

## HB0106S03 compared with HB0106S02

~~text~~ shows text that was in HB0106S02 but was deleted in HB0106S03.

text shows text that was not in HB0106S02 but was inserted into HB0106S03.

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

Senator Curtis S. Bramble proposes the following substitute bill:

### MEDICAID INSPECTOR GENERAL AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ryan D. Wilcox**

Senate Sponsor: ~~Stuart C.~~ Curtis S. ~~Reid~~ Bramble

Cosponsor: James A. Dunnigan

---

---

#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ moves the Office of Inspector General of Medicaid Services into the Department of Administrative Services as an independent entity within the department;
- ▶ provides for the appointment of the inspector general of Medicaid services by the governor with the advice and consent of the Senate;

## HB0106S03 compared with HB0106S02

- ▶ permits the removal of the inspector general by the governor for cause;
- ▶ preserves the term of the existing inspector general until December 31, 2014;
- ▶ establishes a four-year term of office for the inspector general of Medicaid services;
- ▶ requires the inspector general of Medicaid services to make recommendations to the Legislature and the governor;
- ▶ amends the duties and powers of the inspector general of Medicaid services;
- ▶ amends the period of time in which the inspector general can review claims;
- ▶ amends the manner in which the inspector general accesses records;
- ▶ requires the Office of Inspector General of Medicaid Services to adopt administrative rules 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~~ best practices for Medicaid compliance;
- ▶ makes technical and conforming amendments; and
- ▶ includes uncodified language to transition the Office of Inspector General of Medicaid Services out of the Governor's Office of Planning and Budget.

### Money Appropriated in this Bill:

This bill appropriates for fiscal year ~~2012-13~~ 2013-14:

- ▶ to the Governor's Office of Planning and Budget - Inspector General of Medicaid Services:
  - From the General Fund, (1,020,200)
  - From Transfers, (1,962,600)
  - From Pass-Through, 733,400
  - From Beginning Nonlapsing Balances, (865,300)
  - Schedule of Programs, Inspector General of Medicaid Services (\$3,114,700)
- ▶ to the Department of Administrative Services - Office of Inspector General of Medicaid Services:
  - From General Fund, ~~1,020~~ 1,020,200
  - From Transfers, 1,962,600
  - From Pass-through (733,400)
  - From Beginning Nonlapsing Balances, 865,300

## HB0106S03 compared with HB0106S02

- Schedule of Programs Inspector General of Medicaid Services \$3,114,700.

### Other Special Clauses:

~~{ None }~~ This bill provides an immediate effective date.

### Utah Code Sections Affected:

#### AMENDS:

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

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

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

#### RENUMBERS AND AMENDS:

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

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

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

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

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

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

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

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

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

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

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

## HB0106S03 compared with HB0106S02

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

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

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

**63A-13-601**, (Renumbered from 63J-4a-601, as enacted by Laws of Utah 2011, Chapter 151)

**63A-13-602**, (Renumbered from 63J-4a-602, as enacted by Laws of Utah 2011, Chapter 151)

ENACTS:

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

### Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

---

---

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

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

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

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

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

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

(2) The division shall make information in the database and information obtained from other state or federal prescription monitoring programs by means of the database available only to the following individuals, in accordance with the requirements of this chapter and division rules:

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

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

## HB0106S03 compared with HB0106S02

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

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

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

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

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

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

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

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

(II) diagnosing the current or prospective patient;

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

(IV) determining whether the current or prospective patient:

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

or

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

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

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

(iii) relates specifically to an individual who has access to the practitioner's Drug Enforcement Administration identification number, and the practitioner suspects that the

## HB0106S03 compared with HB0106S02

individual may have used the practitioner's Drug Enforcement Administration identification number to fraudulently acquire or prescribe a controlled substance;

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

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

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

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

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

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

(iii) the division:

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

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

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

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

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

(iii) the division:

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

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

## HB0106S03 compared with HB0106S02

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

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

(ii) determining whether a person:

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

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

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

(i) regulating controlled substances;

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

(iii) providing information about a criminal defendant to defense counsel, upon request during the discovery process, for the purpose of establishing a defense in a criminal case;

(i) employees of the Office of Internal Audit and Program Integrity within the Department of Health who are engaged in their specified duty of ensuring Medicaid program integrity under Section 26-18-2.3;

(j) a mental health therapist, if:

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

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

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

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

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

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

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

## HB0106S03 compared with HB0106S02

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

(l) the inspector general, or a designee of the inspector general, of the Office of Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in Title ~~[63J, Chapter 4a]~~ 63A, Chapter 13, Part 2, Office Duties and Powers; and

(m) the following licensed physicians for the purpose of reviewing and offering an opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

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

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

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

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

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

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

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

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

(i) is employed in the emergency room;

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

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



## **HB0106S03 compared with HB0106S02**

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

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

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

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

(iii) the division:

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

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

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

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

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

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

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

#### **Part 1. General Provisions**

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

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

## HB0106S03 compared with HB0106S02

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

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

As used in this chapter:

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

## HB0106S03 compared with HB0106S02

- (j) Title 58, Chapter 49, Dietitian Certification Act;
- (k) Title 58, Chapter 60, Mental Health Professional Practice Act;
- (l) Title 58, Chapter 67, Utah Medical Practice Act;
- (m) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- (n) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
- (o) Title 58, Chapter 70a, Physician Assistant Act; and
- (p) Title 58, Chapter 73, Chiropractic Physician Practice Act.

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

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

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

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

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

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

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

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

### Part 2. Office and Powers

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

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

(2) The governor shall:

(a) appoint the inspector general~~[,]~~ of Medicaid services in accordance with Subsection (5)(b), and with the advice and consent of the Senate~~[,]; and~~

## HB0106S03 compared with HB0106S02

(b) establish the salary for the inspector general of Medicaid services based upon a recommendation from the Department of Human Resource Management which shall be based on a market salary survey conducted by the Department of Human Resource Management.

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

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

(b) have the following qualifications:

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

(ii) strong management skills;

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

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

(v) strong interpersonal skills.

(4) The inspector general of Medicaid services:

(a) shall, ~~except as provided in Subsection (5),~~ serve a term of [~~two~~] four years; and

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

(5) ~~(a)~~ If the inspector general is removed for cause, a new inspector general shall be appointed, with the advice and consent of the Senate, to serve [~~a two-year term.~~] the remainder of the term of the inspector general of Medicaid services who was removed for cause.

(b) The term of office for the inspector general of Medicaid services in office on January 1, 2013, shall end on December 31, 2014. The governor may appoint an inspector general for a four-year term on January 1, 2015.

(6) The office of the inspector general for Medicaid services:

(a) is not under the supervision of, and does not take direction from, the executive director~~;~~

~~(b) may:~~

~~(i) retain its own legal counsel for purposes of performing the duties under this chapter;~~  
~~or~~

~~(ii) use the~~, except for administrative purposes;

(b) shall use the legal services of the state attorney general's office~~;~~

(c) shall submit a budget for the office directly to the governor;

## HB0106S03 compared with HB0106S02

(d) except as prohibited by federal law, is subject to:

(i) Title 51, Chapter 5, Funds Consolidation Act;

(ii) Title 51, Chapter 7, State Money Management Act;

(iii) Title 63A, Utah Administrative Services Code;

(iv) Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(v) Title 63G, Chapter 4, Administrative Procedures Act;

(vi) Title 63G, Chapter 6a, Utah Procurement Code;

(vii) Title 63J, Chapter 1, Budgetary Procedures Act;

(viii) Title 63J, Chapter 2, Revenue Procedures and Control Act;

(ix) Title 67, Chapter 19, Utah State Personnel Management Act;

(x) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(xi) Title 52, Chapter 4, Open and Public Meetings Act;

(xii) Title 63G, Chapter 2, Government Records Access and Management Act; and

(xiii) coverage under the Risk Management Fund created under Section 63A-4-201;

and;

(f)(e) when requested, shall provide reports to the governor, the president of the Senate, or the speaker of the House; and

(f) shall adopt administrative rules to establish policies for employees that are substantially similar to the administrative rules adopted by the Department of Human Resource Management.

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

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

(1) The inspector general of Medicaid services 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;

## HB0106S03 compared with HB0106S02

(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 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 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;

~~(l)~~ (l) determine ways to:

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

## HB0106S03 compared with HB0106S02

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;

~~[(t) seek recovery of]~~

~~(m)~~ recover improperly paid Medicaid funds;

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

~~[(n)]~~ (o) in accordance with Section ~~[63J-4a-501]~~ 63A-13-502:

(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)]~~ Section 63A-13-301, 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 state Medicaid program or change the policies and procedures of the state Medicaid program.

## HB0106S03 compared with HB0106S02

(ii) The office shall 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) ~~The~~ 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) ~~The~~ Beginning July 1, 2013, the department 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. The department and the office of the inspector general shall enter into a memorandum of understanding regarding the timing of the review process under Subsection (2)(b)(iii).

(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 current Medicaid information bulletin that is available to the public.

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

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

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

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

(1) formalize communication, cooperation, coordination of efforts, and the sharing of



## HB0106S03 compared with HB0106S02

information, on a regular basis, between the office and the fraud unit;

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

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

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

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

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

(1) (a) ~~[On an annual basis, the]~~ The office shall periodically 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 ~~{creditable}~~ credible allegation of fraud. In the event the office or the fraud unit determines that there is fraud as defined in Subsection 63A-13-102(5), then the statute of limitations defined in Subsection 26-20-15(1) shall apply.

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

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

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

## **HB0106S03 compared with HB0106S02**

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

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

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

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

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

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

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

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

~~[63J-4a-301].~~      **63A-13-301. 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;~~] 63A-13-202, 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

## HB0106S03 compared with HB0106S02

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

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

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

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

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

(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.

## HB0106S03 compared with HB0106S02

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

~~[63J-4a-302].~~      **63A-13-302.** **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~~] 63A-13-202:

- (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);~~] 63A-13-301(1), in the manner described in Subsection 63A-13-301(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 63A-13-301(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 11. Section **63A-13-303**, which is renumbered from Section 63J-4a-303 is

## HB0106S03 compared with HB0106S02

renumbered and amended to read:

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

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

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

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

No person may:

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

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

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

(1) (a) The office shall, in accordance with Section 63A-13-602, 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 63A-13-602, 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 63A-13-602.

Section 14. Section **63A-13-401**, which is renumbered from Section 63J-4a-401 is

## HB0106S03 compared with HB0106S02

renumbered and amended to read:

### Part 4. Subpoena Power

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

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

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

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

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

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

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

(iii) pursue other legal remedies against the person.

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

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

(b) may:

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

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

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

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

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

## HB0106S03 compared with HB0106S02

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

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

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

### Part 5. Reporting

~~[63J-4a-501].~~      **63A-13-501. 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. Suspected fraud and abuse shall be reported in accordance with Subsection (1).

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

~~[63J-4a-502].~~      **63A-13-502. Report and recommendations to governor and**

## HB0106S03 compared with HB0106S02

### Executive Appropriations Committee.

(1) The inspector general of Medicaid services 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~~]  
63A-13-202(1)(b) and Section 63A-13-204;

(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~~] On or before October 1 of each year, the inspector general of Medicaid services 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.



## HB0106S03 compared with HB0106S02

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

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

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

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

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

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

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

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

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

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

The office may make rules, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and Section 63A-13-305, 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)]~~ 63A-13-202(1)(q);
- (4) auditing, inspecting, and evaluating the functioning of the division under Subsection ~~[63J-4a-202(1)(h)]~~ 63A-13-202(1)(h);

## HB0106S03 compared with HB0106S02

(5) conducting an audit under Subsection [~~63J-4a-202(1)(h)~~] 63A-13-202(1)(h) or (2);

or

(6) ordering a hold on the payment of a claim for reimbursement under Section [~~63J-4a-205~~] 63A-13-205.

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

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

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

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

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

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

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

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

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

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

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

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, once the contract or

## HB0106S03 compared with HB0106S02

grant has been awarded, a bid, proposal, or application submitted to or by a governmental entity in response to:

- (a) a request for bids;
- (b) a request for proposals;
- (c) a grant; or
- (d) other similar document;

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

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

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

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

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

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

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

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

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

## **HB0106S03 compared with HB0106S02**

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

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

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

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

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

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

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

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

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

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

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

## HB0106S03 compared with HB0106S02

audits or collections;

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

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

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

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

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

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

(A) members of a legislative body;

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

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

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

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

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

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

(21) drafts, unless otherwise classified as public;

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

## **HB0106S03 compared with HB0106S02**

(a) collective bargaining; or

(b) imminent or pending litigation;

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

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

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

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

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

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

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

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

(31) transcripts, minutes, or reports of the closed portion of a meeting of a public body

## HB0106S03 compared with HB0106S02

except as provided in Section 52-4-206;

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

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

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

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

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

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (36); and

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

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

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

## HB0106S03 compared with HB0106S02

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

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

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

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

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

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

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

(b) notwithstanding Subsection (40)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

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

(a) a production facility; or

(b) a magazine;

(42) information:

(a) contained in the statewide database of the Division of Aging and Adult Services



## HB0106S03 compared with HB0106S02

created by Section 62A-3-311.1; or

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

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

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

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

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

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

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Management information;

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

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

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

(b) information or records related to a complaint received by the Department of Health

## HB0106S03 compared with HB0106S02

from an anonymous complainant regarding a child care program or residential child care;

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

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

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

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

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

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

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

(b) conducted using animals;

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

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

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

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

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

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

(58) recorded Children's Justice Center investigative interviews, both video and audio,

## HB0106S03 compared with HB0106S02

the release of which are governed by Section 77-37-4;

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

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

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

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

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

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

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

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

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

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

(62) information provided to the Department of Health or the Division of Occupational

## HB0106S03 compared with HB0106S02

and Professional Licensing under Subsection 58-68-304(3) or (4); and

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

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

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

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

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

(ii) a state planning coordinator.

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

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

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

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

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

(1) The inspector general for Medicaid services in office on January 1, ~~2103~~2013, shall serve as the transition director for the transition of the office of the inspector general of ~~medicaid~~ Medicaid services into the Department of Administrative Services and shall transition the office of the inspector general of Medicaid services into the Department of Administrative Services on or before July 1, 2013.

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

## HB0106S03 compared with HB0106S02

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

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

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

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

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

### Section 22. **Appropriation.**

Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for the fiscal year beginning July 1, ~~2012~~2013, and ending June 30, ~~2013~~2014, the following sums of money are appropriated from resources not otherwise appropriated, or reduced from amounts previously appropriated, out of the funds or accounts indicated. These sums of money are in addition to any amounts previously appropriated for fiscal year ~~2013~~2014.

~~†~~

<del>†</del>	<u>To Governor's Office of Planning and Budget - Inspector General of Medicaid Services</u>	
	<u>From General Fund</u>	<u>(1,020,200)</u>
	<u>From Transfers</u>	<u>(1,962,600)</u>
	<u>From Pass-through</u>	<u>733,400</u>
	<u>From Beginning Nonlapsing Balances</u>	<u>(865,300)</u>
	<u>Schedule of Programs</u>	
	<u>Inspector General of Medicaid Services</u>	<u>(\$3,114,700)</u>

The Legislature intends that the Division of Finance transfer unexpended appropriations and balances of appropriations, up to the amounts shown above, from the Governor's Office of

## HB0106S03 compared with HB0106S02

Planning and Budget to the Department of Administrative Services for fiscal year ~~2013~~2014.

To Department of Administrative Services - Inspector General of Medicaid Services

<u>From General Fund</u>	<u>1,020,200</u>
<u>From Transfers</u>	<u>1,962,600</u>
<u>From Pass-through</u>	<u>(733,400)</u>
<u>From Beginning Nonlapsing Balances</u>	<u>865,300</u>
<u>Schedule of Programs</u>	
<u>Inspector General of Medicaid Services</u>	<u>\$3,114,700</u>

The Legislature intends that the Division of Finance transfer unexpended appropriations and balances of appropriations, up to the amounts shown above, from the Governor's Office of Planning and Budget to the Department of Administrative Services for fiscal year ~~2013~~2014.

### Section 23. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.