

By: Crownover

H.B. No. 4307

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the creation of the office of inspector within the State  
3 Auditor's Office and the appointment of deputy inspectors general  
4 at the Health and Human Services Commission, Texas Youth  
5 Commission, Texas Department of Criminal Justice, Texas Education  
6 Agency, and Texas Department of Transportation; providing  
7 penalties.

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

9 SECTION 1. Section 321.001, Government Code, is designated  
10 as Subchapter A, Chapter 321, Government Code, and a heading is  
11 added to that subchapter to read as follows:

12 SUBCHAPTER A. GENERAL PROVISIONS

13 SECTION 2. Sections 321.002 through 321.023, Government  
14 Code, are designated as Subchapter B, Chapter 321, Government Code,  
15 and a heading is added to that subchapter to read as follows:

16 SUBCHAPTER B. STATE AUDITOR

17 SECTION 3. Chapter 321, Government Code, is amended by  
18 adding Subchapter C to read as follows:

19 SUBCHAPTER C. OFFICE OF INSPECTOR GENERAL DIVISION

20 Sec. 321.101. DEFINITIONS. In this subchapter:

21 (1) "Agency" means a state agency subject to this  
22 subchapter under Section 321.102.

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

1           (3) "Division" means the office of inspector general  
2 division of the state auditor's office.

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

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

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

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

14                           (ii) a provider; or

15                           (iii) another supplier of services; and

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

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

22           (7) "Inspector general" means the inspector general  
23 appointed under Section 321.109.

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

27           (9) "Provider" means a person, firm, partnership,

1 corporation, agency, association, institution, or other entity  
2 that was or is approved by the commission to provide:

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

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

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

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

12 Sec. 321.102. APPLICABILITY. (a) Except as provided by  
13 Subsections (c) and (d), this subchapter applies only to the:

14 (1) Health and Human Services Commission;

15 (2) Texas Youth Commission;

16 (3) Texas Department of Criminal Justice;

17 (4) Texas Education Agency; and

18 (5) Texas Department of Transportation.

19 (b) A state agency may not establish an office of inspector  
20 general without specific legislative authorization.

21 (c) A health and human services agency as defined by Section  
22 531.001 is an agency to which this subchapter applies for purposes  
23 related to the review and investigatory authority of the division.

24 (d) A state agency that receives federal stimulus money is  
25 an agency to which this subchapter applies for purposes of Section  
26 321.122.

27 Sec. 321.103. REFERENCE IN OTHER LAW. (a) Notwithstanding

1 any other provision of law, a reference in law or rule to an  
2 agency's office of inspector general means, for an agency to which  
3 this subchapter applies, the office of inspector general division  
4 of the state auditor's office.

5 (b) Notwithstanding any other provision of law, a reference  
6 in law or rule to the commission's office of investigations and  
7 enforcement or the commission's office of inspector general means  
8 the office of inspector general division of the state auditor's  
9 office.

10 Sec. 321.104. INTERFERENCE PROHIBITED. The governor, the  
11 legislature or a committee of the legislature, or a state agency may  
12 not prevent the inspector general or a deputy inspector general  
13 from initiating, performing, or completing an investigation,  
14 audit, review, or any oversight, compliance, or enforcement  
15 activity pursued by the division under this subchapter or other  
16 law.

17 Sec. 321.105. OFFICE OF INSPECTOR GENERAL. (a) The office  
18 of inspector general is a division of the state auditor's office.

19 (b) The division is governed by the inspector general.

20 (c) The division shall have its principal office and  
21 headquarters in the state auditor's office in Austin.

22 Sec. 321.106. INDEPENDENCE OF DIVISION. Except as  
23 otherwise provided by this subchapter, the division and inspector  
24 general operate independently of any other agency.

25 Sec. 321.107. ADMINISTRATIVE ATTACHMENT. A person  
26 designated by the inspector general to serve as the deputy  
27 inspector general for an agency, together with division staff

1 assigned to the deputy inspector general, are administratively  
2 attached to the assigned agency. The assigned agency shall provide  
3 to the division personnel administrative support services.

4 Sec. 321.108. SERVICE LEVEL AGREEMENT. (a) The division  
5 and each state agency to which this subchapter applies shall enter  
6 into a service level agreement that establishes the performance  
7 standards and deliverables with regard to administrative support  
8 provided to the division by the agency.

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

12 Sec. 321.109. APPOINTMENT. (a) The governor, with the  
13 advice and consent of the senate, shall appoint an inspector  
14 general to serve as director of the division.

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

17 (c) In making the appointment, the governor shall consider  
18 the person's knowledge of laws, experience in the enforcement of  
19 law, honesty, integrity, education, training, and executive  
20 ability.

21 Sec. 321.110. TERM; VACANCY. (a) The inspector general  
22 serves a two-year term that expires on February 1 of each  
23 odd-numbered year.

24 (b) The governor shall fill a vacancy in the office of  
25 inspector general for the unexpired term.

26 Sec. 321.111. ELIGIBILITY. (a) A person is not eligible  
27 for appointment as inspector general or designation as a deputy

1 inspector general if the person or the person's spouse:

2 (1) is an officer or paid consultant of a business  
3 entity or other organization that holds a license, certificate of  
4 authority, or other authorization from an agency to which this  
5 subchapter applies or that receives funds from an agency to which  
6 this subchapter applies;

7 (2) owns or controls, directly or indirectly, more  
8 than a 10 percent interest in a business entity or other  
9 organization receiving funds from an agency to which this  
10 subchapter applies; or

11 (3) uses or receives a substantial amount of tangible  
12 goods or funds from an agency to which this subchapter applies,  
13 other than compensation or reimbursement authorized by law.

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

19 Sec. 321.112. CONFLICT OF INTEREST. (a) The inspector  
20 general may not serve as an ex officio member on the governing body  
21 of a governmental entity.

22 (b) The inspector general may not have a financial interest  
23 in the transactions of the division, the state auditor's office, or  
24 an agency to which this subchapter applies.

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

1       Sec. 321.113. REMOVAL. The governor, with the advice and  
2 consent of the senate, may remove the inspector general from office  
3 as provided by Section 9, Article XV, Texas Constitution.

4       Sec. 321.114. DEPUTY INSPECTORS GENERAL. (a) The  
5 inspector general, in consultation with the office of the governor  
6 and as necessary to implement this subchapter, shall designate  
7 persons to serve as deputy inspectors general for each agency to  
8 which this subchapter applies.

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

11       (c) Each agency to which this subchapter applies shall  
12 provide to the agency's designated deputy inspector general  
13 facilities and support services, including suitable office space,  
14 furniture, computer and communications equipment, administrative  
15 support, and salary and benefits as provided by the General  
16 Appropriations Act.

17       Sec. 321.115. PEACE OFFICERS. (a) The division may employ  
18 and commission peace officers to assist the inspector general in  
19 carrying out the duties of the division relating to detection,  
20 investigation, and prevention of fraud, waste, and abuse in  
21 programs at an agency to which this subchapter applies or in  
22 programs receiving state or federal funds that are implemented,  
23 administered, or overseen by or for the agency.

24       (b) A commissioned peace officer or otherwise designated  
25 law enforcement officer employed by the division is not entitled to  
26 supplemental benefits from the law enforcement and custodial  
27 officer supplemental retirement fund unless the officer transfers

1 from a position, without a break in service, that qualifies for  
2 supplemental retirement benefits from the fund.

3 Sec. 321.116. EXPERTS. Subject to the availability of  
4 funds, the inspector general and deputy inspectors general may  
5 contract with certified public accountants, qualified management  
6 consultants, or other professional experts as necessary to  
7 independently perform the functions of the division.

8 Sec. 321.117. EMPLOYEES; TRAINING. (a) The inspector  
9 general may employ personnel as necessary to implement the duties  
10 of the division.

11 (b) The inspector general shall train division personnel to  
12 pursue, efficiently and as necessary, fraud, waste, and abuse cases  
13 in programs at an agency to which this subchapter applies or other  
14 state or federally funded programs implemented, administered, or  
15 overseen by or for the agency.

16 Sec. 321.118. ASSISTANCE BY AGENCY EMPLOYEES. (a) The  
17 inspector general may require employees of an agency to which this  
18 subchapter applies to provide assistance to the division in  
19 connection with the division's duties relating to the investigation  
20 of fraud, waste, and abuse in the provision of services for programs  
21 at an agency to which this subchapter applies or state or federally  
22 funded programs implemented, administered, or overseen by or for  
23 the agency.

24 (b) The inspector general or the deputy inspector general  
25 for the commission may also require employees of any health and  
26 human services agency to provide assistance under Subsection (a).

27 Sec. 321.119. MERIT SYSTEM. (a) The division may establish



1 a merit system for its employees.

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

5 Sec. 321.120. GENERAL RESPONSIBILITIES. (a) The division  
6 is responsible for the investigation of fraud, waste, and abuse, as  
7 defined in applicable state and federal law, in the provision or  
8 funding of services by or for an agency to which this subchapter  
9 applies or under a program implemented, administered, or overseen  
10 by or for the agency.

11 (b) The division shall set clear objectives, priorities,  
12 and performance standards for the division that emphasize:

13 (1) coordinating investigative efforts to  
14 aggressively recover money;

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

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

21 Sec. 321.121. GENERAL POWERS. The division has all the  
22 powers necessary or appropriate to carry out its responsibilities  
23 and functions under this subchapter and other law. In addition to  
24 performing functions and duties otherwise provided by law, the  
25 division may:

26 (1) provide for coordination between the division and  
27 special investigative units formed by managed care organizations

1 under Section 531.113 or entities with which managed care  
2 organizations contract under that section;

3 (2) audit the use and effectiveness of state or  
4 federal funds, including contract and grant funds, administered by  
5 a person or an agency to which this subchapter applies;

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

8 (4) recommend policies promoting economical and  
9 efficient administration of the funds described by Subdivision (2)  
10 and the prevention and detection of fraud, waste, and abuse in  
11 administration of those funds; and

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

15 Sec. 321.122. FEDERAL STIMULUS MONEY RESPONSIBILITIES. (a)  
16 The division has oversight responsibility for any federal stimulus  
17 funds provided to this state or a state agency by the federal  
18 government.

19 (b) The division shall monitor:

20 (1) actions of the federal government related to  
21 efforts to promote economic recovery by providing federal funds to  
22 the states; and

23 (2) actions of any state agency that receives federal  
24 stimulus funds to prevent fraud, waste, and abuse in the use of the  
25 funds.

26 (c) The division shall study appropriate provisions of the  
27 American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5)

1 and any subsequent federal economic stimulus legislation that may  
2 make federal stimulus money available to this state and any federal  
3 regulations and executive orders connected to the federal  
4 legislation to:

5 (1) determine the extent to which federal stimulus  
6 money is available for the programs of any state agency;

7 (2) provide oversight for the use of federal stimulus  
8 funds by a state agency that receives the funds; and

9 (3) recommend to the legislature any state legislation  
10 necessary to maximize this state's receipt of federal funds.

11 (d) Notwithstanding Section 321.114, the inspector general  
12 shall appoint a deputy inspector general for an agency to which this  
13 subchapter applies solely under Section 321.102(d) and this section  
14 only if the inspector general determines that the agency receives  
15 enough federal stimulus money to warrant the appointment.

16 Sec. 321.123. HEALTH AND HUMAN SERVICES RESPONSIBILITIES.

17 The division is responsible for:

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

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

22 (3) the prevention and detection of crime relating to  
23 the provision of those services.

24 Sec. 321.124. RULEMAKING BY INSPECTOR GENERAL. (a)

25 Notwithstanding Section 531.0055(e) and any other law, the  
26 inspector general shall adopt the rules necessary to administer the  
27 functions of the division, including rules to address the

1 imposition of sanctions and penalties for violations of state or  
2 federal law and due process requirements for imposing sanctions and  
3 penalties.

4 (b) A rule, standard, or form adopted by an agency to which  
5 this subchapter applies that is necessary to accomplish the duties  
6 of the division is considered to also be a rule, standard, or form  
7 of the division and remains in effect as a rule, standard, or form  
8 of the division until changed by the inspector general.

9 (c) The rules must include standards for the division that  
10 emphasize:

11 (1) coordinating investigative efforts to  
12 aggressively recover money;

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

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

18 Sec. 321.125. STATE AUDITOR AUDITS, INVESTIGATIONS, AND  
19 ACCESS TO INFORMATION NOT IMPAIRED. This subchapter or other law  
20 related to the operation of the division does not:

21 (1) take precedence over the authority of the state  
22 auditor to conduct audits under this chapter or other law; or

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

1       Sec. 321.126. EXECUTIVE ORDERS. (a) The governor may issue  
2 executive orders directing state agencies to implement  
3 recommendations issued by the division for corrective or remedial  
4 actions promoting the economical and efficient administration of  
5 money and the detection of fraud.

6       (b) The governor may submit to the lieutenant governor, the  
7 speaker of the house of representatives, the state auditor, and the  
8 comptroller a report of the executive orders issued under this  
9 subchapter and the compliance by state agencies with those orders.

10       Sec. 321.127. 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 division as a result of that person's official act or omission,  
14 whether or not the person has terminated service with the division  
15 at the time the action is instituted.

16       Sec. 321.128. INTERAGENCY COORDINATION. (a) The division  
17 and the attorney general shall enter into a memorandum of  
18 understanding to develop and implement joint written procedures for  
19 processing cases of suspected fraud, waste, or abuse, as those  
20 terms are defined by state or federal law, or other violations of  
21 state or federal law under programs at an agency to which this  
22 subchapter applies or in programs receiving state or federal funds  
23 that are implemented, administered, or overseen by the agency.

24       (b) The memorandum of understanding shall require:

25               (1) the division and the attorney general to set  
26 priorities and guidelines for referring cases to appropriate state  
27 agencies for investigation, prosecution, or other disposition to

1 enhance deterrence of fraud, waste, abuse, or other violations of  
2 state or federal law, including a violation of Chapter 102,  
3 Occupations Code, in the programs and to maximize the imposition of  
4 penalties, the recovery of money, and the successful prosecution of  
5 cases;

6 (2) the division to refer each case of suspected  
7 fraud, waste, or abuse to the attorney general not later than the  
8 20th business day after the date the division determines that the  
9 existence of fraud, waste, or abuse is reasonably indicated;

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

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

22 (A) the agency to which the case is referred for  
23 investigation;

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

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

27 (5) the division to notify each appropriate unit of

1 the office of the attorney general of each case referred by the  
2 division;

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

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

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

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

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

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

1       Sec. 321.129. INFORMATION AND TECHNOLOGY; PUBLIC INTEREST  
2 INFORMATION AND COMPLAINTS. (a) The division may obtain  
3 information or technology necessary to enable the division to meet  
4 its responsibilities under this subchapter or other law.

5       (b) The division shall develop and implement policies that  
6 provide the public a reasonable opportunity to appear before the  
7 division and to speak on any issue under the division's  
8 jurisdiction.

9       (c) The division shall prepare information of public  
10 interest describing the functions of the division and the  
11 division's procedures by which complaints are filed with and  
12 resolved by the division. The division shall make the information  
13 available to the public and appropriate state agencies.

14       (d) The division shall keep an information file about each  
15 complaint filed with the division relating to a state agency or  
16 entity receiving state or federal money and falling under the  
17 investigatory jurisdiction of the division.

18       Sec. 321.130. REVIEW, INVESTIGATION, AND AUDIT AUTHORITY.

19 (a) The inspector general may evaluate any activity or operation of  
20 an agency to which this subchapter applies, a provider, if  
21 applicable, or a person in this state that is related to the  
22 investigation, detection, or prevention of fraud, waste, abuse, or  
23 employee misconduct in a program at an agency to which this  
24 subchapter applies or in a state or federally funded program  
25 implemented, administered, or overseen by or for the agency. A  
26 review may include an investigation or other inquiry into a  
27 specific act or allegation of, or a specific financial transaction



1 or practice that may involve, impropriety, malfeasance, or  
2 nonfeasance in the obligation, spending, receipt, or other use of  
3 state or federal money.

4 (b) The division shall conduct reviews and inspections to  
5 protect the public and detect and prevent fraud, waste, and abuse in  
6 the provision or funding of services or programs described by  
7 Subsection (a).

8 (c) A state agency or the governing body or governing  
9 officer of a state agency may not impair or prohibit the inspector  
10 general from initiating or completing a review.

11 (d) With respect to an agency to which this subchapter  
12 applies, the inspector general may audit and review the use and  
13 effectiveness of state or federal funds, including contract and  
14 grant funds, administered by a person or agency receiving the funds  
15 in connection with an agency or state or federally funded program  
16 implemented, administered, or overseen by or for the agency.

17 Sec. 321.131. CLAIMS CRITERIA FOR INVESTIGATIONS. The  
18 division by rule shall set specific claims criteria that, when met,  
19 require the division to begin an investigation.

20 Sec. 321.132. INITIATION OF REVIEW. The inspector general  
21 may initiate a review:

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

23 (2) at the request of an agency to which this  
24 subchapter applies or the governing body or governing officer of  
25 the agency; or

26 (3) based on a complaint from any source concerning a  
27 matter described by Section 321.130.

1       Sec. 321.133. INTEGRITY REVIEW FOR MEDICAID PROGRAM. (a)

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

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

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

17               (1) if a provider is suspected of fraud involving  
18       criminal conduct, the division must refer the case to the state's  
19       Medicaid fraud control unit, provided that the criminal referral  
20       does not preclude the division from continuing its investigation of  
21       the provider or preclude the imposition of appropriate  
22       administrative or civil sanctions; or

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

26       Sec. 321.134. ACCESS TO INFORMATION. (a) To further a  
27       review conducted by the division, the inspector general or a deputy

1 inspector general is entitled to access all books, records,  
2 accounts, documents, reports, vouchers, databases, systems, or  
3 other information, including confidential information, electronic  
4 data, and internal records relevant to the functions of the  
5 division that are maintained by or for a person, state agency, or  
6 provider, if applicable, in connection with an agency to which this  
7 subchapter applies or a state or federally funded program  
8 implemented, administered, or overseen by or for the agency.

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

13 Sec. 321.135. COOPERATION REQUIRED. To further a review  
14 conducted by the division, the inspector general or deputy  
15 inspector general may require medical or other professional  
16 assistance from an agency to which this subchapter applies or an  
17 auditor, accountant, or other employee of the agency.

18 Sec. 321.136. REFERRAL TO STATE MEDICAID FRAUD CONTROL  
19 UNIT. (a) At the time the division learns or has reason to suspect  
20 that a health or human services provider's records related to  
21 participation in the state Medicaid program are being withheld,  
22 concealed, destroyed, fabricated, or in any way falsified, the  
23 division shall immediately refer the case to the state's Medicaid  
24 fraud control unit.

25 (b) A criminal referral under Subsection (a) does not  
26 preclude the division from continuing its investigation of a health  
27 or human services provider or the imposition of appropriate

1 administrative or civil sanctions.

2 Sec. 321.137. HOLD ON CLAIM REIMBURSEMENT PAYMENT;  
3 EXCLUSION FROM PROGRAMS. (a) In addition to other instances  
4 authorized under state or federal law, the division shall impose  
5 without prior notice a hold on payment of claims for reimbursement  
6 submitted by a health or human services provider to compel  
7 production of records related to participation in the state  
8 Medicaid program or on request of the state's Medicaid fraud  
9 control unit, as applicable.

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

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

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

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

19 (d) A health or human services provider subject to a hold on  
20 payment or excluded from a program under this section is entitled to  
21 a hearing on the hold or exclusion. A hearing under this subsection  
22 is a contested case hearing under Chapter 2001. The State Office of  
23 Administrative Hearings shall conduct the hearing. After the  
24 hearing, the division, subject to judicial review, shall make a  
25 final determination. The commission, a health and human services  
26 agency, and the attorney general are entitled to intervene as  
27 parties in the contested case.

1       Sec. 321.138. REQUEST FOR EXPEDITED HEARING. (a) On timely  
2 written request by a health or human services provider subject to a  
3 hold on payment under Section 321.137, other than a hold requested  
4 by the state's Medicaid fraud control unit, the division shall file  
5 a request with the State Office of Administrative Hearings for an  
6 expedited administrative hearing regarding the hold.

7       (b) The health or human services provider must request an  
8 expedited hearing not later than the 10th day after the date the  
9 provider receives notice from the division under Section  
10 321.137(b).

11       Sec. 321.139. INFORMAL RESOLUTION. (a) The inspector  
12 general shall adopt rules that allow a health or human services  
13 provider subject to a hold on payment under Section 321.137, other  
14 than a hold requested by the state's Medicaid fraud control unit, to  
15 seek an informal resolution of the issues identified by the  
16 division in the notice provided under that section.

17       (b) A health or human services provider that seeks an  
18 informal resolution must do so not later than the 10th day after the  
19 date the provider receives notice from the division under Section  
20 321.137(b).

21       (c) A health or human services provider's decision to seek  
22 an informal resolution does not extend the time by which the  
23 provider must request an expedited administrative hearing under  
24 Section 321.138.

25       (d) A hearing initiated under Section 321.137 shall be  
26 stayed at the division's request until the informal resolution  
27 process is completed.

1       Sec. 321.140. EMPLOYEE REPORTS. The inspector general may  
2 require employees at an agency to which this subchapter applies to  
3 report to the division information regarding fraud, waste, misuse  
4 or abuse of funds or resources, corruption, or illegal acts.

5       Sec. 321.141. SUBPOENAS. (a) The inspector general may  
6 issue a subpoena to compel the attendance of a relevant witness at a  
7 hearing or deposition under this subchapter or to compel the  
8 production, for inspection or copying, of relevant materials in  
9 connection with a review, hearing, or deposition conducted under  
10 this subchapter.

11       (b) A subpoena may be served personally or by certified  
12 mail.

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

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

20       (e) The reimbursement of the expenses of a witness whose  
21 attendance is compelled under this section is governed by Section  
22 2001.103.

23       Sec. 321.142. INTERNAL AUDITOR. (a) In this section,  
24 "internal auditor" means a person appointed under Section 2102.006.

25       (b) The internal auditor for an agency to which this  
26 subchapter applies shall provide the inspector general with a copy  
27 of the agency's internal audit plan to:

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

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

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

7                 (1) part of the agency;

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

9                 (3) program conducted by the agency.

10           Sec. 321.143. COOPERATION WITH LAW ENFORCEMENT OFFICIALS  
11 AND OTHER ENTITIES. (a) The inspector general may provide  
12 information and evidence relating to criminal acts to the state  
13 auditor's office and appropriate law enforcement officials.

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

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

22           Sec. 321.144. COOPERATION AND COORDINATION WITH STATE  
23 AUDITOR. (a) The state auditor may, on request of the inspector  
24 general, provide appropriate information or other assistance to the  
25 inspector general or division, as determined by the state auditor.

26           (b) The inspector general may meet with the state auditor to  
27 coordinate a review conducted under this subchapter, share

1 information, or schedule work plans.

2 (c) The state auditor is entitled to access all information  
3 maintained by the inspector general, including vouchers,  
4 electronic data, internal records, and information obtained under  
5 Section 321.134 or subject to Section 321.152.

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

9 Sec. 321.145. PREVENTION. (a) The inspector general may  
10 recommend to an agency to which this subchapter applies or the  
11 presiding officer of the agency policies on:

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

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

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

21 Sec. 321.146. AWARD FOR REPORTING FRAUD, WASTE, ABUSE, OR  
22 OVERCHARGES. (a) If the division determines that the report  
23 results in the recovery of an administrative or civil penalty  
24 imposed by law, the division may grant an award to an individual who  
25 reports:

26 (1) activity that constitutes fraud, waste, or abuse  
27 of money related to any agency programs or in programs receiving



1 state or federal funds that are implemented, administered, or  
2 overseen by the agency; or

3 (2) overcharges in a program described by Subdivision  
4 (1).

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

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

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

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

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

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

21 Sec. 321.147. RULEMAKING BY PRESIDING OFFICER OF AGENCY.  
22 The presiding officer of an agency may adopt rules governing the  
23 agency's response to reports and referrals from the inspector  
24 general on issues identified by the inspector general related to  
25 the agency or a contractor of the agency.

26 Sec. 321.148. ALLEGATIONS OF MISCONDUCT AGAINST PRESIDING  
27 OFFICER. If a review by the inspector general involves allegations

1 that a presiding officer of an agency has engaged in misconduct, the  
2 inspector general shall report to the governor during the review  
3 until the report is completed or the review is closed without a  
4 finding.

5 Sec. 321.149. PERIODIC REPORTING REQUIRED. The inspector  
6 general shall timely inform the governor, the attorney general, the  
7 state auditor, and the presiding officer of the relevant agency of  
8 the initiation of a review of an agency program and the ongoing  
9 status of the review.

10 Sec. 321.150. REPORTING DIVISION FINDINGS. The inspector  
11 general shall report the findings of the division in connection  
12 with a review conducted under this subchapter to:

- 13 (1) the presiding officer of the agency;  
14 (2) the governor;  
15 (3) the lieutenant governor;  
16 (4) the speaker of the house of representatives;  
17 (5) the comptroller;  
18 (6) the state auditor; and  
19 (7) the attorney general.

20 Sec. 321.151. FLAGRANT VIOLATIONS; IMMEDIATE REPORT. The  
21 inspector general shall immediately report to the presiding officer  
22 of the agency associated with the review, the governor's general  
23 counsel, and the state auditor a particularly serious or flagrant  
24 problem relating to the administration of a program, operation of  
25 the agency, or interference with an inspector general review.

26 Sec. 321.152. INFORMATION CONFIDENTIAL. (a) Except as  
27 provided by this subchapter, all information and material compiled

1 by the inspector general during a review under this subchapter is:

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

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

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

11 (1) a law enforcement agency;

12 (2) the attorney general;

13 (3) the state auditor; or

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

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

19 Sec. 321.153. DRAFT OF FINAL REVIEW REPORT; AGENCY  
20 RESPONSE. (a) Except in cases in which the division has determined  
21 that potential fraud, waste, or abuse exists, the division shall  
22 provide a draft of the final review report of any investigation,  
23 audit, or review of the operations of an agency to the presiding  
24 officer of the agency before publishing the division's final review  
25 report.

26 (b) The agency director may provide a response to the  
27 division's draft report in the manner prescribed by the division

1 not later than the 10th day after the date the draft report is  
2 received by the agency. The inspector general by rule shall specify  
3 the format of and requirements for the agency response.

4 (c) Notwithstanding Subsection (a), the division may not  
5 provide a draft report to the presiding officer of the agency if in  
6 the inspector general's opinion providing the draft report could  
7 negatively affect any anticipated civil or criminal proceedings.

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

10 Sec. 321.154. FINAL REVIEW REPORTS; AGENCY RESPONSE. (a)  
11 The inspector general shall prepare a final report for each review  
12 conducted under this subchapter. The final report must include:

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

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

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

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

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

23 (d) Not later than the 60th day after the date the division  
24 issues a final report that identifies deficiencies or  
25 inefficiencies in, or recommends corrective measures in the  
26 operations of, an agency, the agency shall file a response that  
27 includes:

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

3           (2) the agency's rationale for declining to implement  
4 corrective measures for the identified deficiencies or  
5 inefficiencies or the division's recommended corrective measures,  
6 as applicable.

7           Sec. 321.155. COSTS. (a) The inspector general shall  
8 maintain information regarding the cost of reviews.

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

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

16           (2) abusive or wilful misconduct; or

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

19           Sec. 321.156. SEMIANNUAL REPORT. The division and the  
20 attorney general shall jointly prepare and submit a semiannual  
21 report to the governor, the lieutenant governor, the speaker of the  
22 house of representatives, the state auditor, the comptroller, and  
23 each member of the legislature concerning the activities of the  
24 division and the attorney general in detecting and preventing  
25 fraud, waste, and abuse under any agency programs or in programs  
26 receiving state or federal funds that are implemented,  
27 administered, or overseen by a state agency that is reviewed by the

1 division under this subchapter. The report may be consolidated  
2 with any other report relating to the same subject matter the  
3 division or the attorney general is required to submit under other  
4 law.

5 Sec. 321.157. ADMINISTRATIVE OR CIVIL PENALTY; INJUNCTION.

6 (a) The division may:

7 (1) act for an agency to which this subchapter  
8 applies, including a health and human services agency, in the  
9 assessment by the division of administrative or civil penalties the  
10 agency is authorized to assess under applicable law; and

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

15 (b) If the division imposes an administrative or civil  
16 penalty under Subsection (a) for an agency:

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

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

22 SECTION 4. The following sections of the Government Code  
23 are repealed:

24 (1) Section 531.102;

25 (2) Section 531.1021; and

26 (3) Section 531.103.

27 SECTION 5. (a) The repeal by this Act of Section 531.102,

1 Government Code, does not affect the validity of a complaint,  
2 investigation, or other proceeding initiated under that section  
3 before the effective date of this Act. A complaint, investigation,  
4 or other proceeding initiated under that section is continued in  
5 accordance with the changes in law made by this Act.

6 (b) The repeal by this Act of Section 531.1021, Government  
7 Code, does not affect the validity of a subpoena issued under that  
8 section before the effective date of this Act. A subpoena issued  
9 under that section before the effective date of this Act is governed  
10 by the law that existed when the subpoena was issued, and the former  
11 law is continued in effect for that purpose.

12 SECTION 6. (a) The person serving as inspector general  
13 under Section 531.102(a-1), Government Code, on the effective date  
14 of this Act shall serve as the inspector general appointed under  
15 Subchapter C, Chapter 321, Government Code, as added by this Act,  
16 until February 1, 2011, and may be reappointed under Subchapter C,  
17 Chapter 321 if the person has the qualifications required under  
18 that chapter.

19 (b) A person serving on the effective date of this Act as  
20 inspector general for a state agency subject to Subchapter C,  
21 Chapter 321, Government Code, as added by this Act, shall serve as  
22 the deputy inspector general designated for the agency under  
23 Subchapter C, Chapter 321, Government Code, as added by this Act,  
24 unless and until replaced by the inspector general.

25 (c) Not later than February 1, 2011, the governor shall  
26 appoint an inspector general for the office of inspector general  
27 division of the state auditor's office established under Subchapter

1 C, Chapter 321, Government Code, as added by this Act, to a term  
2 expiring February 1, 2013.

3 SECTION 7. A contract or proceeding primarily related to a  
4 function transferred to the office of inspector general division of  
5 the state auditor's office established under this Act is  
6 transferred to the division. The transfer does not affect the  
7 status of a proceeding or the validity of a contract.

8 SECTION 8. (a) All personnel and assets currently assigned  
9 to the inspector general of a state agency subject to Subchapter C,  
10 Chapter 321, Government Code, as added by this Act, by operation of  
11 Section 321.102(a) or (c), Government Code, shall be promptly  
12 transferred to the office of inspector general division established  
13 under Subchapter C, Chapter 321 along with any equipment,  
14 documents, and records currently assigned to or used by the  
15 inspector general of that agency. Inventory of personnel,  
16 equipment, documents, records, and assets to be transferred under  
17 this section shall be accomplished jointly by the transferring  
18 agency and the inspector general serving under Subchapter C,  
19 Chapter 321. All funds previously appropriated or used, from any  
20 source, by the transferring agency in support of the transferred  
21 functions, personnel, equipment, documents, records, or assets  
22 shall also be contemporaneously transferred to the division.

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

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



1 and

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

6 (c) All state and federal funding, including funding for  
7 overhead costs, support costs, and lease or colocation lease costs,  
8 for the functions to be transferred to the office of inspector  
9 general division of the state auditor's office established under  
10 Subchapter C, Chapter 321, Government Code, as added by this Act,  
11 shall be reallocated to the division.

12 (d) For purposes of federal single state agency funding  
13 requirements, any federal funds for an agency subject to Subchapter  
14 C, Chapter 321, Government Code, as added by this Act, that may not  
15 be appropriated directly to the office of inspector general  
16 division shall be transferred from the single state agency  
17 receiving the funds to the office of inspector general division  
18 established under Subchapter C, Chapter 321 if the funds are  
19 intended for a function performed by the division.

20 SECTION 9. On the effective date of this Act:

21 (1) all functions, activities, employees, rules,  
22 forms, money, property, contracts, memorandums of understanding,  
23 records, and obligations of a previously established office of  
24 inspector general of an agency subject to Subchapter C, Chapter  
25 321, Government Code, as added by this Act, by operation of Section  
26 321.102(a) or (c), Government Code, become functions, activities,  
27 employees, rules, forms, money, property, contracts, memorandums

1 of understanding, records, and obligations of the office of  
2 inspector general division of the state auditor's office  
3 established under Subchapter C, Chapter 321, without a change in  
4 status; and

5 (2) all money appropriated or budgeted for the  
6 operations of a previously established office of inspector general  
7 at an agency subject to Subchapter C, Chapter 321, Government Code,  
8 as added by this Act, by operation of Section 321.102(a) or (c),  
9 Government Code, including money for providing administrative  
10 support, is considered appropriated for the use of the office of  
11 inspector general division established under Subchapter C, Chapter  
12 321.

13 SECTION 10. (a) Each agency subject to Subchapter C,  
14 Chapter 321, Government Code, as added by this Act, by operation of  
15 Section 321.102(a) or (c), Government Code, shall take all action  
16 necessary to provide for the orderly transfer of the assets and  
17 responsibilities of any previously established office of inspector  
18 general for that agency to the office of inspector general division  
19 of the state auditor's office established under Subchapter C,  
20 Chapter 321.

21 (b) A rule or form adopted by a previously established  
22 office of inspector general of an agency subject to Subchapter C,  
23 Chapter 321, Government Code, as added by this Act, by operation of  
24 Section 321.102(a) or (c), Government Code, is a rule or form of the  
25 office of inspector general division of the state auditor's office  
26 established under Subchapter C, Chapter 321 and remains in effect  
27 until changed by the inspector general.

1           (c) A reference in law or administrative rule to a  
2 previously established office of inspector general of an agency  
3 subject to Subchapter C, Chapter 321, Government Code, as added by  
4 this Act, by operation of Section 321.102(a) or (c), Government  
5 Code, means the office of inspector general division established  
6 under Subchapter C, Chapter 321.

7           SECTION 11. If before implementing any provision of this  
8 Act a state agency determines that a waiver or authorization from a  
9 federal agency is necessary for implementation of that provision,  
10 the agency affected by the provision shall request the waiver or  
11 authorization and may delay implementing that provision until the  
12 waiver or authorization is granted.

13           SECTION 12. This Act takes effect immediately if it  
14 receives a vote of two-thirds of all the members elected to each  
15 house, as provided by Section 39, Article III, Texas Constitution.  
16 If this Act does not receive the vote necessary for immediate  
17 effect, this Act takes effect September 1, 2009.