

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

HOUSE BILL 1116

By: Representative A. Davis

By: Senator Hester

## For An Act To Be Entitled

AN ACT TO CREATE THE TRANSFORMATION AND EFFICIENCIES ACT OF 2019; TO ESTABLISH CABINET-LEVEL DEPARTMENTS; TO ESTABLISH THE CABINET-LEVEL DEPARTMENT OF THE INSPECTOR GENERAL; TO TRANSFER STATE ENTITIES; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

## Subtitle

AN ACT TO CREATE THE TRANSFORMATION AND EFFICIENCIES ACT OF 2019; TO ESTABLISH CABINET-LEVEL DEPARTMENTS; TO ESTABLISH THE CABINET-LEVEL DEPARTMENT OF THE INSPECTOR GENERAL; TO TRANSFER STATE ENTITIES; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 25, Chapter 43, Subchapter 10 is amended to read as follows:

Subchapter 10 – Department of the Inspector General

25-43-1001. Department of Inspector General.

There is created the Department of the Inspector General as a cabinet-level department.

25-43-1002. State entities transferred to Department of Inspector General.



(a) The administrative functions of the following state entities are transferred to the Department of the Inspector General under a cabinet-level transfer:

(1) The Arkansas Fair Housing Commission, created under § 16-123-303;

(2) The Internal Audit Section, created under § 19-4-105; and

(3) The Office of Medicaid Inspector General, created under § 20-77-2503.

(b) Each entity transferred shall retain its specified statutory duties.

25-43-1003. Secretary of Department of Inspector General.

(a) The executive head of the Department of the Inspector General shall be the Secretary of the Department of the Inspector General.

(b) The secretary shall be appointed by the Governor and shall serve at the pleasure of the Governor.

(c)(1) All personnel of the department shall be employed by the secretary.

(2)(A) Members of a statutory board or commission shall continue to be selected in the manner and serve for the terms provided by the statutes applicable to that board or commission as the statutes may from time to time be amended.

(B) All personnel employed by a statutory board or commission shall be employees of the department.

(d) Nothing in this section shall reduce any right that an employee of the department has under any civil service or merit system.

(e) Each division of the department shall be under the direction, control, and supervision of the secretary. The secretary may delegate his or her functions, powers, and duties to various divisions or employees of the department as he or she shall deem desirable and necessary for the effective and efficient operation of the department.

(f) The secretary has the authority to direct the department as necessary to conduct and supervise activities to prevent, detect, and investigate fraud and abuse.

SECTION 2. Arkansas Code § 16-123-305 is amended to read as follows:

16-123-305. Director.

(a)(1) The Governor shall appoint a Director of the Arkansas Fair Housing Commission who shall serve at the pleasure of the Governor.

(2) The Arkansas Fair Housing Commission may fix the compensation, duties, authority, and responsibilities of the director.

~~(b) The commission may authorize the director to hire necessary staff and to provide for services, furnishings, equipment, and office space~~  
Employees of the Arkansas Fair Housing Commission shall be employed by the Department of Inspector General.

SECTION 3. Arkansas Code § 19-4-105, is amended to read as follows:

19-4-105. Continuing studies and investigations – Duties of Chief Fiscal Officer of the State and Internal Audit Section – Exemption of internal audit documentation from Freedom of Information Act of 1967.

(a) ~~The Chief Fiscal Officer of the State~~ Secretary of the Department of Inspector General is directed to make continuing studies and investigations of the operation of state agencies and to make recommendations to the General Assembly, the Legislative Council, and the Governor about improvements which should be made in order to:

- (1) Safeguard against excessive expenditures of appropriations and funds;
- (2) Promote economy, efficiency, and control in the operation of state agencies;
- (3) Properly execute budgets; and
- (4) Accomplish the purposes of this chapter as intended by the General Assembly.

(b) The Internal Audit Section created under the Department of Finance and Administration by Governor's Executive Order 99-08 and transferred to the Department of the Inspector General by a cabinet-level department transfer under § 25-43-1002 shall conduct its audits using the suggested standards for the professional practice of internal auditing as adopted by the Institute of Internal Auditors.

(c) The Internal Audit Section shall:

- (1) Review the financial and operating controls and the transactions of state agencies to determine the level of conformity with established laws, standards, regulations, and procedures;

(2) Review the various functions within an enterprise to appraise the efficiency and economy of operations and the effectiveness with which those functions achieve the stated objectives, including without limitation a review of established internal control activities;

(3) Investigate reported occurrences of fraud, embezzlement, theft, waste, abuse, or mismanagement of state resources;

(4) Recommend controls to prevent occurrences of fraud, embezzlement, theft, waste, abuse, or mismanagement of state resources;

(5) Assist state agencies to resolve areas of concern;

(6) Assist state agencies in establishing appropriate internal controls that will prevent errors or irregularities;

(7) Provide objective analysis, appraisals, and recommendations concerning the activities it reviews; and

(8) Perform other functions as directed by the Governor, ~~Chief Fiscal Officer of the State~~ or the Secretary of the Department of Inspector General, ~~or other board or government entity charged with authority over the Internal Audit Section by executive order.~~

(d) After an audit is completed, the Internal Audit Section shall file a written final report concerning the actions and determinations made under this section with:

(1) ~~The Chief Fiscal Officer of the State~~ Secretary of the Department of Inspector General;

(2) The Governor;

(3) The State Board of Finance; and

(4) Arkansas Legislative Audit; ~~and~~

~~(5) Any other board or government entity charged with authority over the Internal Audit Section by executive order.~~

(e) Employees of the Internal Audit Section shall:

(1) Be employed by the ~~Governor or other board or government entity charged with authority over the Internal Audit Section by executive order~~ Secretary of the Department of Inspector General as employees of the Department of Inspector General; and

(2) Serve at the pleasure of the ~~Governor or other board or government entity charged with authority over the Internal Audit Section by executive order~~ Secretary of the Department of Inspector General.

(f)(1) All internal audit documentation, including notes, memoranda,

preliminary drafts of audit reports, and other data gathered in the preparation of internal audit reports by the Internal Audit Section, are privileged and confidential and are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., except as provided in subdivision (f)(2) of this section.

(2)(A) The exemption shall not apply to completed internal audits of the Internal Audit Section after a final report of the internal audit has been presented to:

(i) ~~The Chief Fiscal Officer of the State~~ Secretary of the Department of Inspector General;

(ii) The Governor or the Governor's designee;

(iii) The State Board of Finance; or

(iv) Arkansas Legislative Audit; ~~or~~

~~(v) Any other board or government entity charged with authority over the Internal Audit Section by executive order.~~

(B) The final report and copies of any supporting documentation shall then be open to public inspection and copying, except for documents that are exempt from disclosure under other law.

SECTION 4. Arkansas Code § 20-77-2503 is amended to read as follows:  
20-77-2503. Office of Medicaid Inspector General – Created.

The Office of Medicaid Inspector General is created within the ~~office of the Governor~~ Department of the Inspector General and is independent from the Department of Human Services.

SECTION 5. Arkansas Code § 20-77-2504 is amended to read as follows:  
20-77-2504. Medicaid Inspector General – ~~Appointment~~ Employment – Qualifications.

(a)(1) The Medicaid Inspector General shall be appointed by the Governor, with the advice and consent of the Senate.

(2) The inspector shall serve at the pleasure of the Governor.

(b) The inspector shall report directly to the Governor.

(c) The Medicaid Inspector General shall be the Director of the Office of Medicaid Inspector General.

(d) The ~~inspector~~ Medicaid Inspector General shall have not less than ten (10) years of professional experience in one (1) or more of the following

areas of expertise:

- (1) Prosecution for fraud;
- (2) Fraud investigation;
- (3) Auditing; or
- (4) Comparable alternate experience in health care, if the

healthcare experience involves some consideration of fraud.

SECTION 6. Arkansas Code § 20-77-2506 is amended to read as follows:  
20-77-2506. Medicaid Inspector General – Duties.

The Medicaid Inspector General shall, with the approval of the Secretary of the Department of the Inspector General:

(1) Hire deputies, directors, assistants, and other officers and employees needed for the performance of his or her duties and prescribe the duties of deputies, directors, assistants, and other officers and fix the compensation of deputies, directors, assistants, and other officers within the amounts appropriated;

(2)(A) Conduct and supervise activities to prevent, detect, and investigate medical assistance program fraud and abuse.

(B)(i) The Office of Medicaid Inspector General shall review provider records only for the three (3) years before an investigation begins.

(ii) However, if a credible allegation of fraud has been made or if the ~~office~~ Office of Medicaid Inspector General has reason to believe that fraud has occurred, the Office of Medicaid Inspector General may review provider records for the five (5) years before the investigation began;

(3) Work in a coordinated and cooperative manner with:

(A) Federal, state, and local law enforcement agencies;

(B) The Medicaid Fraud Control Unit of the office of the Attorney General;

(C) United States Attorneys;

(D) The United States Department of Health and Human Services' Office of Inspector General;

(E) The Federal Bureau of Investigation;

(F) The United States Drug Enforcement Administration;

(G) Prosecuting attorneys;

(H) The Centers for Medicare and Medicaid Services; and

(I) An investigative unit maintained by a health insurer;

(4) Solicit, receive, and investigate complaints related to fraud and abuse within the medical assistance program;

(5)(A) Inform the Governor, the Secretary of the Department of the Inspector General, the Attorney General, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives regarding efforts to prevent, detect, investigate, and prosecute fraud and abuse within the medical assistance program.

(B) All cases in which fraud is determined to have occurred shall be referred to the appropriate law enforcement agency for prosecution;

(6)(A) Pursue civil and administrative enforcement actions against an individual or entity that engages in fraud, abuse, or illegal or improper acts within the medical assistance program, including without limitation:

(i) Referral of information and evidence to regulatory agencies and licensure boards;

(ii) Withholding payment of medical assistance funds in accordance with state laws and rules and federal laws and regulations;

(iii) Imposition of administrative sanctions and penalties in accordance with state laws and rules and federal laws and regulations;

(iv) Exclusion of providers, vendors, and contractors from participation in the medical assistance program;

(v) Initiating and maintaining actions for civil recovery and, where authorized by law, seizure of property or other assets connected with improper payments;

(vi) Entering into civil settlements; and

(vii) Recovery of improperly expended medical assistance program funds from those who engage in fraud or abuse or illegal or improper acts perpetrated within the medical assistance program.

(B) In investigating civil and administrative enforcement actions under subdivision (a)(6)(A) of this section, the Medicaid Inspector General shall consider the quality and availability of medical care and services and the best interest of both the medical assistance program and

recipients;

(7) Make available to appropriate law enforcement officials information and evidence relating to suspected criminal acts that have been obtained in the course of the Medicaid Inspector General's duties;

(8)(A) Refer suspected fraud or criminal activity to the Medicaid Fraud Control Unit.

(B) After a referral and with ten (10) days' written notice to the Medicaid Fraud Control Unit, the Medicaid Inspector General may provide relevant information about suspected fraud or criminal activity to another federal or state law enforcement agency that the ~~inspector~~ Medicaid Inspector General deems appropriate under the circumstances;

(9) Subpoena and enforce the attendance of witnesses, administer oaths or affirmations, examine witnesses under oath, and take testimony in connection with an investigation or audit under this subchapter and under rules governing these investigations;

(10) Require and compel the production of books, papers, records, and documents as he or she deems relevant or material to an investigation, examination, or review undertaken under this section;

(11)(A) Examine and copy or remove documents or records related to the medical assistance program or necessary for the Medicaid Inspector General to perform his or her duties if the documents are prepared, maintained, or held by or available to a state agency or local governmental entity the patients or clients of which are served by the medical assistance program, or the entity is otherwise responsible for the control of fraud and abuse within the medical assistance program.

(B) A document or record examined and copied or removed by the Medicaid Inspector General under subdivision (11)(A) of this section is confidential.

(C) The removal of a record under subdivision (11)(A) of this section is limited to circumstances in which a copy of the record is insufficient for an appropriate legal or investigative purpose.

(D) For a removal under subdivision (11)(A) of this section, the Medicaid Inspector General shall copy the record and ensure the expedited return of the original, or of a copy if the original is required for an appropriate legal or investigative purpose, so that the information is expedited and the original or copy is readily accessible for the care and

treatment needs of the patient;

(12)(A) Recommend and implement policies relating to the prevention and detection of fraud and abuse.

(B) The Medicaid Inspector General shall obtain the consent of the Attorney General before the implementation of a policy under subdivision (12)(A) of this section that may affect the operations of the office of the Attorney General;

(13)(A) Monitor the implementation of a recommendation made by the Office of Medicaid Inspector General to an agency or other entity with responsibility for administration of the medical assistance program and produce a report detailing the results of its monitoring activity as necessary.

(B) The report shall be submitted to the:

(i) ~~Governor~~ Secretary of the Department of the Inspector General;

(ii) President Pro Tempore of the Senate;

(iii) Speaker of the House of Representatives;

(iv) Legislative Council;

(v) Arkansas Legislative Audit; and

(vi) Attorney General;

(14) Prepare cases, provide testimony, and support administrative hearings and other legal proceedings;

(15) Review and audit contracts, cost reports, claims, bills, and other expenditures of medical assistance program funds to determine compliance with applicable state laws and rules and federal laws and regulations and take actions authorized by state laws and rules and federal laws and regulations;

(16)(A) Work with the fiscal agent employed to operate the Medicaid Management Information System of the Department of Human Services to optimize the system, including without limitation the ability to add edits and audits in consultation with the Department of Human Services.

(B) The Medicaid Inspector General shall be consulted before an edit or audit is added or discontinued by the Department of Human Services;

(17) Work in a coordinated and cooperative manner with relevant agencies in the implementation of information technology relating to the

prevention and identification of fraud and abuse in the medical assistance program;

(18)(A) Conduct educational programs for medical assistance program providers, vendors, contractors, and recipients designed to limit fraud and abuse within the medical assistance program.

(B) The Office of Medicaid Inspector General shall regularly communicate with and educate providers about the Office of Medicaid Inspector General's fraud and abuse prevention program and its audit policies and procedures.

(C) The Office of Medicaid Inspector General shall educate providers annually concerning its areas of focus within the medical assistance program, appropriate billing and documentation, and methods for improving compliance with program rules, policies, and procedures;

(19)(A) Develop protocols to facilitate the efficient self-disclosure consistent with the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, and the collection of overpayments and monitor collections, including those that are self-disclosed by providers.

(B) A provider's good faith self-disclosure of overpayments may be considered as a mitigating factor in the determination of an administrative enforcement action;

(20) Receive and investigate complaints of alleged failures of state and local officials to prevent, detect, and prosecute fraud and abuse in the medical assistance program;

(21) Implement rules relating to the prevention, detection, investigation, and referral of fraud and abuse within the medical assistance program and to the recovery of improperly expended medical assistance program funds;

(22) Conduct, in the context of the investigation of fraud and abuse, on-site inspections of a facility or an office;

(23)(A) Take appropriate authorized actions to ensure that the medical assistance program is the payor of last resort; and

(B) Recommend to the ~~department~~ Department of Human Services that it take appropriate actions authorized under the ~~department's~~ jurisdiction of the Department of Human Services to ensure that the medical assistance program is the payor of last resort;

(24) Annually submit a budget request for the next state fiscal

year to the Governor;

(25) Identify and order the return of underpayments to providers;

(26) Maintain the confidentiality of all information and documents that are deemed confidential by law;

(27) Implement, facilitate, and maintain federally required directives and contracts required for Medicaid integrity programs;

(28) Implement and maintain a hotline for reporting complaints regarding fraud, waste, and abuse by providers;

(29) Audit, investigate, and access Medicaid encounter data, premium data, or other information from an entity contracted with for the purpose of serving Medicaid programs;

(30)(A) Promulgate administrative rules to establish policies and procedures for audits and investigations that are consistent with the duties of the Office of Medicaid Inspector General under this chapter.

(B) The rules shall be posted on the Office of Medicaid Inspector General's website;

(31) Identify conflicts between the Medicaid state plan, ~~department~~ Department of Human Services rules, Medicaid provider manuals, Medicaid notices, or other guidance and recommend that the ~~department~~ Department of Human Services reconcile inconsistencies;

(32) When conducting an audit, investigation, or review under this subchapter, classify violations as either:

(A) Errors that do not rise to the level of fraud or abuse; or

(B) Fraud or abuse;

(33)(A) If a credible allegation of fraud has been made, review provider records that have been the subject of a previous audit or review for the purpose of fraud investigation and referral.

(B) However, the Medicaid Inspector General shall not duplicate an audit of a contract, cost report, claim, bill, or expenditure of a medical assistance program fund that has been the subject of a previous audit or review by or on behalf of the Office of Medicaid Inspector General, the Medicaid Fraud Control Unit, or other federal agency with authority over the medical assistance program if the audit or review was performed in accordance with the Government Auditing Standards;

(34)(A) Utilize a quality improvement organization as part of the assessment of quality of services.

(B) The quality improvement organization shall refer all identified improper payments due to technical deficiencies, abuse, waste, or fraud to the Medicaid Inspector General for further investigation and appropriate action, including without limitation recovery; and

(35) Perform other functions necessary or appropriate to fulfill the duties and responsibilities of the Office of Medicaid Inspector General.

SECTION 7. Arkansas Code § 20-77-2509(a), concerning the reports required of the Medicaid Inspector General, is amended to read as follows:

20-77-2509. Reports required of Medicaid Inspector General.

(a) The Medicaid Inspector General shall, no later than October 1 of each year, submit to the ~~Governor~~ Secretary of the Department of the Inspector General, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, Arkansas Legislative Audit, the Legislative Council, and the Attorney General a report summarizing the activities of the Office of Medicaid Inspector General during the preceding calendar year.

SECTION 8. Arkansas Code § 20-77-2509(d) and (e), concerning the reports required of the Medicaid Inspector General, are amended to read as follows:

(d)(1) In making the report required under subsection (a) of this section, the ~~inspector~~ Medicaid Inspector General shall not disclose information that jeopardizes an ongoing investigation or proceeding.

(2) The ~~inspector~~ Medicaid Inspector General may disclose information in the report required under subsection (a) of this section if the information does not jeopardize an ongoing investigation or proceeding and the inspector fully apprises the designated recipients of the scope and quality of the office's activities.

(e) Quarterly by April 1, July 1, October 1, and January 1 of each year, the ~~inspector~~ Medicaid Inspector General shall submit to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Division of Legislative Audit, the Legislative Council, and the Attorney General an accountability statement providing a statistical profile of the referrals made to the Medicaid Fraud Control Unit of the

office of the Attorney General, audits, investigations, and recoveries.

SECTION 9. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that this act revises the duties of certain state entities; that this act establishes new departments of the state; that these revisions impact the expenses and operations of state government; and that the provisions of this act should become effective to allow for implementation of the new provisions in advance of the upcoming fiscal year. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2019.