

Amend CSHB 2942 (house committee printing) as follows:

(1) On page 8, lines 18 and 19, strike ", inspectors general, deputy inspectors general, assistant inspectors general,".

(2) On page 9, strike lines 24-26.

(3) On page 9, line 27, strike "(d)" and substitute "(c)".

(4) Strike page 23, line 27 through page 41, line 13.

(5) Strike page 60, line 5 through page 61, line 8, and renumber subsequent SECTIONS of the article accordingly.

(6) Add the following appropriately numbered ARTICLE to the bill and renumber remaining ARTICLES of the bill accordingly:

ARTICLE _____. INSPECTOR GENERAL

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

CHAPTER 422. OFFICE OF INSPECTOR GENERAL

SUBCHAPTER A. GENERAL PROVISIONS

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

Sec. 422.002. DEFINITIONS. In this chapter:

(1) "Agency" means a board, commission, committee, department, office, division, or other agency of the executive branch of state government. The term does not include an institution of higher education as defined by Section 61.003, Education Code.

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

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

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

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

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

(ii) a provider; or

(iii) another supplier of services; and

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

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

(6) "Inspector general" means the inspector general appointed under Section 422.101.

(7) "Office" means the office of inspector general established under this chapter.

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

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

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

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

(10) "Review" includes an audit, inspection, investigation, evaluation, or similar activity.

(11) "State funds" or "state money" includes federal funds or money received and appropriated by the state or for which the state has oversight responsibility.

Sec. 422.003. APPLICATION OF SUNSET ACT. The office of inspector general is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2021.

Sec. 422.004. AGENCY ESTABLISHMENT OF INSPECTOR GENERAL OFFICE. An agency may not establish an office of inspector general without specific legislative authorization.

Sec. 422.005. REFERENCE IN OTHER LAW. (a) Notwithstanding any other provision of law, a reference in law or rule to an agency's office of inspector general means the office of inspector

general established under this chapter.

(b) Notwithstanding any other provision of law, a reference in law or rule to the commission's office of investigations and enforcement or the commission's office of inspector general means the office of inspector general established under this chapter.

[Sections 422.006-422.050 reserved for expansion]

SUBCHAPTER B. ADMINISTRATION

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

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

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

(d) The office consists of the inspector general, deputy inspectors general, and other personnel necessary to carry out the duties of the inspector general.

Sec. 422.052. INDEPENDENCE OF OFFICE. (a) Except as otherwise provided by this chapter, the office and inspector general operate independently of any other agency.

(b) The inspector general, a deputy inspector general, and the office staff are not employees of any other agency.

Sec. 422.053. ADMINISTRATIVE ATTACHMENT. A person designated by the inspector general to serve as the deputy inspector general for an agency, together with office staff assigned to the deputy inspector general, are administratively attached to the assigned agency. The assigned agency shall provide to office personnel administrative support services.

Sec. 422.054. SERVICE LEVEL AGREEMENT. (a) The office and each agency to which a deputy inspector general is appointed shall enter into a service level agreement that establishes the performance standards and deliverables with regard to administrative support provided to the office by the agency.

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

(c) The commission shall provide to the deputy inspector general designated for the commission and that person's staff, for the state fiscal biennium beginning September 1, 2009, the same

level of administrative support the commission provided to the office established under former Section 531.102 for the state fiscal biennium beginning September 1, 2007. This subsection expires January 1, 2012.

[Sections 422.055-422.100 reserved for expansion]

SUBCHAPTER C. INSPECTOR GENERAL AND PERSONNEL

Sec. 422.101. APPOINTMENT. (a) From a list of three or more names submitted to the governor by the Legislative Budget Board, the governor, with the advice and consent of the senate, shall appoint an inspector general to serve as director of the office.

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

(c) In preparing the list and in making the appointment, the Legislative Budget Board and the governor, respectively, shall consider the person's knowledge of laws, experience in the enforcement of law, honesty, integrity, education, training, executive ability, capability for strong leadership, and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation, criminal justice administration, or other closely related fields.

Sec. 422.102. TERM; VACANCY. (a) The inspector general serves a two-year term that expires on February 1 of each odd-numbered year. The inspector general may be reappointed to one or more subsequent terms.

(b) The governor shall fill a vacancy in the office of inspector general for the unexpired term in the same manner as the inspector general is appointed under Section 422.101(a).

Sec. 422.103. ELIGIBILITY. (a) A person is not eligible for appointment as inspector general or designation as a deputy inspector general if the person or the person's spouse:

(1) is an officer or paid consultant of a business entity or other organization that holds a license, certificate of authority, or other authorization from an agency for which a deputy inspector general is appointed or that receives funds from an agency for which a deputy inspector general is appointed;

(2) owns or controls, directly or indirectly, more

than a 10 percent interest in a business entity or other organization receiving funds from an agency for which a deputy inspector general is appointed; or

(3) uses or receives a substantial amount of tangible goods or funds from an agency for which a deputy inspector general is appointed, other than compensation or reimbursement authorized by law.

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

(c) A person who is a former or current executive or manager of an agency may not be appointed as the inspector general or a deputy inspector general for that agency before the fifth anniversary of the person's last day of service with the agency.

(d) The inspector general, a deputy inspector general, or an employee of the office may not during the person's term of appointment or employment:

(1) become a candidate for any elective office;

(2) hold another elected or appointed public office except for an appointment on a governmental advisory board or study commission or as otherwise expressly authorized by law;

(3) be actively involved in the affairs of any political party or political organization; or

(4) actively participate in any campaign for any elective office.

Sec. 422.104. CONFLICT OF INTEREST. (a) The inspector general may not serve as an ex officio member on the governing body of a governmental entity.

(b) The inspector general may not have a financial interest in the transactions of the office or an agency.

(c) The inspector general and the deputy inspector general designated for the commission may not have a financial interest in the transactions of a provider.

Sec. 422.105. REMOVAL. The governor, with the advice and

consent of the senate, may remove the inspector general from office as provided by Section 9, Article XV, Texas Constitution.

Sec. 422.106. DEPUTY INSPECTORS GENERAL. (a) Subject to available appropriations and as necessary to carry out the powers and duties of the inspector general under this chapter and other laws granting jurisdiction to or applicable to the inspector general, the inspector general may designate a person to serve as the deputy inspector general for any agency or serve as a deputy inspector general for more than one agency.

(b) The inspector general shall designate persons to serve as the deputy inspectors general for each of the following agencies:

- (1) the Health and Human Services Commission;
- (2) the Texas Youth Commission;
- (3) the Texas Department of Criminal Justice;
- (4) the Texas Education Agency; and
- (5) the Texas Department of Transportation.

(c) A deputy inspector general is an at-will employee and may be discharged by the inspector general without a hearing.

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

(e) Each agency to which a deputy inspector general is appointed shall provide to the agency's designated deputy inspector general facilities and support services, including suitable office space, furniture, computer and communications equipment, administrative support, and salary and benefits as provided by the General Appropriations Act.

Sec. 422.107. PEACE OFFICERS. (a) The office may employ and commission peace officers to assist the inspector general in carrying out the duties of the office relating to detection, investigation, and prevention of criminal wrongdoing, malfeasance, misfeasance, or fraud, waste, and abuse in programs at an agency or in programs receiving state or federal funds that are implemented, administered, or overseen by or for an agency.

(b) A commissioned peace officer or otherwise designated law enforcement officer employed by the office is not entitled to supplemental benefits from the law enforcement and custodial

officer supplemental retirement fund unless the officer transfers from a position, without a break in service, that qualifies for supplemental retirement benefits from the fund.

Sec. 422.108. IN-HOUSE GENERAL COUNSEL. The inspector general shall employ an in-house general counsel. The general counsel must:

(1) be an attorney licensed to practice law in this state;

(2) be in good standing with the State Bar of Texas; and

(3) have at least five years of continuing experience in advising senior executive management in the public or private sector on contracts and contract management.

Sec. 422.109. EXPERTS. Subject to the availability of funds, the inspector general and deputy inspectors general may contract with certified public accountants, qualified management consultants, or other professional experts as necessary to independently perform the functions of the office.

Sec. 422.110. EMPLOYEES; TRAINING. (a) The inspector general may appoint, employ, promote, and remove personnel as the inspector general considers necessary for the efficient and effective administration of the office.

(b) The inspector general shall train office personnel to pursue, efficiently and as necessary, fraud, waste, and abuse cases in programs at an agency or in other state or federally funded programs implemented, administered, or overseen by or for the agency.

Sec. 422.111. ASSISTANCE BY AGENCY EMPLOYEES. (a) The inspector general may require employees of an agency to provide information, resources, or other assistance to the office as the inspector general considers necessary to fulfill the duties and responsibilities imposed on the office under this chapter and other law in connection with the investigation of fraud, waste, and abuse in the provision of services for programs at an agency or in state or federally funded programs implemented, administered, or overseen by or for the agency.

(b) The inspector general or the deputy inspector general

for the commission may also require employees of any health and human services agency to provide assistance under Subsection (a).

Sec. 422.112. MERIT SYSTEM. (a) The office may establish a merit system for its employees.

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

[Sections 422.113-422.150 reserved for expansion]

SUBCHAPTER D. GENERAL POWERS AND DUTIES

Sec. 422.151. GENERAL RESPONSIBILITIES. (a) The office is responsible for:

(1) the investigation of any matter pertaining to or involving an agency that receives state or federal funds; and

(2) the investigation, prevention, and detection of criminal misconduct and wrongdoing and of fraud, waste, and abuse, as defined in applicable state and federal law, in the provision or funding of services by or for an agency or under a program implemented, administered, or overseen by or for the agency.

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

(1) coordinating investigative efforts to aggressively recover money;

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

(3) maximizing opportunities for referral of cases to the office of the attorney general in accordance with this chapter and other applicable law.

(c) The inspector general shall investigate allegations of fraud, waste, abuse, misconduct, nonfeasance, misfeasance, and malfeasance, and violations of this chapter or other law.

(d) The office may:

(1) conduct criminal, civil, and administrative investigations and initiate reviews of an agency as considered appropriate by the inspector general; and

(2) receive and investigate complaints from any source

on its own initiative.

(e) The inspector general shall perform all other duties and exercise all other powers granted to the inspector general's office by this chapter or another law.

Sec. 422.152. GENERAL POWERS. The office has all the powers necessary or appropriate to carry out its responsibilities and functions under this chapter and other law. In addition to performing functions and duties otherwise provided by law, the office may:

(1) audit the use and effectiveness of state or federal funds, including contract and grant funds, administered by a person or an agency;

(2) conduct reviews, investigations, and inspections relating to the funds described by Subdivision (1);

(3) recommend policies promoting economical and efficient administration of the funds described by Subdivision (1) and the prevention and detection of fraud, waste, and abuse in administration of those funds; and

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

Sec. 422.153. RULEMAKING BY INSPECTOR GENERAL. (a) Notwithstanding Section 531.0055(e) and any other law, the inspector general shall adopt the rules necessary to administer the functions of the office, including rules to address the imposition of sanctions and penalties for violations and due process requirements for imposing sanctions and penalties.

(b) A rule, standard, or form adopted by an agency that is necessary to accomplish the duties of the office is considered to also be a rule, standard, or form of the office and remains in effect as a rule, standard, or form of the office until changed by the inspector general.

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

(1) coordinating investigative efforts to aggressively recover money;

(2) allocating resources to cases that have the

strongest supportive evidence and the greatest potential for recovery of money; and

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

Sec. 422.154. STATE AUDITOR AUDITS, INVESTIGATIONS, AND ACCESS TO INFORMATION NOT IMPAIRED. This subchapter or other law related to the operation of the inspector general does not:

(1) take precedence over the authority of the state auditor to conduct audits under Chapter 321 or other law; or

(2) prohibit the state auditor from conducting an audit, investigation, or other review or from having full and complete access to all records and other information, including witnesses and electronic data, that the state auditor considers necessary for the audit, investigation, or other review.

Sec. 422.155. PUBLIC PAMPHLET. (a) The office shall provide information of public interest in the form of a pamphlet that describes:

(1) the functions of the office, including the functions of the inspector general;

(2) the matters or issues that may be subject to an investigation or review performed by the office; and

(3) the manner in which a person may report an allegation of fraud, abuse, or criminal wrongdoing to the office.

(b) The office shall make the information described by Subsection (a) available to state officers and employees and to the public.

Sec. 422.156. INTERNET WEBSITE. (a) The office shall maintain an Internet website accessible to the public.

(b) The office shall post in a conspicuous place on the office's Internet website the public interest pamphlet prepared under Section 422.155.

(c) The office shall ensure that the office's Internet website allows a person to report to the office an allegation of fraud, abuse, or criminal wrongdoing related to an agency. A report submitted through the office's Internet website, in person, or through another means of communication may be anonymous.

Sec. 422.157. SEAL. The seal of the office shall be a

five-pointed star in the center with the words "Office of Inspector General, State of Texas" engraved around the margin. The seal shall be used to authenticate official documents issued by the office.

Sec. 422.158. EXECUTIVE ORDERS. (a) The governor may issue executive orders directing agencies to implement recommendations issued by the office for corrective or remedial actions promoting the economical and efficient administration of money and the detection of fraud.

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

Sec. 422.159. DEFENSE BY ATTORNEY GENERAL. The attorney general shall defend any action brought against the inspector general, a deputy inspector general, or an employee or officer of the office as a result of that person's official act or omission, whether or not the person has terminated service with the office at the time the action is instituted.

Sec. 422.160. INTERAGENCY COORDINATION. (a) The office and the attorney general shall enter into a memorandum of understanding to develop and implement joint written procedures for processing cases of suspected fraud, waste, or abuse, as those terms are defined by state or federal law, or other violations of state or federal law under programs at an agency for which a deputy inspector general is appointed or in programs at any agency receiving state or federal funds that are implemented, administered, or overseen by the agency.

(b) The memorandum of understanding shall require:

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

(2) the office to refer each case of suspected fraud,

waste, or abuse to the attorney general not later than the 20th business day after the date the office determines that the existence of fraud, waste, or abuse is reasonably indicated;

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

(4) the office to keep detailed records for cases processed by the office or the attorney general, including information on the total number of cases processed and, for each case:

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

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

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

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

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

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

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

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

(c) An exchange of information under this section between the attorney general and the office or any other agency does not affect whether the information is subject to disclosure under Chapter 552.

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

Sec. 422.161. INFORMATION AND TECHNOLOGY. The office may obtain information or technology necessary to enable the office to meet its responsibilities under this chapter or other law.

[Sections 422.162-422.200 reserved for expansion]

SUBCHAPTER E. REVIEWS, INVESTIGATIONS, AND AUDITS

Sec. 422.201. REVIEW, INVESTIGATION, AND AUDIT AUTHORITY.

(a) The inspector general may evaluate any activity or operation of:

(1) an agency;

(2) a provider, in connection with an activity listed in Section 422.002(9) or in connection with the provider's relationship with the commission or a health and human services agency as defined by Section 531.001; or

(3) a person in this state in relation to the investigation, detection, or prevention of fraud, waste, abuse, or employee misconduct in a program at an agency or in a state or federally funded program implemented, administered, or overseen by or for the agency.

(b) A review may include an investigation or other inquiry into a specific act or allegation of, or a specific financial transaction or practice that may involve, impropriety, malfeasance, or nonfeasance in the obligation, spending, receipt, or other use of state or federal money.

(c) The office shall conduct reviews and inspections to protect the public and detect and prevent fraud, waste, and abuse in

the provision or funding of services or programs by or for an agency.

(d) An agency or the governing body or governing officer of an agency may not impair or prohibit the inspector general from initiating or completing a review.

(e) With respect to an agency, the inspector general may audit and review the use and effectiveness of state or federal funds, including contract and grant funds, administered by a person or agency receiving the funds in connection with an agency or state or federally funded program implemented, administered, or overseen by or for the agency.

Sec. 422.202. CLAIMS CRITERIA FOR INVESTIGATIONS. The office by rule shall set specific claims criteria that, when met, require the office to begin an investigation.

Sec. 422.203. INITIATION OF REVIEW. The inspector general may initiate a review:

- (1) on the inspector general's own initiative;
- (2) at the request of an agency or the governing body or governing officer of the agency; or
- (3) based on a complaint from any source concerning a matter described by Section 422.201.

Sec. 422.204. ACCESS TO INFORMATION. (a) To further a review conducted by the office, the inspector general or a deputy inspector general is entitled to access all books, records, accounts, documents, reports, vouchers, databases, systems, or other information, including confidential information, electronic data, and internal records relevant to the functions of the office that are maintained by or for a person, agency, or provider, if applicable, in connection with an agency or a state or federally funded program implemented, administered, or overseen by or for the agency. The inspector general's authority under this subsection supersedes any claim of privilege.

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

Sec. 422.205. COOPERATION REQUIRED. To further a review

conducted by the inspector general's office, the inspector general or deputy inspector general may require medical or other professional assistance from an agency or an auditor, accountant, or other employee of the agency.

Sec. 422.206. EMPLOYEE REPORTS. The inspector general may require employees at an agency to report to the office information regarding fraud, waste, misuse or abuse of funds or resources, corruption, or illegal acts.

Sec. 422.207. SUBPOENAS. (a) The inspector general may issue a subpoena to compel the attendance of a relevant witness at a hearing or deposition under this chapter or to compel the production, for inspection or copying, of books, papers, records, documents, or other relevant materials, including electronic data, in connection with a review, hearing, or deposition conducted under this chapter. The inspector general may issue a subpoena for the records of any person receiving any funds from an agency under a contract for the delivery of goods or services to this state.

(b) The inspector general may delegate the authority to issue subpoenas to a deputy inspector general.

(c) A subpoena may be served personally or by certified mail. If a person fails to comply with a subpoena, the inspector general, acting through the attorney general, may file suit to enforce the subpoena in a district court in this state.

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

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

(f) Nothing in this section limits or alters a person's rights under state or federal law.

Sec. 422.208. INTERNAL AUDITOR. (a) In this section, "internal auditor" means a person appointed under Section 2102.006.

(b) The internal auditor for an agency shall provide the inspector general with a copy of the agency's internal audit plan to:

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

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

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

(1) part or division of the agency;

(2) contract, procurement, or grant; and

(3) program conducted by the agency.

Sec. 422.209. COOPERATION WITH LAW ENFORCEMENT OFFICIALS AND OTHER ENTITIES. (a) The inspector general may provide information and evidence relating to criminal acts to the state auditor's office and appropriate law enforcement officials.

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

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

(d) The office may conduct joint investigations with the attorney general or law enforcement agencies.

(e) The attorney general or prosecutor shall inform the inspector general on whether an investigation is ongoing with regard to any matter referred by the inspector general.

(f) The attorney general or a prosecutor that decides not to investigate or prosecute a complaint alleging criminal conduct referred to the attorney general or prosecutor by the inspector general shall promptly notify the inspector general of that decision.

Sec. 422.210. COOPERATION AND COORDINATION WITH STATE AUDITOR. (a) The state auditor may, on request of the inspector general, provide appropriate information or other assistance to the inspector general or office, as determined by the state auditor.

(b) The inspector general may meet with the state auditor's office to coordinate a review conducted under this chapter, share

information, or schedule work plans.

(c) The state auditor is entitled to access all information maintained by the inspector general, including vouchers, electronic data, internal records, and information obtained under Section 422.204 or subject to Section 422.253.

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

Sec. 422.211. PREVENTION. (a) The inspector general may recommend to an agency or the presiding officer of the agency policies on:

(1) promoting economical and efficient administration of state or federal funds administered by an individual or entity that received the funds from an agency; and

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

(b) The inspector general may provide training or other education regarding the prevention of fraud, waste, and abuse to employees of an agency. The training or education provided must be approved by the presiding officer of the agency.

Sec. 422.212. AWARD FOR REPORTING FRAUD, WASTE, ABUSE, OR OVERCHARGES. (a) If the office determines that the report results in the recovery of an administrative or civil penalty imposed by law, the office may grant an award to an individual who reports:

(1) activity that constitutes fraud, waste, or abuse of money related to any agency programs or in programs receiving state or federal funds that are implemented, administered, or overseen by the agency; or

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

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

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

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

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

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

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

Sec. 422.213. RULEMAKING BY PRESIDING OFFICER OF AGENCY.
An agency may adopt rules governing the agency's response to reports and referrals from the inspector general on issues identified by the inspector general related to the agency or a contractor of the agency.

Sec. 422.214. ALLEGATIONS OF MISCONDUCT AGAINST PRESIDING OFFICER. If a review by the inspector general involves allegations that a presiding officer of the governing body of an agency, or if applicable the single state officer who governs the agency, has engaged in misconduct, the inspector general shall report to the governor during the review until the report is completed or the review is closed without a finding.

Sec. 422.215. RIGHT TO DECLINE INVESTIGATION. The inspector general may decline to investigate a complaint that the inspector general determines:

- (1) is trivial, frivolous, or vexatious;
- (2) was not made in good faith;
- (3) is based on a situation for which too much time has passed to justify an investigation;
- (4) may not be adequately investigated with the resources available, considering established priorities; or
- (5) addresses a matter that is not within the inspector general's investigatory authority.

[Sections 422.216-422.250 reserved for expansion]

SUBCHAPTER F. REPORTS

Sec. 422.251. REPORTING OFFICE FINDINGS. Unless the findings would compromise an ongoing investigation by the attorney general or law enforcement, the inspector general shall report the

findings of the office in connection with a review conducted under this chapter to:

(1) the presiding officer of the governing body of the agency, or if applicable the single state officer who governs the agency;

(2) the governor;

(3) the lieutenant governor;

(4) the speaker of the house of representatives;

(5) the comptroller;

(6) the state auditor; and

(7) the attorney general.

Sec. 422.252. FLAGRANT VIOLATIONS. The inspector general may report to the presiding officer of the governing body of the agency associated with the review, or if applicable the single state officer who governs the agency, the governor, and the state auditor a particularly serious or flagrant problem relating to the administration of a program, operation of the agency, or interference with an inspector general review.

Sec. 422.253. INFORMATION CONFIDENTIAL. (a) Except as provided by this chapter, all information and material compiled by the inspector general during a review under this chapter is:

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

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

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

(1) a law enforcement agency;

(2) the attorney general;

(3) the state auditor; or

(4) the agency that is the subject of a review.

(c) A person that receives information under Subsection (b) may not disclose the information except to the extent that disclosure is consistent with the authorized purpose for which the

person received the information.

Sec. 422.254. DRAFT OF FINAL REVIEW REPORT; AGENCY RESPONSE. (a) Except in cases in which the office has determined that potential fraud, waste, or abuse exists, the office shall provide a draft of the final review report of any investigation, audit, or review of the operations of an agency to the presiding officer of the governing body of the agency, or if applicable to the single state officer who governs the agency, before publishing the office's final review report.

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

(c) Notwithstanding Subsection (a), the office may not provide a draft report to the presiding officer of the governing body of the agency, or if applicable to the single state officer who governs the agency, if in the inspector general's opinion providing the draft report could negatively affect any anticipated civil or criminal proceedings.

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

Sec. 422.255. FINAL REVIEW REPORTS; AGENCY RESPONSE. (a) The inspector general shall prepare a final report for each review conducted under this chapter. The final report must include:

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

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

(3) a description of any findings of wrongdoing.

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

(c) All working papers and other documents related to compiling the final review reports remain confidential and are not subject to disclosure under Chapter 552.

(d) Not later than the 60th day after the date the office issues a final report that identifies deficiencies or

inefficiencies in, or recommends corrective measures in the operations of, an agency, the agency shall file a response that includes:

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

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

Sec. 422.256. COSTS. (a) The inspector general shall maintain information regarding the cost of reviews.

(b) The inspector general may cooperate with appropriate administrative and prosecutorial agencies, including the attorney general, in recovering costs incurred under this chapter from nongovernmental entities, including contractors or individuals involved in:

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

(2) abusive or wilful misconduct; or

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

Sec. 422.257. SEMIANNUAL REPORT; LEGISLATIVE REPORT. (a) The office shall prepare and submit a semiannual report to the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, the comptroller, and each member of the legislature concerning:

(1) any completed final review; and

(2) the activities of the office and the attorney general in detecting and preventing fraud, waste, and abuse under any agency programs or in programs receiving state or federal funds that are implemented, administered, or overseen by an agency that is reviewed by the office under this chapter.

(b) Not later than December 1 of each even-numbered year, the office shall issue to each member of the legislature a report that contains the information required under Subsection (a) for the two years immediately preceding the legislative session. The office shall make the report available to the public.

[Sections 422.258-422.300 reserved for expansion]

SUBCHAPTER G. HEALTH AND HUMAN SERVICES POWERS AND DUTIES

Sec. 422.301. GENERAL HEALTH AND HUMAN SERVICES POWERS.

The office has all the powers necessary or appropriate to carry out its responsibilities and functions under this chapter and other law in relation to health and human services matters. In addition to performing functions and duties otherwise provided by law, the office may provide for coordination between the office and special investigative units formed by managed care organizations under Section 531.113 or entities with which managed care organizations contract under that section.

Sec. 422.302. HEALTH AND HUMAN SERVICES RESPONSIBILITIES.

The office is responsible for:

- (1) the investigation of fraud, waste, and abuse in the provision or funding of health or human services by this state;
- (2) the enforcement of state law relating to the provision of those services to protect the public; and
- (3) the prevention and detection of crime relating to the provision of those services.

Sec. 422.303. INTEGRITY REVIEW FOR MEDICAID PROGRAM. (a)

The deputy inspector general designated for the commission shall conduct an integrity review to determine whether there is sufficient basis to warrant a full investigation on receipt of any complaint of fraud, waste, or abuse of funds in the state Medicaid program from any source.

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

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

- (1) if a provider is suspected of fraud involving criminal conduct, the office must refer the case to the state's

Medicaid fraud control unit, provided that the criminal referral does not preclude the office from continuing its investigation of the provider or preclude the imposition of appropriate administrative or civil sanctions; or

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

Sec. 422.304. REFERRAL TO STATE MEDICAID FRAUD CONTROL UNIT. (a) At the time the office learns or has reason to suspect that a health or human services provider's records related to participation in the state Medicaid program are being withheld, concealed, destroyed, fabricated, or in any way falsified, the office shall immediately refer the case to the state's Medicaid fraud control unit.

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

Sec. 422.305. HOLD ON CLAIM REIMBURSEMENT PAYMENT; EXCLUSION FROM PROGRAMS. (a) In addition to other instances authorized under state or federal law, the office shall impose without prior notice a hold on payment of claims for reimbursement submitted by a health or human services provider to compel production of records related to participation in the state Medicaid program or on request of the state's Medicaid fraud control unit, as applicable.

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

(c) The office shall, in consultation with the state's Medicaid fraud control unit, establish guidelines under which holds on payment or exclusions from a health and human services program:

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

(2) shall automatically be imposed on a provider.

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

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

Sec. 422.306. REQUEST FOR EXPEDITED HEARING. (a) On timely written request by a health or human services provider subject to a hold on payment under Section 422.305, other than a hold requested by the state's Medicaid fraud control unit, the office shall file a request with the State Office of Administrative Hearings for an expedited administrative hearing regarding the hold.

(b) The health or human services provider must request an expedited hearing not later than the 10th day after the date the provider receives notice from the office under Section 422.305(b).

Sec. 422.307. INFORMAL RESOLUTION. (a) The inspector general shall adopt rules that allow a health or human services provider subject to a hold on payment under Section 422.305, other than a hold requested by the state's Medicaid fraud control unit, to seek an informal resolution of the issues identified by the office in the notice provided under that section.

(b) A health or human services provider that seeks an informal resolution must do so not later than the 10th day after the date the provider receives notice from the office under Section 422.305(b).

(c) A health or human services provider's decision to seek an informal resolution does not extend the time by which the provider must request an expedited administrative hearing under Section 422.306.

(d) A hearing initiated under Section 422.305 shall be stayed at the office's request until the informal resolution process is completed.

[Sections 422.308-422.450 reserved for expansion]

SUBCHAPTER J. PENALTIES

Sec. 422.451. ADMINISTRATIVE OR CIVIL PENALTY; INJUNCTION.

(a) The office may request that the attorney general obtain an

injunction to prevent a person from disposing of an asset identified by the office as potentially subject to recovery by the office due to the person's fraud, waste, or abuse.

(b) The office may act for an agency in assessing administrative or civil penalties the agency is authorized to assess under applicable law if:

(1) the inspector general is required to designate a deputy inspector general for the agency under Section 422.106;

(2) the agency is a health and human services agency as defined by Section 531.001; or

(3) the penalty is imposed in connection with fraud, waste, or abuse in the use of state or federal funds.

(c) If the office imposes an administrative or civil penalty under Subsection (b) for an agency:

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

(2) the office shall impose the penalty under applicable rules of the office, this chapter, and applicable laws governing the imposition of a penalty by the agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) to prevent or investigate fraud; or

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

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

(13) a consumer reporting agency that:

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

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

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

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

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

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

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

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

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

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

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

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

(9) officers commissioned by the General Services Commission;

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

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

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

(13) municipal park and recreational patrolmen and

security officers;

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

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

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

(17) investigators commissioned by the Texas Medical Board;

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

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

(20) investigators employed by the Texas Racing Commission;

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

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

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

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

(25) an officer employed by the Department of State Health Services under Section 431.2471, Health and Safety Code;

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

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

(28) an investigator commissioned by the commissioner of insurance under Section 701.104, Insurance Code;

(29) apprehension specialists [~~and—inspectors general~~] commissioned by the Texas Youth Commission as officers

under Section [~~Sections 61.0451 and~~] 61.0931, Human Resources Code;

(30) [~~officers appointed by the inspector general of the Texas Department of Criminal Justice under Section 493.019, Government Code,~~

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

(31) [~~(32)~~] commission investigators commissioned by the Texas Private Security Board under Section 1702.061(f), Occupations Code;

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

(33) [~~(34)~~] officers commissioned by the State Board of Dental Examiners under Section 254.013, Occupations Code, subject to the limitations imposed by that section; [~~and~~]

(34) [~~(35)~~] investigators commissioned by the Texas Juvenile Probation Commission as officers under Section 141.055, Human Resources Code; and

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

SECTION _____. The following sections of the Government Code are repealed:

- (1) Section 531.102;
- (2) Section 531.1021; and
- (3) Section 531.103.

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

(b) The repeal by this Act of Section 531.1021, Government Code, does not affect the validity of a subpoena issued under that section before the effective date of this Act. A subpoena issued under that section before the effective date of this Act is governed by the law that existed when the subpoena was issued, and the former

law is continued in effect for that purpose.

SECTION _____. (a) As soon as practicable after the effective date of this Act, the Legislative Budget Board shall submit to the governor a list with the names of at least three persons who may be appointed as inspector general for the office of inspector general as required by Chapter 422, Government Code, as added by this Act.

(b) As soon as practicable after the date the governor receives the list under Subsection (a) of this section, the governor shall appoint an inspector general for the office of inspector general established under Chapter 422, Government Code, as added by this Act, to a term expiring February 1, 2011.

(c) A person serving on the effective date of this Act as inspector general for a state agency subject to Chapter 422, Government Code, as added by this Act, shall serve as the deputy inspector general designated for the agency under Chapter 422, Government Code, as added by this Act, unless and until replaced by the inspector general.

SECTION _____. A contract or proceeding primarily related to a function transferred to the office of inspector general established under this Act is transferred to the office. The transfer does not affect the status of a proceeding or the validity of a contract.

SECTION _____. (a) All personnel and assets currently assigned to the inspector general of an agency subject to Chapter 422, Government Code, as added by this Act, shall be promptly transferred to the office of inspector general established under Chapter 422 along with any equipment, documents, and records currently assigned to or used by the inspector general of that agency. Inventory of personnel, equipment, documents, records, and assets to be transferred under this section shall be accomplished jointly by the transferring agency and the inspector general serving under Chapter 422. All funds previously appropriated or used, from any source, by the transferring agency in support of the transferred functions, personnel, equipment, documents, records, or assets shall also be contemporaneously transferred to the office.

(b) For purposes of this section, "currently assigned" means:

(1) all personnel and vacant full-time equivalent positions assigned to or supporting a transferred function at any time during the state fiscal biennium beginning September 1, 2007; and

(2) all inventory and equipment assigned to a transferred function or transferring personnel or that was in the possession of transferring personnel on or at any time after October 31, 2008.

(c) All state and federal funding, including funding for overhead costs, support costs, and lease or colocation lease costs, for the functions to be transferred to the office of inspector general established under Chapter 422, Government Code, as added by this Act, shall be reallocated to that office.

(d) For purposes of federal single state agency funding requirements, any federal funds for an agency subject to Chapter 422, Government Code, as added by this Act, that may not be appropriated directly to the office of inspector general shall be transferred from the single state agency receiving the funds to the office of inspector general established under Chapter 422 if the funds are intended for a function performed by the office.

SECTION _____. On the effective date of this Act:

(1) all functions, activities, employees, rules, forms, money, property, contracts, memorandums of understanding, records, and obligations of a previously established office of inspector general of an agency subject to Chapter 422, Government Code, as added by this Act, become functions, activities, employees, rules, forms, money, property, contracts, memorandums of understanding, records, and obligations of the office of inspector general established under Chapter 422, without a change in status; and

(2) all money appropriated or budgeted for the operations of a previously established office of inspector general at an agency subject to Chapter 422, Government Code, as added by this Act, including money for providing administrative support, is considered appropriated for the use of the office of inspector

general established under Chapter 422.

SECTION _____._____. (a) Each agency subject to Chapter 422, Government Code, as added by this Act, shall take all action necessary to provide for the orderly transfer of the assets and responsibilities of any previously established office of inspector general for that agency to the office of inspector general established under Chapter 422.

(b) A rule or form adopted by a previously established office of inspector general of an agency subject to Chapter 422, Government Code, as added by this Act, is a rule or form of the office of inspector general established under Chapter 422 and remains in effect until changed by the office of inspector general.

(c) A reference in law or administrative rule to a previously established office of inspector general of an agency subject to Chapter 422, Government Code, as added by this Act, means the office of inspector general established under Chapter 422.

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