

**OFFICE OF INSPECTOR GENERAL OF MEDICAID
SERVICES**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David Clark

Senate Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates, within the governor's office, the Office of Inspector General of Medicaid Services (office);
- ▶ describes and provides for the qualifications, appointment, term of office, and removal of the Inspector General of Medicaid Services (inspector general);
- ▶ describes the duties and powers of the inspector general and the office;
- ▶ requires the inspector general to enter into a memorandum of understanding with the Medicaid Fraud Unit of the attorney general's office;
- ▶ requires the office to annually select and review a representative sample of claims submitted for reimbursement under the state Medicaid program to determine whether fraud, waste, or abuse occurred;
- ▶ provides for the transfer of FTEs from the Department of Human Services to the governor's office to staff the office;
- ▶ establishes a process where the inspector general can order a hold on the payment of



28 a claim for reimbursement submitted by a claimant if there is reasonable cause to believe that
29 the claim, or payment of the claim, constitutes fraud, waste, or abuse, or is otherwise
30 inaccurate;

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

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

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

38 ▶ grants subpoena power to the inspector general;

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

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

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

48 ▶ makes technical changes.

49 **Money Appropriated in this Bill:**

50 This bill appropriates:

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

- 52 • from the General Fund, \$(511,800);
- 53 • from the Federal Fund, \$(1,041,900); and
- 54 • from Revenue Transfers - Within Agency, \$(285,200);

55 ▶ to Department of Health - Health Care Financing:

- 56 • from the General Fund, \$(257,200); and
- 57 • from the Federal Fund, \$(257,200); and

58 ▶ to Office of Inspector General of Medicaid Services:

- 59 • from the General Fund, \$769,000;
- 60 • from the Federal Fund, \$1,299,100; and
- 61 • from Revenue Transfers - Health, \$285,200.

62 **Other Special Clauses:**

63 This bill takes effect on July 1, 2011.

64 **Utah Code Sections Affected:**

65 AMENDS:

66 **63G-2-305**, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247

67 **63I-2-263**, as last amended by Laws of Utah 2010, Chapter 224

68 ENACTS:

69 **63M-12-101**, Utah Code Annotated 1953

70 **63M-12-102**, Utah Code Annotated 1953

71 **63M-12-201**, Utah Code Annotated 1953

72 **63M-12-202**, Utah Code Annotated 1953

73 **63M-12-203**, Utah Code Annotated 1953

74 **63M-12-204**, Utah Code Annotated 1953

75 **63M-12-205**, Utah Code Annotated 1953

76 **63M-12-206**, Utah Code Annotated 1953

77 **63M-12-207**, Utah Code Annotated 1953

78 **63M-12-301**, Utah Code Annotated 1953

79 **63M-12-302**, Utah Code Annotated 1953

80 **63M-12-303**, Utah Code Annotated 1953

81 **63M-12-304**, Utah Code Annotated 1953

82 **63M-12-401**, Utah Code Annotated 1953

83 **63M-12-501**, Utah Code Annotated 1953

84 **63M-12-502**, Utah Code Annotated 1953

85

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

87 Section 1. Section **63G-2-305** is amended to read:

88 **63G-2-305. Protected records.**

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

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

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

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

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

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

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

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

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

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

116 (a) a request for bids;

117 (b) a request for proposals;

118 (c) a grant; or

119 (d) other similar document;

120 (7) records that would identify real property or the appraisal or estimated value of real

121 or personal property, including intellectual property, under consideration for public acquisition
122 before any rights to the property are acquired unless:

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

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

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

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

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

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

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

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

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

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

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

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

152 hearing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

192 (A) members of a legislative body;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

244 (34) memoranda prepared by staff and used in the decision-making process by an

245 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
246 other body charged by law with performing a quasi-judicial function;

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

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

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

259 (a) the donor requests anonymity in writing;

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

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

267 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
268 73-18-13;

269 (39) a notification of workers' compensation insurance coverage described in Section
270 34A-2-205;

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

274 (i) unpublished lecture notes;

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

276 (A) relating to research; and
277 (B) of:
278 (I) the institution within the state system of higher education defined in Section
279 53B-1-102; or
280 (II) a sponsor of sponsored research;
281 (iii) unpublished manuscripts;
282 (iv) creative works in process;
283 (v) scholarly correspondence; and
284 (vi) confidential information contained in research proposals;
285 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
286 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
287 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
288 (41) (a) records in the custody or control of the Office of Legislative Auditor General
289 that would reveal the name of a particular legislator who requests a legislative audit prior to the
290 date that audit is completed and made public; and
291 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
292 Office of the Legislative Auditor General is a public document unless the legislator asks that
293 the records in the custody or control of the Office of Legislative Auditor General that would
294 reveal the name of a particular legislator who requests a legislative audit be maintained as
295 protected records until the audit is completed and made public;
296 (42) records that provide detail as to the location of an explosive, including a map or
297 other document that indicates the location of:
298 (a) a production facility; or
299 (b) a magazine;
300 (43) information:
301 (a) contained in the statewide database of the Division of Aging and Adult Services
302 created by Section 62A-3-311.1; or
303 (b) received or maintained in relation to the Identity Theft Reporting Information
304 System (IRIS) established under Section 67-5-22;
305 (44) information contained in the Management Information System and Licensing
306 Information System described in Title 62A, Chapter 4a, Child and Family Services;

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

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

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

314 (48) except to the extent that the record is exempt from this chapter pursuant to Section
315 63G-2-106, records related to an emergency plan or program prepared or maintained by the
316 Division of Homeland Security the disclosure of which would jeopardize:

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

318 (b) the security of:

319 (i) governmental property;

320 (ii) governmental programs; or

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

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

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

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

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

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

337 (a) the individual is required to provide the information in order to comply with a law,

338 ordinance, rule, or order of a government entity; and
339 (b) the subject of the record has a reasonable expectation that this information will be
340 kept confidential due to:
341 (i) the nature of the law, ordinance, rule, or order; and
342 (ii) the individual complying with the law, ordinance, rule, or order;
343 (52) the name, home address, work addresses, and telephone numbers of an individual
344 that is engaged in, or that provides goods or services for, medical or scientific research that is:
345 (a) conducted within the state system of higher education, as defined in Section
346 53B-1-102; and
347 (b) conducted using animals;
348 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
349 Private Proposal Program, to the extent not made public by rules made under that chapter;
350 (54) information collected and a report prepared by the Judicial Performance
351 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
352 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
353 the information or report;
354 (55) (a) records of the Utah Educational Savings Plan created under Section
355 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;
356 (b) proposals submitted to the Utah Educational Savings Plan; and
357 (c) contracts entered into by the Utah Educational Savings Plan and the related
358 payments;
359 (56) records contained in the Management Information System created in Section
360 62A-4a-1003;
361 (57) records provided or received by the Public Lands Policy Coordinating Office in
362 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;
363 (58) information requested by and provided to the Utah State 911 Committee under
364 Section 53-10-602;
365 (59) recorded Children's Justice Center investigative interviews, both video and audio,
366 the release of which are governed by Section 77-37-4; [and]
367 (60) in accordance with Section 73-10-33:
368 (a) a management plan for a water conveyance facility in the possession of the Division

369 of Water Resources or the Board of Water Resources; or

370 (b) an outline of an emergency response plan in possession of the state or a county or
371 municipality[-];

372 (61) the following records in the custody or control of the Office of Inspector General
373 of Medicaid Services, created in Section 63M-12-201:

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

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

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

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

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

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

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

397 **63I-2-263. Repeal dates, Title 63A to Title 63M.**

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

399 (2) Sections 63M-12-206 and 63M-12-207 are repealed on December 31, 2011.

400 Section 3. Section 63M-12-101 is enacted to read:

401 **CHAPTER 12. OFFICE OF INSPECTOR GENERAL OF MEDICAID SERVICES**

402 **Part 1. General Provisions**

403 **63M-12-101. Title.**

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

405 Section 4. Section 63M-12-102 is enacted to read:

406 **63M-12-102. Definitions.**

407 As used in this chapter:

408 (1) "Abuse" means:

409 (a) an action or practice that:

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

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

412 (b) reckless or negligent upcoding.

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

414 (a) provides a service; and

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

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

417 (4) "Division" means the Division of Health Care Financing, created in Section

418 26-18-2.1.

419 (5) "Fraud" means intentional or knowing deception, misrepresentation, or upcoding in
420 relation to Medicaid funds, costs, a claim, reimbursement, or services.

421 (6) "Fraud unit" means the Medicaid Fraud Unit of the attorney general's office.

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

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

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

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

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

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

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

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

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

- 431 (i) Title 58, Chapter 44a, Nurse Midwife Practice Act;
 432 (j) Title 58, Chapter 49, Dietitian Certification Act;
 433 (k) Title 58, Chapter 60, Mental Health Professional Practice Act;
 434 (l) Title 58, Chapter 67, Utah Medical Practice Act;
 435 (m) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
 436 (n) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
 437 (o) Title 58, Chapter 70a, Physician Assistant Act; and
 438 (p) Title 58, Chapter 73, Chiropractic Physician Practice Act.
 439 (8) "Inspector general" means the inspector general of the office, appointed under
 440 Section 63M-12-201.
 441 (9) "Office" means the Office of Inspector General of Medicaid Services, created in
 442 Section 63M-12-201.
 443 (10) "Provider" means a person that provides:
 444 (a) medical assistance in exchange for Medicaid funds; or
 445 (b) billing or recordkeeping services relating to Medicaid funds.
 446 (11) "Upcoding" means assigning an inaccurate evaluation and maintenance code for a
 447 service that is payable or reimbursable by Medicaid funds, if the correct evaluation and
 448 maintenance code for the service would result in a lower Medicaid payment or reimbursement.
 449 (12) "Waste" means overutilization of resources or inappropriate payment.
 450 Section 5. Section **63M-12-201** is enacted to read:
 451 **Part 2. Office Duties and Powers**
 452 **63M-12-201. Creation of office -- Inspector general -- Appointment -- Term.**
 453 (1) There is created, within the governor's office, the Office of Inspector General of
 454 Medicaid Services.
 455 (2) The governor shall appoint the inspector general, with the advice and consent of the
 456 Senate.
 457 (3) A person appointed as the inspector general shall:
 458 (a) be a certified public accountant or a certified internal auditor; and
 459 (b) have the following qualifications:
 460 (i) a general knowledge of the specific methodology and controls necessary to audit,
 461 investigate, and identify Medicaid fraud, waste, and abuse;

462 (ii) strong management skills;
463 (iii) extensive knowledge of, and at least seven years experience with, performance
464 audit methodology;

465 (iv) the ability to oversee and execute an audit;
466 (v) strong interpersonal skills; and
467 (vi) experience in making presentations to government officials.

468 (4) The inspector general:

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

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

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

473 Section 6. Section **63M-12-202** is enacted to read:

474 **63M-12-202. Duties and powers of inspector general and office.**

475 (1) The inspector general shall:

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

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

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

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

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

481 (iv) records and recordkeeping procedures;

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

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

484 Medicaid program;

485 (e) consult with the Centers for Medicaid and Medicare Services and other states to
486 determine and implement best practices for discovering and eliminating fraud, waste, and
487 abuse of Medicaid funds;

488 (f) obtain, develop, and utilize computer algorithms to identify fraud, waste, or abuse
489 in the state Medicaid program;

490 (g) work closely with the fraud unit to identify and recover improperly or fraudulently
491 expended Medicaid funds;

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

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

494 (i) regularly advise the department and the division of an action that should be taken to
495 ensure that the state Medicaid program is managed in the most efficient and cost-effective
496 manner possible;

497 (j) refer potential criminal conduct, relating to Medicaid funds or the state Medicaid
498 program, to the fraud unit;

499 (k) determine ways to:

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

501 and

502 (ii) recoup costs, reduce costs, and avoid or minimize increased costs of the state
503 Medicaid program;

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

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

506 (n) in accordance with Section 63M-12-501:

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

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

509 (o) provide training to agencies and employees on identifying potential fraud, waste, or
510 abuse of Medicaid funds; and

511 (p) develop and implement principles and standards for the fulfillment of the duties of
512 the inspector general, based on principles and standards used by:

513 (i) the Federal Offices of Inspector General;

514 (ii) the Association of Inspector's General; and

515 (iii) the United States Government Accountability Office.

516 (2) The office may conduct a performance or financial audit of:

517 (a) a state executive branch entity or a local government entity, including an entity
518 described in Subsection 63M-12-301(3), that:

519 (i) manages or oversees a state Medicaid program; or

520 (ii) manages or oversees the use or expenditure of state or federal Medicaid funds; or

521 (b) Medicaid funds received by a person by a grant from, or under contract with, a state
522 executive branch entity or a local government entity.

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

524 Section 7. Section **63M-12-203** is enacted to read:

525 **63M-12-203. Memorandum of understanding with fraud unit.**

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

528 (1) formalize communication, cooperation, coordination of efforts, and the sharing of
529 information, on a regular basis, between the office and the fraud unit;

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

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

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

535 Section 8. Section **63M-12-204** is enacted to read:

536 **63M-12-204. Selection and review of claims.**

537 (1) On an annual basis, the office shall select and review a representative sample of
538 claims submitted for reimbursement under the state Medicaid program to determine whether
539 fraud, waste, or abuse occurred.

540 (2) The office may directly contact the recipient of record for a Medicaid reimbursed
541 service to determine whether the service for which reimbursement was claimed was actually
542 provided to the recipient of record.

543 (3) The office shall generate statistics from the sample described in Subsection (1) to
544 determine the type of fraud, waste, or abuse that is most advantageous to focus on in future
545 audits or investigations.

546 Section 9. Section **63M-12-205** is enacted to read:

547 **63M-12-205. Placement of hold on claims for reimbursement -- Injunction.**

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

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

554 (3) The inspector general or the inspector general's designee may not maintain a hold

555 longer than is necessary to determine whether the claim, or payment of the claim, constitutes
556 fraud, waste, or abuse, or is otherwise inaccurate.

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

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

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

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

566 Section 10. Section **63M-12-206** is enacted to read:

567 **63M-12-206. Transfer of full-time equivalents to staff office.**

568 The office shall be staffed by transferring full-time equivalents to the office, as follows:

569 (1) transferring from the Office of Internal Audit and Program Integrity to the office all
570 full-time equivalents for the following positions, as they existed and were organized within the
571 Office of Internal Audit and Program Integrity on September 28, 2010, as shown in Appendix
572 B of the Performance Audit of Utah Medicaid Provider Cost Control, dated December 2010
573 and published by the Office of the Legislative Auditor General:

574 (a) the director of the Office of Internal Audit and Program Integrity;

575 (b) the executive secretary to the director of the Office of Internal Audit and Program
576 Integrity;

577 (c) two positions of program manager of Program Integrity Post Payment Review;

578 (d) all positions under the positions described in Subsection (1)(c), including:

579 (i) four RN III positions;

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

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

582 (iv) doctor (0.2 FTE);

583 (v) two positions of doctor (0.5 FTE each);

584 (vi) data HPS III;

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

- 586 (viii) collections HPS II;
- 587 (ix) PERM Lead;
- 588 (x) PERM HPS II; and
- 589 (xi) PERM HPS II;
- 590 (e) the audit manager (other audits); and
- 591 (f) all positions under the position described in Subsection (1)(e), including:
- 592 (i) four positions of Auditor II; and
- 593 (ii) the position of Auditor II that was vacant on September 28, 2010; and
- 594 (2) transferring from the division to the office three full-time equivalents for the
- 595 following positions, as they existed and were organized within the Division of Health Care
- 596 Financing on September 28, 2010:
- 597 (a) financial analyst II;
- 598 (b) actuarial specialist; and
- 599 (c) health program specialist III.

600 Section 11. Section **63M-12-207** is enacted to read:

601 **63M-12-207. Filling of transferred positions.**

602 The executive director of the department and the inspector general shall meet to
603 determine which individuals, if any, who currently hold the positions represented by the
604 full-time equivalents described in Section 63M-12-206, will fill positions in the office. Any
605 disagreement regarding transferring of personnel shall be resolved by the governor.

606 Section 12. Section **63M-12-301** is enacted to read:

607 **Part 3. Investigation or Audit**

608 **63M-12-301. Access to records -- Retention of designation under Government**
609 **Records Access and Management Act.**

610 (1) In order to fulfill the duties described in Section 63M-12-202, the office shall have
611 unrestricted access to all records of state executive branch entities, all local government
612 entities, and all providers relating, directly or indirectly, to:

- 613 (a) the state Medicaid program;
- 614 (b) state or federal Medicaid funds;
- 615 (c) the provision of Medicaid related services;
- 616 (d) the regulation or management of any aspect of the state Medicaid program;

- 617 (e) the use or expenditure of state or federal Medicaid funds;
618 (f) suspected or proven fraud, waste, or abuse of state or federal Medicaid funds;
619 (g) Medicaid program policies, practices, and procedures;
620 (h) monitoring of Medicaid services or funds; or
621 (i) a fatality review of a person who received Medicaid funded services.
622 (2) The office shall have access to information in any database maintained by the state
623 or a local government to verify identity, income, employment status, or other factors that affect
624 eligibility for Medicaid services.
625 (3) The records described in Subsections (1) and (2) include records held or maintained
626 by the department, the division, the Department of Human Services, the Department of
627 Workforce Services, a local health department, a local mental health authority, or a school
628 district. The records described in Subsection (1) include records held or maintained by a
629 provider.
630 (4) A record, described in Subsection (1) or (2), that is accessed or copied by the
631 office:
632 (a) may be reviewed or copied by the office during normal business hours; and
633 (b) if it is a government record, shall retain the classification made by the entity
634 responsible for the record, under Title 63G, Chapter 2, Government Records Access and
635 Management Act.
636 Section 13. Section **63M-12-302** is enacted to read:
637 **63M-12-302. Access to employees -- Cooperating with investigation or audit.**
638 (1) The office shall have access to interview the following persons if the inspector
639 general determines that the interview may assist the inspector general in fulfilling the duties
640 described in Section 63M-12-202:
641 (a) a state executive branch official, executive director, director, or employee;
642 (b) a local government official or employee;
643 (c) a consultant or contractor of a person described in Subsection (1)(a) or (b); or
644 (d) a provider or an employee of a provider.
645 (2) A person described in Subsection (1) and each supervisor of the person shall fully
646 cooperate with the office by:
647 (a) providing the office or the inspector general's designee with access to interview the

648 person;

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

651 (c) providing the records, described in Subsection 63M-12-301(1), requested by the
652 office or the inspector general's designee; and

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

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

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

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

661 Section 14. Section **63M-12-303** is enacted to read:

662 **63M-12-303. Cooperation and support.**

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

666 Section 15. Section **63M-12-304** is enacted to read:

667 **63M-12-304. Interference with an investigation or audit prohibited.**

668 No person may:

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

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

672 Section 16. Section **63M-12-401** is enacted to read:

673 **Part 4. Subpoena Power**

674 **63M-12-401. Subpoena power -- Enforcement.**

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

678 (2) A person who fails to comply with a subpoena issued by the inspector general or

679 who refuses to testify regarding a matter upon which the person may be lawfully interrogated:

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

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

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

683 court;

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

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

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

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

690 (b) may:

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

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

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

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

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

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

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

707 Section 17. Section **63M-12-501** is enacted to read:

708 **Part 5. Reporting**

709 **63M-12-501. Duty to report potential Medicaid fraud to the office or fraud unit.**

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

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

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

718 Section 18. Section **63M-12-502** is enacted to read:

719 **63M-12-502. Report and recommendations to governor and Executive**
720 **Appropriations Committee.**

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

723 (2) The report shall include:

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

725 (i) the items described in Subsection 63M-12-202(1)(b) and Section 63M-12-204;

726 (ii) action taken by the office and the result of that action;

727 (iii) fraud, waste, and abuse in the state Medicaid program;

728 (iv) the recovery of fraudulent or improper use of state and federal Medicaid funds;

729 (v) measures taken by the state to discover and reduce fraud, waste, and abuse in the
730 state Medicaid program;

731 (vi) audits conducted by the office; and

732 (vii) investigations conducted by the office and the results of those investigations;

733 (b) recommendations on action that should be taken by the Legislature or the governor

734 to:

735 (i) improve the discovery and reduction of fraud, waste, and abuse in the state
736 Medicaid program;

737 (ii) improve the recovery of fraudulently or improperly used Medicaid funds; and

738 (iii) reduce costs and avoid or minimize increased costs in the state Medicaid program;

739 (c) recommendations relating to rules, policies, or procedures of a state or local
740 government entity; and

741 (d) services provided by the state Medicaid program that exceed industry standards.

742 (3) The report described in Subsection (1) may not include any information that would

743 interfere with or jeopardize an ongoing criminal investigation or other investigation.

744 (4) The inspector general shall provide the report described in Subsection (1) to the

745 Executive Appropriations Committee of the Legislature and to the governor on or before

746 October 1 of each year.

747 (5) The inspector general shall present the report described in Subsection (1) to the

748 Executive Appropriations Committee of the Legislature before November 30 of each year.

749 **Section 19. Appropriation.**

750 As ongoing appropriations, beginning in the 2011-12 fiscal year, the following

751 appropriations are made:

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

753 From General Fund \$(511,800)

754 From Federal Fund \$(1,041,900)

755 From Revenue Transfers - Within Agency \$(285,200)

756 Schedule of Programs:

757 Internal Audit and Program Integrity \$(1,838,900)

758 Item 2 To Department of Health - Health Care Financing

759 From General Fund \$(257,200)

760 From Federal Fund \$(257,200)

761 Schedule of Programs:

762 Financial Services \$(514,400)

763 Item 3 To Office of Inspector General of Medicaid Services

764 From General Fund \$769,000

765 From Federal Fund \$1,299,100

766 From Revenue Transfers - Health \$285,200

767 Schedule of Programs:

768 Office of Inspector General of Medicaid Services \$2,353,300

769 **Section 20. Effective date.**

770

This bill takes effect on July 1, 2011.

Legislative Review Note
as of **1-26-11 9:22 AM**

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 84

SHORT TITLE: Office of Inspector General of Medicaid Services

SPONSOR: Clark, D.

2011 GENERAL SESSION, STATE OF UTAH

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

This bill reallocates by appropriation \$2,353,300 (\$769,000 from the General Fund, \$1,299,100 from federal funds, and \$285,200 from transfers) from the Department of Health to a new Medicaid Inspector General's Office. The Attorney General's Office reports that enactment of the bill will cost it an additional \$143,400 ongoing from the General Fund beginning in FY 2012 for a mid-range attorney and support staff. Enactment of the bill may cost the Department of Health \$83,300 ongoing from the General Fund and \$83,300 from Federal Funds beginning in FY 2012 for two internal auditors.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
General Fund	\$0	\$226,700	\$226,700
General Fund	\$0	\$769,000	\$769,000
General Fund	\$0	(\$769,000)	(\$769,000)
Federal Funds	\$0	\$83,300	\$83,300
Federal Funds	\$0	\$1,299,100	\$1,299,100
Federal Funds	\$0	(\$1,299,100)	(\$1,299,100)
Transfers	\$0	\$285,200	\$285,200
Transfers	\$0	(\$285,200)	(\$285,200)
Total Expenditure	\$0	\$310,000	\$310,000
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$310,000)	(\$310,000)
Net Impact, General/Education Funds	\$0	(\$226,700)	(\$226,700)

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

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

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

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