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## **An Act To Establish the Office of the Inspector General in the Department of Health and Human Services**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 5 MRSA §200-C, sub-§2**, as enacted by PL 1975, c. 715, §1, is amended to read:

**2. Purpose.** The purpose of the division shall be to investigate and prosecute, including actions for civil recovery, any act of fraud or attempted fraud perpetrated against the State or any department, agency or commission thereof. The division shall ~~may~~ not have primary responsibility for the investigation of any act of fraud or attempted fraud or incident of commingling or misapplication of funds pursuant to Title 22, ~~section 13, subsection 2~~ chapter 3.

**Sec. 2. 5 MRSA §200-C, sub-§3**, as enacted by PL 1975, c. 715, §1 and amended by PL 2003, c. 689, Pt. B, §6, is further amended to read:

**3. Cooperation, information.** All agencies of the State and municipal governments shall cooperate fully with the division, rendering any assistance requested by the division. Every head of a department, bureau, division, commission or any other unit of State Government shall report in writing to the division any suspected act of fraud or attempted fraud or violation of any law in connection with funds of the State. Any such act or violation involving funds administered by the Department of Health and Human Services shall ~~must~~ be reported pursuant to Title 22, ~~section 13, subsection 3~~ 106.

**Sec. 3. 22 MRSA §13**, as corrected by RR 2011, c. 2, §22, is repealed.

**Sec. 4. 22 MRSA c. 3** is enacted to read:

### **CHAPTER 3** **INSPECTOR GENERAL**

#### **§ 101. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Agency.** "Agency" means a bureau, division, office, agency or program operated, licensed or certified by the department.

**2. Employee.** "Employee" means a person who provides services on site at a facility or agency or off site directly to an individual or with a facility or agency, including an employee or contractual agent of the department or agency involved in providing, monitoring or administering mental health or intellectual disabilities services, including but not limited to a payroll processor, contractor, subcontractor or volunteer.

**3. Facility.** "Facility" means a facility operated by the department.

**4. Financial exploitation.** "Financial exploitation" means an employee's, facility's or agency's taking unjust advantage of an individual's assets, property or financial resources through deception, intimidation or conversion for the employee's, facility's or agency's advantage or benefit.

**5. Individual.** "Individual" means a person receiving on-site or off-site mental health, autism or intellectual disabilities services from a facility or agency. For purposes of this subsection, "intellectual disabilities" has the same meaning as in Title 34-B, section 5001, subsection 3.

**6. Mental abuse.** "Mental abuse" means the use of demeaning, intimidating or threatening words, signs, gestures or other actions by an employee about an individual that results or could result in mental distress or maladaptive behavior.

**7. Neglect.** "Neglect" means an employee's, agency's or facility's failure to provide adequate medical care, personal care or maintenance that, as a consequence:

A. Causes an individual pain, injury or emotional distress;

B. Results in either an individual's maladaptive behavior or the deterioration of an individual's physical or mental condition; or

C. Places an individual's health or safety at substantial risk.

**8. Physical abuse.** "Physical abuse" means an employee's nonaccidental and inappropriate contact with an individual that causes bodily harm, including directing another individual or person to engage in such contact.

**9. Provider.** "Provider" means a person other than an agency that provides services to a recipient on behalf of or under contract with the department.

**10. Recipient.** "Recipient" means a person who receives assistance or services from the department.

**11. Recommendation.** "Recommendation" means an admonition, separate from a finding, that requires action by a facility, agency or department to correct a systemic issue, problem or deficiency identified during an investigation.

**12. Sexual abuse.** "Sexual abuse" means any sexual contact or intimate physical contact between an employee and an individual, including an employee's coercion or encouragement of an individual to engage in sexual behavior that results in sexual contact, intimate physical contact, sexual behavior or intimate physical behavior. For purposes of this subsection, "sexual contact" has the same meaning as in Title 17-A, section 251, subsection 1, paragraph D.

**13. Vendor.** "Vendor" means a person who provides goods or services to the department, including administrative services such as payroll processing, bookkeeping or facilities maintenance.

## **§ 102. Office of the Inspector General**

**1. Inspector General; office; salary.** The Inspector General is the executive head of the Office of the Inspector General, established within the department by this chapter. The Inspector General is entitled to receive an annual salary for all services. The Inspector General is entitled to receive actual expenses incurred in the performance of official duties.

**2. Appointment; term of office; removal.** The Inspector General is appointed by the Governor and subject to review by the joint standing committee of the Legislature having jurisdiction over health and human services matters and to confirmation by the Legislature. The Inspector General serves a term of office for 7 years or until a successor has been appointed and qualified. Any vacancy occurring must be filled by appointment for the unexpired portion of the term. The Inspector General is removable for cause by impeachment or by address of the Governor to both branches of the Legislature.

**3. Operation; appropriation.** The Inspector General operates independently within the department, including in the performance of investigations and issuance of reports, findings and recommendations. The appropriation for the Office of the Inspector General must be separate from the overall appropriation for the department.

**4. Duties.** The duties of the Inspector General include:

A. Investigating reported acts of fraud or attempted fraud or incidents of commingling or misapplication of funds in connection with, but not limited to, the requesting, obtaining, receiving, withholding, recording, reporting, expending or handling of funds administered by the department;

B. Conducting quality assurance audits and program reviews to ensure that public funds are well managed and dispensed for the purposes for which the funds are appropriated and deliver the best value for the intended recipients of the funds or department services;

C. Investigating reports of suspected mental abuse, physical abuse, sexual abuse, neglect or financial exploitation of a recipient of mental health or intellectual disabilities services by an employee, agency or facility or any death of an individual under section 105;

D. Maintaining a process by which an employee, recipient or member of the public may file a report or complaint concerning the department or an agency or facility, including any fraud, attempted fraud or commingling or misapplication of funds under section 103 or any abuse, neglect or financial exploitation or death under section 105; and

E. Issuing reports and recommendations as required by this chapter.

**5. Cooperation; information.** All agencies of the State and municipal governments shall cooperate fully with the Inspector General, rendering any assistance requested by the Inspector General. Every head of a department, bureau, division, commission or any other unit of State Government shall report in writing to the Inspector General all information concerning any suspected incident of fraud or attempted fraud or violation of any law in connection with funds administered by the department, abuse or

neglect of a recipient of department services or death of an individual. The Inspector General may access any program of the department, agency or facility and any records of any program of the department, agency or facility for any purpose under subsection 4.

**6. Violation of law; action.** Whenever the Inspector General determines that fraud, attempted fraud or any other violation of law may have occurred, the Inspector General shall report in writing all information concerning the fraud, attempted fraud or violation to the Attorney General, the Chief of the State Police or another law enforcement agency as the Inspector General determines appropriate. Upon referral from the Inspector General under this subsection, the Attorney General may take any action the Attorney General determines appropriate, including civil action for recovery of funds, injunctive relief or criminal prosecution. The Inspector General shall, upon request of the Attorney General and in such a manner as the Attorney General determines appropriate, assist in the recovery of funds, investigation or other actions required by the Attorney General in investigating or prosecuting a matter under this subsection. The Inspector General shall conduct any investigation in a manner to ensure the preservation of evidence for possible use in a civil or criminal proceeding.

**7. Audit methods.** When conducting audits pursuant to this chapter, the Inspector General may not engage a private vendor to conduct the audit or base any auditor's compensation on a percentage of the alleged overpayment amount, except that the department may engage a private vendor to conduct an audit of a provider located outside this State and may base that vendor's compensation on a percentage of the amount of overpayment received by the department. The department shall disclose to the public any mathematical algorithm used in performance of an audit. The Inspector General may request the services of the State Auditor to carry out the purposes of this chapter.

**8. Subpoena power.** The Inspector General may issue a subpoena to a witness and compel the production of a document or physical evidence related to an investigation under this chapter. The Inspector General may not issue a subpoena under this subsection for the production of a document of a labor organization or to a labor organization or a representative of a labor organization acting in a representative capacity to an employee whose conduct is the subject of an investigation or the document relates to the representation of the employee. A person who fails to respond to a subpoena under this subsection or knowingly provides false information to the Inspector General commits a Class E crime.

**9. Audit by Office of Program Evaluation and Government Accountability.** The Office of Program Evaluation and Government Accountability shall conduct a program audit of the Inspector General upon complaint or on an as-needed basis as determined by the Office of Program Evaluation and Government Accountability. An audit conducted under this subsection must include a review of the Inspector General's compliance with this chapter and effectiveness in performing the duties under subsection 4. The findings of an audit conducted under this subsection must be reported to the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over financial affairs within 60 days of the conclusion of the audit.

**10. Rules.** The Inspector General may adopt routine technical rules as defined by Title 5, chapter 375, subchapter 2-A to carry out the provisions of this chapter.

## **§ 103. Human Services Fraud Investigation Unit**

**1. Establishment; composition.** The Human Services Fraud Investigation Unit, referred to in this section as "the unit," is established within and is responsible to the Office of the Inspector General. The Inspector General may employ and assign to the unit such employees as the Inspector General determines appropriate.

**2. Purpose.** The purpose of the unit is to investigate reported acts of fraud or attempted fraud or incidents of commingling or misapplication of funds in connection with, but not limited to, the requesting, obtaining, receiving, withholding, recording, reporting, expending or handling of funds administered by the department pursuant to section 102, subsection 4, paragraph A. The Inspector General shall investigate such reported acts or incidents involving, but not limited to, employees, recipients, providers or vendors administering, receiving or applying for services or funds administered by the department.

**3. Limitation on actions to recover overpayments.** Based upon a report or recommendation by the Inspector General, the department may impose a sanction or withhold payment from a MaineCare provider in order to recover or impose penalties for an overpayment for services rendered or goods delivered under the MaineCare program as provided in this subsection.

A. The department may impose a sanction or withhold payment when the department has obtained an order from the Superior Court allowing interim sanctions upon showing a substantial likelihood that overpayment or fraud has occurred and that substantial harm to the department will result from further delay or when the department has taken final agency action and the provider has waived or exhausted its right to judicial review.

B. Notwithstanding paragraph A, the department may terminate or suspend the participation of a provider in the MaineCare program pursuant to federal regulation and state rule. This authority includes, but is not limited to, provider payment suspensions required under section 1714-E.

C. For the purposes of this subsection, "overpayment" does not include an overestimate made as part of a prospective interim payment, a 3rd-party liability recovery, a departmental administrative error or receivership fees or debt. In addition, this subsection does not apply to routine adjustments of \$2,500 or less that result from claims editing or processing.

## **§ 104. Quality assurance audits and program reviews**

**1. Quality assurance audits and program reviews.** The Inspector General shall design a comprehensive and well-coordinated system of quality assurance audits and program reviews of agencies, facilities and department administration to ensure that public funds are well managed and dispensed for the purposes for which the funds are appropriated and deliver the best value for the intended recipients of the funds or department services pursuant to section 102, subsection 4, paragraph B.

**2. Facility, agency and department.** In conducting a quality assurance audit or program review of an agency, facility or department administration under subsection 1, the Inspector General may review all relevant records, policies, procedures or other information to determine the effectiveness, efficiency and economical use of resources and compliance with laws, regulations, rules, policies and procedures of the program, agency, facility or department administration.

**3. Program baseline information.** In conducting a quality assurance audit or program review of a department program under subsection 1, if applicable, the Inspector General must use the following baseline information for the prior year for the program under audit or review:

- A. The total unduplicated number of households, children, persons with disabilities and seniors receiving assistance under the program;
- B. The average monthly benefit for each program in general funds, federal allocations and any special revenue funds; and
- C. The total program expenditure in general funds, federal allocations and any special revenue funds for each program.

**4. Components of a quality assurance audit and program review.** A quality assurance audit or program review of a department program under subsection 1 must include review of the department's program integrity efforts for that program, including:

A. A description of the department's efforts under this section and under chapters 851, 855, 1053-B and 1054-A, including any efforts made in cooperation with federal agency partners in investigating and prosecuting fraudulent claims, misuse of public benefits instruments investigated pursuant to Title 17-A, section 905-C and overpayments to providers, vendors and retailers, including:

- (1) The number of staff investigating cases;
- (2) The number of cases opened, investigated and disposed of;
- (3) The sources of the cases opened;
- (4) The dispositions of the cases closed;
- (5) The number and amount of fraudulent overpayments recovered and fines or penalties actually imposed, expressed in absolute dollar values and as percentages of all funds spent in each program;
- (6) The amount of recoveries of fraudulent claims reclaimed by the Federal Government;

(7) All costs associated with all activities related to discovering, investigating and prosecuting cases in which fraud was alleged, whether or not fraud was determined to exist, for each program, both in absolute dollar values and as percentages of each program;

(8) The average length of time to recover fraudulent overpayments and fines or penalties imposed from the time cases are opened until the time overpayments and fines or penalties are repaid in full;

(9) The amount of fraudulent overpayments determined as uncollectible;

(10) The amount of fraudulent overpayments recovered by type of offender;

(11) The amount of fraudulent overpayments recovered by a business unit within the department's audits and program integrity activities group;

(12) The number of program providers, retailers or vendors, by type, that are terminated from participation or otherwise sanctioned from participation in public programs as a result of program integrity activities;

(13) The amount of all recoveries of fraudulent overpayments received as a result of multistate litigation against pharmaceutical companies or other providers; and

(14) The dollar amount, by provider type, of any overpayment recoveries;

B. A description of the status of cases referred to the Attorney General's health care crimes or other unit or other law enforcement entities under section 102, subsection 6 and the number and disposition of those cases and the amount of overpayments recovered, all detailed on a per case basis, as long as the information disclosed conforms to the requirements of Title 16, section 804 and does not compromise the investigation or prosecution of a case;

C. If the department uses a vendor, contractor or other program integrity unit to assist in the identification and recovery of overpayments, a description of the performance and activities of the vendor, contractor or other program integrity unit used by the department. The report must include what the scope of the vendor's, contractor's or other program integrity unit's activity is, what payments have been made to the vendor, contractor or other program integrity unit, how many cases have been opened, how many overpayments have been recovered and any other benefits from the vendor's, contractor's or other program integrity unit's involvement;

D. A description of the department's participation in federally mandated program integrity efforts, including the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services recovery audit program and payment error rate measurement program, and the effect of this participation on department resources and money recovered and the number of providers sanctioned and referrals made as a result of this participation;

E. The results of any federal audits of the department's program integrity activities, including weaknesses identified and best practices identified;

F. A description of any known defects, deficiencies or weaknesses in any systems managed or used by the department that resulted in the improper or inaccurate payment of claims or benefits, including but not limited to the Medicaid information system, provider enrollment system and eligibility determination system. The report must include an estimate of the financial effect of these issues and a timeline for remediation and a description of any known defects, deficiencies or weaknesses in any systems managed or used by the department that have been corrected and an estimate of the cost of and any savings from these corrections;

G. A description of any investments in technology planned by the department to improve efforts to prevent improper payments; and

H. A description of any policy changes or improvements implemented by the department to improve the accurate payment of claims and benefits.

**5. Report.** Upon completion of a quality assurance audit or program review under this section, the Inspector General shall report the findings and any recommendations to the commissioner and the joint standing committee of the Legislature having jurisdiction over health and human services matters and the joint standing committee of the Legislature having jurisdiction over financial affairs.

## **§ 105. Investigation of mental abuse, physical abuse, sexual abuse, neglect or financial exploitation or death of an individual**

**1. Mental abuse, physical abuse, sexual abuse, neglect or financial exploitation of an individual.** Upon receipt of a report or a complaint or upon the Inspector General's own initiative, the Inspector General shall investigate instances of possible mental abuse, physical abuse, sexual abuse, neglect or financial exploitation of an individual. The Inspector General may take immediate action to prevent mental abuse, physical abuse, sexual abuse, neglect or financial exploitation of an individual or, if the Inspector General determines a crime was or is being committed, report the matter immediately to the Chief of the State Police or other appropriate law enforcement agency under section 102, subsection 6. If the Inspector General takes immediate action or reports a matter to a law enforcement agency under this subsection, the Inspector General shall immediately notify the Attorney General, the commissioner and the director of the agency or facility where the incident occurred.

**2. Death of individual.** The Inspector General shall investigate the death of an individual that occurs:

- A. At an agency, facility or site funded by the department;
- B. Within 24 hours after the individual was refused services at an agency, facility or site funded by the department; or
- C. Within 14 days after the individual was discharged or transferred from an agency, facility or site funded by the department.

Upon written request of a department or agency of the State, the Inspector General shall assist that department or agency in investigating a report of the death, abuse or neglect of a person with mental illness, autism or intellectual disabilities.

**3. Site visits.** The Inspector General shall conduct an unannounced site visit to each facility at least once annually to review and make recommendations on systemic issues relative to preventing, reporting, investigating and responding to mental abuse, physical abuse, sexual abuse, neglect or financial exploitation of individuals in the facility's care.

**4. Reports and recommendations.** Upon the conclusion of an investigation under subsection 1 or 2, the Inspector General shall report its findings to the commissioner and to the director of the agency or facility where the incident occurred and include any recommendations the Inspector General determines appropriate.

## **§ 106. Employees**

**1. Mandatory reporting.** In addition to the reporting requirements under Title 34-B or department rules, if an employee witnesses, suspects, is told of or has reason to believe an instance of fraud or attempted fraud or an incident of commingling or misapplication of funds under section 103 or of abuse, neglect, financial exploitation or death of an individual under section 105 has occurred or is occurring, the employee shall report the allegation to the Inspector General within 4 hours after initial discovery of the information pursuant to the process under section 102, subsection 4, paragraph D. A violation of this subsection is a Class D crime.

**2. Cooperation with Inspector General.** An employee shall cooperate with the Inspector General in the performance of the Inspector General's duties. Failure to cooperate under this subsection includes:

- A. Creating and transmitting a false report to the Inspector General;
- B. Providing false information to an investigator of the Inspector General during an investigation, site visit, quality assurance audit or program review;
- C. Colluding with other employees to cover up evidence;
- D. Colluding with other employees to provide false information to an investigator of the Inspector General during an investigation, site visit, quality assurance audit or program review;

- E. Knowingly destroying or not properly preserving evidence;
- F. Withholding evidence;
- G. Failing to provide information upon request of the Inspector General during an investigation, site visit, quality assurance audit or program review; or
- H. Obstructing an Inspector General investigation, site visit, quality assurance audit or program review.

**3. Retaliation.** An employee who complies with the provisions of this section may not be retaliated against if the employee acted in good faith in conformance with the employee's duties.

## **§ 107. Reports and recommendations**

**1. Annual report.** No later than January 1st of each year, the Inspector General shall provide to the Governor, the joint standing committee of the Legislature having jurisdiction over health and human services matters, the joint standing committee of the Legislature having jurisdiction over financial affairs and the commissioner a summary of investigations, reports and recommendations made under this chapter for the prior calendar year. The report shall detail any corrective or administrative action directed by the commissioner or final disposition of a matter as a result of an investigation, report or recommendation submitted by the Inspector General made under this chapter for the prior calendar year and a summary of the prior calendar year's program integrity efforts of the department, including efforts to investigate and prosecute fraudulent incidents or practices. The report must include objective data identifying trends in reported allegations, the timeliness of the Office of the Inspector General's investigations and the final dispositions of investigations for each agency and facility and of each departmentwide investigation for the most recent 3-year period. The report must include any detailed recommended administrative actions and matters for consideration by the Legislature. The report may not contain any confidential or personally identifying information of a recipient.

**2. Confidentiality.** Any raw data, finding or unsubstantiated report from an investigation or site visit conducted by the Inspector General is confidential except for the report under subsection 1 or as provided by this chapter, court order or other applicable law.

**3. Disclosure of findings or report.** The Inspector General shall disclose the findings of an investigation or site visit, including whether any allegations were substantiated or unsubstantiated, to the following persons:

- A. The Governor;
- B. The commissioner;
- C. The director of the agency or facility involved;
- D. The alleged victim and a parent or guardian of the alleged victim, when applicable;
- E. The complainant, when applicable; and

F. The accused, when applicable.

**4. Agency or facility response.** Within 30 calendar days of receiving a report with recommendations from the Inspector General, the director of the agency or facility that is the subject of the report shall file a written response to the Inspector General and commissioner that addresses any corrective actions taken by the agency or facility to:

- A. Protect an individual, when applicable;
- B. Eliminate an identified problem; and
- C. Prevent recurrences of an identified problem.

A response under this subsection must include the implementation and completion dates of any corrective action taken. If a written response is not made within the 30-day period, the commissioner shall determine the appropriate corrective action to be taken in response to the report.

**5. Commissioner review.** Upon review of any report, finding or recommendation submitted by the Inspector General and any response under subsection 4, the commissioner may accept or reject a recommendation and may direct that further investigation be taken by the Inspector General or further corrective action be taken by the department or an agency or facility.

**Sec. 5. Transition provisions.** The following provisions govern the transition of the Human Services Fraud Investigation Unit from the jurisdiction of the Department of Health and Human Services to the jurisdiction of the Office of the Inspector General.

1. The Human Services Fraud Investigation Unit under the jurisdiction of the Office of the Inspector General is the successor in every way to the powers, duties and functions of the former Human Services Fraud Investigation Unit under the jurisdiction of the Department of Health and Human Services.

2. All existing rules, regulations and procedures in effect, in operation or adopted in or by the Human Services Fraud Investigation Unit under the jurisdiction of the Department of Health and Human Services or any of its administrative units or officers are hereby declared in effect and continue in effect until rescinded, revised or amended by the proper authority.

3. All existing contracts, agreements and compacts currently in effect in the Human Services Fraud Investigation Unit under the jurisdiction of the Department of Health and Human Services continue in effect.

4. Any positions authorized and allocated subject to the personnel laws to the former Human Services Fraud Investigation Unit under the jurisdiction of the Department of Health and Human Services are transferred to the Human Services Fraud Investigation Unit under the jurisdiction of the Office of the Inspector General and may continue to be authorized.

5. All records, property and equipment previously belonging to or allocated for the use of the former Human Services Fraud Investigation Unit under the jurisdiction of the Department of Health and Human Services become, on the effective date of this Act, part of the property of the Human Services Fraud Investigation Unit under the jurisdiction of the Office of the Inspector General.

6. All existing forms, licenses, letterheads and similar items bearing the name of or referring to the Human Services Fraud Investigation Unit may be used by the Human Services Fraud Investigation Unit under the jurisdiction of the Office of the Inspector General until existing supplies of those items are exhausted.

## **SUMMARY**

This bill creates the Office of the Inspector General within the Department of Health and Human Services to be operated and funded independently of the department. The purpose of the Office of the Inspector General is to oversee the functions of the Department of Health and Human Services with 4 main duties:

1. Investigate instances of fraud, attempted fraud and commingling or misapplication of department funds;

2. Conduct quality assurance audits and program reviews of department programs, agencies and facilities;

3. Investigate instances of abuse, financial exploitation or death of mentally ill, autistic or intellectually disabled recipients of department assistance or services; and

4. Establish and maintain a process by which an employee, recipient of department assistance or services or a member of the public may report or complain about fraud, attempted fraud, commingling or misapplication of department funds or abuse, neglect, financial exploitation or death of a mentally ill, autistic or intellectually disabled recipient of department assistance or services.

This bill requires the Inspector General to perform its duties through conducting investigations, audits and site visits and issuing findings, reports and recommendations that are reviewed by the Commissioner of Health and Human Services. The bill moves the existing Human Services Fraud Investigation Unit from the jurisdiction of the Department of Health and Human Services to the Office of the Inspector General and directs the Inspector General to refer matters to the Attorney General or a law enforcement agency or enlist the assistance of the State Auditor when appropriate. This bill also requires the Inspector General to submit an annual report to the Governor, the Commissioner of Health and Human Services and the joint standing committees of the Legislature having jurisdiction over health and human services matters and financial affairs summarizing its activities for the prior calendar year. This bill provides for oversight of the Inspector General by the Office of Program Evaluation and Government Accountability on an as-needed basis.