

## SENATE BILL No. 141

By Committee on Judiciary

1-29

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9 AN ACT concerning the division of post audit; transferring the inspector  
10 general and the office of the inspector general from the Kansas health  
11 policy authority to the division of post audit; amending K.S.A. 2008  
12 Supp. 75-7427 and repealing the existing section.  
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14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. On the effective date of this act, K.S.A. 2008 Supp. 75-  
16 7427 is hereby amended to read as follows: 75-7427. (a) As used in this  
17 section:

18 (1) "Attorney general" means the attorney general, employees of the  
19 attorney general or authorized representatives of the attorney general.

20 (2) "Benefit" means the receipt of money, goods, items, facilities,  
21 accommodations or anything of pecuniary value.

22 (3) "Claim" means an electronic, electronic impulse, facsimile, mag-  
23 netic, oral, telephonic or written communication that is utilized to identify  
24 any goods, service, item, facility or accommodation as reimbursable to  
25 the state medicaid program, or its fiscal agents, the state mediKan pro-  
26 gram or the state children's health insurance program or which states  
27 income or expense.

28 (4) "Client" means past or present beneficiaries or recipients of the  
29 state medicaid program, the state mediKan program or the state chil-  
30 dren's health insurance program.

31 (5) "Contractor" means any contractor, supplier, vendor or other per-  
32 son who, through a contract or other arrangement, has received, is to  
33 receive or is receiving public funds or in-kind contributions from the  
34 contracting agency as part of the state medicaid program, the state  
35 mediKan program or the state children's health insurance program, and  
36 shall include any sub-contractor.

37 (6) "Contractor files" means those records of contractors which relate  
38 to the state medicaid program, the state mediKan program or the state  
39 children's health insurance program.

40 (7) "Fiscal agent" means any corporation, firm, individual, organiza-  
41 tion, partnership, professional association or other legal entity which,  
42 through a contractual relationship with the state of Kansas receives, pro-  
43 cesses and pays claims under the state medicaid program, the state

1 mediKan program or the state children's health insurance program.

2 (8) "Health care provider" means a health care provider as defined  
3 under K.S.A. 65-4921, and amendments thereto, who has applied to partici-  
4 pulate in, who currently participates in, or who has previously partici-  
5 pated in the state medicaid program, the state mediKan program or the  
6 state children's health insurance program.

7 (9) "Kansas health policy authority" or "authority" means the Kansas  
8 health policy authority established under K.S.A. 2008 Supp. 75-7401, and  
9 amendments thereto, or its successor agency.

10 (10) "Managed care program" means a program which provides co-  
11 ordination, direction and provision of health services to an identified  
12 group of individuals by providers, agencies or organizations.

13 (11) "Medicaid program" means the Kansas program of medical as-  
14 sistance for which federal or state moneys, or any combination thereof,  
15 are expended, or any successor federal or state, or both, health insurance  
16 program or waiver granted thereunder.

17 (12) "Person" means any agency, association, corporation, firm, lim-  
18 ited liability company, limited liability partnership, natural person, organ-  
19 ization, partnership or other legal entity, the agents, employees, inde-  
20 pendent contractors, and subcontractors, thereof, and the legal successors  
21 thereto.

22 (13) "Provider" means a person who has applied to participate in,  
23 who currently participates in, who has previously participated in, who  
24 attempts or has attempted to participate in the state medicaid program,  
25 the state mediKan program or the state children's health insurance pro-  
26 gram, by providing or claiming to have provided goods, services, items,  
27 facilities or accommodations.

28 (14) "Recipient" means an individual, either real or fictitious, in  
29 whose behalf any person claimed or received any payment or payments  
30 from the state medicaid program, or its fiscal agent, the state mediKan  
31 program or the state children's health insurance program, whether or not  
32 any such individual was eligible for benefits under the state medicaid  
33 program, the state mediKan program or the state children's health insur-  
34 ance program.

35 (15) "Records" means all written documents and electronic or mag-  
36 netic data, including, but not limited to, medical records, X-rays, profes-  
37 sional, financial or business records relating to the treatment or care of  
38 any recipient; goods, services, items, facilities or accommodations pro-  
39 vided to any such recipient; rates paid for such goods, services, items,  
40 facilities or accommodations; and goods, services, items, facilities or ac-  
41 commodated provided to nonmedicaid recipients to verify rates or  
42 amounts of goods, services, items, facilities or accommodations provided  
43 to medicaid recipients, as well as any records that the state medicaid

1 program, or its fiscal agents, the state mediKan program or the state  
2 children's health insurance program require providers to maintain. "Re-  
3 cords" shall not include any report or record in any format which is made  
4 pursuant to K.S.A. 65-4922, 65-4923 or 65-4924, and amendments  
5 thereto, and which is privileged pursuant to K.S.A. 65-4915 or 65-4925,  
6 and amendments thereto.

7 (16) "State children's health insurance program" means the state chil-  
8 dren's health insurance program as provided in K.S.A. 38-2001 et seq.,  
9 and amendments thereto.

10 (b) (1) There is hereby established within the ~~Kansas health policy~~  
11 ~~authority~~ *division of post audit* the office of inspector general. All budg-  
12 eting, purchasing and related management functions of the office of in-  
13 spector general shall be administered under the direction and supervision  
14 of the ~~executive director of the Kansas health policy authority~~ *the legis-*  
15 *lative post audit committee*. The purpose of the office of inspector general  
16 is to establish a full-time program of audit, investigation and performance  
17 review to provide increased accountability, integrity and oversight of the  
18 state medicaid program, the state mediKan program and the state chil-  
19 dren's health insurance program within the jurisdiction of the Kansas  
20 health policy authority and to assist in improving agency and program  
21 operations and in deterring and identifying fraud, waste, *inefficiency, mis-*  
22 *management, misconduct*, abuse and illegal acts. The office of inspector  
23 general shall be independent and free from political influence and in  
24 performing the duties of the office under this section shall conduct in-  
25 vestigations, audits, evaluations, inspections and other reviews in accord-  
26 ance with professional standards that relate to the fields of investigation  
27 and auditing in government.

28 (2) (A) The inspector general shall be appointed by the ~~Kansas health~~  
29 ~~policy authority~~ *the legislative post audit committee* with the advice and  
30 consent of the senate and subject to confirmation by the senate as pro-  
31 vided in K.S.A. 75-4315b, and amendments thereto. Except as provided  
32 in K.S.A. 46-2601, and amendments thereto, no person appointed to the  
33 position of inspector general shall exercise any power, duty or function  
34 of the inspector general until confirmed by the senate. The inspector  
35 general shall be selected without regard to political affiliation and on the  
36 basis of integrity and capacity for effectively carrying out the duties of  
37 the office of inspector general. The inspector general shall possess dem-  
38 onstrated knowledge, skills, abilities and experience in conducting audits  
39 or investigations and shall be familiar with the programs subject to over-  
40 sight by the office of inspector general.

41 (B) No former or current executive or manager of any program or  
42 agency subject to oversight by the office of inspector general may be  
43 appointed inspector general within two years of that individual's period

1 of service with such program or agency. The inspector general shall hold  
2 at time of appointment, or shall obtain within one year after appointment,  
3 certification as a certified inspector general from a national organization  
4 that provides training to inspectors general.

5 (C) ~~The term of the person first appointed to the position of inspector~~  
6 ~~general shall expire on January 15, 2000. Thereafter, a each~~ person ap-  
7 pointed to the position of inspector general shall serve for a term which  
8 shall expire on January 15 of each year in which the whole senate is sworn  
9 in for a new term.

10 (D) The inspector general shall be in the ~~classified~~ *unclassified* serv-  
11 ice and shall receive such compensation as is determined by ~~law~~ *the leg-*  
12 *islative post audit committee*, except that such compensation may be in-  
13 creased but not diminished during the term of office of the inspector  
14 general. ~~The inspector general may be removed from office prior to the~~  
15 ~~expiration of the inspector general's term of office in accordance with the~~  
16 ~~Kansas civil service act shall serve at the pleasure of the legislative post~~  
17 ~~audit committee. The inspector general may be removed from office by~~  
18 ~~the affirmative vote of not less than seven members of the legislative post~~  
19 ~~audit committee taken at any regular meeting of such committee.~~ The  
20 inspector general shall exercise independent judgment in carrying out the  
21 duties of the office of inspector general under subsection (b). Appropri-  
22 ations for the office of inspector general shall be made to the ~~Kansas~~  
23 ~~health policy authority division of post audit~~ by separate line item appro-  
24 priations for the office of inspector general. The inspector general shall  
25 report to the ~~Kansas health policy authority post auditor and the legisla-~~  
26 ~~tive post audit committee.~~

27 (E) *Except as otherwise provided by this section, the inspector gen-*  
28 *eral and such employees are employees in the division of post audit and*  
29 *are under the direct supervision of the post auditor.* The inspector general  
30 shall have general managerial control over the office of the inspector  
31 general and shall establish the organization structure of the office as the  
32 inspector general deems appropriate to carry out the responsibilities and  
33 functions of the office.

34 (3) Within the limits of appropriations therefor *and subject to ap-*  
35 *proval by the post auditor*, the inspector general may hire such employees  
36 in the unclassified service as are necessary ~~to administer~~ *for* the office of  
37 the inspector general. Such employees shall serve at the pleasure of the  
38 inspector general. Subject to appropriations, the inspector general may  
39 obtain the services of certified public accountants, qualified management  
40 consultants, professional auditors, or other professionals necessary to in-  
41 dependently perform the functions of the office.

42 (c) (1) In accordance with the provisions of this section, the duties  
43 of the office of inspector general shall be to oversee, audit, investigate

1 and make performance reviews of the state medicaid program, the state  
2 mediKan program and the state children's health insurance program,  
3 which programs are within the jurisdiction of the Kansas health policy  
4 authority.

5 (2) In order to carry out the duties of the office, the inspector general  
6 shall conduct independent and ongoing evaluation of the Kansas health  
7 policy authority and of such programs administered by the Kansas health  
8 policy authority, which oversight includes, but is not limited to, the  
9 following:

10 (A) Investigation of fraud, waste, *inefficiency, mismanagement, mis-*  
11 *conduct*, abuse and illegal acts by the Kansas health policy authority and  
12 its agents, employees, vendors, contractors, consumers, clients and health  
13 care providers or other providers.

14 (B) Audits of the Kansas health policy authority, its employees, con-  
15 tractors, vendors and health care providers related to ensuring that ap-  
16 propriate payments are made for services rendered and to the recovery  
17 of overpayments.

18 (C) Investigations of fraud, waste, *inefficiency, mismanagement, mis-*  
19 *conduct*, abuse or illegal acts committed by clients of the Kansas health  
20 policy authority or by consumers of services administered by the Kansas  
21 health policy authority.

22 (D) Monitoring adherence to the terms of the contract between the  
23 Kansas health policy authority and an organization with which the au-  
24 thority has entered into a contract to make claims payments.

25 (3) Upon finding credible evidence of fraud, waste, *inefficiency, mis-*  
26 *management, misconduct*, abuse or illegal acts, the inspector general shall  
27 report its findings to the Kansas health policy authority *and the legislative*  
28 *post audit committee* and shall refer the findings to the attorney general.

29 (d) The inspector general shall have access to all pertinent informa-  
30 tion, confidential or otherwise, and to all personnel and facilities of the  
31 Kansas health policy authority, ~~their~~ *the employees of the authority*, ven-  
32 dors, contractors and health care providers and any federal, state or local  
33 governmental agency that are necessary to perform the duties of the office  
34 as directly related to such programs administered by the authority. Access  
35 to contractor or health care provider files shall be limited to those files  
36 necessary to verify the accuracy of the contractor's or health care pro-  
37 vider's invoices or their compliance with the contract provisions or pro-  
38 gram requirements. No health care provider shall be compelled under  
39 the provisions of this section to provide individual medical records of  
40 patients who are not clients of the state medicaid program, the state  
41 mediKan program or the state children's health insurance program. State  
42 and local governmental agencies are authorized and directed to provide  
43 to the inspector general requested information, assistance or cooperation.

1 (e) Except as otherwise provided in this section, the inspector general  
2 and all employees and former employees of the office of inspector general  
3 shall be subject to the same duty of confidentiality imposed by law on  
4 any such person or agency with regard to any such information, and shall  
5 be subject to any civil or criminal penalties imposed by law for violations  
6 of such duty of confidentiality. The duty of confidentiality imposed on  
7 the inspector general and all employees and former employees of the  
8 office of inspector general shall be subject to the provisions of subsection  
9 (f), and the inspector general may furnish all such information to the  
10 attorney general, Kansas bureau of investigation or office of the United  
11 States attorney in Kansas pursuant to subsection (f). Upon receipt thereof,  
12 the attorney general, Kansas bureau of investigation or office of the  
13 United States attorney in Kansas and all assistants and all other employees  
14 and former employees of such offices shall be subject to the same duty  
15 of confidentiality with the exceptions that any such information may be  
16 disclosed in criminal or other proceedings which may be instituted and  
17 prosecuted by the attorney general or the United States attorney in Kan-  
18 sas, and any such information furnished to the attorney general, the Kan-  
19 sas bureau of investigation or the United States attorney in Kansas under  
20 subsection (f) may be entered into evidence in any such proceedings.

21 (f) All investigations conducted by the inspector general shall be con-  
22 ducted in a manner that ensures the preservation of evidence for use in  
23 criminal prosecutions or agency administrative actions. If the inspector  
24 general determines that a possible criminal act relating to fraud in the  
25 provision or administration of such programs administered by the Kansas  
26 health policy authority has been committed, the inspector general shall  
27 immediately notify the office of the Kansas attorney general. If the in-  
28 spector general determines that a possible criminal act has been com-  
29 mitted within the jurisdiction of the office, the inspector general may  
30 request the special expertise of the Kansas bureau of investigation. The  
31 inspector general may present for prosecution the findings of any criminal  
32 investigation to the office of the attorney general or the office of the  
33 United States attorney in Kansas.

34 (g) To carry out the duties as described in this section, the inspector  
35 general and the inspector general's designees shall have the power to  
36 compel by subpoena the attendance and testimony of witnesses and the  
37 production of books, electronic records and papers as directly related to  
38 such programs administered by the Kansas health policy authority. Access  
39 to contractor files shall be limited to those files necessary to verify the  
40 accuracy of the contractor's invoices or its compliance with the contract  
41 provisions. No health care provider shall be compelled to provide indi-  
42 vidual medical records of patients who are not clients of the authority.

43 (h) The inspector general shall report all convictions, terminations

1 and suspensions taken against vendors, contractors and health care pro-  
2 viders to the Kansas health policy authority and to any agency responsible  
3 for licensing or regulating those persons or entities. If the inspector gen-  
4 eral determines reasonable suspicion exists that an act relating to the  
5 violation of an agency licensure or regulatory standard has been commit-  
6 ted by a vendor, contractor or health care provider who is licensed or  
7 regulated by an agency, the inspector general shall immediately notify  
8 such agency of the possible violation.

9 (i) The inspector general shall make annual reports, findings and rec-  
10 ommendations regarding the office's investigations into reports of fraud,  
11 waste, *inefficiency, mismanagement, misconduct*, abuse and illegal acts  
12 relating to any such programs administered by the Kansas health policy  
13 authority to the executive director of the Kansas health policy authority,  
14 the legislative post auditor, *the legislative post audit committee*, the com-  
15 mittee on ways and means of the senate, the committee on appropriations  
16 of the house of representatives, the joint committee on health policy over-  
17 sight and the governor. These reports shall include, but not be limited  
18 to, the following information:

19 (1) Aggregate provider billing and payment information;  
20 (2) the number of audits of such programs administered by the Kan-  
21 sas health policy authority and the dollar savings, if any, resulting from  
22 those audits;

23 (3) health care provider sanctions, in the aggregate, including ter-  
24 minations and suspensions; and

25 (4) a detailed summary of the investigations undertaken in the pre-  
26 vious fiscal year, which summaries shall comply with all laws and rules  
27 and regulations regarding maintaining confidentiality in such programs  
28 administered by the Kansas health policy authority.

29 (j) Based upon the inspector general's findings under subsection (c),  
30 the inspector general may make such recommendations to the Kansas  
31 health policy authority or the legislature for changes in law, rules and  
32 regulations, policy or procedures as the inspector general deems appro-  
33 priate to carry out the provisions of law or to improve the efficiency of  
34 such programs administered by the Kansas health policy authority. The  
35 inspector general shall not be required to obtain permission or approval  
36 from any other official or authority prior to making any such  
37 recommendation.

38 (k) (1) The inspector general shall make provision to solicit and re-  
39 ceive reports of fraud, waste, *inefficiency, mismanagement, misconduct*,  
40 abuse and illegal acts in such programs administered by the Kansas health  
41 policy authority from any person or persons who shall possess such in-  
42 formation. The inspector general shall not disclose or make public the  
43 identity of any person or persons who provide such reports pursuant to

1 this subsection unless such person or persons consent in writing to the  
2 disclosure of such person's identity. Disclosure of the identity of any per-  
3 son who makes a report pursuant to this subsection shall not be ordered  
4 as part of any administrative or judicial proceeding. Any information re-  
5 ceived by the inspector general from any person concerning fraud, waste,  
6 *inefficiency, mismanagement, misconduct*, abuse or illegal acts in such  
7 programs administered by the Kansas health policy authority shall be  
8 confidential and shall not be disclosed or made public, upon subpoena or  
9 otherwise, except such information may be disclosed if (A) release of the  
10 information would not result in the identification of the person who pro-  
11 vided the information, (B) the person or persons who provided the in-  
12 formation to be disclosed consent in writing prior to its disclosure, (C)  
13 the disclosure is necessary to protect the public health, or (D) the infor-  
14 mation to be disclosed is required in an administrative proceeding or  
15 court proceeding and appropriate provision has been made to allow dis-  
16 closure of the information without disclosing to the public the identity of  
17 the person or persons who reported such information to the inspector  
18 general.

19 (2) No person shall:

20 (A) Prohibit any agent, employee, contractor or subcontractor from  
21 reporting any information under subsection (k)(1); or

22 (B) require any such agent, employee, contractor or subcontractor to  
23 give notice to the person prior to making any such report.

24 (3) Subsection (k)(2) shall not be construed as:

25 (A) Prohibiting an employer from requiring that an employee inform  
26 the employer as to legislative or auditing agency requests for information  
27 or the substance of testimony made, or to be made, by the employee to  
28 legislators or the auditing agency, as the case may be, on behalf of the  
29 employer;

30 (B) permitting an employee to leave the employee's assigned work  
31 areas during normal work hours without following applicable rules and  
32 regulations and policies pertaining to leaves, unless the employee is re-  
33 quested by a legislator or legislative committee to appear before a legis-  
34 lative committee or by an auditing agency to appear at a meeting with  
35 officials of the auditing agency;

36 (C) authorizing an employee to represent the employee's personal  
37 opinions as the opinions of the employer; or

38 (D) prohibiting disciplinary action of an employee who discloses in-  
39 formation which (A) the employee knows to be false or which the em-  
40 ployee discloses with reckless disregard for its truth or falsity, (B) the  
41 employee knows to be exempt from required disclosure under the open  
42 records act, or (C) is confidential or privileged under statute or court rule.

43 (4) Any agent, employee, contractor or subcontractor who alleges that

1 disciplinary action has been taken against such agent, employee, contrac-  
2 tor or subcontractor in violation of this section may bring an action for  
3 any damages caused by such violation in district court within 90 days after  
4 the occurrence of the alleged violation.

5 (5) Any disciplinary action taken against an employee of a state agency  
6 or firm as such terms are defined under subsection (b) of K.S.A. 75-2973,  
7 and amendments thereto, for making a report under subsection (k)(1)  
8 shall be governed by the provisions of K.S.A. 75-2973, and amendments  
9 thereto.

10 (l) The scope, timing and completion of any audit or investigation  
11 conducted by the inspector general shall be within the discretion of the  
12 inspector general. Any audit conducted by the inspector general's office  
13 shall adhere and comply with all provisions of generally accepted govern-  
14 mental auditing standards promulgated by the United States government  
15 accountability office.

16 (m) Nothing in this section shall limit investigations by any state de-  
17 partment or agency that may otherwise be required by law or that may  
18 be necessary in carrying out the duties and functions of such agency.

19 (n) The Kansas health policy authority *and the legislative post audit*  
20 *committee*, in accordance with K.S.A. 75-4319, and amendments thereto,  
21 may recess for a closed, executive meeting under the open meetings act,  
22 K.S.A. 75-4317 through 75-4320a, and amendments thereto, to discuss  
23 with the inspector general any information, records or other matters that  
24 are involved in any investigation or audit under this section. All infor-  
25 mation and records of the inspector general that are obtained or received  
26 under any investigation or audit under this section shall be confidential,  
27 except as required or authorized pursuant to this section.

28 Sec. 2. On the effective date of this act, K.S.A. 2008 Supp. 75-7427  
29 is hereby repealed.

30 Sec. 3. This act shall take effect and be in force from and after its  
31 publication in the Kansas register.