

SESSION OF 2024

SUPPLEMENTAL NOTE ON SENATE BILL NO. 488

As Amended by Senate Committee of the Whole

Brief*

SB 488, as amended, would expand the scope of the Inspector General within the Office of the Attorney General (OAG) to include the audit, investigation, and performance review of all state cash, food, and health assistance programs. The bill would grant the Inspector General (IG) the power to subpoena, administer oaths, and execute search warrants. The bill would establish a limit of five additional full-time employees (FTEs) in fiscal year (FY) 2025 that could be hired to perform the expanded duties of the Office of the Inspector General (OIG) as well as the maximum budget allocation for the additional FTEs. The bill would also add and amend several definitions and make technical, clarifying, and conforming amendments.

The amendments made by the bill would expire on July 1, 2028.

Definitions

The bill would add the following definitions:

- “Cash assistance” would mean assistance that is administered and provided by the Secretary for Children and Families to individuals for a family’s ongoing basic needs;
- “Food assistance” would mean assistance that is administered by the U.S. Department of Agriculture

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

and provided by the Secretary for Children and Families to individuals for eligible food products; and

- “Health assistance” would mean the Medicaid program, the state Children’s Health Insurance Program (CHIP), and the State Employee Health Benefits Plan.

The bill would amend the definitions for “claim,” “client,” “contractor,” “contractor files,” “fiscal agent,” “provider,” “recipient,” and “records” to replace references to “Medicaid, the state MediKan program, or the state Children’s Health Insurance Program” with “any cash, food or health assistance program.” The definition of “healthcare provider” would be amended to replace a reference to “Medicaid, the state MediKan program, or the state Children’s Health Insurance Program” with “health assistance program,” which would include those three programs and the State Employee Health Benefits Plan.

The bill would remove language exempting the following from the definition of “records”: any report or record in any format made pursuant to statutes pertaining to risk management programs for healthcare facilities, healthcare provider reporting requirements, and reports relating to impaired providers, which are privileged pursuant to statutes relating to healthcare provider peer reviews or confidential and privileged reports.

Office of the Inspector General

Purpose

The bill would clarify the purpose of the OIG full-time program of audit, investigation, and performance review to provide increased accountability, integrity, and oversight of any state cash, food, or health assistance programs and to assist in improving agency and program operations and in

detering and identifying fraud, waste, abuse, and other illegal acts. [Note: Current law provides only for a full-time program to audit, investigate, and perform such reviews of the state Medicaid program, the MediKan program, and CHIP.]

Prohibited Employment

The bill would prohibit a former or current IG from being employed as an executive director or manager for any program or agency subject to oversight by the OIG for two years after such IG's period of service as the IG has concluded.

Removal from Office

The bill would require the Attorney General (AG) to remove the IG from office prior to the expiration of the IG's term for cause. [Note: Current law provides the AG may remove an IG for cause.]

Office of the Inspector General Staffing and Expenditure Limitations

Within appropriations and as further provided, the bill would allow the AG to hire such employees in the unclassified services as are necessary to administer the OIG. The AG would be prohibited from authorizing more than five additional FTEs in FY 2025 in the OIG to perform the expanded duties established in the bill. The bill would prohibit expenditures in FY 2025 for salaries and wages and other operating expenditures for such additional employees from exceeding \$775,456.

Duties of Inspector General

The bill would expand the duties of the IG to require the oversight, audit, investigation, and performance reviews of any state cash, food, or health assistance program. [Note:

Current law limits such duties to state Medicaid, MediKan, and CHIP programs.]

Reporting to Attorney General

Upon finding credible evidence of “significant levels” of fraud, waste, abuse, or other illegal acts, the bill would require the IG to report the findings to the AG. [Note: Current law requires reporting upon finding credible evidence and does not reference “significant levels.”]

Cases for Prosecution

Current law allows the IG to present for prosecution the findings of any criminal investigation to the AG or the Office of the U.S. Attorney in Kansas. The bill would allow the IG to also present such findings for prosecution to any applicable district or county attorneys.

Powers of the Inspector General and Designees

The bill would grant the IG, and the IG’s designees, the following additional powers:

- Original jurisdiction to investigate crimes related to public assistance, including:
 - Violations of the Kansas Medicaid Fraud Control Act;
 - Fraud pertaining to eligibility for cash, food assistance, child care subsidy, and medical assistance;
 - Fraudulent acts involving assistance; and
 - Violations for which the AG is allowed access to records held by a provider;

- The power to issue, serve, or cause to be served subpoenas or other process of service in the aid of investigations;
- The power to compel by subpoena the attendance and testimony of witnesses and the production of books, electronic records, and papers as directly related to state cash, food, and health assistance programs;
- The power to administer oaths and take sworn statements under penalty of perjury;
- The power to serve and execute in any county search warrants that relate to investigations being executed by the OIG; and
- Access to contractor files would be limited to those files necessary to verify the accuracy of the contractors' invoices or its compliance with contract provisions. No health care provider would be compelled to provide individual medical records of patients who are not clients of such a program or programs. [Note: This is current law that would be re-designated as one of the powers granted to the IG and the IG's designee.]

Reporting to Health Care Provider Regulatory Agencies

When the IG determines that reasonable suspicion exists that an act relating to the violation of an agency licensure or regulatory standard has been committed by a vendor, contractor, or health care provider who is licensed or regulated by an agency, current law requires the IG to immediately notify such agency of the possible violation. The bill would add an exception to the reporting requirement if such notification would jeopardize an ongoing criminal investigation.

Content of Annual Inspector General Report

The bill would require the type of audit conducted to be included in the IG's annual report. The bill would remove the requirement for the annual report to include aggregate provider billing and payment information as well as the reference to the programs administered by the Kansas Department of Health and Environment.

Sunset Provision

The amendments made by the bill would expire on July 1, 2028.

Background

The bill was introduced by the Senate Committee on Public Health and Welfare at the request of a representative of the OAG.

Senate Committee on Public Health and Welfare

In the Senate Committee hearing, **proponent** testimony was provided by Medicaid Inspector General and Opportunity Solutions Project. The Medicaid Inspector General stated the bill would expand the existing responsibilities of the Office of Medicaid Inspector General to investigate fraud, waste, abuse, and other illegal acts involving Medicaid to allow for the investigation of all Kansas cash, food, and health assistance programs to ensure taxpayer dollars are properly spent and fraud, waste, and abuse are deterred. The representative of Opportunity Solutions Project stated the bill would enhance transparency and accountability within the state's welfare assistance programs and provide a proactive approach to combating fraud, protecting taxpayer dollars, and ensuring assistance programs remain accessible to those who need support.

Written-only opponent testimony was provided by representatives of Kansas Action for Children and Kansas Applesseed Center for Law and Justice.

No other testimony was provided.

The Senate Committee amended the bill to:

- Limit the number of unclassified employees for the OIG that the AG may authorize in FY 2025 to five FTEs and set a maximum budget for FY 2025;
- Add a sunset provision to the language amended by the bill;
- Revert to language in current law that:
 - Limits the IG's access to contractor or healthcare provider files to those files necessary to verify the accuracy of the contractor's or healthcare provider's invoices or their compliance with the contract provisions or program requirements;
 - Prohibits compelling a health care provider to provide individual medical records of patients who are not clients of the state Medicaid program, the MediKan program, or CHIP but replaces these listed programs with "health assistance program," which, as defined, would also include the State Employee Health Plan; and
 - With regard to the powers granted to the IG and the IG's designees to carry out the duties of the OIG:
 - Limits access to contractor files to those files necessary to verify the accuracy of the contractor's invoices or its compliance with the contract provisions; and

- Prohibits compelling a health care provider to provide individual medical records of patients who are not clients of the programs under investigation.

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill to clarify that the additional FTEs that could be hired to perform the expanded duties of the OIG in FY 2025 are in addition to current allocated FTEs. The amendment also clarified that the limit on expenditures for FY 2025 noted in the bill applied to the salaries and wages and other operating expenses for such additional employees.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the OAG states enactment of the bill would increase expenditures by \$3.0 million from the State General Fund (SGF) for FY 2025 and \$2.4 million from the SGF for FY 2026 and beyond. These expenditures would include hiring of an additional 20.0 FTE positions along with other operating expenditures. The on-going costs would include \$1.9 million for salaries and fringe benefits for 2.0 FTE IG positions, 6.0 FTE Special Agent positions, 3.0 FTE Analyst positions, 5.0 FTE Auditor positions, 1.0 FTE Legal Assistant position, and 3.0 FTE Investigator positions. Other ongoing costs of \$482,300 would include certain contractual services and supplies. One-time costs of \$577,288 would include computers, media equipment, furniture, training, and other commodities.

The additional full-time personnel would be needed to perform the expected additional audits, reviews, and investigations of fraud, waste, abuse, and other illegal acts. The additional staff would allow the OIG to conduct at least seven additional audits, four reviews, and 120 investigations per year. The increased funding would be offset by the fraud

that is prevented and the identification of wasteful spending, overpayments, and program savings.

The Kansas Department for Aging and Disability Services and the Department for Children and Families (DCF) indicate enactment of the bill would have no fiscal effect on the respective agencies. Currently, DCF has staff to investigate cash and food assistance cases. It is assumed these activities would continue within DCF with the current staff.

Any fiscal effect associated with the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Office of Inspector General; Inspector General; Attorney General; powers, duties, and responsibilities; investigations and audits; cash assistance; food assistance; medical assistance; fraud; sunset provision; limitations on employees and expenditures