first priority to providing the services described in Subsection (1) to the
 1083 office.

1084 (4) The office and the division shall enter into a memorandum of understanding in
 1085 order to execute the requirements of this section in an effective and efficient manner.

1086 **Section 24. Appropriation.**

1087 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, the
 1088 following sums of money are appropriated from resources not otherwise appropriated out of the
 1089 funds or accounts indicated for the fiscal year beginning July 1, 2011 and ending June 30,
 1090 2012. These are additions to amounts previously appropriated for fiscal year 2012.

1091 Item 1 To Department of Health - Executive Director's Operations

1092 From General Fund \$(694,900)

1093 From Federal Fund \$(1,037,000)

1094 From Revenue Transfers - Within Agency \$(81,500)

1095 Schedule of Programs:

1096 Internal Audit and Program Integrity \$(1,813,400)

1097 Item 2 To Medicaid Mandatory Services

1098 From General Fund \$(300,000)

1099 From Federal Fund \$(519,100)

1100 Schedule of Programs:

1101 Other Mandatory Services \$(819,100)

1102 Item 3 To Office of Inspector General of Medicaid Services

1103 From General Fund \$994,900

1104 From Federal Fund \$1,556,100

1105 From Revenue Transfers - Health \$81,500

1106 Schedule of Programs:

1107 Office of Inspector General of Medicaid Services \$2,632,500

1108 **Section 25. Effective date.**

1109 This bill takes effect on July 1, 2011.

FISCAL NOTE

H.B. 84 2nd Sub. (Gray)

SHORT TITLE: Office of Inspector General of Medicaid Services

SPONSOR: Clark, D.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

This bill reallocates \$2,632,500 in FY 2012 (\$994,900 from the General Fund, \$1,556,100 from federal funds, and \$81,500 from transfers) from the Department of Health to a new Medicaid Inspector General's Office within the Governor's Office of Planning and Budget.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
General Fund	\$0	(\$994,900)	(\$994,900)
General Fund	\$0	\$994,900	\$994,900
Federal Funds	\$0	(\$1,556,100)	(\$1,556,100)
Federal Funds	\$0	\$1,556,100	\$1,556,100
Transfers	\$0	(\$81,500)	(\$81,500)
Transfers	\$0	\$81,500	\$81,500
Total Expenditure	\$0	\$0	\$0
Net Impact, All Funds (Rev.-Exp.)	\$0	\$0	\$0
Net Impact, General/Education Funds	\$0	\$0	\$0

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.