

SESSION OF 2007

SUPPLEMENTAL NOTE ON SENATE BILL NO. 373

As Recommended by Senate Committee on
Ways and Means

Brief*

SB 373 would create the Office of the Inspector General within the Kansas Health Policy Authority (KHPA).

The duties of the Office of Inspector General would be to oversee, audit, investigate and make performance reviews of the state Medicaid program, the state MediKan program and the State Children's Health Insurance Program. As established by the bill, this oversight would include, but not be limited to, the following:

- Investigation of fraud, waste, abuse and illegal acts by the KHPA and its agents, employees, vendors, contractors, consumers, clients and health care providers or other providers;
- Audits of the KHPA and its employees, contractors, vendors and health care providers related to ensuring that appropriate payments are made for services rendered and to the recovery of overpayments;
- Investigations of fraud, waste, abuse or illegal acts committed by clients of the KHPA or by consumers of services administered by the Kansas Health Policy Authority; and
- Monitor adherence to the terms of the contract between the KHPA the organization under contract to make claims payments.

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

Upon finding credible evidence of fraud, waste, abuse or illegal acts, the Inspector General would be required to report its findings to the KHPA and refer the findings to the Attorney General.

Under the provision of the bill, the Inspector General would be appointed by the KHPA subject to confirmation by the Senate. Selection would be made without regard to political affiliation. Qualifications for the Inspector General are set out in the bill to include demonstrated knowledge, skills, abilities and experience in conducting audits or investigations and a familiarity with programs subject to oversight. No former or current executive or manager of a program or agency subject to oversight would be allowed to serve as an inspector general within two years of such service. The bill would require any person appointed to the position to receive certification as an inspector general from a national organization that provides training to such persons. The term of the first inspector general would expire on January 15, 2009. Subsequent persons would serve for a term which expires on January 15 of each year in which the whole Senate is sworn in for a new term.

The bill directs that the Inspector General would be in the classified service and that although they would report to the Executive Director of the KHPA, the Inspector General would exercise independent judgment in carrying out statutory duties. Appropriations for the Office of Inspector General shall be made to the KHPA by a separate line item appropriation. The Inspector General would be allowed to hire employees in the unclassified service and contract for necessary services subject to appropriation.

Under the provisions of the bill, the Inspector General would have access to all pertinent information and to all personnel and facilities of the KHPA, its employees, vendors, contractors and health care providers and any federal, state or local governmental agency that are necessary to perform the duties of the office as directly related to programs administered by the agency. In addition, the bill would grant the Inspector

General the power to compel by subpoena the attendance and testimony of witnesses and the production of books, electronic records and papers as directly related to programs under its purview. State and local governmental agencies would be authorized and directed to provide to the Inspector General requested information, assistance or cooperation. Access to contractor files would be limited to those files necessary to verify the accuracy of the contractor's invoices, compliance with the contract provisions or program rules. Individual medical records of patients who are not clients of the Authority would not be made available to the Inspector General.

The bill would make the Office of the Inspector General subject to the same duty of confidentiality as imposed by law for the programs it oversees. Information provided to the Attorney General, Kansas Bureau of Investigation or Office of the United States Attorney in Kansas under the provisions of the bill would carry the same confidentiality requirements as is imposed on the Inspector General's Office. However, the bill would allow such information to be disclosed in criminal or other proceedings which may be instituted and prosecuted by the Attorney General or the United States Attorney in Kansas, and any such information furnished to those offices may be entered into evidence in any such proceedings. The bill would require that all investigations conducted by the Inspector General be conducted in a manner that ensures the preservation of evidence for use in criminal prosecutions or agency administrative actions.

Under the provisions of the bill, if the Inspector General determines that a possible criminal act relating to fraud in the provision or administration of KHPA programs has been committed, the Inspector General would be required to immediately notify the Office of the Kansas Attorney General. The Inspector General may request the special expertise of the Kansas Bureau of Investigation and may present for prosecution the findings of any criminal investigation to the Office of the Attorney General or the Office of the United States Attorney in Kansas.

The bill would require the Inspector General to report all convictions, terminations and suspensions taken against vendors, contractors and health care providers to the KHPA and to any agency responsible for licensing or regulating those persons or entities. The Inspector General would be required to notify a licensing or regulatory agency if it determines that reasonable suspicion exists that an act relating to the violation of an agency licensure or regulatory standard has been committed by a vendor, contractor or health care provider who is licensed or regulated by the agency.

The bill would require the Inspector General to make annual reports, findings and recommendations regarding the office's investigations into reports of fraud, waste, abuse and illegal acts to the Executive Director of the KHPA, the Legislative Post Auditor, the Senate Committee on Ways and Means, the House Committee on Appropriations, the Joint Committee on Health Policy Oversight and the Governor. The bill sets out the components of these reports.

Under the provisions of the bill, the Inspector General may make recommendations to the KHPA or the Legislature for changes in law, rules and regulations, policy or procedures as the Inspector General deems appropriate to carry out the provisions of law or to improve the efficiency of programs administered by the KHPA.

The Inspector General would be required to solicit and receive reports of fraud, waste, abuse and illegal acts in KHPA program from any person or persons who possess such information. The identity of the reporting person could not be disclosed without written consent. Any information received by the Inspector General from any person would be confidential except that such information may be disclosed if release of the information would not result in the identification of the person who provided the information, the person or persons who provided the information to be disclosed consent in writing prior to its disclosure, the disclosure is necessary to protect the public health, or the information to be disclosed is required in an administrative proceeding or court proceeding and appropriate

provision has been made to allow disclosure of the information without disclosing to the public the identity of the person who reported such information.

The bill states that nothing in the bill would limit investigations by any state department or agency that may otherwise be required by law or that may be necessary in carrying out the duties and functions of such agency.

The bill amends the Open Meetings Act and provides the ability of the KHPA to meet in executive session to discuss investigations and audits with the Inspector General.

The bill would amend the Kansas Whistleblower Act to include the Office of the Inspector General under the definition of an auditing agency.

Background

SB 373 was introduced by the Senate Committee on Ways and Means. Proponents appearing on the bill included Senator Derrick Schmidt and representatives from the Kansas Health Policy Authority, the Kansas Medical Society and the Kansas Hospital Association. Children's Mercy Family Health Partners submitted written testimony in support of the bill. No persons appeared in opposition to the bill.

The fiscal note from the Division of the Budget indicates that passage of the bill would require additional expenditures of \$349,673 from the State General Fund and 4.0 additional FTE position for the Kansas Health Policy Authority.