

By: Uresti

S.B. No. 477

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the State Office of Inspector General;
providing an administrative penalty.

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

SECTION 1. Subtitle C, Title 10, Government Code, is amended by adding Chapter 2116 to read as follows:

CHAPTER 2116. STATE OFFICE OF INSPECTOR GENERAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2116.001. SHORT TITLE. This chapter may be cited as the Texas Inspector General Act.

Sec. 2116.002. PURPOSE. The purpose of this chapter is to establish a full-time program of investigation, audit, and performance review of certain state agencies to deter and identify fraud, waste, abuse, and illegal acts, to provide increased accountability, integrity, and oversight, and to assist in improving agency operations.

Sec. 2116.003. APPLICABILITY. This chapter applies to the following state agencies:

- (1) Texas Education Agency;
- (2) Texas Higher Education Coordinating Board;
- (3) Texas Department of Criminal Justice;
- (4) Texas Youth Commission;
- (5) Texas Juvenile Probation Commission;
- (6) Texas Building and Procurement Commission;

- 1 (7) Texas Workforce Commission;
- 2 (8) Texas Department of Transportation;
- 3 (9) Texas Department of Insurance;
- 4 (10) Health and Human Services Commission; and
- 5 (11) health and human services agencies listed in
6 Section 531.001(4).

7 Sec. 2116.004. DEFINITIONS. In this chapter:

8 (1) "Agency" means a state agency to which this
9 chapter applies, as provided by Section 2116.003.

10 (2) "Fraud" means an intentional deception or
11 misrepresentation made by a person with the knowledge that the
12 deception could result in some unauthorized benefit to that person
13 or some other person, including any act that constitutes fraud
14 under applicable federal or state law.

15 (3) "Inspector general" means the individual
16 appointed as the inspector general under this chapter.

17 (4) "Office" means the State Office of Inspector
18 General.

19 (5) "Presiding officer" means the presiding officer of
20 the governing body of an agency or the commissioner of an agency if
21 a single commissioner presides over the agency.

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

24 Sec. 2116.005. CREATION OF OFFICE; ADMINISTRATIVE
25 ATTACHMENT TO HEALTH AND HUMAN SERVICES COMMISSION. (a) The State
26 Office of Inspector General is created as an agency of the state.

27 (b) The office is administratively attached to the Health

1 and Human Services Commission but is independent of direction by
2 the commission. The governor, the legislature or a committee of the
3 legislature, the commission, the executive commissioner of the
4 commission, or any authority within the commission may not prevent
5 the inspector general or a deputy inspector general from
6 initiating, performing, or completing an investigation, audit, or
7 review or any other compliance or enforcement activity pursued by
8 the office under this chapter or other law.

9 (c) Except as provided under Section 2116.058(d)(1), the
10 Health and Human Services Commission shall provide facilities and
11 support services to the office that are necessary to enable the
12 inspector general to perform all duties under this chapter and
13 other law, including:

14 (1) sufficient and appropriate office space
15 commensurate with the classification and grade of the inspector
16 general;

17 (2) administrative assistance and support services;

18 (3) health and human services enterprise support
19 services;

20 (4) personnel services; and

21 (5) computer services and support.

22 (d) The Health and Human Services Commission and the office
23 shall execute a service level agreement to establish performance
24 standards regarding facilities and support services described by
25 Subsection (c). The service level agreement shall be reviewed at
26 least annually to ensure that facilities and support services are
27 being provided in accordance with the agreement.

1 Sec. 2116.006. SUNSET PROVISION. The State Office of
2 Inspector General is subject to Chapter 325, Government Code (Texas
3 Sunset Act). Unless continued in existence as provided by that
4 chapter, the office is abolished and this chapter expires September
5 1, 2015.

6 Sec. 2116.007. PUBLIC INTEREST INFORMATION. (a) The
7 office shall prepare information of public interest describing the
8 functions of the office.

9 (b) The office shall make the information available to the
10 public and appropriate state agencies.

11 Sec. 2116.008. RULEMAKING. (a) The inspector general
12 shall adopt rules as necessary to implement this chapter.

13 (b) All agency rules of agencies to which this chapter
14 applies that are necessary to accomplish the duties and functions
15 of the office may be grandfathered and transferred from an agency to
16 the office.

17 Sec. 2116.009. POLICIES AND PROCEDURES. (a) The inspector
18 general shall establish policies and procedures to guide the
19 operation of the office and to ensure that the work and practices of
20 the office are in accordance with commonly used and adopted
21 professional standards related to the fields of investigation and
22 auditing in public administration environments.

23 (b) An investigation, audit, or review conducted by the
24 office must conform to professional standards and best practices
25 for offices of inspectors general.

26 Sec. 2116.010. AGENCY COOPERATION. Each agency to which
27 this chapter applies shall require employees of the agency to

1 provide assistance to the office in connection with the office's
2 duties relating to the investigation of fraud, waste, and abuse.
3 The office is entitled to access to any information maintained by an
4 agency, including internal records, relevant to the functions of
5 the office.

6 [Sections 2116.011-2116.050 reserved for expansion]

7 SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

8 Sec. 2116.051. APPOINTMENT; TERM. (a) The governor, with
9 the advice and consent of the senate, shall appoint the inspector
10 general. An inspector general may, with the advice and consent of
11 the senate, be reappointed by the governor.

12 (b) The governor shall appoint the inspector general
13 without regard to the race, color, disability, sex, religion, age,
14 or national origin of the appointee.

15 (c) The inspector general serves a two-year term that
16 expires on February 1 of each odd-numbered year.

17 (d) If a vacancy occurs during a term, the governor shall
18 appoint a successor for the unexpired term.

19 Sec. 2116.052. QUALIFICATIONS. (a) To be eligible to
20 serve as inspector general, a person must hold at the time of
21 appointment, or must obtain within one year after appointment,
22 certification as a Certified Inspector General by the Association
23 of Inspectors General Institute of Certification.

24 (b) In appointing a person as inspector general, the
25 governor shall consider the person's integrity, leadership
26 capability, and demonstrated ability in investigation,
27 prosecution, management analysis, public administration, criminal

1 justice administration, accounting, auditing, financial analysis,
2 law, and other closely related fields. Professional certifications
3 that are recommended, but not required, include certified fraud
4 examiner, certified public accountant, and certified internal
5 auditor.

6 Sec. 2116.053. BUSINESS INTEREST; SERVICE AS INSPECTOR
7 GENERAL. A person is not eligible for appointment as inspector
8 general or deputy inspector general if the person or the person's
9 spouse:

10 (1) is employed by or participates in the management
11 of a business entity or other organization that holds a license,
12 certificate of authority, or other authorization from an agency or
13 that receives funds from an agency;

14 (2) owns or controls, directly or indirectly, more
15 than a 10 percent interest in a business entity or other
16 organization receiving funds from an agency; or

17 (3) uses or receives a substantial amount of tangible
18 goods or funds from an agency, other than compensation or
19 reimbursement authorized by law.

20 Sec. 2116.054. LOBBYING ACTIVITIES. A person may not serve
21 as inspector general or deputy inspector general if the person is
22 required to register as a lobbyist under Chapter 305 because of the
23 person's activities for compensation related to the operation of an
24 agency.

25 Sec. 2116.055. POLITICAL ACTIVITIES. (a) A former
26 inspector general or deputy inspector general may not hold or be a
27 candidate for elective public office before the second anniversary

1 of the date the person ceases to serve as inspector general or
2 deputy inspector general.

3 (b) An inspector general or deputy inspector general may not
4 serve as an officer of a political party, political subdivision, or
5 political committee, and may not participate in a political
6 campaign for public office, while the person serves as inspector
7 general or deputy inspector general.

8 Sec. 2116.056. TRADE ASSOCIATIONS. (a) In this section,
9 "trade association" means a nonprofit, cooperative, and
10 voluntarily joined association of business or professional
11 competitors designed to assist its members and its industry or
12 profession in dealing with mutual business or professional problems
13 and in promoting their common interest.

14 (b) A person may not serve as inspector general or deputy
15 inspector general if the person has been, within the previous two
16 years:

17 (1) an officer, employee, or paid consultant of a
18 trade association in a field related to an agency to which this
19 chapter applies; or

20 (2) the spouse of an officer, manager, or paid
21 consultant of a trade association in a field related to an agency to
22 which this chapter applies.

23 Sec. 2116.057. GROUNDS FOR REMOVAL. (a) The governor,
24 with the advice and consent of the senate, may remove the inspector
25 general from office as provided by Section 9, Article XV, Texas
26 Constitution.

27 (b) Notwithstanding Subsection (a), the inspector general

1 may be removed from office by either the governor or the senate,
2 acting independently. The inspector general may be removed under
3 this subsection only for cause based on the following grounds:

4 (1) gross misconduct;

5 (2) conviction of a felony; or

6 (3) conviction of a crime of moral turpitude.

7 (c) The governor may remove the inspector general from
8 office under Subsection (b) by notifying the inspector general in
9 writing of the grounds for removal. The governor shall send a copy
10 of the notification of removal to both houses of the legislature.

11 (d) The senate may remove the inspector general from office
12 under Subsection (b) by a two-thirds vote of the senate membership.
13 The secretary of the senate shall notify the inspector general in
14 writing of the grounds for removal and shall send a copy of the
15 notification of removal to the governor and the chief clerk of the
16 house of representatives.

17 Sec. 2116.058. ORGANIZATION; DEPUTY INSPECTORS GENERAL.

18 (a) The inspector general shall establish an organizational
19 structure for the office that is appropriate to carrying out the
20 office's responsibilities and functions. The inspector general has
21 the sole responsibility and discretion for establishing the
22 organization and the methods of administration of the office and
23 for determining the appropriate allocation of office resources.

24 (b) The inspector general shall appoint a deputy inspector
25 general to be colocated at each of the following agencies:

26 (1) Texas Department of Criminal Justice; and

27 (2) Health and Human Services Commission.

1 (c) Except as provided by Subsection (b), the inspector
2 general, at the inspector general's discretion, may:

3 (1) appoint a deputy inspector general to fulfill the
4 functions of the office at an agency to which this chapter applies;

5 (2) appoint a deputy inspector general to more than
6 one agency; and

7 (3) designate an agency to have a deputy inspector
8 general and related office staff colocated at the agency.

9 (d) Each agency designated to have a deputy inspector
10 general and related office staff colocated at the agency shall:

11 (1) provide facilities and support services to the
12 office that are necessary to enable the deputy inspector general to
13 perform all duties under this chapter and other law, including:

14 (A) sufficient and appropriate office space
15 commensurate with the classification and grade of the deputy
16 inspector general;

17 (B) administrative assistance and support
18 services;

19 (C) personnel services; and

20 (D) computer services and support; and

21 (2) execute a service level agreement with the office
22 to establish performance standards regarding facilities and
23 support services described by Subdivision (1).

24 (e) A service level agreement under Subsection (d)(2) must
25 be reviewed at least annually to ensure that facilities and support
26 services are being provided in accordance with the agreement.

27 (f) The inspector general may perform the functions of a

1 deputy inspector general.

2 (g) The inspector general or a deputy inspector general is
3 independent of direction by an agency, or by the presiding officer
4 of the agency, being monitored. An agency, a presiding officer, or
5 any authority within an agency may not prevent the inspector
6 general or a deputy inspector general from initiating, performing,
7 or completing an investigation, audit, or review or any other
8 compliance or enforcement activity pursued by the office under this
9 chapter or other law.

10 Sec. 2116.059. DEFENSE BY ATTORNEY GENERAL. The attorney
11 general shall defend any action brought against the inspector
12 general, a deputy inspector general, or an employee or officer of
13 the office as a result of that person's official act or omission,
14 whether or not the person has terminated service with the office at
15 the time the action is instituted.

16 [Sections 2116.060-2116.100 reserved for expansion]

17 SUBCHAPTER C. PERSONNEL

18 Sec. 2116.101. DEPUTY INSPECTORS GENERAL. (a) Deputy
19 inspectors general report to, and are supervised by, the inspector
20 general.

21 (b) At the discretion of the inspector general, deputy
22 inspectors general may be required to hold at the time of
23 appointment, or be required to obtain within one year after
24 appointment, certification as a Certified Inspector General by the
25 Association of Inspectors General Institute of Certification.

26 (c) In appointing a person as a deputy inspector general,
27 the inspector general shall consider the person's integrity,

1 leadership capability, and demonstrated ability in investigation,
2 prosecution, management analysis, public administration, criminal
3 justice administration, accounting, auditing, financial analysis,
4 law, and other closely related fields. Professional certifications
5 that are recommended, but not required, include certified fraud
6 examiner, certified public accountant, and certified internal
7 auditor.

8 (d) Deputy inspectors general serve at the will of the
9 inspector general.

10 Sec. 2116.102. EMPLOYEES. (a) The inspector general and
11 deputy inspectors general may appoint, employ, promote, and remove
12 assistants, employees, and personnel as necessary to efficiently
13 and effectively administer the office.

14 (b) The inspector general and deputy inspectors general
15 shall train office staff to enable the staff to pursue fraud, waste,
16 and abuse cases, including priority Medicaid and other health and
17 human services fraud, waste, and abuse cases.

18 Sec. 2116.103. EXPERTS. Subject to the availability of
19 funds, the inspector general and deputy inspectors general may
20 contract with certified public accountants, qualified management
21 consultants, or other professional experts as necessary to
22 independently perform the functions of the office.

23 Sec. 2116.104. PEACE OFFICERS. (a) The inspector general
24 and deputy inspectors general may commission and hire commissioned
25 peace officers for the limited purposes of carrying out duties
26 within the scope of authority of the office.

27 (b) Investigators assigned to conduct investigations at the

1 Texas Department of Criminal Justice, Texas Youth Commission, and
2 Texas Juvenile Probation Commission must be commissioned peace
3 officers. Commissioned peace officers assigned to conduct
4 investigations at all other agencies may not exceed 15 percent of
5 the office's full-time equivalent positions in those agencies.

6 (c) A commissioned peace officer or otherwise designated
7 law enforcement officer employed by the office is exempt from and
8 not entitled to supplemental benefits of the Supplemental
9 Retirement Program for Commissioned Peace Officers and Custodial
10 Officers provided under applicable provisions of Title 8 relating
11 to public retirement systems unless the officer transfers from a
12 position, without a break in service, that qualifies for
13 supplemental retirement benefits under that program.

14 [Sections 2116.105-2116.150 reserved for expansion]

15 SUBCHAPTER D. GENERAL POWERS AND DUTIES

16 Sec. 2116.151. AUTHORITY. (a) The office is responsible
17 for investigating and deterring fraud, waste, and abuse, as defined
18 by applicable state and federal law, in the operations of agencies
19 to which this chapter applies.

20 (b) The office may obtain any information or technology
21 necessary to enable the office to meet its responsibilities under
22 this chapter or other law.

23 (c) The inspector general shall set clear objectives,
24 priorities, and performance standards that emphasize:

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

27 (2) allocating resources to cases having the strongest

1 supportive evidence and greatest potential for the recovery of
2 money;

3 (3) allocating resources to cases involving the
4 protection of the public and agency clients;

5 (4) maximizing opportunities to refer cases to the
6 office of the attorney general in accordance with this chapter; and

7 (5) protecting state and federal funds.

8 Sec. 2116.152. POWERS. (a) The office has all the powers
9 necessary or appropriate to carry out its responsibilities and
10 functions under this chapter and other law. On its own initiative
11 or on the basis of a complaint or information received from any
12 source, the office may:

13 (1) investigate, audit, or review any activity or
14 operation of an agency for the purpose of detecting or preventing
15 fraud, waste, abuse, or employee misconduct;

16 (2) investigate, audit, or review all activities,
17 records, individuals with contracts, procurements, grants,
18 agreements, and other programmatic and financial arrangements
19 undertaken by an agency and any other function, activity, process,
20 or operation conducted by an agency or any other organization or
21 individual that may be involved with an agency;

22 (3) audit the use and effectiveness of state or
23 federal funds, including contract and grant funds, administered by
24 a person or agency;

25 (4) conduct investigations relating to the funds
26 described by Subdivision (3);

27 (5) recommend policies promoting economical and

1 efficient administration of the funds described by Subdivision (3)
2 and the prevention and detection of fraud and abuse in the
3 administration of those funds;

4 (6) ensure that an agency's internal audit plan has
5 provisions for reviewing and reporting on the economy, efficiency,
6 and effectiveness of the agency's operations and functions;

7 (7) conduct reviews of an agency's performance
8 measurement system;

9 (8) review the reliability and validity of information
10 provided by an agency's performance measures and standards;

11 (9) provide information and evidence relating to
12 criminal acts to appropriate law enforcement officials;

13 (10) investigate, audit, or review any organization or
14 individual that may be involved with an agency, as deemed
15 appropriate;

16 (11) investigate alleged service deficiencies,
17 including deficiencies in the operation and maintenance of
18 facilities;

19 (12) refer matters for civil, criminal, or
20 administrative action to the appropriate administrative and
21 prosecutorial agencies, including the office of the attorney
22 general;

23 (13) conduct joint investigations and projects with
24 other oversight or law enforcement agencies;

25 (14) recommend to agencies remedial actions to correct
26 operating deficiencies and inefficiencies at the agency related to
27 the economical and efficient administration of funds and the

1 prevention and detection of fraud, waste, and abuse in the
2 administration of programs and funds;

3 (15) monitor the implementation of recommendations
4 for compliance made to an agency by the office or another audit
5 agency;

6 (16) provide for coordination between the office and
7 special investigative units formed by managed care organizations
8 under Section 531.113 or entities with which managed care
9 organizations contract under that section;

10 (17) attend any meetings held by an agency;

11 (18) cooperate with appropriate administrative and
12 prosecutorial agencies, including the office of the attorney
13 general, in recovering costs incurred under this chapter and other
14 law from nongovernmental entities, including contractors or
15 individuals involved in:

16 (A) violations of state or federal rules or
17 statutes; or

18 (B) fraudulent, wasteful, abusive, or willful
19 misconduct;

20 (19) request and compel from any department, board,
21 bureau, commission, office, or other agency of the state or any of
22 its political subdivisions such cooperation, assistance, services,
23 and data as will enable the inspector general to carry out the
24 inspector general's functions, duties, and powers under this
25 chapter;

26 (20) impose administrative sanctions authorized under
27 state and federal law and under rules established by the office;

1 (21) assess administrative penalties otherwise
2 authorized by law on behalf of an agency;

3 (22) request that the attorney general obtain an
4 injunction to prevent the disposition or destruction of an asset
5 identified by the office as potentially subject to review or
6 recovery by the office as part of an investigation of fraud, waste,
7 or abuse;

8 (23) review, develop, and recommend legislation,
9 rules, regulations, policies, procedures, and appropriate training
10 and education for the purpose of promoting the economical and
11 efficient administration of program and agency funds, including
12 contract and grant funds, and the prevention and detection of
13 fraud, waste, and abuse in the administration of those funds;

14 (24) conduct internal affairs investigations in
15 instances of fraud, waste, abuse, or misconduct by employees,
16 contractors, subcontractors, or vendors related to an agency;

17 (25) with authority that supersedes any claim of
18 confidentiality or privilege, obtain full and unrestricted access
19 to all agency offices, limited access or restricted areas,
20 employees, records, reports, plans, projections, matters,
21 contracts, memoranda, correspondence, and any other materials,
22 including electronic data of the agency or any person, including
23 contractors, subcontractors, providers, recipients of funds or
24 benefits, and persons who are regulated by an agency;

25 (26) administer oaths or affirmations and take
26 testimony deemed to be relevant to an investigation, audit, or
27 review;

1 (27) communicate with the head of any public entity
2 when necessary for purposes related to the work of the office;

3 (28) require employees of an agency to report to the
4 office information regarding fraud, waste, misuse, corruption,
5 illegal acts, and abuse;

6 (29) recover overpayments and impose sanctions on a
7 person based on the person's fraud or abuse and may appropriately
8 distribute recovered funds to state and federal agencies;

9 (30) perform data matches with agencies to identify
10 fraud, waste, or abuse;

11 (31) develop rules for the imposition of payment holds
12 on contractors and providers determined to have committed fraud or
13 abuse in programs administered by an agency; and

14 (32) develop rules for conducting criminal history
15 background checks on applicants, providers, and contractors
16 participating in or applying for participation in programs
17 administered by an agency.

18 (b) Failure to comply with a request for cooperation,
19 assistance, services, or data made under Subsection (a)(19) will
20 subject the requested entity to an administrative penalty of up to
21 \$100,000 per violation. The penalty will be paid from the entity's
22 next scheduled biennium allocation directly to the inspector
23 general. Such failure to comply may also constitute a violation
24 under other applicable state law.

25 Sec. 2116.153. GENERAL DUTIES OF INSPECTOR GENERAL.

26 (a) The inspector general shall administer and enforce the powers
27 and duties of the office under this chapter and other law.

1 (b) The inspector general shall maintain information
2 documenting the cost of inspection, audit, and review operations of
3 the office.

4 (c) The inspector general and deputy inspectors general
5 shall advise and consult with the presiding officer of an agency,
6 including consultation regarding:

7 (1) the selection of internal audit topics;

8 (2) the establishment of internal audit priorities;

9 and

10 (3) the findings of each regular or special audit
11 initiative.

12 (d) The inspector general shall consult with the governor as
13 necessary to perform the duties of the office.

14 Sec. 2116.154. ALLEGATIONS OF MISCONDUCT AGAINST PRESIDING
15 OFFICER. If allegations that a presiding officer has engaged in
16 misconduct result in an investigation by the inspector general or a
17 deputy inspector general, the inspector general or deputy inspector
18 general may not inform any personnel of the subject agency of the
19 investigation until the final report on the investigation is
20 completed and delivered under Section 2116.201 or the investigation
21 is closed without a finding, unless the inspector general
22 determines that disclosure to agency personnel is appropriate.

23 Sec. 2116.155. INTERAGENCY COORDINATION. (a) The State
24 Office of Inspector General and the office of the attorney general
25 shall enter into a memorandum of understanding to develop and
26 implement joint written procedures for processing cases of
27 suspected fraud, waste, or abuse, as those terms are defined by

1 state or federal law, or other violations of state or federal law
2 under any program administered by an agency, including the state
3 Medicaid program, the financial assistance program under Chapter
4 31, Human Resources Code, a nutritional assistance program under
5 Chapter 33, Human Resources Code, and the child health plan
6 program. The memorandum of understanding shall require:

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

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

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

1 initiation of civil litigation or other appropriate action;

2 (4) the State Office of Inspector General to keep
3 detailed records for cases processed by that office or the office of
4 the attorney general, including information on the total number of
5 cases processed and, for each case:

6 (A) the agency and division to which the case is
7 referred for investigation;

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

9 (C) the nature of the suspected fraud, waste, or
10 abuse;

11 (5) the State Office of Inspector General to notify
12 each appropriate division of the office of the attorney general of
13 each case referred by the State Office of Inspector General;

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

18 (7) the office of the attorney general to notify the
19 State Office of Inspector General of each case the attorney general
20 declines to prosecute or prosecutes unsuccessfully;

21 (8) representatives of the State Office of Inspector
22 General and of the office of the attorney general to meet not less
23 than quarterly to share case information related to the
24 investigation and prosecution of each case; and

25 (9) the State Office of Inspector General and the
26 office of the attorney general to submit information requested by
27 the comptroller about each resolved case for the comptroller's use

1 in improving fraud detection.

2 (b) An exchange of information under this section between
3 the office of the attorney general and the State Office of Inspector
4 General or an agency does not affect whether the information is
5 subject to disclosure under Chapter 552.

6 (c) In addition to the provisions required by Subsection
7 (a), the memorandum of understanding required by this section must
8 also ensure that no barriers to direct fraud referrals to the office
9 of the attorney general's Medicaid fraud control unit or
10 unreasonable impediments to communication between Medicaid agency
11 employees and the Medicaid fraud control unit are imposed and must
12 include procedures to facilitate the referral of cases directly to
13 the office of the attorney general.

14 Sec. 2116.156. ASSISTING INVESTIGATIONS BY ATTORNEY
15 GENERAL. (a) The State Office of Inspector General and the office
16 of the attorney general shall execute a memorandum of understanding
17 under which the State Office of Inspector General shall provide
18 investigative support, as required, to the office of the attorney
19 general in connection with cases of fraud, waste, or abuse,
20 including cases under Subchapter B, Chapter 36, Human Resources
21 Code. Under the memorandum of understanding, the State Office of
22 Inspector General shall assist in performing investigations for
23 actions prosecuted by the attorney general, including actions under
24 Subchapter C, Chapter 36, Human Resources Code.

25 (b) The memorandum of understanding must specify the type,
26 scope, and format of the investigative support provided to the
27 office of the attorney general under this section.

1 (c) The memorandum of understanding must ensure that no
2 barriers to direct fraud referrals to the state's Medicaid fraud
3 control unit by Medicaid agencies or unreasonable impediments to
4 communication between Medicaid agency employees and the state's
5 Medicaid fraud control unit will be imposed.

6 Sec. 2116.157. FRAUD PREVENTION. (a) The office shall
7 compile and disseminate accurate information and statistics
8 relating to:

9 (1) fraud prevention; and

10 (2) post-fraud referrals received and accepted or
11 rejected from the office's case management system or the case
12 management system of an agency.

13 (b) The office shall:

14 (1) aggressively publicize successful fraud
15 prosecutions and fraud-prevention programs through all available
16 means, including the use of statewide press releases; and

17 (2) maintain and promote a toll-free hotline for
18 reporting suspected fraud in programs administered by an agency.

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

25 (d) The office shall:

26 (1) verify automobile information that is used as
27 criteria for eligibility for public assistance; and

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

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

12 Sec. 2116.158. SUBPOENAS. (a) The inspector general and
13 deputy inspectors general may, in connection with an investigation,
14 audit, or review conducted by the office, issue a subpoena or
15 request a grand jury subpoena to compel the attendance of a relevant
16 witness or the production, for inspection, confiscation, or
17 copying, of relevant evidence, including books, papers, records,
18 equipment, documents, and electronic data, located in this state.

19 (b) A subpoena may be served personally or by certified
20 mail.

21 (c) If a person fails to comply with a subpoena, the office,
22 acting through the attorney general, may file suit to enforce the
23 subpoena in a district court in this state.

24 (d) On finding that good cause exists for issuing the
25 subpoena, the court shall order the person to comply with the
26 subpoena. The court may punish a person who fails to obey the court
27 order.

1 (e) The reimbursement of the expenses of a witness whose
2 attendance is compelled under this section is governed by Section
3 2001.103.

4 Sec. 2116.159. FEDERAL FELONY WATCH. The office shall
5 develop and implement a system to cross-reference data collected
6 for the programs listed under Section 531.008(c) with the list of
7 fugitive felons maintained by the federal government.

8 Sec. 2116.160. ASSESSMENT AND COLLECTION OF CERTAIN FEES
9 AND COSTS. (a) The Office of State Inspector General and the
10 office of the attorney general may not assess or collect
11 investigation and attorney's fees on behalf of any state agency
12 unless the office of the attorney general or other state agency
13 collects a penalty, restitution, or other reimbursement payment to
14 the state.

15 (b) A district attorney, county attorney, city attorney, or
16 private collection agency may collect and retain costs associated
17 with a case referred to the attorney or agency in accordance with
18 procedures adopted under Section 2116.155 and 20 percent of the
19 amount of the penalty, restitution, or other reimbursement payment
20 collected.

21 [Sections 2116.161-2116.200 reserved for expansion]

22 SUBCHAPTER E. REPORTS

23 Sec. 2116.201. FINAL REPORTS. (a) The inspector general
24 or the deputy inspector general for the subject agency shall
25 prepare a final report on each investigation, audit, or review
26 conducted under this chapter. A final report must include:

27 (1) a summary of the activities performed by the

1 office in conducting the investigation, audit, or review;

2 (2) a statement regarding whether the investigation,
3 audit, or review resulted in a finding of any wrongdoing; and

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

5 (b) Unless otherwise prohibited by this chapter or other
6 law, the inspector general shall deliver a copy of each final report
7 to:

8 (1) the presiding officer of the subject agency;

9 (2) the governor;

10 (3) the lieutenant governor;

11 (4) the speaker of the house of representatives;

12 (5) appropriate law enforcement and prosecutorial
13 agencies; and

14 (6) appropriate licensing or certification agencies.

15 Sec. 2116.202. AGENCY RESPONSE. (a) Not later than the
16 60th day after the issuance of any inspector general report that
17 identifies deficiencies or recommends specified corrective
18 measures in the operations of an agency, the agency shall file a
19 response including an implementation plan and timeline for
20 implementing corrective measures. If the agency elects to decline
21 implementation of corrective measures for the identified
22 deficiencies or to implement the inspector general's recommended
23 corrective measures, the agency response must include rationale for
24 the declination.

25 (b) The office shall specify by rule the format and
26 requirements of an agency response.

27 (c) An agency to which this chapter applies shall adopt

1 rules to respond to reports and recommendations from the inspector
2 general or deputy inspectors general, including sanctions for
3 agency violations.

4 Sec. 2116.203. ANNUAL REPORT. (a) The inspector general
5 shall prepare annually a complete and detailed written report
6 describing the activities of the office during the fiscal year. The
7 report shall separately describe each major investigation, audit,
8 review, fraud prevention effort, and agency assistance effort
9 completed during the fiscal year.

10 (b) The annual report must meet the reporting requirements
11 applicable to financial reporting provided in the General
12 Appropriations Act.

13 (c) The inspector general shall deliver a copy of each
14 annual report to:

15 (1) the governor;

16 (2) the lieutenant governor;

17 (3) the speaker of the house of representatives;

18 (4) the presiding officer of each house and senate
19 committee having jurisdiction over an agency to which this chapter
20 applies;

21 (5) the presiding officer of each agency to which this
22 chapter applies; and

23 (6) the comptroller.

24 (d) Each agency to which this chapter applies shall post the
25 annual report on its agency website.

26 (e) The annual report shall be issued not later than the
27 60th day after the end of each fiscal year.

1 Sec. 2116.204. JOINT REPORT WITH ATTORNEY GENERAL.

2 (a) The State Office of Inspector General and the office of the
3 attorney general shall jointly prepare and submit a semiannual
4 report concerning the activities of agencies in detecting and
5 preventing fraud, waste, and abuse in programs administered by the
6 agencies. The report may be consolidated with any other report
7 relating to the same subject matter the State Office of Inspector
8 General or office of the attorney general is required to submit
9 under other law.

10 (b) The inspector general shall deliver a copy of each joint
11 report to:

12 (1) the governor;

13 (2) the lieutenant governor;

14 (3) the speaker of the house of representatives;

15 (4) the presiding officer of each house and senate
16 committee having jurisdiction over an agency to which this chapter
17 applies;

18 (5) the presiding officer of each agency to which this
19 chapter applies; and

20 (6) the comptroller.

21 Sec. 2116.205. FLAGRANT VIOLATIONS; IMMEDIATE REPORT.

22 Unless otherwise prohibited by this chapter or other law, the
23 inspector general shall immediately report to the presiding officer
24 of an agency particularly serious or flagrant problems, abuses, or
25 deficiencies relating to the administration of programs and
26 operations of the agency or interference with inspector general
27 operations.

1 [Sections 2116.206-2116.250 reserved for expansion]

2 SUBCHAPTER F. PUBLIC RECORDS

3 Sec. 2116.251. INFORMATION CONFIDENTIAL. (a) Except as
4 provided by this section and Section 2116.252, all records,
5 information, and material compiled by the office in connection with
6 an investigation, audit, or review, including records,
7 information, and material disclosed under Subsection (b) or
8 obtained through subpoena, is:

9 (1) confidential and not subject to disclosure under
10 Chapter 552 and may not be released except in accordance with this
11 chapter; and

12 (2) not subject to disclosure, discovery, subpoena, or
13 other means of legal compulsion for release to anyone other than the
14 office or its employees or agents involved in the investigation,
15 audit, or review.

16 (b) As the inspector general determines appropriate,
17 information relating to an investigation, audit, or review may be
18 disclosed to:

19 (1) the governor;

20 (2) the attorney general;

21 (3) the state auditor's office;

22 (4) a law enforcement agency; or

23 (5) a licensing and certification agency.

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

1 (d) The names and identities of individuals making
2 complaints and identifying information protected by whistleblower
3 laws or other law may not be disclosed unless required by law or
4 judicial processes.

5 (e) The inspector general shall maintain the
6 confidentiality of any public information made confidential by law
7 that is obtained from the custodian of the information and is
8 subject to the same penalties as the custodian of the public
9 information for violating confidentiality statutes.

10 (f) The office shall make efforts to protect the privacy of
11 individuals or employees whenever possible without interfering in
12 judicial or administrative processes initiated to protect the
13 public.

14 Sec. 2116.252. FINAL REPORT DISCLOSURE. (a) A final
15 report required under Section 2116.201 is subject to disclosure
16 under Chapter 552.

17 (b) All working papers and other documents related to
18 compiling a final report remain confidential and are not subject to
19 disclosure under Chapter 552.

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

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

24 (1) a state or local governmental entity, including a
25 law enforcement agency or court or private collection agency, if
26 the entity, agency, or court is acting under a court order, warrant,
27 subpoena, or administrative subpoena;

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

5 (3) the State Office of Inspector General [~~Health and~~
6 ~~Human Services Commission~~] acting to investigate fraud, waste, or
7 abuse in state agencies under Chapter 2116, Government Code, or
8 other law [~~under Section 531.102, Government Code~~];

9 (4) the comptroller acting to investigate or collect
10 delinquent sales or franchise taxes;

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

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

16 (7) a person with whom the consumer has an account or
17 contract or to whom the consumer has issued a negotiable
18 instrument, or the person's subsidiary, affiliate, agent,
19 assignee, prospective assignee, or private collection agency, for
20 purposes related to that account, contract, or instrument;

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

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

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

1 (11) a check service or fraud prevention service
2 company that issues consumer reports:

3 (A) to prevent or investigate fraud; or

4 (B) for purposes of approving or processing
5 negotiable instruments, electronic funds transfers, or similar
6 methods of payment;

7 (12) a deposit account information service company
8 that issues consumer reports related to account closures caused by
9 fraud, substantial overdrafts, automated teller machine abuses, or
10 similar negative information regarding a consumer to an inquiring
11 financial institution for use by the financial institution only in
12 reviewing a consumer request for a deposit account with that
13 institution; or

14 (13) a consumer reporting agency that:

15 (A) acts only to resell credit information by
16 assembling and merging information contained in a database of
17 another consumer reporting agency or multiple consumer reporting
18 agencies; and

19 (B) does not maintain a permanent database of
20 credit information from which new consumer reports are produced.

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

23 Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace
24 officers:

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

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

4 (3) marshals or police officers of an incorporated
5 city, town, or village, and those reserve municipal police officers
6 who hold a permanent peace officer license issued under Chapter
7 1701, Occupations Code;

8 (4) rangers and officers commissioned by the Public
9 Safety Commission and the Director of the Department of Public
10 Safety;

11 (5) investigators of the district attorneys', criminal
12 district attorneys', and county attorneys' offices;

13 (6) law enforcement agents of the Texas Alcoholic
14 Beverage Commission;

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

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

19 (9) officers commissioned by the General Services
20 Commission;

21 (10) law enforcement officers commissioned by the
22 Parks and Wildlife Commission;

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

26 (12) airport security personnel commissioned as peace
27 officers by the governing body of any political subdivision of this

1 state, other than a city described by Subdivision (11), that
2 operates an airport that serves commercial air carriers;

3 (13) municipal park and recreational patrolmen and
4 security officers;

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

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

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

11 (17) investigators commissioned by the Texas State
12 Board of Medical Examiners;

13 (18) officers commissioned by the board of managers of
14 the Dallas County Hospital District, the Tarrant County Hospital
15 District, or the Bexar County Hospital District under Section
16 281.057, Health and Safety Code;

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

19 (20) investigators employed by the Texas Racing
20 Commission;

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

23 (22) officers commissioned by the governing body of a
24 metropolitan rapid transit authority under Section 451.108,
25 Transportation Code, or by a regional transportation authority
26 under Section 452.110, Transportation Code;

27 (23) investigators commissioned by the attorney

1 general under Section 402.009, Government Code;

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

4 (25) an officer employed by the Texas Department of
5 Health under Section 431.2471, Health and Safety Code;

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

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

10 (28) an investigator commissioned by the commissioner
11 of insurance under Article 1.10D, Insurance Code;

12 (29) apprehension specialists commissioned by the
13 Texas Youth Commission as officers under Section 61.0931, Human
14 Resources Code;

15 (30) officers appointed by the executive director of
16 the Texas Department of Criminal Justice under Section 493.019,
17 Government Code;

18 (31) investigators commissioned by the Commission on
19 Law Enforcement Officer Standards and Education under Section
20 1701.160, Occupations Code;

21 (32) commission investigators commissioned by the
22 Texas Commission on Private Security under Section 1702.061(f),
23 Occupations Code;

24 (33) the fire marshal and any officers, inspectors, or
25 investigators commissioned by an emergency services district under
26 Chapter 775, Health and Safety Code; ~~and~~

27 (34) officers commissioned by the State Board of

1 Dental Examiners under Section 254.013, Occupations Code, subject
2 to the limitations imposed by that section; and

3 (35) investigators commissioned or employed by the
4 State Office of Inspector General under Chapter 2116, Government
5 Code.

6 SECTION 4. Subsection (p), Article 59.06, Code of Criminal
7 Procedure, is amended to read as follows:

8 (p) Notwithstanding Subsection (a), and to the extent
9 necessary to protect the State Office of Inspector General's
10 [~~commission's~~] ability to recover amounts wrongfully obtained by
11 the owner of the property and associated damages and penalties to
12 which the State Office of Inspector General [~~commission~~] may
13 otherwise be entitled by law, the attorney representing the state
14 shall transfer to the State Office of Inspector General, for
15 appropriate distribution, [Health and Human Services Commission]
16 all forfeited property defined as contraband under Article
17 59.01(2)(B)(vii). If the forfeited property consists of property
18 other than money or negotiable instruments, the attorney
19 representing the state may, if approved by the State Office of
20 Inspector General [~~commission~~], sell the property and deliver to
21 the State Office of Inspector General, for appropriate
22 distribution, [commission] the proceeds from the sale, minus costs
23 attributable to the sale. The sale must be conducted in a manner
24 that is reasonably expected to result in receiving the fair market
25 value for the property.

26 SECTION 5. Subsection (c), Section 531.008, Government
27 Code, is amended to read as follows:

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

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

6 (A) the child health plan program;

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

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

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

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

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

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

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

22 [~~3~~] the office of the ombudsman to:

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

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

27 (3) [~~4~~] a purchasing division as provided by Section

1 531.017; and

2 (4) [~~(5)~~] an internal audit division to conduct a
3 program of internal auditing in accordance with [~~Government Code,~~
4 Chapter 2102.

5 SECTION 6. Subsections (a) and (b), Section 531.101,
6 Government Code, are amended to read as follows:

7 (a) The office [~~commission~~] may grant an award to an
8 individual who reports activity that constitutes fraud or abuse of
9 funds in the state Medicaid program or reports overcharges in the
10 program if the office [~~commission~~] determines that the disclosure
11 results in the recovery of an administrative penalty imposed under
12 Section 32.039, Human Resources Code. The office [~~commission~~] may
13 not grant an award to an individual in connection with a report if
14 the office [~~commission~~] or attorney general had independent
15 knowledge of the activity reported by the individual.

16 (b) The office [~~commission~~] shall determine the amount of an
17 award. The award may not exceed five percent of the amount of the
18 administrative penalty imposed under Section 32.039, Human
19 Resources Code, that resulted from the individual's disclosure. In
20 determining the amount of the award, the office [~~commission~~] shall
21 consider how important the disclosure is in ensuring the fiscal
22 integrity of the program. The office [~~commission~~] may also
23 consider whether the individual participated in the fraud, abuse,
24 or overcharge.

25 SECTION 7. Section 531.1011, Government Code, is amended by
26 adding Subdivision (3-a) to read as follows:

27 (3-a) "Office" means the State Office of Inspector General.

1 SECTION 8. Section 531.102, Government Code, is amended to
2 read as follows:

3 Sec. 531.102. STATE OFFICE OF INSPECTOR GENERAL. (a) The
4 office [~~commission, through the commission's office of inspector~~
5 ~~general,~~] is responsible for the investigation of fraud and abuse
6 in the provision of health and human services and the enforcement of
7 state law relating to the provision of those services. The office
8 [~~commission~~] may obtain any information or technology necessary to
9 enable the office to meet its responsibilities under this
10 subchapter, Chapter 2116, or other law.

11 [~~(a-1) The governor shall appoint an inspector general to~~
12 ~~serve as director of the office. The inspector general serves a~~
13 ~~one-year term that expires on February 1.~~]

14 (b) [~~The commission, in consultation with the inspector~~
15 ~~general, shall set clear objectives, priorities, and performance~~
16 ~~standards for the office that emphasize:~~

17 [~~(1) coordinating investigative efforts to~~
18 ~~aggressively recover money,~~

19 [~~(2) allocating resources to cases that have the~~
20 ~~strongest supportive evidence and the greatest potential for~~
21 ~~recovery of money, and~~

22 [~~(3) maximizing opportunities for referral of cases to~~
23 ~~the office of the attorney general in accordance with Section~~
24 ~~531.103.~~

25 [~~(c) The commission shall train office staff to enable the~~
26 ~~staff to pursue priority Medicaid and other health and human~~
27 ~~services fraud and abuse cases as necessary.~~

1 ~~[(d)]~~ The commission shall ~~[may]~~ require employees of
2 health and human services agencies to provide assistance to the
3 office in connection with the office's duties relating to the
4 investigation of fraud, waste, and abuse in the provision of health
5 and human services. The office is entitled to access to any
6 information maintained by a health and human services agency,
7 including internal records, relevant to the functions of the
8 office.

9 (c) ~~[(e)]~~ The ~~[commission, in consultation with the]~~
10 inspector general~~[,]~~ by rule shall set specific claims criteria
11 that, when met, require the office to begin an investigation.

12 (d)(1) ~~[(f)(1)]~~ If the inspector general, the commission,
13 or any health and human services agency receives a complaint of
14 Medicaid fraud, waste, or abuse from any source, the office must
15 conduct an integrity review to determine whether there is
16 sufficient basis to warrant a full investigation. The commission
17 or any health and human services agency shall immediately forward
18 to the office a complaint received by the commission or any health
19 and human services agency under this subdivision. An integrity
20 review must begin not later than the 30th day after the date the
21 inspector general ~~[commission]~~ receives a complaint directly or
22 from any health and human services agency or has reason to believe
23 that fraud, waste, or abuse has occurred. An integrity review shall
24 be completed not later than the 90th day after it began.

25 (2) If the findings of an integrity review give the
26 office reason to believe that an incident of fraud or abuse
27 involving possible criminal conduct has occurred in the Medicaid

1 program, the office must take the following action, as appropriate,
2 not later than the 30th day after the completion of the integrity
3 review:

4 (A) if a provider is suspected of fraud or abuse
5 involving criminal conduct, the office must refer the case to the
6 state's Medicaid fraud control unit, provided that the criminal
7 referral does not preclude the office from continuing its
8 investigation of the provider, which investigation may lead to the
9 imposition of appropriate administrative or civil sanctions; or

10 (B) if there is reason to believe that a
11 recipient has defrauded the Medicaid program, the inspector general
12 [~~office~~] may conduct a full investigation of the suspected fraud.

13 (e)(1) [~~(g)(1)~~] Whenever the office learns or has reason to
14 suspect that a provider's records are being withheld, concealed,
15 destroyed, fabricated, or in any way falsified, the office shall
16 immediately refer the case to the state's Medicaid fraud control
17 unit. However, such criminal referral does not preclude the office
18 from continuing its investigation of the provider, which
19 investigation may lead to the imposition of appropriate
20 administrative or civil sanctions.

21 (2) In addition to other instances authorized under
22 state or federal law, the office shall impose without prior notice a
23 hold on payment of claims for reimbursement submitted by a provider
24 to compel production of records or when requested by the state's
25 Medicaid fraud control unit, as applicable. The office must notify
26 the provider of the hold on payment not later than the fifth working
27 day after the date the payment hold is imposed.

1 (3) On timely written request by a provider subject to
2 a hold on payment under Subdivision (2), other than a hold requested
3 by the state's Medicaid fraud control unit, the office shall file a
4 request with the State Office of Administrative Hearings for an
5 expedited administrative hearing regarding the hold. The provider
6 must request an expedited hearing under this subdivision not later
7 than the 10th day after the date the provider receives notice from
8 the office under Subdivision (2).

9 (4) The inspector general [~~commission~~] shall adopt
10 rules that allow a provider subject to a hold on payment under
11 Subdivision (2), other than a hold requested by the state's
12 Medicaid fraud control unit, to seek an informal resolution of the
13 issues identified by the office in the notice provided under that
14 subdivision. A provider must seek an informal resolution under
15 this subdivision not later than the deadline prescribed by
16 Subdivision (3). A provider's decision to seek an informal
17 resolution under this subdivision does not extend the time by which
18 the provider must request an expedited administrative hearing under
19 Subdivision (3). However, a hearing initiated under Subdivision
20 (3) shall be stayed at the office's request until the informal
21 resolution process is completed.

22 (5) The inspector general [~~office~~] shall, in
23 consultation with the state's Medicaid fraud control unit,
24 establish guidelines under which holds on payment or program
25 exclusions:

- 26 (A) may permissively be imposed on a provider; or
27 (B) shall automatically be imposed on a provider.

1 (f) [~~(h)~~] ~~In addition to performing functions and duties~~
2 ~~otherwise provided by law, the office may:~~

3 [~~(1)~~] ~~assess administrative penalties otherwise~~
4 ~~authorized by law on behalf of the commission or a health and human~~
5 ~~services agency;~~

6 [~~(2)~~] ~~request that the attorney general obtain an~~
7 ~~injunction to prevent a person from disposing of an asset~~
8 ~~identified by the office as potentially subject to recovery by the~~
9 ~~office due to the person's fraud or abuse;~~

10 [~~(3)~~] ~~provide for coordination between the office and~~
11 ~~special investigative units formed by managed care organizations~~
12 ~~under Section 531.113 or entities with which managed care~~
13 ~~organizations contract under that section;~~

14 [~~(4)~~] ~~audit the use and effectiveness of state or~~
15 ~~federal funds, including contract and grant funds, administered by~~
16 ~~a person or state agency receiving the funds from a health and human~~
17 ~~services agency;~~

18 [~~(5)~~] ~~conduct investigations relating to the funds~~
19 ~~described by Subdivision (4); and~~

20 [~~(6)~~] ~~recommend policies promoting economical and~~
21 ~~efficient administration of the funds described by Subdivision (4)~~
22 ~~and the prevention and detection of fraud and abuse in~~
23 ~~administration of those funds.~~

24 [~~(i)~~] Notwithstanding any other provision of law, a
25 reference in law or rule to the commission's office of
26 investigations and enforcement or the commission's office of
27 inspector general means the State Office of Inspector General

1 ~~[office of inspector general]~~ established under Chapter 2116 ~~[this~~
2 ~~section]~~.

3 ~~[(j) The office shall prepare a final report on each audit~~
4 ~~or investigation conducted under this section. The final report~~
5 ~~must include:~~

6 ~~[(1) a summary of the activities performed by the~~
7 ~~office in conducting the audit or investigation;~~

8 ~~[(2) a statement regarding whether the audit or~~
9 ~~investigation resulted in a finding of any wrongdoing; and~~

10 ~~[(3) a description of any findings of wrongdoing.~~

11 ~~[(k) A final report on an audit or investigation is subject~~
12 ~~to required disclosure under Chapter 552. All information and~~
13 ~~materials compiled during the audit or investigation remain~~
14 ~~confidential and not subject to required disclosure in accordance~~
15 ~~with Section 531.1021(g).]~~

16 SECTION 9. Section 531.105, Government Code, is amended to
17 read as follows:

18 Sec. 531.105. FRAUD DETECTION TRAINING. (a) The office
19 ~~[commission]~~ shall develop and implement a program to provide
20 annual training to contractors who process Medicaid claims and
21 appropriate staff of health or human services agencies ~~[the Texas~~
22 ~~Department of Health and the Texas Department of Human Services]~~ in
23 identifying potential cases of fraud, waste, or abuse under the
24 state Medicaid program. The training provided to the contractors
25 and staff must include clear criteria that specify:

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

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

2 (b) The [~~Texas~~] Department of State Health Services and the
3 [~~Texas~~] Department of Aging and Disability [~~Human~~] Services, in
4 cooperation with the office [~~commission~~], shall periodically set a
5 goal of the number of potential cases of fraud, waste, or abuse
6 under the state Medicaid program that each agency will attempt to
7 identify and refer to the office [~~commission~~]. The office
8 [~~commission~~] shall include information on the agencies' goals and
9 the success of each agency in meeting the agency's goal in the
10 report required by Section 2116.204 [~~531.103(c)~~].

11 SECTION 10. Subsections (a), (b), and (d) through (g),
12 Section 531.106, Government Code, are amended to read as follows:

13 (a) The office [~~commission~~] shall use learning or neural
14 network technology to identify and deter fraud in the Medicaid
15 program throughout this state.

16 (b) The office [~~commission~~] shall contract with a private or
17 public entity to develop and implement the technology. The office
18 [~~commission~~] may require the entity it contracts with to install
19 and operate the technology at locations specified by the office
20 [~~commission~~], including State Office of Inspector General
21 [~~commission~~] offices.

22 (d) The office [~~commission~~] shall require each health and
23 human services agency that performs any aspect of the state
24 Medicaid program to participate in the implementation and use of
25 the technology.

26 (e) The office [~~commission~~] shall maintain all information
27 necessary to apply the technology to claims data covering a period

1 of at least two years.

2 (f) The office [~~commission~~] shall investigate [~~refer~~] cases
3 identified by the technology and shall refer cases to the
4 [~~commission's office of investigations and enforcement or the~~]
5 office of the attorney general for prosecution, as appropriate.

6 (g) Each month, the learning or neural network technology
7 implemented under this section must match bureau of vital
8 statistics death records with Medicaid claims filed by a provider.
9 If the office [~~commission~~] determines that a provider has filed a
10 claim for services provided to a person after the person's date of
11 death, as determined by the bureau of vital statistics death
12 records, the office [~~commission~~] shall investigate [~~refer~~] the case
13 [~~for investigation to the commission's office of investigations and~~
14 ~~enforcement~~].

15 SECTION 11. Section 531.1061, Government Code, is amended
16 to read as follows:

17 Sec. 531.1061. FRAUD INVESTIGATION TRACKING SYSTEM.

18 (a) The office [~~commission~~] shall use an automated fraud
19 investigation tracking system [~~through the commission's office of~~
20 ~~investigations and enforcement~~] to monitor the progress of an
21 investigation of suspected fraud, waste, abuse, or insufficient
22 quality of care under the state Medicaid program.

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

27 (1) receive electronically transferred records

1 relating to the identified case from the learning or neural network
2 technology;

3 (2) record the details and monitor the status of an
4 investigation of the identified case, including maintaining a
5 record of the beginning and completion dates for each phase of the
6 case investigation;

7 (3) generate documents and reports related to the
8 status of the case investigation; and

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

11 (c) The office [~~commission~~] shall require each health and
12 human services agency that performs any aspect of the state
13 Medicaid program to participate in the implementation and use of
14 the automated fraud investigation tracking system.

15 SECTION 12. Subsection (a), Section 531.1062, Government
16 Code, is amended to read as follows:

17 (a) The office [~~commission~~] shall use an automated recovery
18 monitoring system to monitor the collections process for a settled
19 case of fraud, waste, abuse, or insufficient quality of care under
20 the state Medicaid program.

21 SECTION 13. Subsections (a), (b), and (f), Section 531.107,
22 Government Code, are amended to read as follows:

23 (a) The Medicaid and Public Assistance Fraud Oversight Task
24 Force advises and assists the office [~~commission and the~~
25 ~~commission's office of investigations and enforcement~~] in
26 improving the efficiency of fraud investigations and collections.

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

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

3 (2) comptroller's office, appointed by the
4 comptroller;

5 (3) Department of Public Safety, appointed by the
6 public safety director;

7 (4) state auditor's office, appointed by the state
8 auditor;

9 (5) State Office of Inspector General, appointed by
10 the inspector general [~~commission, appointed by the commissioner of~~
11 ~~health and human services~~];

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

15 (7) Texas Department of Insurance, appointed by the
16 commissioner of insurance; and

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

19 (f) At least once each fiscal quarter, the office
20 [~~commission's office of investigations and enforcement~~] shall
21 provide to the task force:

22 (1) information detailing:

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

25 (B) the time spent investigating each case;

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

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

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

5 (2) any additional information the task force
6 requires.

7 SECTION 14. Section 531.109, Government Code, is amended to
8 read as follows:

9 Sec. 531.109. SELECTION AND REVIEW OF CLAIMS. (a) The
10 office [~~commission~~] shall annually select and review a random,
11 statistically valid sample of all claims for reimbursement under
12 the state Medicaid program, including the vendor drug program, for
13 potential cases of fraud, waste, or abuse.

14 (b) In conducting the annual review of claims under
15 Subsection (a), the office [~~commission~~] may directly contact a
16 recipient by telephone or in person, or both, to verify that the
17 services for which a claim for reimbursement was submitted by a
18 provider were actually provided to the recipient.

19 (c) Based on the results of the annual review of claims, the
20 office and the commission shall determine the types of claims at
21 which the office and commission resources for fraud, waste, and
22 abuse detection should be primarily directed.

23 SECTION 15. Subsections (a) and (c) through (f), Section
24 531.110, Government Code, are amended to read as follows:

25 (a) The office [~~commission~~] shall conduct electronic data
26 matches for a recipient of assistance under the state Medicaid
27 program at least quarterly to verify the identity, income,

1 employment status, and other factors that affect the eligibility of
2 the recipient.

3 (c) The commission and the [~~Texas~~] Department of Aging and
4 Disability [~~Human~~] Services shall cooperate with the office
5 [~~commission~~] by providing data or any other assistance necessary to
6 conduct the electronic data matches required by this section.

7 (d) The office [~~commission~~] may contract with a public or
8 private entity to conduct the electronic data matches required by
9 this section.

10 (e) The office [~~commission~~], or a health and human services
11 agency designated by the office [~~commission~~], by rule shall
12 establish procedures to verify the electronic data matches
13 conducted by the office [~~commission~~] under this section. Not later
14 than the 20th day after the date the electronic data match is
15 verified, the commission or the [~~Texas~~] Department of Aging and
16 Disability [~~Human~~] Services shall remove from eligibility a
17 recipient who is determined to be ineligible for assistance under
18 the state Medicaid program.

19 (f) The office [~~commission~~] shall report biennially to the
20 legislature the results of the electronic data matching program.
21 The report must include a summary of the number of applicants who
22 were removed from eligibility for assistance under the state
23 Medicaid program as a result of an electronic data match conducted
24 under this section.

25 SECTION 16. Section 531.111, Government Code, is amended to
26 read as follows:

27 Sec. 531.111. FRAUD DETECTION TECHNOLOGY. The office

1 ~~[commission]~~ may contract with a contractor who specializes in
2 developing technology capable of identifying patterns of fraud
3 exhibited by Medicaid recipients to:

4 (1) develop and implement the fraud detection
5 technology; and

6 (2) determine if a pattern of fraud by Medicaid
7 recipients is present in the recipients' eligibility files
8 maintained by the commission or the [Texas] Department of Aging and
9 Disability [Human] Services.

10 SECTION 17. Section 531.113, Government Code, is amended to
11 read as follows:

12 Sec. 531.113. MANAGED CARE ORGANIZATIONS: SPECIAL
13 INVESTIGATIVE UNITS OR CONTRACTS. (a) Each managed care
14 organization that provides or arranges for the provision of health
15 care services to an individual under a government-funded program,
16 including the Medicaid program and the child health plan program,
17 shall:

18 (1) establish and maintain a special investigative
19 unit within the managed care organization to investigate fraudulent
20 claims and other types of program waste or abuse by recipients and
21 service providers; or

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

25 (b) Each managed care organization subject to this section
26 shall adopt a plan to prevent and reduce fraud, waste, and abuse and
27 annually file that plan with the ~~[commission's]~~ office ~~[of~~

1 ~~inspector general~~] for approval. The plan must include:

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

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

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

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

14 (5) a description or chart outlining the
15 organizational arrangement of the managed care organization's
16 personnel responsible for investigating and reporting possible
17 acts of fraud, waste, or abuse;

18 (6) a detailed description of the results of
19 investigations of fraud, waste, and abuse conducted by the managed
20 care organization's special investigative unit or the entity with
21 which the managed care organization contracts under Subsection
22 (a)(2); and

23 (7) provisions for maintaining the confidentiality of
24 any patient information relevant to an investigation of fraud,
25 waste, or abuse.

26 (c) If a managed care organization contracts for the
27 investigation of fraudulent claims and other types of program waste

1 or abuse by recipients and service providers under Subsection
2 (a)(2), the managed care organization shall file with the
3 [~~commission's~~] office [~~of inspector general~~]:

4 (1) a copy of the written contract;

5 (2) the names, addresses, telephone numbers, and fax
6 numbers of the principals of the entity with which the managed care
7 organization has contracted; and

8 (3) a description of the qualifications of the
9 principals of the entity with which the managed care organization
10 has contracted.

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

14 (e) The office [~~commissioner~~] shall adopt rules as
15 necessary to accomplish the purposes of this section.

16 SECTION 18. Subsections (b) and (g), Section 531.114,
17 Government Code, are amended to read as follows:

18 (b) If after an investigation the office [~~commission~~]
19 determines that a person violated Subsection (a), the office
20 [~~commission~~] shall:

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

25 (2) refer the matter to the appropriate prosecuting
26 attorney for prosecution.

27 (g) The office [~~commission~~] shall adopt rules as necessary

1 to implement this section.

2 SECTION 19. Subsection (a), Section 533.005, Government
3 Code, is amended to read as follows:

4 (a) A contract between a managed care organization and the
5 commission for the organization to provide health care services to
6 recipients must contain:

7 (1) procedures to ensure accountability to the state
8 for the provision of health care services, including procedures for
9 financial reporting, quality assurance, utilization review, and
10 assurance of contract and subcontract compliance;

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

13 (3) a requirement that the managed care organization
14 provide ready access to a person who assists recipients in
15 resolving issues relating to enrollment, plan administration,
16 education and training, access to services, and grievance
17 procedures;

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

22 (5) a requirement that the managed care organization
23 provide information and referral about the availability of
24 educational, social, and other community services that could
25 benefit a recipient;

26 (6) procedures for recipient outreach and education;

27 (7) a requirement that the managed care organization

1 make payment to a physician or provider for health care services
2 rendered to a recipient under a managed care plan not later than the
3 45th day after the date a claim for payment is received with
4 documentation reasonably necessary for the managed care
5 organization to process the claim, or within a period, not to exceed
6 60 days, specified by a written agreement between the physician or
7 provider and the managed care organization;

8 (8) a requirement that the commission, on the date of a
9 recipient's enrollment in a managed care plan issued by the managed
10 care organization, inform the organization of the recipient's
11 Medicaid certification date;

12 (9) a requirement that the managed care organization
13 comply with Section 533.006 as a condition of contract retention
14 and renewal;

15 (10) a requirement that the managed care organization
16 provide the information required by Section 533.012 and otherwise
17 comply and cooperate with the State Office of Inspector General
18 [~~commission's office of inspector general~~];

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

24 (12) if the commission finds that a managed care
25 organization has violated Subdivision (11), a requirement that the
26 managed care organization reimburse an out-of-network provider for
27 health care services at a rate that is equal to the allowable rate

1 for those services, as determined under Sections 32.028 and
2 32.0281, Human Resources Code;

3 (13) a requirement that the organization use advanced
4 practice nurses in addition to physicians as primary care providers
5 to increase the availability of primary care providers in the
6 organization's provider network;

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

15 (15) a requirement that the managed care organization
16 develop, implement, and maintain a system for tracking and
17 resolving all provider appeals related to claims payment, including
18 a process that will require:

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

21 (B) the contracting with physicians who are not
22 network providers and who are of the same or related specialty as
23 the appealing physician to resolve claims disputes related to
24 denial on the basis of medical necessity that remain unresolved
25 subsequent to a provider appeal; and

26 (C) the determination of the physician resolving
27 the dispute to be binding on the managed care organization and

1 provider.

2 SECTION 20. Subsections (a), (b), (c), and (e), Section
3 533.012, Government Code, are amended to read as follows:

4 (a) Each managed care organization contracting with the
5 commission under this chapter shall submit to the commission and to
6 the State Office of Inspector General:

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

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

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

15 (4) a description and breakdown of all funds paid to
16 the managed care organization, including a health maintenance
17 organization, primary care case management, and an exclusive
18 provider organization, necessary for the commission and the
19 inspector general to determine the actual cost of administering the
20 managed care plan.

21 (b) The information submitted under this section must be
22 submitted in the form required by the commission and the inspector
23 general and be updated as required by the commission.

24 (c) The State Office of Inspector General [~~commission's~~
25 ~~office of investigations and enforcement~~] shall review the
26 information submitted under this section as appropriate in the
27 investigation of fraud in the Medicaid managed care program. The

1 comptroller may review the information in connection with the
2 health care fraud study conducted by the comptroller.

3 (e) Information submitted to the commission and the State
4 Office of Inspector General under Subsection (a)(1) is confidential
5 and not subject to disclosure under Chapter 552 [~~Government Code~~].

6 SECTION 21. Subsection (b), Section 2054.376, Government
7 Code, is amended to read as follows:

8 (b) This subchapter does not apply to:

9 (1) the Department of Public Safety's use for criminal
10 justice or homeland security purposes of a federal database or
11 network;

12 (2) a Texas equivalent of a database or network
13 described by Subdivision (1) that is managed by the Department of
14 Public Safety;

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

17 (4) the state treasury cash and treasury management
18 system; [~~or~~]

19 (5) a database or network managed by the comptroller
20 to:

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

23 (B) manage or administer fiscal, financial,
24 revenue, and expenditure activities of the state under Chapter 403
25 and Chapter 404;

26 (6) the State Office of Inspector General's use for
27 criminal justice and statutorily mandated confidentiality purposes

1 of a federal or state database or network; or

2 (7) the Health and Human Services Commission's use for
3 criminal justice and statutorily mandated confidentiality purposes
4 of a federal or state database or network.

5 SECTION 22. Section 21.014, Human Resources Code, is
6 amended to read as follows:

7 Sec. 21.014. AUDITS. [~~a~~] The financial transactions of
8 the department are subject to audit by the state auditor in
9 accordance with Chapter 321, Government Code.

10 [~~b~~] ~~The person employed by the department as inspector~~
11 ~~general shall make reports to and consult with the chairman of the~~
12 ~~board regarding:~~

13 [~~(1) the selection of internal audit topics,~~

14 [~~(2) the establishment of internal audit priorities,~~

15 ~~and~~

16 [~~(3) the findings of each regular or special internal~~
17 ~~audit initiative.]~~

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

20 (5) "Office" means the State Office of Inspector
21 General.

22 SECTION 24. Section 32.0291, Human Resources Code, is
23 amended to read as follows:

24 Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS.

25 (a) Notwithstanding any other law, the office or department may:

26 (1) perform a prepayment review of a claim for
27 reimbursement under the medical assistance program to determine

1 whether the claim involves fraud, waste, or abuse; and

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

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

13 (c) On timely written request by a provider subject to a
14 postpayment hold under Subsection (b), the office [~~department~~]
15 shall file a request with the State Office of Administrative
16 Hearings for an expedited administrative hearing regarding the
17 hold. The provider must request an expedited hearing under this
18 subsection not later than the 10th day after the date the provider
19 receives notice from the department under Subsection (b). The
20 office [~~department~~] shall discontinue the hold unless the office
21 [~~department~~] makes a prima facie showing at the hearing that the
22 evidence relied on by the office [~~department~~] in imposing the hold
23 is relevant, credible, and material to the issue of fraud, waste,
24 abuse, or wilful misrepresentation.

25 (d) The office [~~department~~] shall adopt rules that allow a
26 provider subject to a postpayment hold under Subsection (b) to seek
27 an informal resolution of the issues identified by the office

1 ~~[department]~~ in the notice provided under that subsection. A
2 provider must seek an informal resolution under this subsection not
3 later than the deadline prescribed by Subsection (c). A provider's
4 decision to seek an informal resolution under this subsection does
5 not extend the time by which the provider must request an expedited
6 administrative hearing under Subsection (c). However, a hearing
7 initiated under Subsection (c) shall be stayed at the office's
8 ~~[department's]~~ request until the informal resolution process is
9 completed.

10 SECTION 25. Section 32.032, Human Resources Code, is
11 amended to read as follows:

12 Sec. 32.032. PREVENTION AND DETECTION OF FRAUD, WASTE, AND
13 ABUSE. The office ~~[department]~~ shall adopt reasonable rules for
14 minimizing the opportunity for fraud, waste, and abuse, for
15 establishing and maintaining methods for detecting and identifying
16 situations in which a question of fraud or abuse in the program may
17 exist, and for referring cases where fraud or abuse appears to exist
18 to the appropriate law enforcement agencies for prosecution.

19 SECTION 26. Subsections (a) through (d), Section 32.0321,
20 Human Resources Code, are amended to read as follows:

21 (a) On the recommendation of the office, the ~~[The]~~
22 department by rule may require that each provider of medical
23 assistance in a provider type that has demonstrated significant
24 potential for fraud, waste, or abuse ~~[to]~~ file with the department a
25 surety bond in a reasonable amount. The office and the department
26 by rule shall require a provider of medical assistance to file with
27 the department a surety bond in a reasonable amount if the office

1 [~~department~~] identifies a pattern of suspected fraud, waste, or
2 abuse involving criminal conduct relating to the provider's
3 services under the medical assistance program that indicates the
4 need for protection against potential future acts of fraud, waste,
5 or abuse.

6 (b) The bond under Subsection (a) must be payable to the
7 department to compensate the department for damages resulting from
8 or penalties or fines imposed in connection with an act of fraud or
9 abuse committed by the provider under the medical assistance
10 program.

11 (c) Subject to Subsection (d) or (e), the office and the
12 department by rule may require each provider of medical assistance
13 that establishes a resident's trust fund account to post a surety
14 bond to secure the account. The bond must be payable to the
15 department to compensate residents of the bonded provider for trust
16 funds that are lost, stolen, or otherwise unaccounted for if the
17 provider does not repay any deficiency in a resident's trust fund
18 account to the person legally entitled to receive the funds.

19 (d) The office and the department may not require the amount
20 of a surety bond posted for a single facility provider under
21 Subsection (c) to exceed the average of the total average monthly
22 balance of all the provider's resident trust fund accounts for the
23 12-month period preceding the bond issuance or renewal date.

24 SECTION 27. Section 32.0322, Human Resources Code, is
25 amended to read as follows:

26 Sec. 32.0322. CRIMINAL HISTORY RECORD INFORMATION.

27 (a) The office [~~department~~] may obtain from any law enforcement or

1 criminal justice agency the criminal history record information
2 that relates to a provider under the medical assistance program or a
3 person applying to enroll as a provider under the medical
4 assistance program.

5 (b) The office [~~department~~] by rule shall establish
6 criteria for revoking a provider's enrollment or denying a person's
7 application to enroll as a provider under the medical assistance
8 program based on the results of a criminal history check.

9 SECTION 28. Subsections (d) through (h), Section 32.033,
10 Human Resources Code, are amended to read as follows:

11 (d) A separate and distinct cause of action in favor of the
12 state is hereby created, and the office [~~department~~] may, without
13 written consent, take direct civil action in any court of competent
14 jurisdiction. A suit brought under this section need not be
15 ancillary to or dependent upon any other action.

16 (e) The office's [~~department's~~] right of recovery is limited
17 to the amount of the cost of medical care services paid by the
18 department. Other subrogation rights granted under this section
19 are limited to the cost of the services provided.

20 (f) The inspector general [~~commissioner~~] may waive the
21 office's [~~department's~~] right of recovery in whole or in part when
22 the inspector general [~~commissioner~~] finds that enforcement would
23 tend to defeat the purpose of public assistance.

24 (g) The office [~~department~~] may designate an agent to
25 collect funds the office [~~department~~] has a right to recover from
26 third parties under this section. The department shall use any
27 funds collected to pay costs of administering the medical

1 assistance program.

2 (h) The office [~~department~~] may adopt rules for the
3 enforcement of its right of recovery.

4 SECTION 29. Subsections (c) through (l), (n) through (r),
5 and (u) through (x), Section 32.039, Human Resources Code, are
6 amended to read as follows:

7 (c) A person who commits a violation under Subsection (b) is
8 liable to the department, as assessed by the office, for:

9 (1) the amount paid, if any, as a result of the
10 violation and interest on that amount determined at the rate
11 provided by law for legal judgments and accruing from the date on
12 which the payment was made; and

13 (2) payment of an administrative penalty of an amount
14 not to exceed twice the amount paid, if any, as a result of the
15 violation, plus an amount:

16 (A) not less than \$5,000 or more than \$15,000 for
17 each violation that results in injury to an elderly person, as
18 defined by Section 48.002(1), a disabled person, as defined by
19 Section 48.002(8)(A), or a person younger than 18 years of age; or

20 (B) not more than \$10,000 for each violation that
21 does not result in injury to a person described by Paragraph (A).

22 (d) Unless the provider submitted information to the
23 department for use in preparing a voucher that the provider knew or
24 should have known was false or failed to correct information that
25 the provider knew or should have known was false when provided an
26 opportunity to do so, this section does not apply to a claim based
27 on the voucher if the department calculated and printed the amount

1 of the claim on the voucher and then submitted the voucher to the
2 provider for the provider's signature. In addition, the provider's
3 signature on the voucher does not constitute fraud. The office
4 [~~department~~] shall adopt rules that establish a grace period during
5 which errors contained in a voucher prepared by the department may
6 be corrected without penalty to the provider.

7 (e) In determining the amount of the penalty to be assessed
8 under Subsection (c)(2), the office [~~department~~] shall consider:

9 (1) the seriousness of the violation;

10 (2) whether the person had previously committed a
11 violation; and

12 (3) the amount necessary to deter the person from
13 committing future violations.

14 (f) If after an examination of the facts the office
15 [~~department~~] concludes that the person committed a violation, the
16 office [~~department~~] may issue a preliminary report stating the
17 facts on which it based its conclusion, recommending that an
18 administrative penalty under this section be imposed and
19 recommending the amount of the proposed penalty.

20 (g) The office [~~department~~] shall give written notice of the
21 report to the person charged with committing the violation. The
22 notice must include a brief summary of the facts, a statement of the
23 amount of the recommended penalty, and a statement of the person's
24 right to an informal review of the alleged violation, the amount of
25 the penalty, or both the alleged violation and the amount of the
26 penalty.

27 (h) Not later than the 10th day after the date on which the

1 person charged with committing the violation receives the notice,
2 the person may either give the office [~~department~~] written consent
3 to the report, including the recommended penalty, or make a written
4 request for an informal review by the office [~~department~~].

5 (i) If the person charged with committing the violation
6 consents to the penalty recommended by the office [~~department~~] or
7 fails to timely request an informal review, the office [~~department~~]
8 shall assess the penalty. The office [~~department~~] shall give the
9 person written notice of its action. The person shall pay the
10 penalty not later than the 30th day after the date on which the
11 person receives the notice.

12 (j) If the person charged with committing the violation
13 requests an informal review as provided by Subsection (h), the
14 office [~~department~~] shall conduct the review. The office
15 [~~department~~] shall give the person written notice of the results of
16 the review.

17 (k) Not later than the 10th day after the date on which the
18 person charged with committing the violation receives the notice
19 prescribed by Subsection (j), the person may make to the office
20 [~~department~~] a written request for a hearing. The hearing must be
21 conducted in accordance with Chapter 2001, Government Code.

22 (l) If, after informal review, a person who has been ordered
23 to pay a penalty fails to request a formal hearing in a timely
24 manner, the office [~~department~~] shall assess the penalty. The
25 office [~~department~~] shall give the person written notice of its
26 action. The person shall pay the penalty not later than the 30th
27 day after the date on which the person receives the notice.

1 (n) A person who acts under Subsection (m)(3) within the
2 30-day period may:

3 (1) stay enforcement of the penalty by:

4 (A) paying the amount of the penalty to the court
5 for placement in an escrow account; or

6 (B) giving to the court a supersedeas bond that
7 is approved by the court for the amount of the penalty and that is
8 effective until all judicial review of the office's [~~department's~~]
9 order is final; or

10 (2) request the court to stay enforcement of the
11 penalty by:

12 (A) filing with the court a sworn affidavit of
13 the person stating that the person is financially unable to pay the
14 amount of the penalty and is financially unable to give the
15 supersedeas bond; and

16 (B) giving a copy of the affidavit to the office
17 [~~commissioner~~] by certified mail.

18 (o) If the office [~~commissioner~~] receives a copy of an
19 affidavit under Subsection (n)(2), the office [~~commissioner~~] may
20 file with the court, within five days after the date the copy is
21 received, a contest to the affidavit. The court shall hold a
22 hearing on the facts alleged in the affidavit as soon as practicable
23 and shall stay the enforcement of the penalty on finding that the
24 alleged facts are true. The person who files an affidavit has the
25 burden of proving that the person is financially unable to pay the
26 amount of the penalty and to give a supersedeas bond.

27 (p) If the person charged does not pay the amount of the

1 penalty and the enforcement of the penalty is not stayed, the office
2 [~~department~~] may forward the matter to the attorney general for
3 enforcement of the penalty and interest as provided by law for legal
4 judgments. An action to enforce a penalty order under this section
5 must be initiated in a court of competent jurisdiction in Travis
6 County or in the county in which the violation was committed.

7 (q) Judicial review of a State Office of Inspector General
8 [~~department~~] order or review under this section assessing a penalty
9 is under the substantial evidence rule. A suit may be initiated by
10 filing a petition with a district court in Travis County, as
11 provided by Subchapter G, Chapter 2001, Government Code.

12 (r) If a penalty is reduced or not assessed, the office
13 [~~department~~] shall remit to the person the appropriate amount plus
14 accrued interest if the penalty has been paid or shall execute a
15 release of the bond if a supersedeas bond has been posted. The
16 accrued interest on amounts remitted by the office [~~department~~]
17 under this subsection shall be paid at a rate equal to the rate
18 provided by law for legal judgments and shall be paid for the period
19 beginning on the date the penalty is paid to the office [~~department~~]
20 under this section and ending on the date the penalty is remitted.

21 (u) Except as provided by Subsection (w), a person found
22 liable for a violation under Subsection (c) that resulted in injury
23 to an elderly person, as defined by Section 48.002(a)(1), a
24 disabled person, as defined by Section 48.002(a)(8)(A), or a person
25 younger than 18 years of age may not provide or arrange to provide
26 health care services under the medical assistance program for a
27 period of 10 years. The office [~~department~~] by rule may provide for

1 a period of ineligibility longer than 10 years. The period of
2 ineligibility begins on the date on which the determination that
3 the person is liable becomes final.

4 (v) Except as provided by Subsection (w), a person found
5 liable for a violation under Subsection (c) that did not result in
6 injury to an elderly person, as defined by Section 48.002(a)(1), a
7 disabled person, as defined by Section 48.002(a)(8)(A), or a person
8 younger than 18 years of age may not provide or arrange to provide
9 health care services under the medical assistance program for a
10 period of three years. The office [~~department~~] by rule may provide
11 for a period of ineligibility longer than three years. The period
12 of ineligibility begins on the date on which the determination that
13 the person is liable becomes final.

14 (w) The office [~~department~~] by rule may prescribe criteria
15 under which a person described by Subsection (u) or (v) is not
16 prohibited from providing or arranging to provide health care
17 services under the medical assistance program. The criteria may
18 include consideration of:

- 19 (1) the person's knowledge of the violation;
- 20 (2) the likelihood that education provided to the
21 person would be sufficient to prevent future violations;
- 22 (3) the potential impact on availability of services
23 in the community served by the person; and
- 24 (4) any other reasonable factor identified by the
25 office [~~department~~].

26 (x) Subsections (b)(1-b) through (1-f) do not prohibit a
27 person from engaging in:

1 (1) generally accepted business practices, as
2 determined by office [~~department~~] rule, including:

3 (A) conducting a marketing campaign;

4 (B) providing token items of minimal value that
5 advertise the person's trade name; and

6 (C) providing complimentary refreshments at an
7 informational meeting promoting the person's goods or services;

8 (2) the provision of a value-added service if the
9 person is a managed care organization; or

10 (3) other conduct specifically authorized by law,
11 including conduct authorized by federal safe harbor regulations (42
12 C.F.R. Section 1001.952).

13 SECTION 30. Subsection (d), Section 32.070, Human Resources
14 Code, is amended to read as follows:

15 (d) This section does not apply to a computerized audit
16 conducted using the Medicaid Fraud Detection Audit System or an
17 audit or investigation of fraud and abuse conducted by the Medicaid
18 fraud control unit of the office of the attorney general, the office
19 of the state auditor, the State Office of Inspector General [~~office~~
20 ~~of the inspector general~~], or the Office of Inspector General in the
21 United States Department of Health and Human Services.

22 SECTION 31. Subsection (e), Section 33.015, Human Resources
23 Code, is amended to read as follows:

24 (e) The department shall require a person exempted under
25 this section from making a personal appearance at department
26 offices to provide verification of the person's entitlement to the
27 exemption on initial eligibility certification and on each

1 subsequent periodic eligibility recertification. If the person
2 does not provide verification and the department considers the
3 verification necessary to protect the integrity of the food stamp
4 program, the department shall initiate a fraud referral to the
5 State Office of Inspector General [~~department's office of inspector~~
6 ~~general~~].

7 SECTION 32. The following sections of the Government Code
8 are repealed:

- 9 (1) Section 531.1021;
10 (2) Section 531.103;
11 (3) Section 531.104;
12 (4) Section 531.108; and
13 (5) Section 531.115.

14 SECTION 33. (a) The State Office of Inspector General
15 under Chapter 2116, Government Code, as added by this Act, is
16 created on the effective date of this Act.

17 (b) If this Act takes immediate effect, then on September 1,
18 2007:

19 (1) the office of inspector general of the Health and
20 Human Services Commission created under Section 531.102,
21 Government Code, as that section existed before amendment by this
22 Act, is abolished;

23 (2) all powers, duties, obligations, rights,
24 contracts, records, personal property, unspent appropriations,
25 state and federal funds, including overhead costs, support costs,
26 and lease or colocation costs, of the office of inspector general of
27 the Health and Human Services Commission are transferred, as

1 consistent with this Act, to the State Office of Inspector General;
2 and

3 (3) all personnel and assets currently assigned to the
4 office of inspector general of the Health and Human Services
5 Commission or substantially engaged in the performance of the
6 functions of that office are transferred, as consistent with this
7 Act, to the State Office of Inspector General.

8 (c) If this Act takes effect September 1, 2007, then on
9 December 1, 2007:

10 (1) the office of inspector general of the Health and
11 Human Services Commission created under Section 531.102,
12 Government Code, as that section existed before amendment by this
13 Act, is abolished;

14 (2) all powers, duties, obligations, rights,
15 contracts, records, personal property, unspent appropriations,
16 state and federal funds, including overhead costs, support costs,
17 and lease or colocation costs, of the office of inspector general of
18 the Health and Human Services Commission are transferred, as
19 consistent with this Act, to the State Office of Inspector General;
20 and

21 (3) all personnel and assets currently assigned to the
22 office of inspector general of the Health and Human Services
23 Commission or substantially engaged in the performance of the
24 functions of that office are transferred, as consistent with this
25 Act, to the State Office of Inspector General.

26 (d) In this section, "personnel and assets currently
27 assigned" means all personnel and full-time equivalent employees

1 assigned to or supporting the function being transferred within the
2 most recent biennial period, regardless of whether the positions
3 were filled or vacant on October 31, 2006, plus any additional
4 full-time equivalent employees assigned to or approved for the
5 function before the date of transfer, and all inventory, documents,
6 records, and equipment, including computer equipment, assigned as
7 of October 31, 2006, to the function or personnel being transferred
8 or in the possession of personnel being transferred, plus any
9 additional inventory, documents, records, and equipment, including
10 computer equipment, assigned to or approved for the function or
11 personnel before the date of transfer.

12 (e) Funds transferred under this section for salaries must
13 be at the classification and salary levels obtaining on the
14 effective date of this Act, including any increases in salary or
15 benefits due.

16 SECTION 34. (a) All future federal funding to be allocated
17 to the office of inspector general of the Health and Human Services
18 Commission, including drawing funds and transferring funds, shall
19 be renegotiated by the inspector general for reallocation to the
20 State Office of Inspector General. The inspector general shall
21 submit any necessary waiver request or other required
22 authorization.

23 (b) For the purpose of federal single state agency funding
24 requirements, any funds related to the office of inspector general
25 of the Health and Human Services Commission that cannot be
26 appropriated directly to the State Office of Inspector General
27 shall be transferred from the appropriate agency to the State

1 Office of Inspector General without alteration.

2 SECTION 35. (a) The Health and Human Services Commission
3 shall take all action necessary to provide for the orderly transfer
4 of the responsibilities of the commission's office of inspector
5 general to the State Office of Inspector General.

6 (b) An inventory of personnel, equipment, documents,
7 records, and assets to be transferred shall be accomplished jointly
8 by the Health and Human Services Commission and the inspector
9 general. On approval of the inspector general and the executive
10 commissioner of the Health and Human Services Commission, the
11 completed inventory shall be submitted to all affected agencies.

12 (c) The inspector general and the Health and Human Services
13 Commission shall adopt rules requiring that all transfers from the
14 commission to the State Office of Inspector General be completed in
15 accordance with this Act. In the event a transfer is not completed
16 on the date specified, all possible efforts shall be made to
17 promptly conclude the transfer.

18 (d) A rule or form adopted by the office of inspector
19 general of the Health and Human Services Commission is a rule or
20 form of the State Office of Inspector General and remains in effect
21 until changed by the State Office of Inspector General.

22 (e) A reference in law or administrative rule to the office
23 of inspector general of the Health and Human Services Commission
24 means the State Office of Inspector General.

25 SECTION 36. (a) Not later than the 30th day after the
26 effective date of this Act, the governor shall appoint an inspector
27 general under Chapter 2116, Government Code, as added by this Act,

1 to an initial term expiring February 1, 2009.

2 (b) The term of the person appointed as inspector general
3 under Section 531.102, Government Code, as that section existed
4 before amendment by this Act, expires on the date the office of
5 inspector general of the Health and Human Services Commission is
6 abolished under this Act.

7 (c) This section does not prohibit a person described by
8 Subsection (b) of this section from being appointed as inspector
9 general under Chapter 2116, Government Code, as added by this Act,
10 if the person has the qualifications required under that chapter.

11 SECTION 37. (a) The amendment by this Act of Section
12 531.102, Government Code, does not affect the validity of a
13 complaint, investigation, or other proceeding initiated under that
14 section before the effective date of this Act. A complaint,
15 investigation, or other proceeding initiated under that section is
16 transferred without change to the State Office of Inspector General
17 created under Chapter 2116, Government Code, as added by this Act.

18 (b) The repeal by this Act of Section 531.1021, Government
19 Code, does not affect the validity of a subpoena issued under that
20 section before the effective date of this Act. A subpoena issued
21 under that section before the effective date of this Act is governed
22 by the law that existed when the subpoena was issued, and the former
23 law is continued in effect for that purpose.

24 (c) The abolition by this Act of the office of inspector
25 general of the Health and Human Services Commission created under
26 Section 531.102, Government Code, as that section existed before
27 amendment by this Act, does not affect the validity of an action

1 taken by that office before it is abolished.

2 SECTION 38. The inspector general shall submit the first
3 annual report under Section 2116.203, Government Code, as added by
4 this Act, not later than November 1, 2008.

5 SECTION 39. If before implementing any provision of this
6 Act a state agency determines that a waiver or authorization from a
7 federal agency is necessary for implementation of that provision,
8 the agency affected by the provision shall request the waiver or
9 authorization and may delay implementing that provision until the
10 waiver or authorization is granted.

11 SECTION 40. This Act takes effect immediately if it
12 receives a vote of two-thirds of all the members elected to each
13 house, as provided by Section 39, Article III, Texas Constitution.
14 If this Act does not receive the vote necessary for immediate
15 effect, this Act takes effect September 1, 2007.