

By: Gattis

H.B. No. 3889

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the office of inspector general;
providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Government Code, is amended
by adding Chapter 422 to read as follows:

CHAPTER 422. OFFICE OF INSPECTOR GENERAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 422.001. SHORT TITLE. This chapter may be cited as the
Texas Inspector General Act.

Sec. 422.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services
Commission.

(2) "Fraud" means an intentional deception or
misrepresentation made by a person with the knowledge that the
deception could result in some unauthorized benefit to that person
or some other person. The term includes any act that constitutes
fraud under applicable federal or state law.

(3) "Furnished," in reference to items or services:

(A) means items or services provided directly by,
provided under the direct supervision of, or ordered by:

(i) a physician or other individual
licensed under state law to practice the individual's profession,
either as an employee or in the individual's own capacity;

1 (ii) a provider; or

2 (iii) another supplier of services; and

3 (B) does not include services ordered by one
4 party but billed for and provided by or under the supervision of
5 another.

6 (4) "Hold on payment" means the temporary denial of
7 reimbursement under a federal program for items or services
8 furnished by a specified provider.

9 (5) "Inspector general" means the inspector general
10 appointed under Section 422.055.

11 (6) "Office" means the office of inspector general
12 established under this chapter.

13 (7) "Program exclusion" means the suspension of a
14 provider's authorization under a federal program to request
15 reimbursement for items or services furnished by that provider.

16 (8) "Provider" means a person, firm, partnership,
17 corporation, agency, association, institution, or other entity
18 that was or is approved by the commission to provide:

19 (A) medical assistance under contract or
20 provider agreement with the commission; or

21 (B) third-party billing vendor services under a
22 contract or provider agreement with the commission.

23 (9) "Review" includes an audit, inspection,
24 investigation, evaluation, or similar activity.

25 Sec. 422.003. APPLICATION OF SUNSET ACT. The office of
26 inspector general is subject to Chapter 325 (Texas Sunset Act).
27 Unless continued in existence as provided by that chapter, the

1 office is abolished and this chapter expires September 1, 2019.

2 Sec. 422.004. REFERENCE IN OTHER STATUTES. Notwithstanding
3 any other provision of law, a reference in law or rule to the
4 commission's office of investigations and enforcement or the
5 commission's office of inspector general means the office of
6 inspector general established under this chapter.

7 Sec. 422.005. INTERFERENCE PROHIBITED. The governor, the
8 legislature or a committee of the legislature, or a state agency may
9 not prevent the inspector general or a deputy inspector general
10 from initiating, performing, or completing an investigation,
11 audit, or review or any other compliance or enforcement activity
12 pursued by the office under this chapter or other law.

13 [Sections 422.006-422.050 reserved for expansion]

14 SUBCHAPTER B. ADMINISTRATION AND COMPLAINTS

15 Sec. 422.051. OFFICE OF INSPECTOR GENERAL. (a) The office
16 of inspector general is an agency of this state.

17 (b) The office is governed by the inspector general.

18 (c) The office shall have its principal office and
19 headquarters in Austin.

20 Sec. 422.052. INDEPENDENCE OF OFFICE. (a) Except as
21 otherwise provided by this chapter, the office and inspector
22 general operate independently of the commission.

23 (b) The inspector general and the office staff are not
24 employees of the commission.

25 Sec. 422.053. SERVICE LEVEL AGREEMENT; FUNDS. (a) The
26 office shall enter into a service level agreement with the
27 commission and each state agency that has a designated deputy

1 inspector general. The agreement must establish the performance
2 standards and deliverables with regard to administrative support by
3 the commission or agency.

4 (b) The service level agreement must be reviewed at least
5 annually to ensure that services and deliverables are provided in
6 accordance with the agreement.

7 (c) The commission shall request, apply for, and receive for
8 the office any appropriations or other money from this state or the
9 federal government.

10 (d) The commission shall provide to the office for the state
11 fiscal biennium beginning September 1, 2007, the same level of
12 administrative support the commission provided to the office
13 established under former Section 531.102 for the state fiscal
14 biennium beginning September 1, 2005. This subsection expires
15 January 1, 2010.

16 Sec. 422.054. BUDGET. (a) The inspector general shall
17 submit a budget in accordance with the reporting requirements of
18 the General Appropriations Act.

19 (b) The inspector general shall submit to the commission a
20 legislative appropriations request and an operating budget in
21 accordance with the service level agreement entered into under
22 Section 422.053 and applicable law.

23 (c) The commission shall submit the office's appropriations
24 request and, if required by or under law, operating budget to the
25 legislature. The request or budget is not subject to review,
26 alteration, or modification by the commission or executive
27 commissioner before submission to the legislature.

1 Sec. 422.055. INSPECTOR GENERAL: APPOINTMENT BY GOVERNOR;
2 QUALIFICATIONS. (a) The inspector general is appointed by the
3 governor with the advice and consent of the senate.

4 (b) The appointment shall be made without regard to race,
5 color, disability, sex, religion, age, or national origin.

6 (c) In making the appointment, the governor shall consider
7 the person's knowledge of laws, experience in the enforcement of
8 law, honesty, integrity, education, training, and executive
9 ability.

10 Sec. 422.056. ELIGIBILITY. (a) A person is not eligible
11 for appointment as inspector general or deputy inspector general if
12 the person or the person's spouse:

13 (1) is an officer or paid consultant of a business
14 entity or other organization that holds a license, certificate of
15 authority, or other authorization from a state agency or that
16 receives funds from a state agency;

17 (2) owns or controls, directly or indirectly, more
18 than a 10 percent interest in a business entity or other
19 organization receiving funds from a state agency; or

20 (3) uses or receives a substantial amount of tangible
21 goods or funds from a state agency, other than compensation or
22 reimbursement authorized by law.

23 (b) A person is not eligible to serve as inspector general
24 or deputy inspector general if the person or the person's spouse is
25 required to register as a lobbyist under Chapter 305 because of the
26 person's or spouse's activities for compensation related to the
27 operation of a state agency.

1 Sec. 422.057. TERM; VACANCY. (a) The inspector general
2 serves a two-year term expiring February 1 of each odd-numbered
3 year.

4 (b) The governor by appointment shall fill a vacancy in the
5 office of inspector general for the unexpired term.

6 Sec. 422.058. CONFLICT OF INTEREST. (a) The inspector
7 general may not serve as an ex officio member on the governing body
8 of a governmental entity.

9 (b) The inspector general may not have a financial interest
10 in the transactions of the office, a health and human services
11 agency, or a health or human services provider.

12 Sec. 422.059. REMOVAL. The governor, with the advice and
13 consent of the senate, may remove the inspector general from office
14 as provided by Section 9, Article XV, Texas Constitution.

15 Sec. 422.060. DEPUTY INSPECTORS GENERAL. (a) The
16 inspector general, in consultation with the office of the governor
17 and as necessary to implement this chapter, may designate persons
18 to serve as deputy inspectors general for state agencies that
19 implement or administer federal programs.

20 (b) A deputy inspector general shall report to and perform
21 duties as directed by the inspector general.

22 (c) Each state agency that has a designated deputy inspector
23 general shall provide to the deputy inspector general facilities
24 and support services, including suitable office space, furniture,
25 computer and communications equipment, administrative support, and
26 salary and benefits as provided by the General Appropriations Act.

27 Sec. 422.061. PEACE OFFICERS. (a) The office may employ

1 and commission peace officers, in a number not to exceed 15 percent
2 of the total number of employees of the office, to assist the
3 inspector general in carrying out the duties of the office relating
4 to detection, investigation, and prevention of fraud, waste, and
5 abuse in federal programs or programs receiving federal funds that
6 are implemented or administered by state agencies.

7 (b) A commissioned peace officer or otherwise designated
8 law enforcement officer employed by the office is not entitled to
9 supplemental benefits from the law enforcement and custodial
10 officer supplemental retirement fund unless the officer transfers
11 from a position, without a break in service, that qualifies for
12 supplemental retirement benefits from the fund.

13 Sec. 422.062. EXPERTS. Subject to the availability of
14 funds, the inspector general and deputy inspectors general may
15 contract with certified public accountants, qualified management
16 consultants, or other professional experts as necessary to
17 independently perform the functions of the office.

18 Sec. 422.063. EMPLOYEES; TRAINING. (a) The inspector
19 general may employ personnel as necessary to implement the duties
20 of the office.

21 (b) The inspector general shall train office personnel to
22 pursue, efficiently and as necessary, priority Medicaid and other
23 fraud, waste, and abuse cases in health and human services programs
24 or other state or federally funded programs.

25 (c) The inspector general may require employees of state
26 agencies, including health and human services agencies, to provide
27 assistance to the office in connection with the office's duties

1 relating to the investigation of fraud, waste, and abuse in the
2 provision of services for federal or federally funded programs.

3 Sec. 422.064. MERIT SYSTEM. (a) The office may establish a
4 merit system for its employees.

5 (b) The merit system may be maintained in conjunction with
6 other state agencies that are required by federal law to operate
7 under a merit system.

8 Sec. 422.065. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

9 (a) The office shall develop and implement policies that provide
10 the public a reasonable opportunity to appear before the office and
11 to speak on any issue under the office's jurisdiction.

12 (b) The office shall prepare information of public interest
13 describing the functions of the office and the office's procedures
14 by which complaints are filed with and resolved by the office. The
15 office shall make the information available to the public and
16 appropriate state agencies.

17 (c) The office shall keep an information file about each
18 complaint filed with the office relating to a state agency or entity
19 receiving federal money and falling under the jurisdiction of the
20 office.

21 [Sections 422.066-422.100 reserved for expansion]

22 SUBCHAPTER C. GENERAL POWERS AND DUTIES

23 Sec. 422.101. GENERAL RESPONSIBILITIES. (a) The office is
24 responsible for the investigation of fraud, waste, and abuse, as
25 defined in applicable state and federal law, in this state's
26 implementation or administration by a state agency of a state or
27 federally funded program, including a health and human services

1 program.

2 (b) The office shall set clear objectives, priorities, and
3 performance standards for the office that emphasize:

4 (1) coordinating investigative efforts to
5 aggressively recover money;

6 (2) allocating resources to cases that have the
7 strongest supportive evidence and the greatest potential for
8 recovery of money; and

9 (3) maximizing opportunities for referral of cases to
10 the office of the attorney general in accordance with this chapter.

11 Sec. 422.102. GENERAL POWERS. The office has all the powers
12 necessary or appropriate to carry out its responsibilities and
13 functions under this chapter and other law. In addition to performing
14 functions and duties otherwise provided by law, the office may:

15 (1) provide for coordination between the office and
16 special investigative units formed by managed care organizations
17 under Section 531.113 or entities with which managed care
18 organizations contract under that section;

19 (2) audit the use and effectiveness of state or
20 federal funds, including contract and grant funds, administered by
21 a person or state agency;

22 (3) conduct reviews, investigations, and inspections
23 relating to the funds described by Subdivision (2);

24 (4) recommend policies promoting economical and
25 efficient administration of the funds described by Subdivision (2)
26 and the prevention and detection of fraud, waste, and abuse in
27 administration of those funds; and

1 (5) conduct internal affairs investigations in
2 instances of fraud, waste, and abuse and in instances of misconduct
3 by employees, contractors, subcontractors, and vendors.

4 Sec. 422.103. HEALTH AND HUMAN SERVICES RESPONSIBILITIES.

5 The office is responsible for:

6 (1) the investigation of fraud, waste, and abuse in
7 the provision or funding of health or human services by this state;

8 (2) the enforcement of state law relating to the
9 provision of those services to protect the public; and

10 (3) the prevention and detection of crime relating to
11 the provision of those services.

12 Sec. 422.104. RULEMAKING BY INSPECTOR GENERAL. (a)

13 Notwithstanding Section 531.0055(e) and any other law, the
14 inspector general shall adopt the rules necessary to administer the
15 functions of the office, including rules to address the imposition
16 of sanctions and penalties for violations and due process
17 requirements for imposing sanctions and penalties.

18 (b) A rule, standard, or form adopted by the executive
19 commissioner, commission, or a state agency, including a health and
20 human services agency, that is necessary to accomplish the duties
21 of the office is considered to also be a rule, standard, or form of
22 the office and remains in effect as a rule, standard, or form of the
23 office until changed by the inspector general.

24 (c) The rules must include standards for the office that
25 emphasize:

26 (1) coordinating investigative efforts to
27 aggressively recover money;

1 (2) allocating resources to cases that have the
2 strongest supportive evidence and the greatest potential for
3 recovery of money; and

4 (3) maximizing opportunities for referral of cases to
5 the office of the attorney general.

6 Sec. 422.105. AUTHORITY OF STATE AUDITOR TO CONDUCT TIMELY
7 AUDITS NOT IMPAIRED. This chapter or other law related to the
8 operation of the inspector general does not take precedence over
9 the authority of the state auditor to conduct an audit under Chapter
10 321 or other law.

11 Sec. 422.106. EXECUTIVE ORDERS. (a) The governor may issue
12 executive orders directing state agencies to implement
13 recommendations issued by the office for corrective or remedial
14 actions promoting the economical and efficient administration of
15 money and the detection of fraud.

16 (b) The governor may submit to the lieutenant governor, the
17 speaker of the house of representatives, the state auditor, and the
18 comptroller a report of the executive orders issued under this
19 chapter and the compliance by state agencies with those orders.

20 Sec. 422.107. DEFENSE BY ATTORNEY GENERAL. The attorney
21 general shall defend any action brought against the inspector
22 general, a deputy inspector general, or an employee or officer of
23 the office as a result of that person's official act or omission,
24 whether or not the person has terminated service with the office at
25 the time the action is instituted.

26 Sec. 422.108. INTERAGENCY COORDINATION. (a) The office
27 and the attorney general shall enter into a memorandum of

1 understanding to develop and implement joint written procedures for
2 processing cases of suspected fraud, waste, or abuse, as those
3 terms are defined by state or federal law, or other violations of
4 state or federal law under any state or federally funded program
5 implemented or administered by a state agency.

6 (b) The memorandum of understanding shall require:

7 (1) the office and the attorney general to set
8 priorities and guidelines for referring cases to appropriate state
9 agencies for investigation, prosecution, or other disposition to
10 enhance deterrence of fraud, waste, abuse, or other violations of
11 state or federal law, including a violation of Chapter 102,
12 Occupations Code, in the programs and to maximize the imposition of
13 penalties, the recovery of money, and the successful prosecution of
14 cases;

15 (2) the office to refer each case of suspected fraud,
16 waste, or abuse to the attorney general not later than the 20th
17 business day after the date the office determines that the
18 existence of fraud, waste, or abuse is reasonably indicated;

19 (3) the attorney general to take appropriate action in
20 response to each case referred to the attorney general, which
21 action may include direct initiation of prosecution, with the
22 consent of the appropriate local district or county attorney,
23 direct initiation of civil litigation, referral to an appropriate
24 United States attorney, a district attorney, or a county attorney,
25 or referral to a collection agency for initiation of civil
26 litigation or other appropriate action;

27 (4) the office to keep detailed records for cases

1 processed by the office or the attorney general, including
2 information on the total number of cases processed and, for each
3 case:

4 (A) the agency and division to which the case is
5 referred for investigation;

6 (B) the date on which the case is referred; and

7 (C) the nature of the suspected fraud, waste, or
8 abuse;

9 (5) the office to notify each appropriate division of
10 the office of the attorney general of each case referred by the
11 office of inspector general;

12 (6) the attorney general to ensure that information
13 relating to each case investigated by the attorney general is
14 available to each division of the attorney general's office with
15 responsibility for investigating suspected fraud, waste, or abuse;

16 (7) the attorney general to notify the office of each
17 case the attorney general declines to prosecute or prosecutes
18 unsuccessfully;

19 (8) representatives of the office and the attorney
20 general to meet not less than quarterly to share case information
21 and determine the appropriate agency and division to investigate
22 each case; and

23 (9) the office and the attorney general to submit
24 information requested by the comptroller about each resolved case
25 for the comptroller's use in improving fraud detection.

26 (c) An exchange of information under this section between
27 the attorney general and the office or any other state agency does

1 not affect whether the information is subject to disclosure under
2 Chapter 552.

3 (d) With respect to Medicaid fraud, in addition to the
4 provisions required by Subsection (b), the memorandum of
5 understanding required by this section must also ensure that no
6 barriers to direct fraud referrals to the attorney general's
7 Medicaid fraud control unit or unreasonable impediments to
8 communication between Medicaid agency employees and the Medicaid
9 fraud control unit are imposed and must include procedures to
10 facilitate the referral of cases directly to the attorney general.

11 Sec. 422.109. SEMIANNUAL REPORT. The office and the
12 attorney general shall jointly prepare and submit a semiannual
13 report to the governor, the lieutenant governor, the speaker of the
14 house of representatives, the state auditor, the comptroller, and
15 each member of the legislature concerning the activities of the
16 office and the attorney general in detecting and preventing fraud,
17 waste, and abuse under any state or federally funded program
18 implemented or administered by a state agency that is reviewed by
19 the office under this chapter. The report may be consolidated with
20 any other report relating to the same subject matter the office or
21 the attorney general is required to submit under other law.

22 Sec. 422.110. INFORMATION AND TECHNOLOGY. The office may
23 obtain information or technology necessary to enable the office to
24 meet its responsibilities under this chapter or other law.

25 Sec. 422.111. AWARD FOR REPORTING FRAUD, WASTE, ABUSE, OR
26 OVERCHARGES. (a) If the office determines that the report results
27 in the recovery of an administrative or civil penalty imposed by

1 law, the office may grant an award to an individual who reports:

2 (1) activity that constitutes fraud, waste, or abuse
3 of money related to any federal program implemented or administered
4 by a state agency; or

5 (2) overcharges in a program described by Subdivision
6 (1).

7 (b) The office may not grant an award to an individual in
8 connection with a report if the office or attorney general had
9 independent knowledge of the activity reported by the individual.

10 (c) The office shall determine the amount of an award
11 granted under this section. The amount may not exceed five percent
12 of the amount of the administrative or civil penalty imposed by law
13 that resulted from the individual's report.

14 (d) In determining the amount of an award granted under this
15 section, the office:

16 (1) shall consider the importance of the report in
17 ensuring the fiscal integrity of the program; and

18 (2) may consider whether the individual participated
19 in the reported fraud, waste, abuse, or overcharge.

20 (e) A person who brings an action under Subchapter C,
21 Chapter 36, Human Resources Code, is not eligible for an award under
22 this section.

23 [Sections 422.112-422.150 reserved for expansion]

24 SUBCHAPTER D. INVESTIGATIONS AND ENFORCEMENT ACTIONS

25 Sec. 422.151. AGENCY COOPERATION. Each state agency shall
26 provide assistance as necessary for the office to perform the
27 office's duties relating to the investigation of fraud, waste, and

1 abuse in the implementation of any state or federally funded
2 program. The office is entitled to access any information
3 maintained by a state agency or by any provider, including internal
4 records, relevant to the functions of the office.

5 Sec. 422.152. CLAIMS CRITERIA FOR INVESTIGATIONS. The
6 office by rule shall set specific claims criteria that, when met,
7 require the office to begin an investigation.

8 Sec. 422.153. REVIEW AND AUDIT AUTHORITY. (a) The
9 inspector general may evaluate any activity or operation of a state
10 agency, including a health and human services agency, a health or
11 human services provider, or a person in this state that is related
12 to the investigation, detection, or prevention of fraud, waste, and
13 abuse or employee misconduct in a state or federally funded
14 program. A review may include an investigation or other inquiry
15 into a specific act or allegation of, or a specific financial
16 transaction or practice that may involve, impropriety,
17 malfeasance, or nonfeasance in the obligation, spending, receipt,
18 or other use of state or federal money.

19 (b) The executive commissioner, the commission, or an
20 agency of this state, including a health and human services agency,
21 may not impair or prohibit the inspector general from initiating or
22 completing a review.

23 (c) The inspector general may audit and review the use and
24 effectiveness of state or federal funds, including contract and
25 grant funds, administered by a person or state agency receiving the
26 funds in connection with a state or federally funded program.

27 Sec. 422.154. INITIATION OF REVIEW. The inspector general

1 may initiate a review:

2 (1) on the inspector general's own initiative;

3 (2) at the request of the commission, the executive
4 commissioner, or the presiding officer of a state agency; or

5 (3) based on a complaint from any source concerning a
6 matter described by Section 422.153.

7 Sec. 422.155. INTEGRITY REVIEW. (a) The office shall
8 conduct an integrity review to determine whether there is
9 sufficient basis to warrant a full investigation on receipt of any
10 complaint of fraud, waste, or abuse of funds in the state Medicaid
11 program from any source.

12 (b) An integrity review must begin not later than the 30th
13 day after the date the office receives a complaint or has reason to
14 believe that Medicaid fraud, waste, or abuse has occurred. An
15 integrity review shall be completed not later than the 90th day
16 after the date the review began.

17 (c) If the findings of an integrity review give the office
18 reason to believe that an incident of fraud involving possible
19 criminal conduct has occurred in the state Medicaid program, the
20 office must take the following action, as appropriate, not later
21 than the 30th day after the completion of the integrity review:

22 (1) if a provider is suspected of fraud involving
23 criminal conduct, the office must refer the case to the state's
24 Medicaid fraud control unit, provided that the criminal referral
25 does not preclude the office from continuing its investigation of
26 the provider or preclude the imposition of appropriate
27 administrative or civil sanctions; or

1 (2) if there is reason to believe that a recipient of
2 funds has defrauded the Medicaid program, the office may conduct a
3 full investigation of the suspected fraud.

4 Sec. 422.156. ACCESS TO INFORMATION. (a) To further a
5 review conducted by the office, the inspector general is entitled
6 to full and unrestricted access to all offices, limited access or
7 restricted areas, employees, books, papers, records, documents,
8 equipment, computers, databases, systems, accounts, reports,
9 vouchers, or other information, including confidential
10 information, electronic data, and internal records relevant to the
11 functions of the office, maintained by a person, a state agency,
12 including a health and human services agency, or a health or human
13 services provider in connection with a state or federally funded
14 program.

15 (b) The inspector general may not access data or other
16 information the release of which is restricted under federal law
17 unless the appropriate federal agency approves the release to the
18 office or its agent.

19 Sec. 422.157. COOPERATION REQUIRED. To further a review
20 conducted by the inspector general's office, the inspector general
21 may require medical or other professional assistance from the
22 executive commissioner, the commission, a state agency, including a
23 health and human services agency, or an auditor, accountant, or
24 other employee of the commission or agency.

25 Sec. 422.158. REFERRAL TO STATE MEDICAID FRAUD CONTROL
26 UNIT. (a) At the time the office learns or has reason to suspect
27 that a health or human services provider's records related to

1 participation in the state Medicaid program are being withheld,
2 concealed, destroyed, fabricated, or in any way falsified, the
3 office shall immediately refer the case to the state's Medicaid
4 fraud control unit.

5 (b) A criminal referral under Subsection (a) does not
6 preclude the office from continuing its investigation of a health
7 or human services provider or the imposition of appropriate
8 administrative or civil sanctions.

9 Sec. 422.159. HOLD ON CLAIM REIMBURSEMENT PAYMENT;
10 EXCLUSION FROM PROGRAMS. (a) In addition to other instances
11 authorized under state or federal law, the office shall impose
12 without prior notice a hold on payment of claims for reimbursement
13 submitted by a health or human services provider to compel
14 production of records related to participation in the state
15 Medicaid program or on request of the state's Medicaid fraud
16 control unit, as applicable.

17 (b) The office must notify the health or human services
18 provider of the hold on payment not later than the fifth working day
19 after the date the payment hold is imposed.

20 (c) The office shall, in consultation with the state's
21 Medicaid fraud control unit, establish guidelines under which holds
22 on payment or exclusions from a state or state-funded program:

23 (1) may permissively be imposed on a health or human
24 services provider; or

25 (2) shall automatically be imposed on a provider.

26 (d) A health or human services provider subject to a hold on
27 payment or excluded from a program under this section is entitled to

1 a hearing on the hold or exclusion. A hearing under this subsection
2 is a contested case hearing under Chapter 2001. The State Office of
3 Administrative Hearings shall conduct the hearing. After the
4 hearing, the office, subject to judicial review, shall make a final
5 determination. The commission, a health and human services agency,
6 and the attorney general are entitled to intervene as parties in the
7 contested case.

8 Sec. 422.160. REQUEST FOR EXPEDITED HEARING. (a) On timely
9 written request by a health or human services provider subject to a
10 hold on payment under Section 422.159, other than a hold requested
11 by the state's Medicaid fraud control unit, the office shall file a
12 request with the State Office of Administrative Hearings for an
13 expedited administrative hearing regarding the hold.

14 (b) The health or human services provider must request an
15 expedited hearing not later than the 10th day after the date the
16 provider receives notice from the office under Section 422.159(b).

17 Sec. 422.161. INFORMAL RESOLUTION. (a) The inspector
18 general shall adopt rules that allow a health or human services
19 provider subject to a hold on payment under Section 422.159, other
20 than a hold requested by the state's Medicaid fraud control unit, to
21 seek an informal resolution of the issues identified by the office
22 in the notice provided under that section.

23 (b) A health or human services provider must seek an
24 informal resolution not later than the 10th day after the date the
25 provider receives notice from the office under Section 422.159(b).

26 (c) A health or human services provider's decision to seek
27 an informal resolution does not extend the time by which the

1 provider must request an expedited administrative hearing under
2 Section 422.160.

3 (d) A hearing initiated under Section 422.159 shall be
4 stayed at the office's request until the informal resolution
5 process is completed.

6 Sec. 422.162. EMPLOYEE REPORTS. The inspector general may
7 require employees at the commission or a state agency, including a
8 health and human services agency, to report to the office
9 information regarding fraud, waste, misuse or abuse of funds or
10 resources, corruption, or illegal acts.

11 Sec. 422.163. SUBPOENAS. (a) The inspector general may
12 issue a subpoena to compel the attendance of a relevant witness or
13 the production, for inspection or copying, of relevant evidence in
14 connection with a review conducted under this subchapter.

15 (b) A subpoena may be served personally or by certified
16 mail.

17 (c) If a person fails to comply with a subpoena, the
18 inspector general, acting through the attorney general, may file
19 suit to enforce the subpoena in a district court in this state.

20 (d) On finding that good cause exists for issuing the
21 subpoena, the court shall order the person to comply with the
22 subpoena. The court may hold in contempt a person who fails to obey
23 the court order.

24 (e) The reimbursement of the expenses of a witness whose
25 attendance is compelled under this section is governed by Section
26 2001.103.

27 Sec. 422.164. INTERNAL AUDITOR. (a) In this section,

1 "internal auditor" means a person appointed under Section 2102.006.

2 (b) The internal auditor for a health and human services
3 agency shall provide the inspector general with a copy of the
4 agency's internal audit plan to:

5 (1) assist in the coordination of efforts between the
6 inspector general and the internal auditor; and

7 (2) limit duplication of effort regarding reviews by
8 the inspector general and internal auditor.

9 (c) The internal auditor shall provide to the inspector
10 general all final audit reports concerning audits of any:

11 (1) part or division of the agency;

12 (2) contract, procurement, or grant; and

13 (3) program conducted by the agency.

14 Sec. 422.165. COOPERATION WITH LAW ENFORCEMENT OFFICIALS
15 AND OTHER ENTITIES. (a) The inspector general may provide
16 information and evidence relating to criminal acts to the state
17 auditor's office and appropriate law enforcement officials.

18 (b) The inspector general may refer matters for further
19 civil, criminal, and administrative action to appropriate
20 administrative and prosecutorial agencies, including the attorney
21 general.

22 (c) The inspector general may enter into a memorandum of
23 understanding with a law enforcement or prosecutorial agency,
24 including the attorney general, to assist in conducting a review
25 under this subchapter.

26 Sec. 422.166. COOPERATION AND COORDINATION WITH STATE
27 AUDITOR. (a) The state auditor may, on request of the inspector

1 general, provide appropriate information or other assistance to the
2 inspector general or office, as determined by the state auditor.

3 (b) The inspector general may meet with the state auditor's
4 office to coordinate a review conducted under this subchapter,
5 share information, or schedule work plans.

6 (c) The state auditor is entitled to access all information
7 maintained by the inspector general, including vouchers,
8 electronic data, internal records, and information obtained under
9 Section 422.156 or subject to Section 422.173.

10 (d) Any information obtained or provided by the state
11 auditor under this section is confidential and not subject to
12 disclosure under Chapter 552.

13 Sec. 422.167. PREVENTION. (a) The inspector general may
14 recommend to the commission, the executive commissioner, or the
15 presiding officer of a state agency policies on:

16 (1) promoting economical and efficient administration
17 of state or federal funds administered by an individual or entity
18 that received the funds from a state agency, including a health and
19 human services agency; and

20 (2) preventing and detecting fraud, waste, and abuse
21 in the administration of those funds.

22 (b) The inspector general may provide training or other
23 education regarding the prevention of fraud, waste, and abuse to
24 employees of a state agency, including a health and human services
25 agency. The training or education provided must be approved by the
26 presiding officer of the agency.

27 Sec. 422.168. RULEMAKING BY EXECUTIVE COMMISSIONER OR

1 PRESIDING OFFICER OF STATE AGENCY. The executive commissioner or
2 the presiding officer of a state agency, as applicable, may adopt
3 rules governing a state agency's response to reports and referrals
4 from the inspector general on issues identified by the inspector
5 general related to the agency or a contractor of the agency.

6 Sec. 422.169. ALLEGATIONS OF MISCONDUCT AGAINST PRESIDING
7 OFFICER. If a review by the inspector general involves allegations
8 that a presiding officer of a state agency has engaged in
9 misconduct, the inspector general shall report to the governor
10 during the review until the report is completed or the review is
11 closed without a finding.

12 Sec. 422.170. PERIODIC REPORTING REQUIRED. The inspector
13 general shall timely inform the governor, the attorney general, the
14 state auditor, the presiding officer, and the relevant state agency
15 of the initiation of a review of a state agency program and the
16 ongoing status of each review.

17 Sec. 422.171. REPORTING OFFICE FINDINGS. The inspector
18 general shall report the findings of the office to:

- 19 (1) the presiding officer of the state agency;
- 20 (2) the governor;
- 21 (3) the lieutenant governor;
- 22 (4) the speaker of the house of representatives;
- 23 (5) the comptroller;
- 24 (6) the state auditor; and
- 25 (7) the attorney general.

26 Sec. 422.172. FLAGRANT VIOLATIONS; IMMEDIATE REPORT. The
27 inspector general shall immediately report to the presiding officer

1 of a state agency associated with the review, the governor's
2 general counsel, and the state auditor a particularly serious or
3 flagrant problem relating to the administration of a program,
4 operation of a state agency, or interference with an inspector
5 general review.

6 Sec. 422.173. INFORMATION CONFIDENTIAL. (a) Except as
7 provided by this chapter, all information and material compiled by
8 the inspector general during a review under this subchapter is:

9 (1) confidential and not subject to disclosure under
10 Chapter 552; and

11 (2) not subject to disclosure, discovery, subpoena, or
12 other means of legal compulsion for release to anyone other than the
13 state auditor's office, the state agency, or the office or its
14 agents involved in the review related to that information or
15 material.

16 (b) As the inspector general determines appropriate,
17 information relating to a review may be disclosed to:

18 (1) a law enforcement agency;

19 (2) the attorney general;

20 (3) the state auditor; or

21 (4) the state agency.

22 (c) A person that receives information under Subsection (b)
23 may not disclose the information except to the extent that
24 disclosure is consistent with the authorized purpose for which the
25 person first obtained the information.

26 Sec. 422.174. DRAFT OF FINAL REVIEW REPORT; AGENCY
27 RESPONSE. (a) Except in cases in which the office has determined

1 that potential fraud, waste, or abuse exists, the office shall
2 provide a draft of the final review report of any investigation,
3 audit, or review of the operations of a state agency to the
4 presiding officer of the agency before publishing the office's
5 final review report.

6 (b) A state agency may provide a response to the office's
7 draft report in the manner prescribed by the office not later than
8 the 10th day after the date the draft report is received by the
9 agency. The inspector general by rule shall specify the format and
10 requirements of the agency response.

11 (c) Notwithstanding Subsection (a), the office may not
12 provide a draft report to the presiding officer of the agency if in
13 the inspector general's opinion providing the draft report could
14 negatively affect any anticipated civil or criminal proceedings.

15 (d) The office may include any portion of the agency's
16 response in the office's final report.

17 Sec. 422.175. FINAL REVIEW REPORTS; AGENCY RESPONSE. (a)
18 The inspector general shall prepare a final report for each review
19 conducted under this subchapter. The final report must include:

20 (1) a summary of the activities performed by the
21 inspector general in conducting the review;

22 (2) a determination of whether wrongdoing was found;
23 and

24 (3) a description of any findings of wrongdoing.

25 (b) The inspector general's final review reports are
26 subject to disclosure under Chapter 552.

27 (c) All working papers and other documents related to

1 compiling the final review reports remain confidential and are not
2 subject to disclosure under Chapter 552.

3 (d) Not later than the 60th day after the date the office
4 issues a final report that identifies deficiencies or
5 inefficiencies in, or recommends corrective measures in the
6 operations of, a state agency, the agency shall file a response that
7 includes:

8 (1) an implementation plan and timeline for
9 implementing corrective measures; or

10 (2) the agency's rationale for declining to implement
11 corrective measures for the identified deficiencies or
12 inefficiencies or the office's recommended corrective measures, as
13 applicable.

14 Sec. 422.176. STATE AUDITOR AUDITS, INVESTIGATIONS, AND
15 ACCESS TO INFORMATION NOT IMPAIRED. This subchapter or other law
16 related to the operation of the inspector general does not prohibit
17 the state auditor from conducting an audit, investigation, or other
18 review or from having full and complete access to all records and
19 other information, including witnesses and electronic data, that
20 the state auditor considers necessary for the audit, investigation,
21 or other review.

22 Sec. 422.177. COSTS. (a) The inspector general shall
23 maintain information regarding the cost of reviews.

24 (b) The inspector general may cooperate with appropriate
25 administrative and prosecutorial agencies, including the attorney
26 general, in recovering costs incurred under this subchapter from
27 nongovernmental entities, including contractors or individuals

1 involved in:

2 (1) violations of applicable state or federal rules or
3 statutes;

4 (2) abusive or wilful misconduct; or

5 (3) violations of a provider contract or program
6 policy.

7 Sec. 422.178. ADMINISTRATIVE OR CIVIL PENALTY; INJUNCTION.

8 (a) The office may:

9 (1) act for a state agency in the assessment by the
10 office of administrative or civil penalties the agency is
11 authorized to assess under applicable law; and

12 (2) request that the attorney general obtain an
13 injunction to prevent a person from disposing of an asset
14 identified by the office as potentially subject to recovery by the
15 office due to the person's fraud, waste, or abuse.

16 (b) If the office imposes an administrative or civil penalty
17 under Subsection (a) for a state agency:

18 (1) the state agency may not impose an administrative
19 or civil penalty against the same person for the same violation; and

20 (2) the office shall impose the penalty under
21 applicable rules of the office, this subchapter, and applicable
22 laws governing the imposition of a penalty by the state agency.

23 SECTION 2. Section 531.001, Government Code, is amended by
24 adding Subdivision (4-a) to read as follows:

25 (4-a) "Office of inspector general" means the office
26 of inspector general established under Chapter 422.

27 SECTION 3. Section 531.008(c), Government Code, is amended

1 to read as follows:

2 (c) The executive commissioner shall establish the
3 following divisions and offices within the commission:

4 (1) the eligibility services division to make
5 eligibility determinations for services provided through the
6 commission or a health and human services agency related to:

7 (A) the child health plan program;

8 (B) the financial assistance program under
9 Chapter 31, Human Resources Code;

10 (C) the medical assistance program under Chapter
11 32, Human Resources Code;

12 (D) the nutritional assistance programs under
13 Chapter 33, Human Resources Code;

14 (E) long-term care services, as defined by
15 Section 22.0011, Human Resources Code;

16 (F) community-based support services identified
17 or provided in accordance with Section 531.02481; and

18 (G) other health and human services programs, as
19 appropriate;

20 (2) ~~[the office of inspector general to perform fraud
21 and abuse investigation and enforcement functions as provided by
22 Subchapter C and other law;~~

23 ~~[(3)]~~ the office of the ombudsman to:

24 (A) provide dispute resolution services for the
25 commission and the health and human services agencies; and

26 (B) perform consumer protection functions
27 related to health and human services;

1 (3) [~~(4)~~] a purchasing division as provided by Section
2 531.017; and

3 (4) [~~(5)~~] an internal audit division to conduct a
4 program of internal auditing in accordance with [~~Government Code,~~]
5 Chapter 2102.

6 SECTION 4. Section 531.105, Government Code, is amended to
7 read as follows:

8 Sec. 531.105. FRAUD DETECTION TRAINING. (a) The office of
9 inspector general [~~commission~~] shall develop and implement a
10 program to provide annual training to contractors who process
11 Medicaid claims and appropriate staff of the commission and other
12 health and human services agencies [~~the Texas Department of Health~~
13 ~~and the Texas Department of Human Services~~] in identifying
14 potential cases of fraud, waste, or abuse under the state Medicaid
15 program. The training provided to the contractors and staff must
16 include clear criteria that specify:

17 (1) the circumstances under which a person should
18 refer a potential case to the office [~~commission~~]; and

19 (2) the time by which a referral should be made.

20 (b) The commission and other health and human services
21 agencies [~~The Texas Department of Health and the Texas Department~~
22 ~~of Human Services~~], in cooperation with the office of inspector
23 general [~~commission~~], shall periodically set a goal of the number
24 of potential cases of fraud, waste, or abuse under the state
25 Medicaid program that each agency will attempt to identify and
26 refer to the office [~~commission~~]. The office [~~commission~~] shall
27 include information on the agencies' goals and the success of each

1 agency in meeting the agency's goal in the report required by
2 Section 422.109 [~~531.103(c)~~].

3 SECTION 5. Sections 531.106(a), (b), (d), (e), (f), and
4 (g), Government Code, are amended to read as follows:

5 (a) The office of inspector general [~~commission~~] shall use
6 learning or neural network technology to identify and deter fraud
7 in the Medicaid program throughout this state.

8 (b) The office of inspector general [~~commission~~] shall
9 contract with a private or public entity to develop and implement
10 the technology. The office [~~commission~~] may require the entity it
11 contracts with to install and operate the technology at locations
12 specified by the office [~~commission~~], including the office of
13 inspector general's [~~commission~~] offices.

14 (d) The office of inspector general [~~commission~~] shall
15 require each health and human services agency that performs any
16 aspect of the state Medicaid program to participate in the
17 implementation and use of the technology.

18 (e) The office of inspector general [~~commission~~] shall
19 maintain all information necessary to apply the technology to
20 claims data covering a period of at least two years.

21 (f) The office of inspector general [~~commission~~] shall
22 investigate [~~refer~~] cases identified by the technology and shall
23 refer cases to the [~~commission's office of investigations and~~
24 ~~enforcement or the~~] office of the attorney general for prosecution,
25 as appropriate.

26 (g) Each month, the learning or neural network technology
27 implemented under this section must match bureau of vital

1 statistics death records with Medicaid claims filed by a provider.
2 If the office of inspector general [~~commission~~] determines that a
3 provider has filed a claim for services provided to a person after
4 the person's date of death, as determined by the bureau of vital
5 statistics death records, the office [~~commission~~] shall
6 investigate [~~refer~~] the case [~~for investigation to the commission's~~
7 ~~office of investigations and enforcement~~].

8 SECTION 6. Section 531.1061, Government Code, is amended to
9 read as follows:

10 Sec. 531.1061. FRAUD INVESTIGATION TRACKING SYSTEM.

11 (a) The office of inspector general [~~commission~~] shall use an
12 automated fraud investigation tracking system [~~through the~~
13 ~~commission's office of investigations and enforcement~~] to monitor
14 the progress of an investigation of suspected fraud, waste, abuse,
15 or insufficient quality of care under the state Medicaid program.

16 (b) For each case of suspected fraud, waste, abuse, or
17 insufficient quality of care identified by the learning or neural
18 network technology required under Section 531.106, the automated
19 fraud investigation tracking system must:

20 (1) receive electronically transferred records
21 relating to the identified case from the learning or neural network
22 technology;

23 (2) record the details and monitor the status of an
24 investigation of the identified case, including maintaining a
25 record of the beginning and completion dates for each phase of the
26 case investigation;

27 (3) generate documents and reports related to the

1 status of the case investigation; and

2 (4) generate standard letters to a provider regarding
3 the status or outcome of an investigation.

4 (c) The office of inspector general [~~commission~~] shall
5 require each health and human services agency that performs any
6 aspect of the state Medicaid program to participate in the
7 implementation and use of the automated fraud investigation
8 tracking system.

9 SECTION 7. Section 531.1062(a), Government Code, is amended
10 to read as follows:

11 (a) The office of inspector general [~~commission~~] shall use
12 an automated recovery monitoring system to monitor the collections
13 process for a settled case of fraud, waste, abuse, or insufficient
14 quality of care under the state Medicaid program.

15 SECTION 8. Sections 531.107(a), (b), and (f), Government
16 Code, are amended to read as follows:

17 (a) The Medicaid and Public Assistance Fraud Oversight Task
18 Force advises and assists the [~~commission and the commission's~~]
19 office of inspector general [~~of investigations and enforcement~~] in
20 improving the efficiency of fraud investigations and collections.

21 (b) The task force is composed of a representative of the:

22 (1) attorney general's office, appointed by the
23 attorney general;

24 (2) comptroller's office, appointed by the
25 comptroller;

26 (3) Department of Public Safety, appointed by the
27 public safety director;

1 (4) state auditor's office, appointed by the state
2 auditor;

3 (5) office of inspector general, appointed by the
4 inspector general [~~commission, appointed by the commissioner of~~
5 ~~health and human services~~];

6 (6) [~~Texas~~] Department of Aging and Disability [~~Human~~]
7 Services, appointed by the commissioner of aging and disability
8 [~~human~~] services;

9 (7) Texas Department of Insurance, appointed by the
10 commissioner of insurance; and

11 (8) [~~Texas~~] Department of State Health Services,
12 appointed by the commissioner of state [~~public~~] health services.

13 (f) At least once each fiscal quarter, the [~~commission's~~]
14 office of inspector general [~~of investigations and enforcement~~]
15 shall provide to the task force:

16 (1) information detailing:

17 (A) the number of fraud referrals made to the
18 office and the origin of each referral;

19 (B) the time spent investigating each case;

20 (C) the number of cases investigated each month,
21 by program and region;

22 (D) the dollar value of each fraud case that
23 results in a criminal conviction; and

24 (E) the number of cases the office rejects and
25 the reason for rejection, by region; and

26 (2) any additional information the task force
27 requires.

1 SECTION 9. Section 531.108, Government Code, is amended to
2 read as follows:

3 Sec. 531.108. FRAUD PREVENTION. (a) [~~The commission's~~
4 ~~office of investigations and enforcement shall compile and~~
5 ~~disseminate accurate information and statistics relating to:~~

6 [~~(1) fraud prevention; and~~

7 [~~(2) post-fraud referrals received and accepted or~~
8 ~~rejected from the commission's case management system or the case~~
9 ~~management system of a health and human services agency.~~

10 [~~(b) The commission shall:~~

11 [~~(1) aggressively publicize successful fraud~~
12 ~~prosecutions and fraud prevention programs through all available~~
13 ~~means, including the use of statewide press releases issued in~~
14 ~~coordination with the Texas Department of Human Services; and~~

15 [~~(2) ensure that a toll-free hotline for reporting~~
16 ~~suspected fraud in programs administered by the commission or a~~
17 ~~health and human services agency is maintained and promoted, either~~
18 ~~by the commission or by a health and human services agency.~~

19 [(c)] The office of inspector general [~~commission~~] shall
20 develop a cost-effective method of identifying applicants for
21 public assistance in counties bordering other states and in
22 metropolitan areas selected by the office [~~commission~~] who are
23 already receiving benefits in other states. If economically
24 feasible, the office [~~commission~~] may develop a computerized
25 matching system.

26 (b) [(d)] The office of inspector general [~~commission~~]
27 shall:

1 (1) verify automobile information that is used as
2 criteria for eligibility; and

3 (2) establish a computerized matching system with the
4 Texas Department of Criminal Justice to prevent an incarcerated
5 individual from illegally receiving public assistance benefits
6 administered by the commission.

7 (c) [~~e~~] The office of inspector general [~~commission~~]
8 shall submit to the governor and Legislative Budget Board a
9 semiannual report on the results of computerized matching of office
10 [~~commission~~] information with information from neighboring states,
11 if any, and information from the Texas Department of Criminal
12 Justice. The report may be consolidated with any other report
13 relating to the same subject matter the office [~~commission~~] is
14 required to submit under other law.

15 SECTION 10. Section 531.109, Government Code, is amended to
16 read as follows:

17 Sec. 531.109. SELECTION AND REVIEW OF CLAIMS. (a) The
18 office of inspector general [~~commission~~] shall annually select and
19 review a random, statistically valid sample of all claims for
20 reimbursement under the state Medicaid program, including the
21 vendor drug program, for potential cases of fraud, waste, or abuse.

22 (b) In conducting the annual review of claims under
23 Subsection (a), the office of inspector general [~~commission~~] may
24 directly contact a recipient by telephone or in person, or both, to
25 verify that the services for which a claim for reimbursement was
26 submitted by a provider were actually provided to the recipient.

27 (c) Based on the results of the annual review of claims, the

1 office of inspector general [~~commission~~] shall determine the types
2 of claims at which office [~~commission~~] resources for fraud, waste,
3 and abuse detection should be primarily directed.

4 SECTION 11. Sections 531.110(a), (c), (d), (e), and (f),
5 Government Code, are amended to read as follows:

6 (a) The office of inspector general [~~commission~~] shall
7 conduct electronic data matches for a recipient of assistance under
8 the state Medicaid program at least quarterly to verify the
9 identity, income, employment status, and other factors that affect
10 the eligibility of the recipient.

11 (c) The commission and other health and human services
12 agencies [~~Texas Department of Human Services~~] shall cooperate with
13 the office of inspector general [~~commission~~] by providing data or
14 any other assistance necessary to conduct the electronic data
15 matches required by this section.

16 (d) The office of inspector general [~~commission~~] may
17 contract with a public or private entity to conduct the electronic
18 data matches required by this section.

19 (e) The office of inspector general [~~commission, or a health~~
20 ~~and human services agency designated by the commission,~~] by rule
21 shall establish procedures to verify the electronic data matches
22 conducted by the office [~~commission~~] under this section. Not later
23 than the 20th day after the date the electronic data match is
24 verified, the commission and other health and human services
25 agencies [~~Texas Department of Human Services~~] shall remove from
26 eligibility a recipient who is determined to be ineligible for
27 assistance under the state Medicaid program.

1 (f) The office of inspector general [~~commission~~] shall
2 report biennially to the legislature the results of the electronic
3 data matching program. The report must include a summary of the
4 number of applicants who were removed from eligibility for
5 assistance under the state Medicaid program as a result of an
6 electronic data match conducted under this section.

7 SECTION 12. Section 531.111, Government Code, is amended to
8 read as follows:

9 Sec. 531.111. FRAUD DETECTION TECHNOLOGY. The office of
10 inspector general [~~commission~~] may contract with a contractor who
11 specializes in developing technology capable of identifying
12 patterns of fraud exhibited by Medicaid recipients to:

13 (1) develop and implement the fraud detection
14 technology; and

15 (2) determine if a pattern of fraud by Medicaid
16 recipients is present in the recipients' eligibility files
17 maintained by the commission and other health and human services
18 agencies [~~Texas Department of Human Services~~].

19 SECTION 13. Section 531.113, Government Code, is amended to
20 read as follows:

21 Sec. 531.113. MANAGED CARE ORGANIZATIONS: SPECIAL
22 INVESTIGATIVE UNITS OR CONTRACTS. (a) Each managed care
23 organization that provides or arranges for the provision of health
24 care services to an individual under a government-funded program,
25 including the Medicaid program and the child health plan program,
26 shall:

27 (1) establish and maintain a special investigative

1 unit within the managed care organization to investigate fraudulent
2 claims and other types of program waste or abuse by recipients and
3 service providers; or

4 (2) contract with another entity for the investigation
5 of fraudulent claims and other types of program waste or abuse by
6 recipients and service providers.

7 (b) Each managed care organization subject to this section
8 shall adopt a plan to prevent and reduce fraud, waste, and abuse and
9 annually file that plan with the [~~commission's~~] office of inspector
10 general for approval. The plan must include:

11 (1) a description of the managed care organization's
12 procedures for detecting and investigating possible acts of fraud,
13 waste, or abuse;

14 (2) a description of the managed care organization's
15 procedures for the mandatory reporting of possible acts of fraud,
16 waste, or abuse to the [~~commission's~~] office of inspector general;

17 (3) a description of the managed care organization's
18 procedures for educating and training personnel to prevent fraud,
19 waste, and abuse;

20 (4) the name, address, telephone number, and fax
21 number of the individual responsible for carrying out the plan;

22 (5) a description or chart outlining the
23 organizational arrangement of the managed care organization's
24 personnel responsible for investigating and reporting possible
25 acts of fraud, waste, or abuse;

26 (6) a detailed description of the results of
27 investigations of fraud, waste, and abuse conducted by the managed

1 care organization's special investigative unit or the entity with
2 which the managed care organization contracts under Subsection
3 (a)(2); and

4 (7) provisions for maintaining the confidentiality of
5 any patient information relevant to an investigation of fraud,
6 waste, or abuse.

7 (c) If a managed care organization contracts for the
8 investigation of fraudulent claims and other types of program waste
9 or abuse by recipients and service providers under Subsection
10 (a)(2), the managed care organization shall file with the
11 [~~commission's~~] office of inspector general:

12 (1) a copy of the written contract;

13 (2) the names, addresses, telephone numbers, and fax
14 numbers of the principals of the entity with which the managed care
15 organization has contracted; and

16 (3) a description of the qualifications of the
17 principals of the entity with which the managed care organization
18 has contracted.

19 (d) The [~~commission's~~] office of inspector general may
20 review the records of a managed care organization to determine
21 compliance with this section.

22 (e) The inspector general [~~commissioner~~] shall adopt rules
23 as necessary to accomplish the purposes of this section.

24 SECTION 14. Sections 531.114(b) and (g), Government Code,
25 are amended to read as follows:

26 (b) If after an investigation the office of inspector
27 general [~~commission~~] determines that a person violated Subsection

1 (a), the office [~~commission~~] shall:

2 (1) notify the person of the alleged violation not
3 later than the 30th day after the date the office [~~commission~~]
4 completes the investigation and provide the person with an
5 opportunity for a hearing on the matter; or

6 (2) refer the matter to the appropriate prosecuting
7 attorney for prosecution.

8 (g) The office of inspector general [~~commission~~] shall
9 adopt rules as necessary to implement this section.

10 SECTION 15. Section 533.001, Government Code, is amended by
11 adding Subdivision (3-a) to read as follows:

12 (3-a) "Inspector general" means the inspector general
13 appointed under Chapter 422.

14 SECTION 16. Section 533.005(a), Government Code, is amended
15 to read as follows:

16 (a) A contract between a managed care organization and the
17 commission for the organization to provide health care services to
18 recipients must contain:

19 (1) procedures to ensure accountability to the state
20 for the provision of health care services, including procedures for
21 financial reporting, quality assurance, utilization review, and
22 assurance of contract and subcontract compliance;

23 (2) capitation rates that ensure the cost-effective
24 provision of quality health care;

25 (3) a requirement that the managed care organization
26 provide ready access to a person who assists recipients in
27 resolving issues relating to enrollment, plan administration,

1 education and training, access to services, and grievance
2 procedures;

3 (4) a requirement that the managed care organization
4 provide ready access to a person who assists providers in resolving
5 issues relating to payment, plan administration, education and
6 training, and grievance procedures;

7 (5) a requirement that the managed care organization
8 provide information and referral about the availability of
9 educational, social, and other community services that could
10 benefit a recipient;

11 (6) procedures for recipient outreach and education;

12 (7) a requirement that the managed care organization
13 make payment to a physician or provider for health care services
14 rendered to a recipient under a managed care plan not later than the
15 45th day after the date a claim for payment is received with
16 documentation reasonably necessary for the managed care
17 organization to process the claim, or within a period, not to exceed
18 60 days, specified by a written agreement between the physician or
19 provider and the managed care organization;

20 (8) a requirement that the commission, on the date of a
21 recipient's enrollment in a managed care plan issued by the managed
22 care organization, inform the organization of the recipient's
23 Medicaid certification date;

24 (9) a requirement that the managed care organization
25 comply with Section 533.006 as a condition of contract retention
26 and renewal;

27 (10) a requirement that the managed care organization

1 provide the information required by Section 533.012 and otherwise
2 comply and cooperate with the [~~commission's~~] office of inspector
3 general;

4 (11) a requirement that the managed care
5 organization's usages of out-of-network providers or groups of
6 out-of-network providers may not exceed limits for those usages
7 relating to total inpatient admissions, total outpatient services,
8 and emergency room admissions determined by the commission;

9 (12) if the commission finds that a managed care
10 organization has violated Subdivision (11), a requirement that the
11 managed care organization reimburse an out-of-network provider for
12 health care services at a rate that is equal to the allowable rate
13 for those services, as determined under Sections 32.028 and
14 32.0281, Human Resources Code;

15 (13) a requirement that the organization use advanced
16 practice nurses in addition to physicians as primary care providers
17 to increase the availability of primary care providers in the
18 organization's provider network;

19 (14) a requirement that the managed care organization
20 reimburse a federally qualified health center or rural health
21 clinic for health care services provided to a recipient outside of
22 regular business hours, including on a weekend day or holiday, at a
23 rate that is equal to the allowable rate for those services as
24 determined under Section 32.028, Human Resources Code, if the
25 recipient does not have a referral from the recipient's primary
26 care physician; and

27 (15) a requirement that the managed care organization

1 develop, implement, and maintain a system for tracking and
2 resolving all provider appeals related to claims payment, including
3 a process that will require:

4 (A) a tracking mechanism to document the status
5 and final disposition of each provider's claims payment appeal;

6 (B) the contracting with physicians who are not
7 network providers and who are of the same or related specialty as
8 the appealing physician to resolve claims disputes related to
9 denial on the basis of medical necessity that remain unresolved
10 subsequent to a provider appeal; and

11 (C) the determination of the physician resolving
12 the dispute to be binding on the managed care organization and
13 provider.

14 SECTION 17. Sections 533.012(a), (b), (c), and (e),
15 Government Code, are amended to read as follows:

16 (a) Each managed care organization contracting with the
17 commission under this chapter shall submit to the office of
18 inspector general [~~commission~~]:

19 (1) a description of any financial or other business
20 relationship between the organization and any subcontractor
21 providing health care services under the contract;

22 (2) a copy of each type of contract between the
23 organization and a subcontractor relating to the delivery of or
24 payment for health care services;

25 (3) a description of the fraud control program used by
26 any subcontractor that delivers health care services; and

27 (4) a description and breakdown of all funds paid to

1 the managed care organization, including a health maintenance
2 organization, primary care case management, and an exclusive
3 provider organization, necessary for the office [~~commission~~] to
4 determine the actual cost of administering the managed care plan.

5 (b) The information submitted under this section must be
6 submitted in the form required by the office of inspector general
7 [~~commission~~] and be updated as required by the office [~~commission~~].

8 (c) The office [~~commission's office~~] of inspector general
9 [~~investigations and enforcement~~] shall review the information
10 submitted under this section as appropriate in the investigation of
11 fraud in the Medicaid managed care program. The comptroller may
12 review the information in connection with the health care fraud
13 study conducted by the comptroller.

14 (e) Information submitted to the office of inspector
15 general [~~commission~~] under Subsection (a)(1) is confidential and
16 not subject to disclosure under Chapter 552[, ~~Government Code~~].

17 SECTION 18. Section 2054.376(b), Government Code, is
18 amended to read as follows:

19 (b) This subchapter does not apply to:

20 (1) the Department of Public Safety's use for criminal
21 justice or homeland security purposes of a federal database or
22 network;

23 (2) a Texas equivalent of a database or network
24 described by Subdivision (1) that is managed by the Department of
25 Public Safety;

26 (3) the uniform statewide accounting system, as that
27 term is used in Subchapter C, Chapter 2101;

1 (4) the state treasury cash and treasury management
2 system; ~~[or]~~

3 (5) a database or network managed by the comptroller
4 to:

5 (A) collect and process multiple types of taxes
6 imposed by the state; or

7 (B) manage or administer fiscal, financial,
8 revenue, and expenditure activities of the state under Chapter 403
9 and Chapter 404; or

10 (6) the office of inspector general's use, for
11 criminal justice and statutorily mandated confidentiality
12 purposes, of a federal or state database or network.

13 SECTION 19. Section 21.014(b), Human Resources Code, is
14 amended to read as follows:

15 (b) The ~~[person employed by the department as]~~ inspector
16 general shall make reports to and consult with the chairman of the
17 board regarding:

18 (1) the selection of internal audit topics;

19 (2) the establishment of internal audit priorities;

20 and

21 (3) the findings of each regular or special internal
22 audit initiative.

23 SECTION 20. Section 32.003, Human Resources Code, is
24 amended by adding Subdivision (5) to read as follows:

25 (5) "Office of inspector general" means the office of
26 inspector general established under Chapter 422, Government Code.

27 SECTION 21. Section 32.0291, Human Resources Code, is

1 amended to read as follows:

2 Sec. 32.0291. PREPAYMENT REVIEWS AND POST PAYMENT HOLDS.

3 (a) Notwithstanding any other law, the office of inspector general
4 [~~department~~] may:

5 (1) perform a prepayment review of a claim for
6 reimbursement under the medical assistance program to determine
7 whether the claim involves fraud, waste, or abuse; and

8 (2) as necessary to perform that review, withhold
9 payment of the claim for not more than five working days without
10 notice to the person submitting the claim.

11 (b) Notwithstanding any other law, the office of inspector
12 general [~~department~~] may impose a postpayment hold on payment of
13 future claims submitted by a provider if the office [~~department~~]
14 has reliable evidence that the provider has committed fraud, waste,
15 abuse, or wilful misrepresentation regarding a claim for
16 reimbursement under the medical assistance program. The office
17 [~~department~~] must notify the provider of the postpayment hold not
18 later than the fifth working day after the date the hold is imposed.

19 (c) On timely written request by a provider subject to a
20 postpayment hold under Subsection (b), the office of inspector
21 general [~~department~~] shall file a request with the State Office of
22 Administrative Hearings for an expedited administrative hearing
23 regarding the hold. The provider must request an expedited hearing
24 under this subsection not later than the 10th day after the date the
25 provider receives notice from the office [~~department~~] under
26 Subsection (b). The office [~~department~~] shall discontinue the hold
27 unless the office [~~department~~] makes a prima facie showing at the

1 hearing that the evidence relied on by the office [~~department~~] in
2 imposing the hold is relevant, credible, and material to the issue
3 of fraud, waste, abuse, or wilful misrepresentation.

4 (d) The office of inspector general [~~department~~] shall
5 adopt rules that allow a provider subject to a postpayment hold
6 under Subsection (b) to seek an informal resolution of the issues
7 identified by the office [~~department~~] in the notice provided under
8 that subsection. A provider must seek an informal resolution under
9 this subsection not later than the deadline prescribed by
10 Subsection (c). A provider's decision to seek an informal
11 resolution under this subsection does not extend the time by which
12 the provider must request an expedited administrative hearing under
13 Subsection (c). However, a hearing initiated under Subsection (c)
14 shall be stayed at the office's [~~department's~~] request until the
15 informal resolution process is completed.

16 SECTION 22. Section 32.032, Human Resources Code, is
17 amended to read as follows:

18 Sec. 32.032. PREVENTION AND DETECTION OF FRAUD AND ABUSE.
19 The office of inspector general [~~department~~] shall adopt reasonable
20 rules for minimizing the opportunity for fraud and abuse, for
21 establishing and maintaining methods for detecting and identifying
22 situations in which a question of fraud or abuse in the program may
23 exist, and for referring cases where fraud or abuse appears to exist
24 to the appropriate law enforcement agencies for prosecution.

25 SECTION 23. Sections 32.0321(a), (b), (c), and (d), Human
26 Resources Code, are amended to read as follows:

27 (a) The office of inspector general [~~department~~] by rule may

1 require each provider of medical assistance in a provider type that
2 has demonstrated significant potential for fraud or abuse to
3 file with the office [~~department~~] a surety bond in a reasonable
4 amount. The office [~~department~~] by rule shall require a provider of
5 medical assistance to file with the office [~~department~~] a surety
6 bond in a reasonable amount if the office [~~department~~] identifies a
7 pattern of suspected fraud or abuse involving criminal conduct
8 relating to the provider's services under the medical assistance
9 program that indicates the need for protection against potential
10 future acts of fraud or abuse.

11 (b) The bond under Subsection (a) must be payable to the
12 office of inspector general [~~department~~] to compensate the office
13 [~~department~~] for damages resulting from or penalties or fines
14 imposed in connection with an act of fraud or abuse committed by the
15 provider under the medical assistance program.

16 (c) Subject to Subsection (d) or (e), the office of
17 inspector general [~~department~~] by rule may require each provider of
18 medical assistance that establishes a resident's trust fund account
19 to post a surety bond to secure the account. The bond must be
20 payable to the office [~~department~~] to compensate residents of the
21 bonded provider for trust funds that are lost, stolen, or otherwise
22 unaccounted for if the provider does not repay any deficiency in a
23 resident's trust fund account to the person legally entitled to
24 receive the funds.

25 (d) The office of inspector general [~~department~~] may not
26 require the amount of a surety bond posted for a single facility
27 provider under Subsection (c) to exceed the average of the total

1 average monthly balance of all the provider's resident trust fund
2 accounts for the 12-month period preceding the bond issuance or
3 renewal date.

4 SECTION 24. Section 32.0322, Human Resources Code, is
5 amended to read as follows:

6 Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION.

7 (a) The office of inspector general and the department may obtain
8 from any law enforcement or criminal justice agency the criminal
9 history record information that relates to a provider under the
10 medical assistance program or a person applying to enroll as a
11 provider under the medical assistance program.

12 (b) The office of inspector general [~~department~~] by rule
13 shall establish criteria for revoking a provider's enrollment or
14 denying a person's application to enroll as a provider under the
15 medical assistance program based on the results of a criminal
16 history check.

17 SECTION 25. Section 33.015(e), Human Resources Code, is
18 amended to read as follows:

19 (e) The department shall require a person exempted under
20 this section from making a personal appearance at department
21 offices to provide verification of the person's entitlement to the
22 exemption on initial eligibility certification and on each
23 subsequent periodic eligibility recertification. If the person
24 does not provide verification and the department considers the
25 verification necessary to protect the integrity of the food stamp
26 program, the department shall initiate a fraud referral to the
27 [~~department's~~] office of inspector general.

1 SECTION 26. Section 20.038, Business & Commerce Code, is
2 amended to read as follows:

3 Sec. 20.038. EXEMPTION FROM SECURITY FREEZE. A security
4 freeze does not apply to a consumer report provided to:

5 (1) a state or local governmental entity, including a
6 law enforcement agency or court or private collection agency, if
7 the entity, agency, or court is acting under a court order, warrant,
8 subpoena, or administrative subpoena;

9 (2) a child support agency as defined by Section
10 101.004, Family Code, acting to investigate or collect child
11 support payments or acting under Title IV-D of the Social Security
12 Act (42 U.S.C. Section 651 et seq.);

13 (3) the office of inspector general [~~Health and Human~~
14 ~~Services Commission~~] acting to investigate fraud, waste, or abuse
15 in state agencies under Chapter 422, Government Code, or other law
16 [~~under Section 531.102, Government Code~~];

17 (4) the comptroller acting to investigate or collect
18 delinquent sales or franchise taxes;

19 (5) a tax assessor-collector acting to investigate or
20 collect delinquent ad valorem taxes;

21 (6) a person for the purposes of prescreening as
22 provided by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et
23 seq.), as amended;

24 (7) a person with whom the consumer has an account or
25 contract or to whom the consumer has issued a negotiable
26 instrument, or the person's subsidiary, affiliate, agent,
27 assignee, prospective assignee, or private collection agency, for

1 purposes related to that account, contract, or instrument;

2 (8) a subsidiary, affiliate, agent, assignee, or
3 prospective assignee of a person to whom access has been granted
4 under Section 20.037(b);

5 (9) a person who administers a credit file monitoring
6 subscription service to which the consumer has subscribed;

7 (10) a person for the purpose of providing a consumer
8 with a copy of the consumer's report on the consumer's request;

9 (11) a check service or fraud prevention service
10 company that issues consumer reports:

11 (A) to prevent or investigate fraud; or

12 (B) for purposes of approving or processing
13 negotiable instruments, electronic funds transfers, or similar
14 methods of payment;

15 (12) a deposit account information service company
16 that issues consumer reports related to account closures caused by
17 fraud, substantial overdrafts, automated teller machine abuses, or
18 similar negative information regarding a consumer to an inquiring
19 financial institution for use by the financial institution only in
20 reviewing a consumer request for a deposit account with that
21 institution; or

22 (13) a consumer reporting agency that:

23 (A) acts only to resell credit information by
24 assembling and merging information contained in a database of
25 another consumer reporting agency or multiple consumer reporting
26 agencies; and

27 (B) does not maintain a permanent database of

1 credit information from which new consumer reports are produced.

2 SECTION 27. Article 2.12, Code of Criminal Procedure, is
3 amended to read as follows:

4 Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace
5 officers:

6 (1) sheriffs, their deputies, and those reserve
7 deputies who hold a permanent peace officer license issued under
8 Chapter 1701, Occupations Code;

9 (2) constables, deputy constables, and those reserve
10 deputy constables who hold a permanent peace officer license issued
11 under Chapter 1701, Occupations Code;

12 (3) marshals or police officers of an incorporated
13 city, town, or village, and those reserve municipal police officers
14 who hold a permanent peace officer license issued under Chapter
15 1701, Occupations Code;

16 (4) rangers and officers commissioned by the Public
17 Safety Commission and the Director of the Department of Public
18 Safety;

19 (5) investigators of the district attorneys', criminal
20 district attorneys', and county attorneys' offices;

21 (6) law enforcement agents of the Texas Alcoholic
22 Beverage Commission;

23 (7) each member of an arson investigating unit
24 commissioned by a city, a county, or the state;

25 (8) officers commissioned under Section 37.081,
26 Education Code, or Subchapter E, Chapter 51, Education Code;

27 (9) officers commissioned by the General Services

1 Commission;

2 (10) law enforcement officers commissioned by the
3 Parks and Wildlife Commission;

4 (11) airport police officers commissioned by a city
5 with a population of more than 1.18 million that operates an airport
6 that serves commercial air carriers;

7 (12) airport security personnel commissioned as peace
8 officers by the governing body of any political subdivision of this
9 state, other than a city described by Subdivision (11), that
10 operates an airport that serves commercial air carriers;

11 (13) municipal park and recreational patrolmen and
12 security officers;

13 (14) security officers and investigators commissioned
14 as peace officers by the comptroller;

15 (15) officers commissioned by a water control and
16 improvement district under Section 49.216, Water Code;

17 (16) officers commissioned by a board of trustees
18 under Chapter 54, Transportation Code;

19 (17) investigators commissioned by the Texas Medical
20 [~~State~~] Board [~~of Medical Examiners~~];

21 (18) officers commissioned by the board of managers of
22 the Dallas County Hospital District, the Tarrant County Hospital
23 District, or the Bexar County Hospital District under Section
24 281.057, Health and Safety Code;

25 (19) county park rangers commissioned under
26 Subchapter E, Chapter 351, Local Government Code;

27 (20) investigators employed by the Texas Racing

1 Commission;

2 (21) officers commissioned under Chapter 554,
3 Occupations Code;

4 (22) officers commissioned by the governing body of a
5 metropolitan rapid transit authority under Section 451.108,
6 Transportation Code, or by a regional transportation authority
7 under Section 452.110, Transportation Code;

8 (23) investigators commissioned by the attorney
9 general under Section 402.009, Government Code;

10 (24) security officers and investigators commissioned
11 as peace officers under Chapter 466, Government Code;

12 (25) an officer employed by the [~~Texas~~] Department of
13 State Health Services under Section 431.2471, Health and Safety
14 Code;

15 (26) officers appointed by an appellate court under
16 Subchapter F, Chapter 53, Government Code;

17 (27) officers commissioned by the state fire marshal
18 under Chapter 417, Government Code;

19 (28) an investigator commissioned by the commissioner
20 of insurance under Section 701.104 [~~Article 1.10D~~], Insurance Code;

21 (29) apprehension specialists commissioned by the
22 Texas Youth Commission as officers under Section 61.0931, Human
23 Resources Code;

24 (30) officers appointed by the executive director of
25 the Texas Department of Criminal Justice under Section 493.019,
26 Government Code;

27 (31) investigators commissioned by the Commission on

1 Law Enforcement Officer Standards and Education under Section
2 1701.160, Occupations Code;

3 (32) commission investigators commissioned by the
4 Texas [~~Commission on~~] Private Security Board under Section
5 1702.061(f), Occupations Code;

6 (33) the fire marshal and any officers, inspectors, or
7 investigators commissioned by an emergency services district under
8 Chapter 775, Health and Safety Code; [~~and~~]

9 (34) officers commissioned by the State Board of
10 Dental Examiners under Section 254.013, Occupations Code, subject
11 to the limitations imposed by that section; and

12 (35) officers commissioned by the office of inspector
13 general established under Chapter 422, Government Code.

14 SECTION 28. The following sections of the Government Code
15 are repealed:

- 16 (1) Section 531.102;
- 17 (2) Section 531.1021;
- 18 (3) Section 531.103; and
- 19 (4) Section 531.104.

20 SECTION 29. (a) The repeal by this Act of Section 531.102,
21 Government Code, does not affect the validity of a complaint,
22 investigation, or other proceeding initiated under that section
23 before the effective date of this Act. A complaint, investigation,
24 or other proceeding initiated under that section is continued in
25 accordance with the changes in law made by this Act.

26 (b) The repeal by this Act of Section 531.1021, Government
27 Code, does not affect the validity of a subpoena issued under that

1 section before the effective date of this Act. A subpoena issued
2 under that section before the effective date of this Act is governed
3 by the law that existed when the subpoena was issued, and the former
4 law is continued in effect for that purpose.

5 SECTION 30. (a) The person serving as inspector general
6 under Section 531.102(a-1), Government Code, on the effective date
7 of this Act shall serve as the inspector general appointed under
8 Chapter 422, Government Code, as added by this Act, until February
9 1, 2009, and may be reappointed under Chapter 422 if the person has
10 the qualifications required under that chapter.

11 (b) Not later than February 1, 2009, the governor shall
12 appoint an inspector general for the office of inspector general
13 under Chapter 422, Government Code, as added by this Act, to a term
14 expiring February 1, 2011.

15 SECTION 31. On the effective date of this Act:

16 (1) all functions, activities, employees, rules,
17 forms, money, property, contracts, memorandums of understanding,
18 records, and obligations of the office of inspector general under
19 Section 531.102(a-1), Government Code, become functions,
20 activities, employees, rules, forms, money, property, contracts,
21 memorandums of understanding, records, and obligations of the
22 office of inspector general appointed under Chapter 422, Government
23 Code, as added by this Act, without a change in status; and

24 (2) all money appropriated for the office of inspector
25 general under Section 531.102(a-1), Government Code, including
26 money for providing administrative support, is considered
27 appropriated to office of inspector general appointed under Chapter

1 422, Government Code, as added by this Act.

2 SECTION 32. A state agency for which a deputy inspector
3 general is designated by the inspector general after October 1,
4 2007, not later than the 90th day after the date of the designation
5 shall transfer to the office of inspector general established under
6 Chapter 422, Government Code, as added by this Act, all personnel,
7 vacant full-time equivalent positions, and assets engaged in the
8 performance of or the support of agency functions relating to the
9 detection, investigation, and prevention of fraud, waste, and abuse
10 in the implementation or administration of state or federally
11 funded programs.

12 SECTION 33. (a) The Health and Human Services Commission
13 shall take all action necessary to provide for the orderly transfer
14 of the assets and responsibilities of the commission's office of
15 inspector general to the office of inspector general established
16 under Chapter 422, Government Code, as added by this Act.

17 (b) A rule or form adopted by the office of inspector
18 general of the Health and Human Services Commission is a rule or
19 form of the office of inspector general established under Chapter
20 422, Government Code, as added by this Act, and remains in effect
21 until changed by the office of inspector general.

22 (c) A reference in law or administrative rule to the office
23 of inspector general of the Health and Human Services Commission
24 means the office of inspector general established under Chapter
25 422, Government Code, as added by this Act.

26 SECTION 34. If before implementing any provision of this
27 Act a state agency determines that a waiver or authorization from a

1 federal agency is necessary for implementation of that provision,
2 the agency affected by the provision shall request the waiver or
3 authorization and may delay implementing that provision until the
4 waiver or authorization is granted.

5 SECTION 35. This Act takes effect immediately if it
6 receives a vote of two-thirds of all the members elected to each
7 house, as provided by Section 39, Article III, Texas Constitution.
8 If this Act does not receive the vote necessary for immediate
9 effect, this Act takes effect September 1, 2007.