

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2006

## SENATE BILL No. 327

By Special Committee on Medicaid Reform

1-5

12 AN ACT creating the office of inspector general within the Kansas health  
13 policy authority; providing for the appointment of the inspector gen-  
14 eral and the powers, duties and functions thereof; amending K.S.A.  
15 46-2601 and K.S.A. 2005 Supp. 75-2973 and repealing the existing  
16 sections.

17  
18 *Be it enacted by the Legislature of the State of Kansas:*

19 New Section 1. (a) (1) There is hereby created the office of inspector  
20 general **to provide oversight of programs as designated in this section**  
21 within the **jurisdiction of the** Kansas health policy authority. **The office**  
22 **of the inspector general shall only oversee, audit, investigate and**  
23 **provide a performance review of the state medicaid program,**  
24 **mediKan program, [and] the state children's health insurance pro-**  
25 **gram as provided in K.S.A. 38-2001 et seq., and amendments**  
26 **thereto, and the state health care benefits program as provided in**  
27 **K.S.A. 75-6501 through 75-6511, and amendments thereto, within**  
28 **the jurisdiction of the Kansas health policy authority and subject**  
29 **to the provisions of this act. The purpose of the office of inspector**  
30 **general is to establish a full-time program of audit, investigation**  
31 **and performance review to provide increased accountability, integ-**  
32 **egrity and oversight of such programs within the jurisdiction of the**  
33 **Kansas health policy authority and to assist in improving agency**  
34 **and program operations and in deterring and identifying fraud,**  
35 **abuse and illegal acts. The office of inspector general shall have a**  
36 **duty to prevent, detect and eliminate fraud, waste, abuse, misman-**  
37 **agement, inefficiency and misconduct by providers, contractors,**  
38 **agency employees, consumers, or any other person or entity in-**  
39 **volved in the delivery of services or the handling of funds of such**  
40 **program or agency within the jurisdiction of the Kansas health pol-**  
41 **icy authority. The office of inspector general shall be independent**  
42 **and free from political influence and shall conduct investigations,**  
43 **audits, evaluations, inspections and other reviews in accordance**

1 *with professional standards that relate to the fields of investigation*  
2 *and auditing in government.*

3 (2) The inspector general shall be appointed by the ~~governor~~ **attor-**  
4 **ney general** with the advice and consent of the senate and subject to  
5 confirmation by the senate as provided in K.S.A. 75-4315b and amend-  
6 ments thereto. Except as provided in K.S.A. 46-2601, no person ap-  
7 pointed to the position of inspector general shall exercise any power, duty  
8 or function of the inspector general until confirmed by the senate. ~~The~~  
9 ~~inspector general shall be a person with extensive experience in investi-~~  
10 ~~gations, auditing or relevant law enforcement.~~ **The inspector general**  
11 **shall be selected without regard to political affiliation and on the**  
12 **basis of integrity, capacity for effectively carrying out the duties of**  
13 **the office of inspector general, demonstrated ability in accounting,**  
14 **auditing, financial analysis, law, law enforcement, management**  
15 **analysis, public administration, investigation, fraud examination,**  
16 **criminal justice administration or other closely related fields. The**  
17 **inspector general shall possess demonstrated knowledge, skills,**  
18 **abilities and experience in conducting audits and investigations and**  
19 **shall be familiar with the programs subject to oversight by the office**  
20 **of inspector general. No former or current executive or manager of**  
21 **any program or agency subject to oversight by the office of inspec-**  
22 **tor general may be appointed inspector general within two years of**  
23 **that individual's period of service with such program or agency.**  
24 **The inspector general shall hold at time of appointment, or shall**  
25 **obtain within one year after appointment, certification as a certified**  
26 **inspector general from a national organization that provides train-**  
27 **ing to inspectors general.**

28 (3) The term of the person first appointed to the position of inspector  
29 general shall expire on January 15, 2009. Thereafter, a person appointed  
30 to the position of inspector general shall serve for a term which shall  
31 expire on January 15 of each year in which the whole senate is sworn in  
32 for a new term.

33 (4) **The inspector general may be removed from office by the**  
34 **attorney general only for just cause. It shall constitute just cause**  
35 **for removal if the legislature adopts a concurrent resolution ex-**  
36 **pressing a lack of confidence in the inspector general's ability to**  
37 **adequately fulfill the duties of the office. The attorney general shall**  
38 **communicate the reasons for any such removal to both houses of**  
39 **the legislature within five days of such removal.**

40 ~~(2)~~ (5) The inspector general shall be in the unclassified service and  
41 shall receive such compensation as is determined by law, except that such  
42 compensation may be increased but not diminished during the term of  
43 office of the inspector general. **The inspector general shall be inde-**

1 ***pendent and shall not be subject to direction by any other executive***  
2 ***or legislative branch officer or agency.*** The inspector general shall  
3 report directly to the ~~governor~~ ***attorney general and to the leadership***  
4 ***of the house of representatives and of the senate, which shall include***  
5 ***the house committee on appropriations and the senate committee***  
6 ***on ways and means*** on matters concerning the administration of the  
7 office of inspector general. All budget requests of the inspector general  
8 shall be made directly to the governor by the inspector general ***and such***  
9 ***requests shall also be submitted by the inspector general directly***  
10 ***to the legislature.*** Appropriations for the office of inspector general shall  
11 be made by separate line item appropriations for the office of inspector  
12 general.

13 ~~(3) The inspector general may be removed from office by the gov-~~  
14 ~~ernor for cause, and it shall constitute cause for removal if the legislature~~  
15 ~~adopts a concurrent resolution expressing a lack of confidence in the~~  
16 ~~inspector general's ability to adequately fulfill the duties of the office. The~~  
17 ~~governor shall communicate the reasons for any such removal to both~~  
18 ~~houses of the legislature within five days of such removal.~~

19 ~~—(4)~~ **(6) *The inspector general shall have general managerial con-***  
20 ***trol over the office of the inspector general and shall establish the***  
21 ***organization structure of the office as the inspector general deems***  
22 ***appropriate to carry out the responsibilities and functions of the***  
23 ***office.*** Within the limits of appropriations therefor the inspector general  
24 may hire such employees in the unclassified service as are necessary to  
25 administer the office of the inspector general. Such employees shall serve  
26 at the pleasure of the inspector general. ***Subject to appropriations, the***  
27 ***inspector general may obtain the services of certified public ac-***  
28 ***countants, qualified management consultants, professional audi-***  
29 ***tors, or other professionals necessary to independently perform the***  
30 ***functions of the office.***

31 ~~(b) In order to prevent, detect and eliminate fraud, waste, abuse,~~  
32 ~~mismanagement, inefficiency and misconduct, the inspector general shall~~  
33 ~~oversee the~~ ***carry out the duties of the office, the inspector general***  
34 ***shall conduct independent and ongoing oversight of such*** programs  
35 administered by the Kansas health policy authority, which oversight in-  
36 cludes, but is not limited to, the following:

37 (1) Investigation of misconduct by employees, vendors, contractors,  
38 consumers, clients and health care providers.

39 (2) Audits of health care providers related to ensuring that appropri-  
40 ate payments are made for services rendered and to the recovery of  
41 overpayments.

42 (3) Monitoring of quality assurance programs generally related to the  
43 medical assistance program and specifically related to any managed care

1 program.

2 (4) Quality control measurements of ~~the~~ *such* programs administered  
3 by the Kansas health policy authority.

4 (5) Investigations of fraud or intentional program violations commit-  
5 ted by clients of the Kansas health policy authority or by consumers of  
6 services administered by the Kansas health policy authority.

7 (6) Actions initiated against contractors or health care providers for  
8 any of the following reasons:

9 (A) Violations of the medical assistance program.

10 (B) Sanctions against health care providers brought in conjunction  
11 with the department of social and rehabilitation services or the depart-  
12 ment on aging, or both.

13 (C) Recoveries of assessments against medical care facilities and long-  
14 term care facilities.

15 (D) Sanctions mandated by the United States department of health  
16 and human services against health care providers.

17 (E) Violations of contracts related to any managed care programs.

18 (F) Monitoring adherence to the terms of the contract between the  
19 Kansas health policy authority and an organization with which the au-  
20 thority has entered into a contract to make claims payments.

21 (c) The inspector general shall have access to all *pertinent* infor-  
22 mation, confidential or otherwise, and to all personnel and facilities of  
23 the Kansas health policy authority, their employees, vendors, contractors  
24 and health care providers and any federal, state or local governmental  
25 agency that are necessary to perform the duties of the office as directly  
26 related to *such* programs administered by the authority. **Access to con-  
27 tractor files shall be limited to those files necessary to verify the  
28 accuracy of the contractor's invoices or its compliance with the con-  
29 tract provisions.** No health care provider shall be compelled under the  
30 provisions of this section to provide individual medical records of patients  
31 who are not clients of the medical assistance program. State and local  
32 governmental agencies are authorized and directed to provide to the in-  
33 spector general requested information, assistance or cooperation. Except  
34 as otherwise provided in this subsection, the inspector general and all  
35 employees and former employees of the office of inspector general shall  
36 be subject to the same duty of confidentiality imposed by law on any such  
37 person or agency with regard to any such information, and shall be subject  
38 to any civil or criminal penalties imposed by law for violations of such  
39 duty of confidentiality. The duty of confidentiality imposed on the in-  
40 spector general and all employees and former employees of the office of  
41 inspector general shall be subject to the provisions of subsection (e), and  
42 the inspector general may furnish all such information to the attorney  
43 general, Kansas bureau of investigation or office of the United States

1 attorney in Kansas pursuant to subsection (e). Upon receipt thereof, the  
2 attorney general, Kansas bureau of investigation or office of the United  
3 States attorney in Kansas and all assistants and all other employees and  
4 former employees of such offices shall be subject to the same duty of  
5 confidentiality with the exceptions that any such information may be dis-  
6 closed in criminal or other proceedings which may be instituted and pros-  
7 ecuted by the attorney general or the United States attorney in Kansas,  
8 and any such information furnished to the attorney general, the Kansas  
9 bureau of investigation or the United States attorney in Kansas under  
10 subsection (e) may be entered into evidence in any such proceedings.

11 (d) The inspector general shall serve as the authority's primary liaison  
12 with law enforcement, investigatory and prosecutorial agencies, including,  
13 but not limited to, the following:

14 (1) The Kansas highway patrol and Kansas bureau of investigation.

15 (2) The federal bureau of investigation and other federal law enforce-  
16 ment agencies.

17 (3) The various inspectors general of federal agencies overseeing the  
18 programs administered by the Kansas health policy authority.

19 (4) The offices of the United States attorney in Kansas.

20 (5) The office of the Kansas attorney general.

21 (6) The legislative post auditor.

22 (7) The unit of the organization which contracts with the Kansas  
23 health policy authority to make claims payments which is maintained to  
24 detect fraud pursuant to the contract. The inspector general shall meet  
25 on a regular basis with these entities to share information regarding pos-  
26 sible misconduct by any persons or entities involved with ~~the~~ **such** pro-  
27 grams administered by the authority. Any inefficiency discovered by the  
28 inspector general shall be reported immediately to the legislative post  
29 auditor. Copies of any reports and recommendations of the unit of the  
30 organization which contracts with the Kansas health policy authority to  
31 make claims payments which is maintained to detect fraud pursuant to  
32 the contract shall be submitted to the inspector general.

33 (e) All investigations conducted by the inspector general shall be con-  
34 ducted in a manner that ensures the preservation of evidence for use in  
35 criminal prosecutions. If the inspector general determines that a possible  
36 criminal act relating to fraud in the provision or administration of ~~a pro-~~  
37 ~~gram~~ **such programs** administered by the Kansas health policy authority  
38 has been committed, the inspector general shall immediately notify the  
39 office of the Kansas attorney general. If the inspector general determines  
40 that a possible criminal act has been committed within the jurisdiction of  
41 the office, the inspector general may request the special expertise of the  
42 Kansas bureau of investigation. The inspector general may present for  
43 prosecution the findings of any criminal investigation to the office of the

1 attorney general or the office of the United States attorney in Kansas.

2 (f) To carry out the duties as described in this section, the inspector  
3 general and the inspector general's designees shall have the power to  
4 compel by subpoena the attendance and testimony of witnesses and the  
5 production of books, electronic records and papers as directly related to  
6 **such** programs administered by the Kansas health policy authority. **Ac-**  
7 **cess to contractor files shall be limited to those files necessary to**  
8 **verify the accuracy of the contractor's invoices or its compliance**  
9 **with the contract provisions.** No health care provider shall be com-  
10 pelled to provide individual medical records of patients who are not cli-  
11 ents of the authority.

12 (g) The inspector general shall report all convictions, terminations  
13 and suspensions taken against vendors, contractors and health care pro-  
14 viders to the Kansas health policy authority and to any agency responsible  
15 for licensing or regulating those persons or entities.

16 (h) The inspector general shall make annual reports, findings and  
17 recommendations regarding the office's investigations into reports of  
18 fraud, waste, abuse, mismanagement or misconduct relating to any **such**  
19 programs administered by the Kansas health policy authority to **the at-**  
20 **torney general**, the legislative post auditor, the legislature and the gov-  
21 ernor. These reports shall include, but not be limited to, the following  
22 information:

23 (1) Aggregate provider billing and payment information.

24 (2) The number of audits of the programs administered by ~~the~~ **such**  
25 Kansas health policy authority and the dollar savings, if any, resulting from  
26 those audits.

27 (3) Health care provider sanctions, in the aggregate, including ter-  
28 minations and suspensions.

29 (4) A detailed summary of the investigations undertaken in the pre-  
30 vious fiscal year. These summaries shall comply with all laws and rules  
31 and regulations regarding maintaining confidentiality in ~~the~~ **such** pro-  
32 grams administered by the Kansas health policy authority.

33 (i) The inspector general shall make such recommendations to the  
34 executive director of the Kansas health policy authority, the ~~governor~~  
35 **attorney general** or the legislature for changes in law, rules and regu-  
36 lations, policy or procedures as the inspector general deems appropriate  
37 to carry out the provisions of law or to improve the efficiency of **such**  
38 programs administered by the Kansas health policy authority. The in-  
39 spector general shall not be required to obtain permission or approval  
40 from any other official or authority prior to making any such  
41 recommendation.

42 (j) The inspector general shall make provision to solicit and receive  
43 reports of fraud, waste, abuse, mismanagement, misconduct or ineffi-

1   ciencies in ~~the~~ **such** programs administered by the Kansas health policy  
2   authority from any person or persons who shall possess such information.  
3   The inspector general shall not disclose or make public the identity of  
4   any person or persons who provide such reports pursuant to this subsection  
5   unless such person or persons consent in writing to the disclosure of  
6   such person's identity. Disclosure of the identity of any person who makes  
7   a report pursuant to this subsection shall not be ordered as part of any  
8   administrative or judicial proceeding. Any information received by the  
9   inspector general from any person concerning fraud, waste, abuse, inefficiency,  
10   mismanagement, misconduct or inefficiencies in ~~the~~ **such** programs administered by the Kansas health policy authority shall be confidential and shall not be disclosed or made public, upon subpoena or otherwise, except such information may be disclosed if (1) release of the information would not result in the identification of the person who provided the information, (2) the person or persons who provided the information to be disclosed consent in writing to its disclosure, (3) the disclosure is necessary to protect the public health or (4) the information to be disclosed is required in an administrative proceeding or court proceeding and appropriate provision has been made to allow disclosure of the information without disclosing to the public the identity of the person or persons who reported such information to the inspector general.

22   (k) The scope, timing and completion of any audit or investigation  
23   conducted by the inspector general shall be within the discretion of the  
24   inspector general. Any audit conducted by the inspector general's office  
25   shall adhere ~~to the government~~ **and comply with all provisions of generally accepted governmental** auditing standards promulgated by the  
26   United States government accountability office.

28   (l) Nothing in this section shall limit investigations by any state department or agency that may otherwise be required by law or that may be necessary in carrying out the duties and functions of such agency.

31   Sec. 2. K.S.A. 2005 Supp. 75-2973 is hereby amended to read as follows: 75-2973. (a) This section shall be known and may be cited as the  
32   Kansas whistleblower act.

34   (b) As used in this section:

35   (1) "Auditing agency" means the (A) legislative post auditor, (B) any  
36   employee of the division of post audit, (C) any firm performing audit  
37   services pursuant to a contract with the post auditor, ~~or~~ (D) any state  
38   agency or federal agency or authority performing auditing or other oversight activities under authority of any provision of law authorizing such activities or (E) *the inspector general created under section 1 and amendments thereto*.

42   (2) "Disciplinary action" means any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal or

- 1 withholding of work.
- 2 (3) “State agency” and “firm” have the meanings provided by K.S.A.  
3 46-1112 and amendments thereto.
- 4 (c) No supervisor or appointing authority of any state agency shall  
5 prohibit any employee of the state agency from discussing the operations  
6 of the state agency or other matters of public concern, including matters  
7 relating to the public health, safety and welfare either specifically or gen-  
8 erally, with any member of the legislature or any auditing agency.
- 9 (d) No supervisor or appointing authority of any state agency shall:
- 10 (1) Prohibit any employee of the state agency from reporting any  
11 violation of state or federal law or rules and regulations to any person,  
12 agency or organization; or
- 13 (2) require any such employee to give notice to the supervisor or  
14 appointing authority prior to making any such report.
- 15 (e) This section shall not be construed as:
- 16 (1) Prohibiting a supervisor or appointing authority from requiring  
17 that an employee inform the supervisor or appointing authority as to leg-  
18 islative or auditing agency requests for information to the state agency or  
19 the substance of testimony made, or to be made, by the employee to  
20 legislators or the auditing agency, as the case may be, on behalf of the  
21 state agency;
- 22 (2) permitting an employee to leave the employee’s assigned work  
23 areas during normal work hours without following applicable rules and  
24 regulations and policies pertaining to leaves, unless the employee is re-  
25 quested by a legislator or legislative committee to appear before a legis-  
26 lative committee or by an auditing agency to appear at a meeting with  
27 officials of the auditing agency;
- 28 (3) authorizing an employee to represent the employee’s personal  
29 opinions as the opinions of a state agency; or
- 30 (4) prohibiting disciplinary action of an employee who discloses in-  
31 formation which: (A) The employee knows to be false or which the em-  
32 ployee discloses with reckless disregard for its truth or falsity, (B) the  
33 employee knows to be exempt from required disclosure under the open  
34 records act or (C) is confidential or privileged under statute or court rule.
- 35 (f) Any officer or employee of a state agency who is in the classified  
36 service and has permanent status under the Kansas civil service act may  
37 appeal to the state civil service board whenever the officer or employee  
38 alleges that disciplinary action was taken against the officer or employee  
39 in violation of this act. The appeal shall be filed within 90 days after the  
40 alleged disciplinary action. Procedures governing the appeal shall be in  
41 accordance with subsections (f) and (g) of K.S.A. 75-2949 and amend-  
42 ments thereto and K.S.A. 75-2929d through 75-2929g and amendments  
43 thereto. If the board finds that disciplinary action taken was unreasonable,

1 the board shall modify or reverse the agency's action and order such relief  
2 for the employee as the board considers appropriate. If the board finds  
3 a violation of this act, it may require as a penalty that the violator be  
4 suspended on leave without pay for not more than 30 days or, in cases of  
5 willful or repeated violations, may require that the violator forfeit the  
6 violator's position as a state officer or employee and disqualify the violator  
7 for appointment to or employment as a state officer or employee for a  
8 period of not more than two years. The board may award the prevailing  
9 party all or a portion of the costs of the proceedings before the board,  
10 including reasonable attorney fees and witness fees. The decision of the  
11 board pursuant to this subsection may be appealed by any party pursuant  
12 to law. On appeal, the court may award the prevailing party all or a portion  
13 of the costs of the appeal, including reasonable attorney fees and witness  
14 fees.

15 (g) Each state agency shall prominently post a copy of this act in  
16 locations where it can reasonably be expected to come to the attention  
17 of all employees of the state agency.

18 (h) Any officer or employee who is in the unclassified service under  
19 the Kansas civil service act who alleges that disciplinary action has been  
20 taken against such officer or employee in violation of this section may  
21 bring an action pursuant to the act for judicial review and civil enforce-  
22 ment of agency actions within 90 days after the occurrence of the alleged  
23 violation. The court may award the prevailing party in the action all or a  
24 portion of the costs of the action, including reasonable attorney fees and  
25 witness fees.

26 (i) Nothing in this section shall be construed to authorize disclosure  
27 of any information or communication that is confidential or privileged  
28 under statute or court rule.

29 Sec. 3. K.S.A. 46-2601 is hereby amended to read as follows: 46-  
30 2601. (a) There is hereby established the confirmation oversight com-  
31 mittee which shall have six members. Except as provided by this subsec-  
32 tion, members of the confirmation oversight committee shall be  
33 appointed in the manner provided by senate rule for the appointment of  
34 members of standing committees of the senate. The two major political  
35 parties shall have proportional representation on such committee. In the  
36 event application of the preceding sentence results in a fraction, the party  
37 having a fraction exceeding .5 shall receive representation as though such  
38 fraction were a whole number. One of the members of the committee  
39 shall be the majority leader, or the majority leader's designee, who shall  
40 be the chairperson. One of the members of the committee shall be the  
41 minority leader, or the minority leader's designee, who shall be the vice-  
42 chairperson. The committee shall meet on the call of the chairperson or  
43 any three members of the committee.

1 (b) If a vacancy occurs in the membership of a board, commission,  
2 council, committee, authority or other governmental body *or in the po-*  
3 *sition of inspector general created under section 1 and amendments*  
4 *thereto* and the appointment to fill such vacancy is subject to confirmation  
5 by the senate as provided in K.S.A. 75-4315b, and amendments thereto,  
6 the confirmation oversight committee may authorize, by a majority vote  
7 thereof, the person appointed to fill such vacancy to exercise the powers,  
8 duties and functions of the office until such appointment is confirmed by  
9 the senate in the manner provided by K.S.A. 75-4315b, and amendments  
10 thereto, at the next regular or special session of the legislature.

11 Prior to authorizing any person to exercise the powers, duties and func-  
12 tions of an office pursuant to this section, the confirmation oversight com-  
13 mittee may require such person to appear before the committee.

14 (c) (1) If the confirmation oversight committee authorizes a person  
15 appointed to fill a vacancy to exercise the powers, duties and functions of  
16 an office as provided by this section, such person shall not be subject to  
17 confirmation by the senate if at the time of such person's appointment  
18 there is less than six months in the unexpired term of such.

19 (2) The provisions of this subsection shall not apply to appointments  
20 to the state board of regents.

21 Sec. 4. K.S.A. 46-2601 and K.S.A. 2005 Supp. 75-2973 are hereby  
22 repealed.

23 Sec. 5. This act shall take effect and be in force from and after its  
24 publication in the statute book.