



2011

**OFFICE OF THE INSPECTOR GENERAL
ANNUAL REPORT**

Nicholas Kramer
Inspector General

Rm. 900-N, Landon Building,
900 SW Jackson Street,
Topeka, KS 66612-1220
www.khpa.ks.gov

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LETTER FROM THE OFFICE OF INSPECTOR GENERAL

January 2011

Dear Reader:

This annual report has been prepared by the Kansas Health Policy Authority (KHPA) Office of Inspector General (OIG) pursuant to the requirements of K.S.A. 75-7427 and is respectfully submitted to:

- Honorable members of the Kansas Health Policy Authority Board
- Andrew Allison, PhD, Executive Director of the Kansas Health Policy Authority
- The Honorable Sam Brownback, Governor of the State of Kansas
- Honorable members of the Kansas Senate's Committee on Ways and Means
- Honorable members of the Kansas House of Representatives' Committee on Appropriations
- Honorable members of the Kansas Legislature's Joint Committee on Health Policy Oversight
- Scott Frank, Legislative Post Auditor
- The people of the State of Kansas

This report provides a history of the KHPA OIG and describes the OIG's accomplishments in calendar year 2010. It also provides general statistics on provider billing, payments and sanctions submitted to us by the Kansas Department on Aging, Kansas Social and Rehabilitation Services and the Kansas Health Policy Authority.

We hope this report provides you with valuable information and we welcome any questions or comments you may have regarding the report contents or our operations. Please feel free to contact me at OIG@khpa.ks.gov or (785) 296-2112.

Sincerely,

Nicholas Kramer, CIG, CPA, CIA, CISA
Inspector General

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INTRODUCTION TO THE OFFICE OF INSPECTOR GENERAL

The Kansas Health Policy Authority (KHPA) Office of Inspector General (OIG) was created by the 2007 Kansas Legislature as part of a much larger health reform bill, commonly referred to as Senate Bill 11. This creation of an independent oversight body, with the responsibility to review and investigate KHPA's performance in delivering health services, was a significant step in reforming public health care in Kansas.

The KHPA OIG, whose enabling statute is K.S.A. 75-7427, is the first statutorily created Office of Inspector General in Kansas. Its mission is:

- To provide increased accountability and integrity in KHPA programs and operations.
- To help improve KHPA programs and operations.
- To identify and deter fraud, waste, abuse and illegal acts in the State Medicaid Program, the MediKan Program and the State Children's Health Insurance Program.

To fulfill its mission, the KHPA OIG conducts:

- Audits of the KHPA, its employees, contractors, vendors and health care providers.
- Investigations of fraud, waste, abuse, and illegal acts by KHPA or its agents, employees, vendors, contractors, consumers, clients, health care providers or other providers.
- Reviews, which may also be called inspections or evaluations.

Audits are formal evaluations of an organization, its systems, processes, projects or products. Performance audits examine the effectiveness or efficiency of a program or operation. The overarching goal of all OIG audits is to review the quality of KHPA programs and processes and make recommendations for improvement. The OIG conducts its audits in a manner consistent with generally accepted government auditing standards developed by the U.S. Government Accountability Office (GAO). OIG audit topics are identified through periodic risk assessments, requests by the KHPA Board members, suggestions by KHPA management, suggestions from members of the Legislature, or from OIG audit staff.

Investigations attempt to determine the extent of reported incidents, the amount of loss, and what weaknesses may have existed that led to the allegations/incidents. Investigative reports may make corrective action recommendations intended to avoid similar problems in the future. The OIG conducts investigations that are consistent with the principles and quality standards set out for investigations by the Association of Inspectors General (AIG). Topics for OIG investigations are identified by audit work performed by OIG staff as well as referrals from KHPA staff, legislators and the general public. The results of investigations are reported to KHPA

management and are referred, if necessary, for further investigation or prosecution to the Kansas Attorney General.

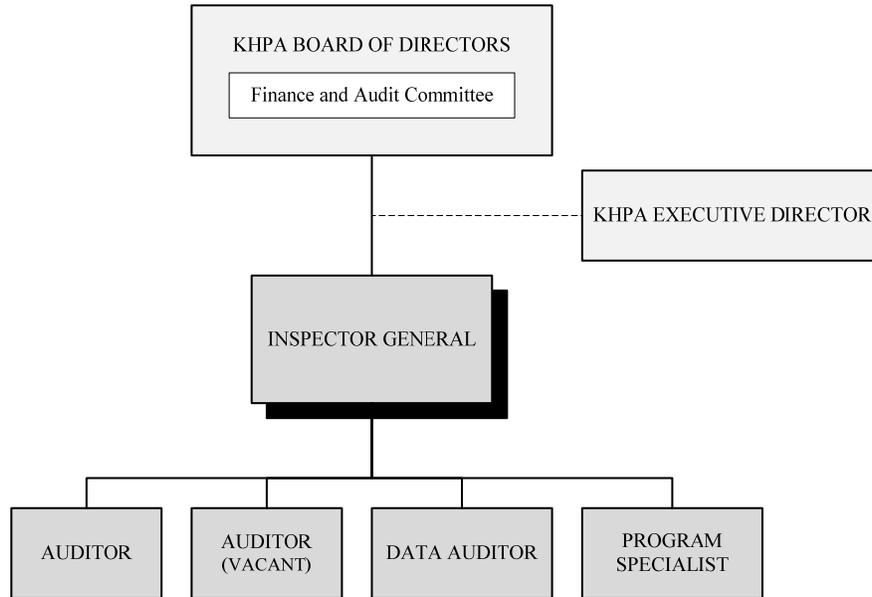
Reviews are inquiries into a specific programmatic aspect of KHPA's operations. Reviews may attempt to determine many issues, such as whether a component of the program is effective and efficient or whether the program component has good strategies to safeguard the appropriate use of state funds. Like investigations, the OIG will conduct reviews which are consistent with the principles and quality standards set out for inspections, evaluations and reviews by the Association of Inspectors General (AIG).

The results of all audits are presented in formal, written audit reports and through oral testimony to the KHPA Board and KHPA management. Draft audit reports are presented initially to the Finance and Audit Committee of the KHPA Board of Directors. Final audit reports are presented to the KHPA Board of Directors and are distributed to the Governor of Kansas, Legislative Division of Post Audit and the Attorney General. Members of the Kansas Legislature, Kansas citizens and other interested parties may access audit reports, annual reports and other information on our website at <http://www.khpa.ks.gov/OIG/default.htm>.

As required by K.S.A. 75-7427, the KHPA OIG will report findings of fraud, waste, abuse or illegal acts to KHPA and also refer those findings to the Attorney General.

ORGANIZATIONAL STRUCTURE

As required by K.S.A. 75-7427 and amended by House Bill (HB) 2578, the Inspector General reports functionally to the KHPA Board and administratively to the KHPA Executive Director. The Inspector General reports monthly to the KHPA Board's Finance and Audit Committee. Currently, the staff of the OIG includes the Inspector General, two auditors and a program specialist.



OFFICE OF INSPECTOR GENERAL STAFF

Nicholas M. Kramer was appointed Inspector General by the KHPA Board in September 2009. Mr. Kramer served as the Internal Audit Manager for the Kansas Department of Revenue for 25 years. His professional certifications include Certified Inspector General, Certified Public Accountant, Certified Internal Auditor, and Certified Information Systems Auditor. Mr. Kramer earned his Master of Business Administration from Washburn University and his B.S. in Accounting from the University of Kansas.

Felany Opiso-Williams is a Certified Internal Auditor. Prior to joining the OIG in 2008, she was an auditor for the Kansas Legislative Division of Post Audit. She received her Master of Public Administration and Certificate in Public Finance from Wichita State University.

Stephen Mhere joined the OIG as Data Auditor in 2008 after serving as a Management Systems Analyst for the Kansas Department of Revenue. He received a Master of Business Administration from Baker College in Michigan.

Kimberly Epps, Program Specialist, served at the Kansas Division of Emergency Management before joining the OIG in 2008. She attended William Jewell College in Liberty, Missouri.

CALENDAR YEAR 2010 ACTIVITIES AND ACCOMPLISHMENTS

The OIG begins the year 2011 ready to continue our efforts to combat fraud, waste, abuse and illegal acts. We will work to fulfill our mission of providing increased accountability and integrity in KHPA programs and operations. Our goal continues to be helping to improve KHPA programs and operations, and identifying and deterring fraud, waste and abuse in the state Medicaid program, MediKan and the State Children's Health Insurance Program.

The KHPA OIG conducts audits as approved by the Finance and Audit Committee of the KHPA Board, and conducts investigations and limited scope reviews based on complaints received from the public, referrals from legislators and the KHPA Board, and issues identified by KHPA management and OIG staff. During 2010, the KHPA OIG completed the following audits.

AUDITS

Performance Audit of KHPA's Medicaid Contract Award Process

The mission of the Kansas Health Policy Authority is to “develop and maintain a coordinated health policy agenda that combines the effective purchasing and administration of health care with promotion oriented public health strategies (K.S.A. 75-7404).” As you can see, *effective purchasing* is a responsibility that lies at the core of KHPA's statutory mandate.

With state government funding strained to unprecedented limits and health care issues at the forefront of the state and national dialogue, it is increasingly important that KHPA accomplishes its mission with limited resources. Because KHPA obtains much of its functionality through contracting rather than hiring state workers, its ability to establish effective contracting practices for vendor-supplied services is of utmost importance today.

Recognizing the importance of this topic, the KHPA Board of Directors approved an OIG audit of KHPA's contracting practices. This audit addresses the following questions:

- **Does KHPA's contracting process comply with state contracting laws?**
- **Does KHPA's contracting process compare favorably with best practices or can improvements be achieved?**

To address our audit objectives, the OIG researched the law and interviewed purchasing officers from the Department of Administration and KHPA. We selected 10 different contracts active in FY 2010 for a detailed review, making sure that different types of contracting processes – interagency, competitive bid, and sole source – were all represented. In this way, we were able to document and test the procedures used for each contract award process.

As part of our audit analysis, the OIG documented, validated and reviewed KHPA's contracting practices. Although KHPA has no official policy and procedural manual to guide its employees, the agency uses the guidelines and principles established for each stage of the contracting process by the Department of Administration's Division of Purchases. In each award that we examined, the contract was independently reviewed and approved by the Director of Purchases. No contract above \$5,000 may be executed without receiving approval and signoff by the Director of Purchases.

KHPA's competitively bid contracts comprise over 94% of total expenditures for contracts active in FY 2010. For these contracts, the competitive purchase negotiating process requires independent scrutiny by the Division of Purchases. It appears that controls exist to help ensure fairness in contract awards, securing a high quality of services at a fair price and protection against potential legal action by unsuccessful bidders.

For contracts with lower amounts, the rules are more relaxed. KHPA is not required to seek competitive bids for contracts \$5,000 or less. Even for contracts that total as much as \$1 million or more, statutory exceptions allow for sole sourcing if approved by the Director of Purchases. KHPA managers have made use of this flexibility to complete contracts with other agencies and vendors using sole source arrangements.

Based on our review of the contract awards in our sample and on our discussions with contracting officers, we concluded that KHPA's contracting process conforms to state law and Division of Purchases policies. KHPA's process for handling contracts that need not be competitively bid complied with the law and has received Division of Purchases approval.

As part of our audit analysis, the OIG compared KHPA's contracting practices with selected guidelines provided by the National Association of State Procurement Officials (NASPO) and the Federal Acquisition Regulations (FAR). NASPO's *State & Local Government Procurement, A Practical Guide* emphasizes the importance of seeking competition in government procurement. A competitive process aids the government purchaser in attaining the highest quality commodities and services at the lowest possible cost. The ultimate justification for the existence of all competition laws is to protect the government as consumer. Other benefits from the competitive marketplace include promoting better market performance and encouraging new technology and higher productivity. Experts say that the overall benefits of competitive bidding outweigh the administrative costs in the long run.

According to NASPO, promoting competition at each stage of the procurement process includes following best practices such as the following:

- Make the decision to initiate the competitive process whenever possible instead of relying on sole source procurement.
- Staff the process with truly independent procurement professionals.
- Complete market research to create and expand lists of possible vendors.
- Draft contract specifications independently of any prospective vendor.
- Publicly announce invitations for bid or requests for proposals using the form of publication likely to reach the broadest possible number of potential vendors.
- Publicly announce the award of contracts.
- Avoid conflicts of interest.
- Document each stage of the process in a single procurement file or series of files.

The arguments for using sole sourcing instead of competitive bidding include the additional time, effort, and costs associated with inviting, evaluating and negotiating with multiple bidders. In addition, there are instances where immediate priorities and practical considerations override the desire to seek competitive bids.

In this audit, we found that KHPA used competitive bidding for 15 of its 57 active contracts, representing about one-fourth of its contracts and over 94 percent of the amounts awarded. There are 25 interagency contracts, which are exempt from competitive bidding requirements. For the remaining 17 contracts, comprising less than three percent of amounts awarded, KHPA employed sole sourcing as its preferred method. According to KHPA management, there were valid, practical reasons why sole sourcing was chosen.

The OIG thoroughly reviewed each contract in our sample to ascertain completeness and adherence to laws, standards, and best practices, but we did not try to judge whether competitive bidding would have been possible or preferable. We noted that KHPA's written justification on the prior authorization form was adequate to meet the Division of Purchases' standards, but insufficient to meet the guidelines established by the National Association of State Procurement Officers and the Federal Acquisition Regulations. These standards encourage organizations to adopt and follow competitive practices which can provide greater assurance against contracting risks. These processes are deemed important to maintaining the public image of the contracting agency and to reap the overall benefits of a more competitive purchasing environment.

Though amounts awarded using sole sourcing are small in comparison to the large contracts awarded through competitive bidding, the OIG recommends that KHPA attempt to employ competitive processes more frequently. When competition is not possible or practical, KHPA should provide more detail in its documentation, explaining why competitive bidding was not possible. This will help assure stakeholders of KHPA's commitment and adherence to best practices and transparency in contract award processes.

Neither the Department of Administration nor KHPA has a documented process that provides step-by-step instructions for purchasing officers and managers. Instead, each relies on the experience and expertise of contracting officers who are well-versed in the contracting process and procurement law. The law is designed primarily to instruct purchasers as to when contracts must be awarded through a competitive bidding process and how to make the competition fair. The law also lists seven exceptions for types of procurements that need not be competitively bid. One exception allows agencies to not seek competitive bids when it is in the “best interest of the state.”

We have included in this audit report nine recommendations which encourage KHPA management to consider adopting strategies and practices for all of its contracting. KHPA management provided thoughtful responses and agreed with the OIG in the majority of cases. The OIG recommendations are listed below.

Recommendations:

1. KHPA management should ensure CMS directives and other relevant federal notices of changes in federally funded programs are adequately reviewed and appropriate staff informed so requirements are complied with and the risk of federal funding being suspended or recouped is minimized.

KHPA agrees with the recommendation and believes that it already complies with the recommendation. KHPA legal staff, program managers and contract staff monitor CMS directives and other relevant federal notices of changes in federally funded programs and will continue to do so. KHPA senior management also reviews the periodic Medicaid Directors letters and other notifications from CMS as well as other trade organizations. Legal staff, program managers and contract staff will continue to work together to ensure that KHPA complies with all requirements and continues to avoid suspension or recoupment of federal funding.

2. KHPA should develop a comprehensive contracting policy and procedure manual which follows all relevant State purchasing laws and prescribed best practices promoting competition, fairness and integrity. The manual should be easy to understand and provide a good medium of knowledge transfer, thereby mitigating the impact of turnover of experienced contracting staff in the future. It should also provide sufficient detail of the agency’s procurement process from start to finish and list the responsibilities of the different agency units involved in contracting, and incorporate policies related to recommendations three through nine below.

KHPA agrees with the recommendation. The Contract Development Manager will develop a policy and procedure manual addressing the procurement process for the various contracts (negotiated procurement, interagency agreements, sole source etc.). The manual will include the state laws, best practices and flow charting to provide a resource for the contract unit and agency for reference. The implementation of the new Statewide Management Accounting and Reporting Tool (SMART) and ImageNow may necessitate changes in the current process and will be incorporated into the manual as they are implemented. The policy will be completed by December 31, 2010.

3. KHPA should require appropriate staff to prepare a statement of business needs for presentation to KHPA executive management prior to contract development and preparation. The business analysis statement should include objectives, the tentative timing of the potential project, and cost projections. Senior management should grant its approval before contract development work begins.

KHPA agrees with this recommendation and already has a process in place. All contracts are presented at the Administrative Staff (Ad Staff) meeting held weekly. The meeting is the venue for presenting and discussing contracts and other outsourcing opportunities prior to starting the contracting/procurement process. The Ad Staff provides a forum for managers to present contract proposals for review by the senior management of the agency. The Director of Medicaid and Deputy Director of Medicaid Operations co-chair the Ad Staff meeting and communicate to Executive Management the recommendation of the Ad Staff before proceeding with procurements. KHPA meets this requirement since senior (Executive) Management grants its approval before any major work begins on contract development and procurement.

4. KHPA should require documentation of the market research conducted to illustrate the absence of alternative vendors whenever sole sourcing a contract. The market research should include a list of potential vendors who were contacted, as well as a description of efforts made to ensure that offers were solicited from as many potential sources as practicable, including whether a notice was or will be publicized. If only one response is received, the contracting officer's statement of price reasonableness should be included in the contract file with supporting documentation.

KHPA agrees with the principle of seeking competitive bids and fully intends to adhere to the principle whenever possible. KHPA disagrees with the OIG's classification of contract KHPA2010-004, with Health and Disability Associates to provide a national media campaign to promote public/private partnerships for increased coordination between employment services and job seekers primarily for Medicaid beneficiaries, as a sole source contract. The OIG does not recognize the unique position of this vendor. The

vendor is the only CMS approved vendor for those services and all funding comes from Federal participation with no state match. The only choice left to the state is whether or not to participate in the media campaign, not whether or not to use the prescribed contractor. In addition, since the contract was competitively procured by CMS we believe that it clearly falls under the category of competitively acquired contracts. KHPA also believes that taking advantage of contract already competitively procured at the federal level is a cost effective and smart contracting method to secure services and be ensured that adequate research has been done regarding viable vendors.

KHPA agrees that documentation of the absence of alternative vendors when requesting sole sourcing contracts should be provided when requesting prior authorization approval. As verified by the audit, KHPA follows the prior authorization process established by the Department of Purchases, whenever sole sourcing a contract. The process requires that the agency justifies why it believes the contractor is the best suited to provide the services. The Director of purchases reviews and approves all requests. KHPA will continue to provide justification for its sole sourcing choices. KHPA will continue to scrutinize the sole source justifications to ensure they are complete, reasonable and comprehensive.

5. KHPA should require competitive bidding or negotiated procurement whenever possible, including for services that could be sole sourced to KHPA employees identified as potential contractors. This is to ensure the award is fair and appropriate both in appearance and in fact.

KHPA agrees that competitive bidding or negotiated procurement is proper when the agency is wishing to obtain experienced and knowledgeable vendors. KHPA will continue to enter into consultant contracts to select the most viable candidate while considering the experience, cost and the propriety of the selection and remaining in compliance with State regulations. The Agency will consider all applicants for open positions; however, if in the opinion of management the applicant who can best fill the position is a former employee, KHPA will continue to selectively and prudently enter into contracts with former employees.

6. KHPA should require all employees substantially involved in preparing, developing or participating in the making of a contract or awarding of a contract, including each contract's evaluation team, to sign an independence statement or disclosure of conflict of interest statement in accordance with K.S.A 46-286, K.S.A 46-233(a) and K.S.A 46-235. KHPA should also develop specific guidelines to follow in the event an actual conflict of interest occurs.

KHPA agrees with the recommendation and will develop a policy to require KHPA employees involved in the development of a contract to sign a disclosure statement indicating there is no conflict of interest at the initiation of contract procurement. If the employee becomes aware during negotiations there is a conflict of interest, the employee will notify the KHPA compliance officer. The compliance officer will determine the nature of the conflict of interest and determine whether the employee may continue with the development of the procurement or recuse themselves from the contract negotiation. Policy will be completed by December 31, 2010.

7. KHPA should identify a price or rate for each type of service where different services are bundled into one contract. For professional services, the unit of measure could be the number of hours services were actually rendered. If a contractor serves on a committee, they should be paid the hourly rate for meeting attendance separately from his professional contract.

In principle, KHPA agrees with the recommendation. However, certain vendors are contracted to provide on call professional consultant services as needed by KHPA. These consultant services can be for committee meetings of short duration, consultation with program managers or for administrative hearings lasting several hours. A consultant maintaining a business on a full time basis should not be expected to forgo income from a private practice without receiving adequate compensation to reschedule or reduce their office workload on short notice. KHPA has remained in compliance with State Regulations when employing former employees and does not see the compensation to be excessive in relation to the scope of work and requirements agreed to.

8. KHPA should retain all documents, including any evaluation tools and criteria, for the purpose of providing a complete background of the acquisition process, supporting actions taken and the essential facts in the event of litigation. Contracts awarded through sole source should be supported by complete and written justifications and approvals.

KHPA partially disagrees with the recommendation. KHPA believes it complies with the Kansas Open Records Act (KORA) and the allowed exceptions under the Act such as “Notes, preliminary drafts, research data in the process of analysis, unfunded grant proposals, memoranda, recommendations or other records in which opinions are expressed or policies or actions are proposed”. This would cover all documents, financial records, notes and memoranda exchanged between staff when reviewing the vendor proposals. If KHPA could not offer some protection from disclosure to a vendor of their proprietary, confidential or business-sensitive information, KHPA runs the risk of either getting poor or no information during procurement. KHPA provides a written detailed and comprehensive summary of the bids ’evaluation and justification for its

choice of contractor to the Director of Purchases. Taking advantage of the KORA's exception allows KHPA to encourage broader vendor participation and reduces the state's risk for litigation.

9. KHPA Contract staff should consistently include a clause in KHPA contracts prohibiting vendors from having any conflict of interest.

KHPA agrees with the recommendation and a clause prohibiting vendors from having a conflict of interest will be present in all agreements between contractors and KHPA. Effective June 30, 2010 all agreements to be entered into, extended or renewed will have a conflict of interest agreement added as part of the extension or renewal policy if there is no clause in the current agreement.

The KHPA OIG released this audit report in June 2010. The complete audit report, including management's response, can be accessed on the KHPA OIG's website at <http://www.khpa.ks.gov/OIG/default.htm>.

Performance Audit of KHPA's Medicaid Pharmacy Program

There are a number of inherent risks involved in the prescription drug program. A key risk is that individuals could submit claims that exceed program limitations or are fictitious, improper, unsubstantiated, or simply in error. KHPA must maintain a sound system of controls that identifies these invalid claims, to ensure that Medicaid funds are only expended for legitimate prescription drug claims.

KHPA has installed a system of controls designed to authenticate claims, contain costs, and help ensure the safety of drug recipients. Based on our understanding and assessment of the controls in place for the risks we targeted, and because we found only a small percentage of claims paid that should not have been paid, it is the opinion of the Office of Inspector General that KHPA's system provides reasonable control against these risks.

However, no system is completely impervious to fraud and abuse. Resources available for controls are finite. The experiences of other states, where fraud perpetrators have exploited control vulnerabilities, remind us of the importance of maintaining vigilance against potential threats. For this reason, the OIG is providing recommendations in this report to help insure that minor control deficiencies do not become major problems.

The purpose of this audit was to evaluate KHPA's system of controls designed to prevent improper pharmacy payments.

To be a legitimate prescription drug claim:

- The beneficiary must be enrolled in Kansas Medicaid and authenticated.
- The prescriber must be licensed to practice and authorized to prescribe the drug.
- The pharmacy must be licensed by the Kansas State Board of Pharmacy.
- The prescription must not exceed any applicable dosage limits.

KHPA has put effective controls in place related to patient safety and drug abuse including dosage limitations for certain controlled substances, computer exception reports that identify possible doctor or pharmacy hopping, and prior authorization and lock-in programs to control risky patient behaviors.

OIG staff employed computer assisted audit techniques in an attempt to find instances where KHPA paid for claims that it should have denied. The most troublesome problem identified is the difficulty in verifying the prescriber of prescription drugs. Verifying the prescriber's identity and authority to prescribe is not only a legal requirement; it is a key safeguard against fraudulent and abusive prescription claims.

KHPA implemented a change in practice that improved verification of the prescriber in 2008. Prior to April 1, 2008, KHPA did not have an edit in place that would deny the claim if it did not include the prescriber identifier. So, from 2007 (the beginning of our audit period) through April 1, 2008, KHPA paid 33,348 claims totaling almost \$3 million where it did not verify that the prescriber was legitimate. Since May 2008, KHPA has captured the prescriber NPI to provide improved assurance of the legitimacy of the prescription. Unfortunately, this requirement does not go far enough in ensuring that all prescriptions that KHPA pays were ordered by prescribers who are currently licensed and authorized to prescribe.

Although many of KHPA's prescription drug payment controls are functioning as intended, the OIG identified several controls, especially those related to authenticating the prescriber of drug claims that could be improved.

- We identified 3,575 claims, totaling about \$ 210,000, where KHPA paid for prescriptions that were ordered by prescribers whose license was either inactive or suspended by their respective Kansas licensing board at the time the prescription was written. A good portion of these may have been legitimate, because the prescriber may have relocated to and obtained licensure in another state, while still treating Kansas Medicaid patients. KHPA paid these claims without knowing whether the prescribers were appropriately licensed.
- KHPA does not have an effective process for authenticating out-of-state or other non-KMAP-enrolled prescribers. Our system of edits requires that we capture the NPI

(National Provider Identifier) number and subject it to a numerical validation test (the Luhn formula). Although this test provides assurance that the number is a valid number; it may not be *this prescriber's* number.

With the exception of prescriptions ordered by unauthorized prescribers, we identified only a small number of paid claims that should not have been paid.

- KHPA paid two pharmacies for prescriptions they filled after the dates established for KMAP termination. Upon request from one of the pharmacies, KHPA officials back-dated the termination date, resulting in claims for several months, amounting to about \$242,000, appearing to be improperly paid. The other pharmacy submitted claims for prescriptions filled after its termination date, resulting in \$11,000 in questionable claims.
- KHPA paid for 66 duplicate claims, amounting to an overpayment of about \$1,785. This indicates that edits designed to catch duplicate claims do not always work.
- KHPA paid claims for prescription drugs for 13 beneficiaries, totaling about \$1,958, that were dispensed after the beneficiary had died.
- KHPA paid for 101 prescriptions, totaling \$10,150, which were dispensed over one year after three prescribers had died.

These are isolated instances which represent a small proportion of prescription drug claims processed. Using these problems as relatively inexpensive lessons, KHPA can make corrections to its control system that should avert larger problems that could arise in the future.

The OIG proposed 10 recommendations for improving control processes. KHPA management provided thoughtful responses and agreed with the OIG in the majority of cases. The OIG recommendations are listed below.

Recommendations:

1. The KHPA Office of Inspector General recommends KHPA update KAECSES or MMIS death dates promptly and accurately using KDHE Vital Statistics death data or the Social Security Administration death database.

KHPA agrees that prompt and accurate maintenance of beneficiary dates of death is important to prevent potential overpayments for deceased beneficiaries. All beneficiary eligibility information is fed into the MMIS through KAECSES, the system of record for beneficiary information; no beneficiary information is inputted directly into the MMIS. Maintenance of KAECSES is a function of SRS, and any interface with KDHE or the SSA would have to be between SRS and that agency. SRS currently receives a feed from KDHE which, as described in the audit report, is then distributed to eligibility workers

for verification before inputting the date of death provided by KDHE into KAECSES. We believe the involvement of the eligibility worker is prudent given that 24 of the 37 beneficiaries originally identified by the OIG auditors as being deceased according to KDHE files, were actually still living. The demonstrated risk of denying claims for living beneficiaries without the eligibility worker double-check would create unnecessary access-to-care issues. We have not assessed the validity of data available from the SSA but agree that a direct linkage with SSA records holds the promise of a simpler and more accurate source of information. KHPA will share the OIG's recommendation with SRS and will evaluate the use of SSA death records in the design and implementation of the new K-MED eligibility system scheduled for completion in 2013. For the claims identified in this report, KHPA will work the fiscal agent to recoup those claims for which payment was inappropriate.

2. KHPA should utilize CMS' NPPES or NPI Registry for non-Kansas Medicaid enrolled providers and make sure NPI and name match to help authenticate the identity of the prescribers.

KHPA will institute on January 1, 2011 the PPACA provision requiring that all ordering or referring providers be enrolled as a Medicaid provider, which we expect will greatly mitigate this issue. The OIG's recommendation to verify the name of the prescriber to the NPI using the NPPES database poses operational challenges. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandates that all pharmacy claims be submitted using the National Council for Prescription Drug Plans (NCPDP) transaction standard (current version 5.1). The NCPDP standard does have a field that could accept prescriber last name (field 427-DR), however the field has a 15 character limitation. Any name with more than 15 characters (such as a hyphenated name) would deny inappropriately with that check in place. Also, the added verification between the submitted NPI and the NPPES would lengthen the processing time for pharmacy claims, potentially impacting the "real-time" pharmacy processing claim requirements of HIPAA due to the size and use of the data base. The January, 2010 NPPES database contained more than three million unique providers and an average of fifteen to twenty thousand point of sale pharmacy claims are submitted daily.

3. KHPA should use healthcare licensing boards' licensing data to ensure only claims for prescriptions ordered by prescribers in good standing with their licensing boards are paid. To implement this practice, KHPA management should consider the following options:
 - a. Deny claims when the license status of the prescriber ordering the prescription cannot be verified.

- b. Obtain healthcare licensing data from surrounding states where Kansas Medicaid beneficiaries obtain prescriptions.
- c. Require all prescribers to enroll in Kansas Medicaid and deny claims for those prescribers whose license status is not in good standing with their licensing board.

KHPA agrees that only prescriptions written by prescribers in good standing with their licensure boards should be paid but disagrees with the methodology recommended to achieve this assurance. A review of the licensing data has revealed a lack of reliability for use as prescriber validation prior to point-of-sale claim payment. KHPA pharmacy staff examined licensure data provided by KBOHA and found inconsistencies with the prescriber's true license status. Comprehensive validation with licensure records would require the development of interfaces with the Kansas Board of Healing Arts, the Kansas Dental Board, the Kansas Board of Examiners in Optometry, and the Kansas Board of Nursing, and also between the corresponding licensing agencies in neighboring states Missouri, Colorado, Oklahoma, and Nebraska. Inter-state communication would be particularly important for Missouri, since one of Kansas' two major metropolitan areas spans the Missouri/Kansas borders. The effort to establish and maintain these interfaces would be costly and require regular updating. Implementation of the PPACA requirement for enrollment of all prescribers in the Medicaid program will ensure that all prescriber's licenses are valid at the time of enrollment and KHPA will work with the various licensing entities in Kansas and surrounding states to explore ways to improve the reliability of the licensure data so in the future it could be used to validate the current licensure standing of prescribers.

4. KHPA should review its policy for allowing prescriptions to be refilled up to one year after the prescription was originally issued. The policy is in compliance with current law, but it conflicts with the recent June 2010 Board of Pharmacy advisory on the one-time validity of prescriptions which have lost their legitimate medical purpose due to the death, retirement or relocation of the prescribing physician.

KHPA has reviewed its current policy and believes it to be consistent with state law and oversight provided by the Board of Pharmacy. Board of Pharmacy Regulation 68-2-20 obligates a pharmacist to ensure a prescription for a drug was issued with a valid preexisting patient-prescriber relationship. Determining the validity of a prescription therefore falls under the purview of the Board of Pharmacy. Current claims payment policy follows the statutory definition of prescription validity, as outlined in K.S.A. 65-1637.

5. KHPA should utilize KDHE's death data or the Social Security Administration's death database to promptly and accurately deny claims for prescriptions allegedly ordered by

deceased prescribers. KHPA SURS staff should review exceptions and refer to MFCU, if records indicate potential fraud.

KHPA agrees with this recommendation. Payment for prescriptions written by deceased prescribers, particularly those filled greater than a year after the prescriber's date of death, is inappropriate. KHPA recognizes the potential usefulness of provider death information and has already begun working on an agreement with KDHE to obtain that information on a regular basis. As with the use of KDHE death records to prevent dispensation of drugs to deceased beneficiaries, use of KDHE's date of death information in the claims payment process requires validation.

6. KHPA should work with its fiscal agent to improve controls to ensure that no payments are made to pharmacies for drugs dispensed after expiration of the pharmacy's license. KHPA should also consider initiating recoupment action on the \$11,012 paid for prescriptions filled during the period following the pharmacy's termination from Medicaid for failure to maintain a license.

KHPA agrees with this recommendation.

7. KHPA should formulate a clear policy regarding the termination effective date in situations where providers request retroactive termination and there are claims paid for prescriptions filled beyond the date being requested. In addition, KHPA should review the pharmacy identified by the OIG as having been terminated retroactively and determine whether to initiate recoupment of the \$242,232 paid for claims filled beyond the termination effective date.

KHPA agrees with this recommendation and has already developed and implemented processes to eliminate such occurrences. In the past, when a provider number was inactivated/terminated with a retroactive date, the Provider Enrollment (PE) team did not verify if claims had been paid for dates after the requested end date, creating the appearance that a few providers had been paid for services after the provider number was inactivated. However, when the claims were submitted for processing, the provider numbers were still active; therefore, the claims were processed and paid appropriately. The end date was entered after the claims were processed and artificially created the appearance of a processing error. In mid 2008, a new Program Manager was given oversight of Provider Enrollment and instructed the team not to establish a retroactive termination date if there were paid claims with dates of service following that termination date. As a result of the new leadership, if there are paid claims, the claims will either be recouped or adjusted or the end date will be made after the date of service of the latest paid claim.

8. KHPA should work with its fiscal agent to find out why Edit 5014 (Suspect Duplicate-Pharmacy) and Edit 5015 (Exact Duplicates-Pharmacy) failed to stop some duplicate claims, and should implement appropriate corrective action. We also recommend KHPA initiate recoupment of roughly \$1,785 in identified duplicate or suspect duplicate payments.

KHPA agrees with this recommendation. In response to initial communication by OIG staff, a sample of duplicate claims was provided to HP systems staff for resolution. The HP systems team researched and discovered intermittent duplicate claim payment caused by a time-out issue on reversed claims. As documented in CSR 12957, which was implemented on 10/22/2010, claims from October 2003 to present were examined; 189 claims were identified for a total paid amount of \$11,609.36. These overpayments will be recouped.

9. KHPA should work with its fiscal agent and the Drug Utilization Review board to implement a new edit in the system that will deny a claim with a dosage of OxyContin (or any other slow-release oxycodone drugs) that exceeds a daily threshold without prior authorization.

KHPA agrees with the recommendation to implement dosage controls for OxyContin, but believes that recent policy adoption by the DUR Board will address the identified potential for the overuse. In April 2010 the DUR Board approved new limitations for both short-acting and long acting narcotics. Policies E2010-058, E2010-059, and E2010-064 document these limitations. Policy E2010-64 includes a quantity (i.e. tablet/capsule) per day limitation on OxyContin, as well as other long-acting opioids. After implementation, beneficiaries will be unable to obtain without prior authorization more than three units per day of any one strength of OxyContin, (except the highest strength), and no more than six units per day of any combination of strengths (including the highest strength). These edits will ensure use of OxyContin as indicated by the drug's package insert, and will result in daily dosage limitations significantly below the OIG recommended threshold of 480mg in many cases (i.e. 30mg per day maximum for 10mg tablets, 60mg per day maximum for 20mg tablets, etc.).

10. KHPA should work with its fiscal agent and the Drug Enforcement Administration to load and maintain DEA registration numbers in the MMIS. Until that can be accomplished, KHPA should review random samples of controlled substance prescriptions periodically. The review should include verifying the DEA number on the claim is current, valid and belongs to the individual who ordered the prescription.

KHPA that verification that the prescribing provider of a controlled substance has a current, valid DEA number would strengthen our oversight of the claims processing of controlled classes of drugs. Protection against invalid DEA numbers is currently offered at the point of sale. Regulation 68-20-18 requires pharmacists to verify the validity of a prescription for a controlled substance, including the DEA registration number of the prescriber. If the prescriber has no authority to prescribe a controlled substance, the dispensing pharmacist is legally required to refuse to fill that prescription. Verification of the DEA number within the MMIS does not appear to be feasible at this time. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandates that all pharmacy claims use the NCPDP 5.1 transaction standard, which allows for submission of only one prescriber identifier. Submission of both the NPI and DEA number is not possible and currently pharmacy claims are submitted using the NPI, as stipulated by federal law. KHPA is hopeful that access to the DEA Registry will become available, facilitating DEA number verification.

The KHPA OIG released this audit report in November 2010. The complete audit report, including management's response, can be accessed on the KHPA OIG's website at <http://www.khpa.ks.gov/OIG/default.htm>.

Performance Audit of KHPA's Medicaid Provider Enrollment and Terminations

Healthcare providers who break the law or submit claims for excessive charges or unnecessary services may be excluded by the federal government from further participation in Medicaid and other federal healthcare programs. To ensure that excluded providers are effectively barred from participation nationwide, the Health and Human Services (HHS) Office of Inspector General (OIG) and the General Services Administration (GSA) generate and make available to the public two databases that list excluded providers. State healthcare agencies are required to use these lists to terminate the participation of the offending providers in each state's Medicaid program.

The purpose of this audit was to determine whether KHPA employs effective controls and processes to do the following:

- Prevent excluded providers from enrolling in Kansas Medicaid.
- Identify currently participating excluded providers for termination.
- Identify related payments for recoupment.

To complete this audit, we reviewed applicable State and federal laws and regulations. We also interviewed KHPA and fiscal agent SURS staff, as well as, the KHPA provider relations manager to understand existing processes and controls related to excluded providers. We obtained the HHS OIG List of Excluded Individuals/Entities database and the GSA Excluded

Parties List System (EPLS) database in October, and conducted computer-aided data matching with the MMIS provider list. Our analysis focused on direct billing providers and the following indirect billing providers: performing, attending, surgical and prescribing providers. We also reviewed provider enrollment files of certain providers.

As of the date of publication of the KHPA Office of Inspector General's Annual Report for 2010, the *Performance Audit of KHPA's Medicaid Provider Enrollment and Terminations* had not been approved by the KHPA Board of Directors for release to the public. Therefore, we have not included findings, recommendations or the management response in this report. After the KHPA Board of Directors' approval, the entire audit report including the management response may be accessed on the KHPA OIG's website at: <http://www.khpa.ks.gov/OIG/default.htm>.

2010 ACCOMPLISHMENTS

In addition to completing the performance audits summarized in this report, the OIG achieved the following milestones in CY 2010.

- Nicholas Kramer was confirmed as Inspector General by the Kansas Senate.
- Nicholas Kramer completed Certified Inspector General training and earned the Certified Inspector General designation.
- Nicholas Kramer participated in the Kansas Judicial Council Review that confirmed the independence and organizational structure of the Office of Inspector General as defined in Kansas statute.
- The OIG received 31 complaints or concerns from the public. For each complaint received we researched the issue, assessed the problem and referred the concern where appropriate for resolution. The most common complaint, 12 of the 31, concerned the Clearinghouse backlog. Other complaints related to issues such as the State Employee Health Plan, Workers Compensation and provider fraud.
- The OIG referred one potential case of provider fraud to MFCU.
- All three members of audit staff completed Continuing Professional Education (CPE) credits as required by government auditing standards.
- OIG staff completed two Medicaid Integrity Institute trainings offered by the Department of Justice.
- Stephen Mhere earned the Certified Information Systems Auditor certification from the Information Systems Audit and Control Association.
- Stephen Mhere completed the Security Management and Audit course at the University of Kansas.
- The Inspector General presented training along with SURS and MFCU at KHPA's Medicaid training session.
- OIG staff participated in 19 program integrity related meetings.
- OIG staff developed new performance measures for the OIG portion of the KHPA strategic plan.

2011 GOALS

- Conduct a series of audits approved by the Board in FY 2011 to help improve KHPA programs and operations and to fulfill the OIG's mission.
- Develop an FY 2012-2013 audit plan that will allow the OIG to conduct audits of KHPA programs and operations, while preserving time for the OIG to be responsive to complaints from the public.
- Ensure that KHPA OIG staff are properly trained as auditors and investigators, and have knowledge of the laws relevant to KHPA programs, as well as the methods for collecting

the appropriate amount of creditable evidence of wrong doing, properly preserving that evidence and handing it off to appropriate agencies.

- Attend MFCU and other Program Integrity meetings and conference calls.
- Meet monthly with the KHPA SURS manager to discuss common issues.

FISCAL YEAR 2010 STATISTICS

K.S.A. 75-7427 requires this report include certain statistics from the previous state fiscal year for your information. The Office of Inspector General does not audit or evaluate the accuracy of the information below. The information has been submitted by the Kansas Department on Aging, Kansas Department of Social and Rehabilitation Services, Kansas Health Policy Authority and its fiscal agent, HP Enterprise Services.

Aggregate Information on Health Care Provider Sanctions

Three broad types of health care providers who provide services to the Medicaid program and the State Children's Health Insurance Plan (SCHIP) may be sanctioned for improper behavior: (1) nursing facilities and long-term care units; (2) providers contracting with managed care organizations (MCOs); and (3) fee-for-service providers, including those who provide services for Medicaid waiver participants. The reported statistics for each type of provider are found below.

- Federal certification enforcement actions of Medicaid-only certified nursing homes are handled by the Kansas Department on Aging (KDOA). Staff at KDOA report that in FY 2010, there were a total of 66 Medicaid-only nursing facilities of which 43 were long term care units (LTCUs.) In FY 2010 there were no terminations. However, six Medicaid-only nursing facilities had Civil Monetary Penalties (CMPs) imposed, of which four were LTCUs and two were nursing facilities. CMPs are generally imposed due to immediate jeopardy (IJ) existing for one or more residents. All IJ's in FY 2010 were abated at the time of survey.
- There were 28 surveys on Medicaid-only facilities where the nursing facility did not meet compliance standards at the time of the survey. There were a total of five Denial of Payment on New Admissions (DOPNA) imposed on Medicaid-only nursing facilities and LTCUs during the same period. It took facilities that were found out of compliance and remained non-compliant at the time of the revisit survey an average of 36 days to be found back in compliance. DOPNAs are imposed for a wide range of issues, which include: Resident Rights; Admissions: Transfer and Discharge Rights; Resident Behavior and Facility Practices; Quality of Life; Resident Assessment; Quality of Care; Nursing

services; Dietary services; Physician services; Specialized Rehabilitation services; Dental services; Pharmacy services; Infection Control; Physical Environment; or Administration.

- Sanctions of *providers credentialed by MCOs* are imposed by the MCOs with whom providers have a direct relationship. KHPA contracts with four MCOs to provide services for the Medicaid program and SCHIP. KHPA staff report there were no sanctions against MCO credentialed providers in fiscal year 2010.

Two other MCOs overseen by SRS provide care to Medicaid and SCHIP consumers. Sanctions of providers in these MCOs included the following:

- Four providers were placed on corrective action plans.
 - Four providers were terminated or disenrolled.
 - Three cases were forwarded to the Attorney General’s Medicaid Fraud Control Unit (MFCU).
- Sanctions of *providers in the fee-for-service and waiver programs* are handled by KHPA staff, who report the following statistics for FY 2010:
 - Seven providers were on “pre-pay review” status, which means before receiving payment, these providers are required to submit treatment records supporting the services provided. KHPA utilizes pre-payment review in cases where questionable billing practices or poor documentation have been identified.
 - Four providers were terminated for cause by KHPA. A provider may be terminated for the reasons specified in KAR 30-5-60.
 - 137 beneficiaries were placed on “lock-in” status. Beneficiaries determined to be inappropriately using their medical card are restricted to assigned lock-in medical providers. Standard assignments for lock-in beneficiaries are a physician and a pharmacy. If emergency room or outpatient services have been used inappropriately, lock-in assignment includes a hospital.
 - 24 provider cases of suspected fraud were referred to the Kansas Attorney General’s Medicaid Fraud and Abuse Unit for further investigation by KHPA and HP Enterprise Services.

Aggregate Information on Provider Billing and Payments

KHPA's fiscal agent, HP Enterprise Services, formerly known as Electronic Data Systems (EDS), which processes claims for KHPA, reported processing approximately 18.86 million claims in FY 2010, which resulted in payments of \$2.55 billion. These numbers include payments to fee-for-service and waiver providers. In addition, approximately \$413 million was paid in capitation payments to the four MCOs overseen by KHPA, who reported processing more than 2.43 million provider claims in FY 2010. The MCOs who contract with SRS report capitation payments of approximately \$215 million.

APPENDIX A

ARRA	American Recovery and Reinvestment Act of 2009
CMS	Centers for Medicare and Medicaid Services
DME	Durable Medical Equipment
EPLS	Excluded Parties List System
FFP	Federal Financial Participation
FFS	Fee-for-Service
FY	State Fiscal Year
HCBS	Home and Community Based Services
HHS	Health and Human Services
K.A.R.	Kansas Administrative Regulation
KHPA	Kansas Health Policy Authority
KMAP	Kansas Medical Assistance Program
K.S.A.	Kansas Statute Annotated
LEIE	List of Excluded Individuals/Entities
MCO	Managed Care Organization
MFCU	Medicaid Fraud Control Unit
MMIS	Medicaid Management Information System
NEMT	Non-Emergency Medical Transportation
OIG	Office of Inspector General
PAHP	Prepaid Ambulatory Health Plan
PIHP	Prepaid Inpatient Health Plan
SAS-70	Statement on Auditing Standards 70
SCHIP	State Children's Health Insurance Program
SRS	Social and Rehabilitation Services
SURS	Surveillance and Utilization Review Subsystem

