

State of Kansas

## Office of the Attorney General

CARLA J. STOVALL  
ATTORNEY GENERAL

July 29, 1996

The Honorable Donna E. Shalala, Secretary  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Madam Secretary,

With pleasure, I submit to you the first annual report for the Kansas Attorney General's Medicaid Fraud and Abuse Division. This report outlines the successes that my new Division has achieved over the past year. The formation of this division is a reflection of the commitment that Kansas has to combating health care fraud. I am confident that the division's fulfillment of this pledge will continue for years to come.

The Kansas Medicaid Fraud and Abuse Division is charged with the responsibility of investigating and criminally prosecuting Medicaid providers who perpetrate fraud on the Kansas Medicaid program. In addition, the division is responsible for investigating and criminally prosecuting cases of patient abuse, neglect, and misappropriation of patient funds in facilities that receive Medicaid dollars. This mission secures the financial integrity of the Medicaid program, protects vulnerable Kansans, and ensures that scarce Medicaid funds are spent on medical services for the truly needy.

When I was elected to the Office of Attorney General, I made a pledge to protect the citizens of Kansas as their chief law enforcement officer. When Governor Bill Graves joined me in applying for certification of the Medicaid Fraud and Abuse Division, I took a step in fulfilling that pledge. The Medicaid Fraud and Abuse Division is an important and valued division in my office. The formation of this division has given Kansas a strong weapon to fight those who steal from the Medicaid program.

The creation of the division was an exciting time for my office. After hiring a director for the division, the grant application preparation was completed. Governor Graves and I were pleased to submit the grant application to the Department of Health and Human Services in August 1995. The division received certification in early October 1995. The assistance my staff received from the Medicaid fraud units of other states, the National Association of Medicaid Fraud Control Units, and the Office of Inspector General contributed to the successful formation of the division and I appreciate the assistance.

Coinciding with the division's creation, Kansas had the opportunity to join in the global settlement with the Caremark Corporation. At a news conference in October, I had the pleasure of announcing both the creation of the Medicaid Fraud and Abuse Division and the settlement that Kansas would receive from participating in the Caremark case. A recovery of more than \$460,000 is a convincing measure of the worth of the division. The division also is participating in other global settlements that are to be completed in the near future. These settlements should recoup funds and impose penalties on those Medicaid providers who have defrauded the Kansas Medicaid program.

In the first year of its existence, the division has pursued a variety of cases. This report contains statistical information and graphical representations of the physical location of each case. Many of these cases are in the investigation stage. Formal charges and trials will follow.

The Kansas Medicaid program has a budget of more than \$822 million. If present growth and spending trends continue, the budget could reach the \$1 billion dollar mark in the very near future. A large share of Kansas Medicaid expenditures is in long term care. The division has a significant number of cases in this area. With the demographic trends in Kansas, I anticipate that the division's caseload will continue to address many long term care issues. The introduction of managed care into the Kansas Medicaid system will also bring new and unique cases to the division.

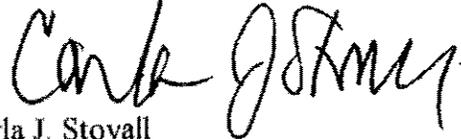
When the grant application was submitted in late August, I stated that I would be introducing legislation that would specifically address Medicaid fraud prosecutions. I am happy to report that such legislation has been enacted. On May 17, 1996, I had the pleasure of watching Governor Bill Graves sign the Kansas Medicaid Fraud Control Act. This act ensures that the division has effective legal means to combat fraud in the Medicaid program. One important factor that made this act a success was the willingness of most Medicaid providers to support its passage. I am confident that this legislation will serve as a model for other states which are seeking to create or refashion their Medicaid fraud legislation. In the next legislative session, I will be supporting legislation that will give the division a strong foundation on which to combat patient abuse and neglect. I am confident that this legislation will have the same success as the Kansas Medicaid Fraud Control Act.

Our unit has been active with many task forces fighting health care fraud. The Health Care Fraud Task Force coordinated by the United States Attorney for Kansas is one of many groups in which the division has played an active role. The commitment to cooperate with federal, state, and local law enforcement and regulatory agencies is key to the division's success.

Division staff have also participated in a number of training opportunities. The training has addressed a diverse array of topics. A few examples of the topics are: electronic claim submission fraud, patient abuse, and managed care fraud. Training opportunities will continue to be pursued to insure that staff are informed and prepared for the rapidly changing health care market.

This report provides you with detailed information about the division's activities and accomplishments. It has been my distinct pleasure as the Kansas Attorney General to see the Medicaid Fraud and Abuse Division added to my office. The citizens of Kansas can now feel confident that unscrupulous Medicaid providers will be prosecuted for committing fraud and abuse. I am sure that you will find this report informative regarding the division and its activities. If any questions arise, please feel free to contact Martha Hodgesmith, Deputy Attorney General or me.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Carla J. Stovall". The signature is written in a cursive, flowing style.

Carla J. Stovall  
Attorney General

Annual Report  
1995-1996

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## Purpose

The purpose of the state Medicaid fraud control unit is to deter and eliminate fraud in the State Medicaid Program through a single, identifiable entity of state government that can investigate and prosecute Medicaid providers across the state. The United States Department of Health and Human Services' Office of Inspector General provides funding and works in partnership with each state's Medicaid fraud control unit.

### **Federal Law defines the responsibilities of the MFCU's**

Every MFCU is to:

1. Conduct a statewide program for investigating and prosecuting violations pertaining to fraud in the administration of the Medicaid program or the activities of Medicaid providers;
2. Review complaints alleging abuse or neglect of patients and misappropriations of patients' private funds by programs receiving Medicaid payments; and
3. Maintain staff to include attorneys experienced in investigation or prosecution of civil and/or criminal fraud, auditors experienced in commercial and/or financial records, investigators experienced in commercial and/or financial investigations, and other professional staff knowledgeable about the provision of medical assistance and the operation of health care providers.

## Background of the Unit

The Kansas Medicaid Fraud and Abuse Division was established in 1995. Application for certification as a state Medicaid Fraud Control Unit was submitted by Attorney General Carla Stovall and Governor Bill Graves to the United States Department of Health and Human Service's in August 1995. The Office of Inspector General certified the division in October 1995.

Certification establishes that the division meets the federal requirements of being a single identifiable entity that can

investigate and prosecute violations pertaining to fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of Medicaid providers. In addition, the division reviews complaints alleging abuse or neglect of patients and misappropriation of the private funds of such patients and determines the appropriateness of criminal prosecution.

## Staffing

The division is staffed with a Deputy Attorney General as Director, Assistant Attorney General, an Auditor, a Chief Investigator, (2) Fraud Investigators, and a Legal Secretary. The staffing brings together a corp of professionals with extensive and complimentary experience that will maximize the capabilities of the division to accomplish its goals of effective and efficient investigation and prosecution.

The Deputy Attorney General is responsible for the day-to-day operations of the division. These include management of all division personnel, oversight of all criminal investigations and cases through trial and appeal, coordination with other agencies, as well as fiscal and program compliance with federal funding and program requirements. The Chief Investigator assists the Deputy Attorney General through the management of investigative personnel and oversight of the investigation phase of cases.

The Deputy Attorney General brings direct experience in public benefits programs with specific expertise in Medicaid and long-term working relationships with local, state, and federal governmental entities as well as private organizations that serve Medicaid recipients.

The Assistant Attorney General is an experienced criminal prosecutor with a background in all aspects of prosecution at the state level.

The Auditor brings a background in law and accounting with direct experience in medical reimbursement in the private insurance sector and private hospital setting.

The Chief Investigator position has recently been vacated and recruitment efforts have begun.

The Fraud Investigators bring direct experience in nursing in the private sector, regulation and oversight of medical providers at the state level, and extensive criminal investigation experience at the local, state and federal level involving both crimes against persons and complex white collar crime.

The Legal Secretary has extensive experience in working with professionals delivering services in the public legal sector and community based mental health services.

The division will be adding five additional positions including two investigators, one paralegal, a research analyst/data manager, and one attorney. The funding for these positions was granted by both the United States Department of Health and Human Services and the Kansas Legislature. The staff members will be recruited from law enforcement, computer science, medical and legal backgrounds. The new staff is expected to be hired by September 1996.

## **Federal Performance Standards**

The Kansas Medicaid Fraud and Abuse Division is required to comply with federal performance standards. The standards are used by the United States Department of Health and Human Services, Office of Inspector General, to recertify a division and to assess its effectiveness during on-site reviews. Each section of the report is in response to specific performance standards. The Annual Report demonstrates that the Kansas Medicaid Fraud and Abuse Division has met the performance standards.

## **State Performance Standards**

The State of Kansas requires performance measures to assess the effectiveness of agencies and their programs. In compliance with this directive, the Kansas Attorney General's office and the Medicaid Fraud and Abuse Division developed program goals,

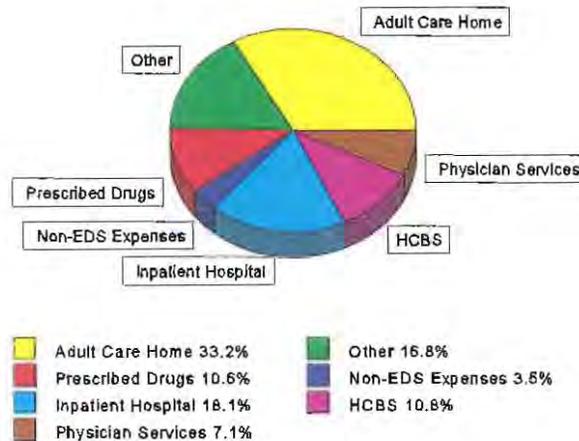
objectives, and measures. These goals and objectives will become effective on July 1, 1996 at the beginning of State Fiscal Year 1997 and can be found in Appendix A.

## Kansas Medicaid Program

The Kansas Medicaid program's budget is \$848 million per year. Medicaid services are delivered by 18,572 providers serving Medicaid recipients in 105 counties. The Medicaid program has seen substantial growth over the past five years mirroring national trends. However, Kansas is unique due to the large share of Medicaid expenditures dedicated to long-care treatment facilities.

### Medicaid Expenditures

State Fiscal Year 1996 (Through February)



Many forces - changing demographics, evolving societal values, limited financial resources, the promise of federal welfare reform - are defining a new direction for Social and Rehabilitation Services. SRS has reorganized several of its' commissions, started initiatives to transfer selected programs to other agencies, and is pursuing privatization options for services traditionally provided by state government.

Some of the changes occurring are as follows:

- **Managed Care.** Under a managed care system Medicaid consumers, primarily women, children and persons with disabilities, designate a primary care provider or an HMO to oversee all preventive and primary medical services. In the past year, SRS has implemented two managed care programs, HealthConnect and PrimeCare Kansas. By July 1997, 80 percent of the state's Medicaid consumers will participate in a managed care program.
- **The move of long term care programs to the Kansas Department on Aging.** The KDOA will assume responsibilities for long term care programs for Medicaid consumers age 65 and over in July 1997. During this time of transition, SRS and the KDOA have worked cooperatively to streamline and improve long-term care services for persons age 65 and over. As a result, a new program, Living Independence for Everyone (LIFE), increases the number of frail, elderly persons who can receive Medicaid services in their homes. With the acceptance threshold lowered, elderly Kansans will be able to remain in the community rather than have to look to nursing facilities to obtain the services they need for daily living.
- **The Home and Community Based Services Waiver for the Physically Disabled** is also a new program. Under the program, Medicaid-eligible persons with physical disabilities will work with counselors at one of the 11 Independent Living Centers across Kansas. Counselors and consumers work together to determine the need for services, develop a service plan, and find service providers.

Program	Average Monthly Consumers	Total Expenditures	State General Funds
Adult Care Homes	13,717	\$264,960,190	\$75,077,529
HCBS Elderly & Disabled	3,138	\$18,769,807	\$4,954,332
HCBS MR/DD	1,589	\$ 45,456,767	\$11,811,901
Head Injury	75	\$ 3,469,682	\$ 808,938
Tech. Asst. Children	2	\$ 68,180	\$ 16,039
Comm. Based LTC (direct services)	7,448	\$ 16,355,563	\$ 6,597,066

## Interagency Partnerships

The Kansas Attorney General's Medicaid Fraud and Abuse Division works to detect and prosecute Medicaid fraud and patient neglect/abuse and receives complaints, concerns, and referrals from anyone who suspects Medicaid fraud and/or patient abuse/neglect.

### Provider Fraud

Partnership between the Kansas Attorney General's Medicaid Fraud and Abuse Division and the Kansas Medicaid agency, Kansas Department of Social and Rehabilitation Services, is required to ensure that suspected cases of provider fraud are appropriately referred, requests for provider records or computerized data are provided, and assistance in recovery of overpayments is given. The division has instituted formal working procedures with the Medicaid agency through a Memorandum of

Understanding that outlines in detail the responsibilities of the Medicaid agency and the division in the referral, review and prosecution of cases.

In addition to the state Medicaid agency as a referral source, the division receives reports of fraud from federal, state, and local law enforcement agencies, social service agencies, regulatory boards, and the general public.

Coordination of referrals from the fiscal agent and the Surveillance Utilization Review System (SURS) unit has resulted in information upon which case openings have been based. Insuring that referring entities understand the information necessary to open and pursue an investigation and successfully prosecute cases has been the focus of division efforts. Such understanding will help to insure that the referrals processed to the division are appropriate. Creating this understanding has been fostered in the following ways.

1. Monthly meetings between division staff, fiscal agent staff, and Medicaid agency staff,
2. Training sessions presented by the fiscal agent and the SURS unit to division staff,
3. Training presented by the division to the fiscal agent and SURS unit,
4. Development of referral form, and
5. Individual case consultations.

### **Abuse/Neglect**

Coordination of interagency cooperation in the review of complaints of abuse, neglect and misappropriation of patients' private funds requires the interaction of three state level agencies: the Department of Social and Rehabilitation Services (SRS), the Kansas Department of Health and Environment (KDHE), and the

Kansas Department on Aging (KDOA). The efforts of these agencies are then integrated into local law enforcement efforts if the matter has been brought to the attention of law enforcement authorities.

Coordinating efforts have begun between these state agencies and the Division through meetings to establish procedures for the processing of referrals, provision of information, and other support needed to pursue criminal investigation and prosecution.

Involvement of law enforcement has occurred by educating local prosecutors about the role and purpose of the Medicaid Fraud and Abuse Division. Further education and coordination are needed with prosecutors and local law enforcement organizations. Because of the geographic size of the state and the number of prosecutors and law enforcement personnel, specific training and written materials will need to be delivered in settings that will reach large numbers of people.

The greatest challenge in state agency coordination lies in the differing responsibilities and fiscal support for the specific subdivisions responsible for various aspects of long-term care and Medicaid waiver community-based services. The following factors have a direct impact on the ability of the Medicaid Fraud and Abuse Division to effectively accomplish its responsibilities in the review of complaints and prosecution of abuse/neglect.

1. Responsibilities for managing Medicaid funded long-term care for senior citizens will move from SRS to KDOA beginning July 1, 1997. This creates a movement of staff and administrative responsibility on a major scale.
2. Major expansions in community-based services for a wide variety of persons has been occurring in the last few years in Kansas and will escalate because of legislative and executive branch emphasis on moving Medicaid recipients from long term care institutional settings into more individualized community-based settings.
3. Projected closure of two state institutions, one for persons with

mental illness and the other for persons with developmental disabilities, will rapidly expand the numbers of persons with those disabilities who will now be served by community-based Medicaid providers.

4. Funding constraints in KDHE have resulted in significant changes in the procedures used for investigation of allegations of abuse/neglect/exploitation. Public outcries over the potential impact of those policies/procedures on the safety of long-term care residents was met by a legislative response. The Legislature ordered a performance audit of certain aspects of nursing home regulation. The results of that audit will be available within the next few months.
5. To insure effective review of complaints by the division, access to the full range of information gathered and produced by KDHE in the course of abuse/neglect investigations and relevant licensing and facility survey activity is needed. KDHE has agreed to provide the division with the public files on such information. The information in the public files is insufficient for division review which must determine whether there is a substantial potential for criminal prosecution.
6. The KDOA Ombudsman program is facing serious funding constraints as federal support for this program is undergoing major change and support from state funding is uncertain. Such constraints impact the number of staff, the amount of travel, and thus the number and depth of investigations the Ombudsman can accomplish.

### **Entities involved in Abuse/Neglect Investigations**

The brief outline below of the various entities involved in abuse neglect investigations exemplifies the organizational challenge in developing effective communication and coordination procedures.

1. Adult Services within the Adult and Medical Services Commission of SRS coordinates with regional SRS offices protective services for seniors and adults with physical disabilities.

2. The Community Developmental Disabilities Program of the Commission of Mental Health and Developmental Disabilities coordinates services in Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and waived community-based services for persons with developmental disabilities with regional SRS offices, regional Developmental Disability (DD) Quality Enhancement personnel and KDHE.
3. The Bureau of Adult and Child Care of KDHE coordinate abuse/neglect complaints in nursing facilities with regional long-term care facility surveyors.
4. The Elder Rights Division of the Department on Aging, of which the Long Term Care Ombudsman is a section, coordinates regional ombudsman and regional Area Agencies on Aging.
5. Local law enforcement entities include police departments, sheriffs' offices, county and district attorneys.

Creating cooperative procedures in this system is the present goal, but because of the factors outlined above, the division will be confronting a constantly changing cast of players that will have to be networked with and educated about the process of criminal investigation and prosecution.

Because the division is new, existing reporting statutes on abuse/neglect/exploitation do not speak to the role of the division and its staff. This situation has a direct impact on the availability of information between affected persons and organizations and the division. Therefore, it is imperative that the state agencies with responsibilities for securing the safety of persons served by Medicaid funded programs share the information they are mandated to receive.

### **U.S. Attorney's Kansas Health Care Fraud Working Group and Investigative Task Force**

The division is a key player in the U.S. Attorney's Kansas Health Care Fraud Working Group and the Investigative Task Force. This group is a partnership of federal and state investigative and

prosecutorial agencies that are dedicated to a comprehensive and coordinated effort in the identification and prosecution of health care fraud. Sharing information in a state and federal data referral system and developing anti-fraud legislative initiatives have been the focus of much of the group's activities.

Case referrals and joint prosecution efforts have also been part of the partnership with federal authorities. The division's Assistant Attorney General has been granted cross designation as an Assistant U.S. Attorney and is actively participating in federal prosecutions of Medicaid providers. The division's investigative staff routinely work with federal investigative agencies in support of cases involving both Medicaid and other federal health care programs. The division has received numerous tips from the general public, professionals, and other sources that have resulted in referrals of potentially significant state, regional, and national fraud schemes in a wide variety of provider services.

Additional groups with which collaborative efforts have occurred are found in Appendix B.

## Authority for Prosecution

The Kansas Attorney General's Medicaid Fraud and Abuse Division receives its specific authority from the Kansas Medicaid Fraud Control Act ("the Act").

Specifically, the Act provides as follows:

"New Section 9. (a) There is hereby created within the office of the attorney general a Medicaid fraud and abuse division.

"(b) The Medicaid fraud and abuse division shall be the same entity to which all cases of suspected Medicaid fraud shall be referred by the department of social and rehabilitation services, or its fiscal agent, for the purpose of investigation, criminal prosecution or referral to the district or county attorney for criminal prosecution.

"(c) In carrying out these responsibilities, the attorney general shall have all the powers necessary to comply with

the federal laws and regulations relative to the operation of the Medicaid fraud and abuse division, the power to investigate, criminally prosecute violations of this act, the power to cross-designate assistant United States attorneys as assistant attorneys general, the power to issue, serve or cause to be issued or served subpoenas or other process in aid of investigations and prosecutions, the power to administer oaths and take sworn statements under penalty of perjury, the power to serve and execute in any county, search warrants which relate to investigations authorized by this act, and the powers of a district or county attorney."

### **Medicaid Fraud Control Act**

On January 25, 1996, representatives of the Office of the Attorney General appeared before the Kansas Senate Public Health and Welfare Committee to request the introduction of the Kansas Medicaid Fraud Control Act. On February 12, 1996, the request was granted and Senate Bill 660 was introduced. The Senate Public Health and Welfare Committee scheduled a committee hearing for February 14, 1996. In the interim, representatives from the Attorney General's Medicaid Fraud and Abuse Division met with a variety of representatives of Medicaid provider groups to discuss the Kansas Medicaid Fraud Control Act. As a result Attorney General Carla Stovall recommended that amendments to the Act be made.

At the conclusion of the February 14, 1996, public hearing, the bill was referred to a subcommittee. On March 12, 1996, the Public Health and Welfare Committee voted to recommend Senate Bill 660 for passage. Thereafter, on March 13, 1996, the Senate voted 40-0 to pass Senate Bill 660. The Kansas Senate amended the contents of Senate Bill 660 into House Bill 2700. After the House nonconcurred, a conference committee was formed. On April 26, 1996, the Senate adopted the conference committee's report. On April 27, 1996, the House adopted the conference committee's report with a vote of 118-3. Thereafter, on May 17, 1996, Governor Bill Graves signed House Bill 2700 into law. A copy of this bill is attached as Appendix C.

## Relevant State Criminal Statutes

In addition to the Kansas Medicaid Fraud Control Act, the following general criminal statutes are also available for use in fraud prosecutions.

- K.S.A. 21-3701 Theft
- K.S.A. 21-3710 Forgery
- K.S.A. 21-3711 Making a False Writing
- K.S.A. 21-3755 Computer Crime
- K.S.A. 21-3805 Perjury
- K.S.A. 21-3824 False Impersonation
- K.S.A. 21-3901 Bribery
- K.S.A. 21-3904 Presenting a False Claim
- K.S.A. 21-4214 Obtaining a Prescription-Only Drug by Fraudulent Means
- K.S.A. 21-4215 Obtaining a Prescription-Only Drug by Fraudulent Means for Resale
- K.S.A. 21-4403 Deception Commercial Practices
- K.S.A. 39-709b Use of Public Lists

The Kansas Attorney General's Medicaid Fraud and Abuse Division anticipates using K.S.A. 21-3437, Mistreatment of Dependent Adult in prosecuting the majority of patient abuse and neglect cases. However, in addition to that statute, the following statutes are also available to prosecute patient abuse cases:

- K.S.A. 21-3401 Murder in the first degree.
- K.S.A. 21-3402 Murder in the second degree.
- K.S.A. 21-3403 Voluntary manslaughter.
- K.S.A. 21-3404 Involuntary manslaughter.
- K.S.A. 21-3408 Assault.
- K.S.A. 21-3410 Aggravated assault.
- K.S.A. 21-3412 Battery.
- K.S.A. 21-3414 Aggravated battery.
- K.S.A. 21-3419 Criminal threat.
- K.S.A. 21-3423 Interference with custody of a committed person.
- K.S.A. 21-3424 Criminal restraint.
- K.S.A. 21-3425 Mistreatment of a confined person.

- K.S.A. 21-3502 Rape.
- K.S.A. 21-3503 Indecent liberties with a child.
- K.S.A. 21-3504 Aggravated indecent liberties with a child.
- K.S.A. 21-3505 Criminal sodomy.
- K.S.A. 21-3506 Aggravated criminal sodomy.
- K.S.A. 21-3510 Indecent solicitation of a child.
- K.S.A. 21-3511 Aggravated indecent solicitation of a child.
- K.S.A. 21-3516 Sexual exploitation of a child.
- K.S.A. 21-3517 Sexual battery.
- K.S.A. 21-3518 Aggravated sexual battery.
- K.S.A. 21-3608 Endangering a child.
- K.S.A. 21-3609 Abuse of a child.

A detailed description of each of these statutes is provided in Appendix D.

## Medicaid Fraud and Abuse Division Case Activity

### Current Case Activity

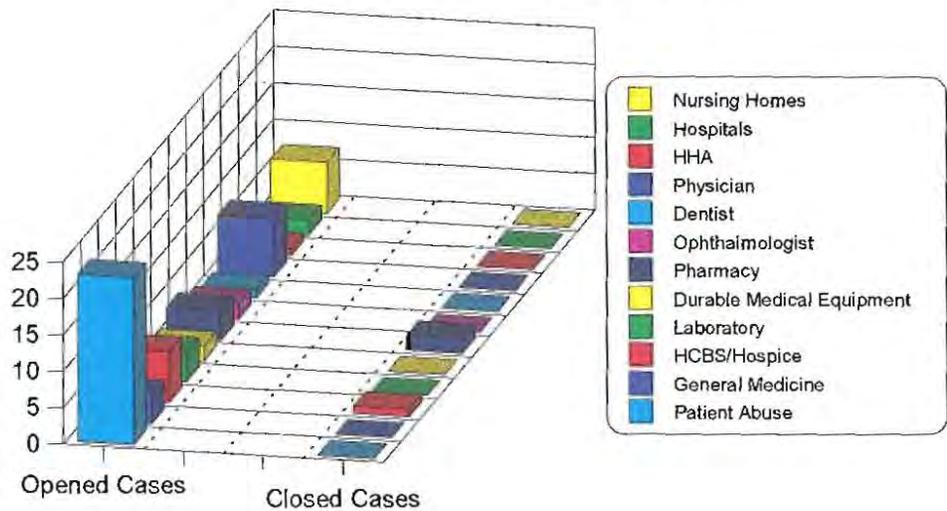
The cases under investigation by the division cover a wide range of Medicaid supported services and provider groups. Affected Medicaid recipients are receiving the services in long term care settings, community-based settings, and traditional medical services delivery systems. The cases are located in rural and urban settings spread across the state. The number and range in type of cases under investigation tend to reflect the Medicaid expenditures and service delivery methods as outlined in the description of the Medicaid program found in this Annual Report.

Besides the cases arising in Kansas, the division is participating in national cases, described as global cases. These cases are representative of the degree of complexity to which health care fraud has risen. They are complex multi-party, multi-state and multi-issues cases which can only be investigated and prosecuted through the team effort of Medicaid Fraud Divisions acting cooperatively across the country. The cases arise because of fraudulent conduct by a provider initially discovered and investigated by another state Medicaid Fraud Division. Because of

such investigations, facts establish that the fraudulent conduct has resulted in losses to the Kansas Medicaid program. Kansas participated in its first global case, Caremark, in 1995 and saw a reimbursement to Kansas of \$461, 268.

The Division is also participating in cases initiated by federal investigative authorities. Kansas is one of the top ten states in the country in terms of the percentage of persons over the age of sixty-five. Thus, many Kansans are Medicare recipients. Federal authorities are the primary investigators in cases involving providers who serve recipients entitled to Medicare or other federally supported health care programs; such recipients often receiving Medicaid services as well. Thus, the fraud committed against Medicare is usually a fraud against the Medicaid program as well.

### Overview of MFCU Cases



65 cases opened with 62 currently open and 3 closed

## Case Activity Projections

The items of change outlined in the description of the Kansas Medicaid Program and the experiences of the division in interagency partnerships described in this Report are predicates of the case activity in the coming year. Two factors of major impact are increases in the number of persons served in community-based services and the implementation of managed care.

Movement of vulnerable recipients into community-based services with the concomitant dispersing of service delivery to a variety of providers holds the potential for increased incidences of abuse as well as fraud. The ability to watchdog this system is a major challenge in a state with the geographic size of Kansas.

The implementation of managed care creates a new set of relationships in the provider community and new methods of delivery and payment. The experience of other states and the federal government in the development of managed care programs reveal that illicit "underutilization" (where providers seek to maximize capitated revenues while minimizing recipient usage of services), illegal contracts, kickbacks, bribes, bloated management fees, new fraud angles and schemes are all possible. The division will work proactively with the Medicaid agency to develop preventative measures to help ensure the integrity of the system, but the reality of experience shows that criminal wrongdoing can show up in many different ways.

These factors as described and the enactment of the Kansas Medicaid Fraud Control Act were important components in the decision of the Kansas Legislature to fund additional positions for the division. It was recognized that the anticipated changes provide opportunity for abuse by those who would take advantage of the system and its recipients.

Through its efforts to date, the Medicaid Fraud Division has been successful in developing the legal tools, assuring the availability of qualified staff, and building the relationships necessary for investigation and prosecution.

## Training

In order to ensure that division staff are knowledgeable on both current and emerging areas of fraud and abuse activities, a comprehensive training program is followed. The training outlined below establishes the division's commitment to staff development designed to enhance specific skills and knowledge.

<b>National</b>	Training	Attendees
	National Association of Medicaid Fraud Control Units, 1995 Annual Meeting	Deputy Attorney General, Assistant Attorney General, Auditor
	National Health Care Anti-Fraud Association, 1995 Annual Training Conference	Assistant Attorney General, Auditor
	National Association of Medicaid Fraud Control Units and American Bar Association Health Care Fraud 1996	Assistant Attorney General
	Medicaid Fraud Control Training Program at the Federal Law Enforcement Training Center	Investigator
	Financial Investigation Techniques and an Outline of Money Laundering Forfeiture Process	Investigator
	American Bar Association Elder Rights in a Changing Political Climate	Deputy Attorney General

	National Health Lawyers Association Healthcare Fraud and Abuse	Deputy Attorney General
	HCFA Region VII - Medicare 101	Investigator
	Federal Bureau of Investigation Health Care Fraud Symposium	Chief Investigator
	National Health Care Anti-Fraud Association; Fraud in Electronic Health Insurance Claims Transactions	Auditor
<b>State</b>	Kansas City Chapter of the Association of Certified Fraud Examiners Second Annual White Collar Crime Seminar	Chief Investigator, Investigator
	Fraud and Deception in Healthcare Billing and Utilization	Chief Investigator, Investigator
	Surveillance and Utilization Review/Overview for Medicaid Fraud Control Unit	Deputy Attorney General, Chief Investigator, Investigator, Auditor, Support Staff
	Kansas Department of Administration CLE Seminar	Assistant Attorney General, Auditor
	Kansas County and District Attorneys Association and the Kansas Attorney General's Call	Deputy Attorney General, Assistant Attorney General, Auditor

	Kansas Law Enforcement Training Center	Chief Investigator
	Kansas Division of Purchases Training Seminar	Support Staff
	Light the Shadows: Responding to Abuse and Neglect of Persons with Disabilities Across the Lifespan	Investigator
	Using and Abusing Sentencing Guidelines	Deputy Attorney General
	Missouri/Kansas International Association of Credit Card Fraud Investigators Conference	Investigator
	Kansas Bureau of Investigation National Crime Information Center/ National Law Enforcement Telecommunications System/Interstate Identification Index/Astra Training	Investigator
<b>Local</b>	Kansas City Metropolitan Insurance Fraud Task Force Meeting	Assistant Attorney General, Chief Investigator, Investigator
	Internal Review of Medicaid System/Kansas Foundation for Medical Care	Auditor, Support Staff
	Surveillance and Utilization Review Peer Profiling	Chief Investigator, Investigators, Auditor

	Dealing with Upset Citizens and the Public	Support Staff
	Internet training	All Staff
	PerfectOffice training	All Staff
	System Administration for NetWare 4.x	Support Staff
	GroupWise Administration 4.1	Support Staff

## Public Awareness

The Kansas Medicaid Fraud and Abuse Division is dedicated to providing education to the public and Medicaid providers about the Kansas Medicaid program, state and national health care fraud issues and specific provider-oriented education. The division educates legal and health care professionals, state workers, and the general public on the content and purpose of the Kansas Medicaid Fraud Control Act. A table outlining presentations made by the Kansas Medicaid Fraud and Abuse Division is contained in Appendix E.

## Headlines

Kansas Attorney General Carla Stovall has made a commitment to fight health care fraud in Kansas. In addition, to prosecuting those who commit fraud and patient abuse, the Attorney General also has educated Kansans on the mission of the Medicaid Fraud and Abuse Division. The news headlines contained in Appendix F demonstrate the success Attorney General Stovall has had in both of these endeavors.

## Policy and Procedure Manual

The Kansas Medicaid Fraud and Abuse Division is finalizing a policy and procedures manual. The policies have been developed from within the division and by evaluating and refining policies used by the Attorney General's office. This manual will include the following policies.

- Investigative report writing
- Case filing protocol
- Supervisory case reviews
- Witness instructions
- Investigators' authority
- Evidence gathering
- Storage, safeguarding and custody of evidence
- Standards relating to daily office procedures and case administration

# Appendix A

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# STATE PERFORMANCE STANDARDS

## PROGRAM GOAL I:

To efficiently, effectively and ethically investigate and prosecute fraud in the Kansas Medicaid program, recover state and federal monies fraudulently received by Medicaid providers, and reimburse the appropriate state and federal agencies. 42 U.S.C. §1396(a) (61), 1396(q)(3); 42 C.F.R. §1007.11(a); K.S.A. 75-7-2, 75-708.

### Objective #1:

Staff a division independent of the State Medicaid Agency (SRS) that will develop and implement specific procedures to effectively and efficiently investigate and prosecute provider fraud.

### Performance Measures for Objective #1:

Percentage of provider fraud complaints processed in a timely manner.

Actual	FY 1995	NA
Estimate	FY 1996	100%
Level A	FY 1997	95%
Level B	FY 1997	95%
Level C	FY 1997	100%

## PROGRAM GOAL II:

To provide for the efficient, effective, and ethical review and investigation of allegations of patient abuse, neglect, or misappropriation of patients' private funds committed in SRS institutions and other health care facilities in the Medicaid program, and represent the State of Kansas in criminal proceedings against the perpetrators of such misconduct or refer cases to agencies for appropriate sanctions. 42 U.S.C. §1396(a)(61), 1396b(q)(4); 42 C.F.R. §1007.11(b); K.S.A. 75-702, -708, K.S.A. 38-1523(c).

### Objective #1:

Develop and implement procedures to effectively and efficiently investigate and prosecute cases of patient abuse, neglect, or misappropriation of patients' private funds.

Performance Measure for Objective #1:

Percentage of complaints alleging patient abuse, neglect, or misappropriation of patients' private funds processed in a timely manner.

Actual	FY 1995	NA
Estimate	FY 1996	100%
Level A	FY 1997	95%
Level B	FY 1997	95%
Level C	FY 1997	100%

PROGRAM GOAL III:

To provide for the efficient and effective education of the public and health care providers to aid in the fight against Medicaid fraud and abuse through cooperation and coordination of private, state, and federal resources. 42 U.S. C. 3 1396(q)(3); K.S.A. 75-708.

Objective #1:

Create procedures to ensure Medicaid providers and the general public are provided with relevant information concerning Medicaid provider fraud and abuse.

Outcome Measures:

Percentage of inquiries for information responded to in a timely manner:

Actual	FY 1995	NA
Estimate	FY 1996	100%
Level A	FY 1997	95%
Level B	FY 1997	95%
Level C	FY 1997	100%

Number of training sessions, public meetings and seminars:

Actual	FY 1995	NA
Estimate	FY 1996	16
Level A	FY 1997	20
Level B	FY 1997	20
Level C	FY 1997	24

# Appendix B

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## COOPERATIVE MEETINGS

Organizations	Purpose and content of meetings
Kansas Department of Health & Environment - Bureau of Adult and Child Care	Coordination on referral and investigation of entities licensed and/or surveyed by the bureau. Focusing on abuse, neglect, or misappropriation of client private funds
Kansas Foundation for Medical Care	Coordination on investigations and prosecutions regarding hospitals and managed care programs
HCFA Region VII	Managed Care Conference - Information exchange on managed care efforts in Medicaid programs in Nebraska, Iowa, Missouri, and Kansas
SRS Adult Services	Coordination on referral and investigations of abuse, neglect, misappropriation of client private funds and provider fraud.
Kansas Independent Living Advisory Council	Cooperation in referral and investigations of abuse, neglect, misappropriation of client private funds, provider fraud.
SRS Commission on Mental Health and Developmental Disabilities - Community DD Programs	Coordination on referral and investigations of abuse, neglect, misappropriation of client private funds, and provider fraud
Office of Insurance Commissioner	Managed care fraud prevention and prosecution issues
Kansas Health Care Fraud Working Group	Coordination on referral, investigation, and prosecution at state and federal level of Medicaid and federal health care program fraud.
Kansas Board of Healing Arts	Coordination on referral, investigation, and prosecution of Medicaid provider fraud involving licensees of the KBHA.
Electronic Data Systems, Inc. (Medicaid Fiscal Agent for Kansas)	Coordination on investigation and prosecution of provider fraud.
Kansas Social and Rehabilitation Services- Legal and Program Integrity Units	Coordination on referral, investigation, and prosecution of provider fraud.
HCFA- Region VII - Division of Medicaid	Meeting with Director and Kansas Representative to describe role of division and state Medicaid agency, national and state provider fraud efforts and trends, _____ provider fraud in managed care.

# Appendix C

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HOUSE BILL No. 2700

AN ACT concerning crimes, punishment and criminal procedure, relating to parole; enacting the Kansas medicaid fraud control act; declaring certain acts to be crimes and providing penalties therefor; granting certain powers to and imposing certain duties upon the attorney general; placements of inmates, postrelease supervision; amending K.S.A. 21-3106, 21-4790 and 22-3717, as amended by section 8 of 1996 House Bill No. 2839, and K.S.A. 1995 Supp. 75-5217 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. Sections 1 to 12, inclusive, and amendments thereto shall be known and may be cited as the Kansas medicaid fraud control act. The Kansas medicaid fraud control act shall be part of and supplemental to the Kansas criminal code.

New Sec. 2. As used in this act:

(a) "Attorney general" means the attorney general, employees of the attorney general or authorized representatives of the attorney general.

(b) "Benefit" means the receipt of money, goods, items, facilities, accommodations or anything of pecuniary value.

(c) "Claim" means an electronic, electronic impulse, facsimile, magnetic, oral, telephonic or written communication that is utilized to identify any goods, service, item, facility or accommodation as reimbursable to the Kansas medicaid program, or its fiscal agents, or which states income or expense and is or may be used to determine a rate of payment by the Kansas medicaid program, or its fiscal agent.

(d) "Fiscal agent" means any corporation, firm, individual, organization, partnership, professional association or other legal entity which, through a contractual relationship with the department of social and rehabilitation services and thereby, the state of Kansas, receives, processes and pays claims under the Kansas medicaid program.

(e) "Family member" means spouse, child, grandchild of any degree, parent, mother-in-law, father-in-law, grandparent of any degree, brother, brother-in-law, sister, sister-in-law, half-brother, half-sister, uncle, aunt, nephew or niece, whether biological, step or adoptive.

(f) "Medicaid program" means the Kansas program of medical assistance for which federal or state moneys, or any combination thereof, are expended as administered by the department of social and rehabilitation services, or its fiscal agent, or any successor federal or state, or both, health insurance program or waiver granted thereunder.

(g) "Medically necessary" means for the purposes of this act only, any goods, service, item, facility, or accommodation, that a reasonable and prudent provider under similar circumstances would believe is appropriate for diagnosing or treating a recipient's condition, illness or injury.

(h) "Person" means any agency, association, corporation, firm, limited liability company, limited liability partnership, natural person, organization, partnership or other legal entity, the agents, employees, independent contractors, and subcontractors, thereof, and the legal successors thereto, and any official, employee or agent of a state or federal agency having regulatory or administrative authority over the medicaid program.

(i) "Provider" means a person who has applied to participate in, who currently participates in, who has previously participated in, who attempts or has attempted to participate in the medicaid program, by providing or claiming to have provided goods, services, items, facilities or accommodations.

(j) "Recipient" means an individual, either real or fictitious, in whose behalf any person claimed or received any payment or payments from the medicaid program, or its fiscal agent, whether or not any such individual was eligible for benefits under the medicaid program.

(k) "Records" mean all written documents and electronic or magnetic data, including, but not limited to, medical records, X-rays, professional, financial or business records relating to the treatment or care of any recipient; goods, services, items, facilities or accommodations provided to any such recipient; rates paid for such goods, services, items, facilities or accommodations; and goods, services, items, facilities, or accommodations provided to nonmedicaid recipients to verify rates or amounts of goods, services, items, facilities or accommodations provided to medicaid recipients, as well as any records that the medicaid program, or its fiscal agents require providers to maintain.

(l) "Sign" means to affix a signature, directly or indirectly, by means of handwriting, typewriter, stamp, computer impulse or other means.

(m) "Statement or representation" means an electronic, electronic

impulse, facsimile, magnetic, oral, telephonic, or written communication that is utilized to identify any goods, service, item, facility or accommodation as reimbursable to the medicaid program, or its fiscal agent, or that states income or expense and is or may be used to determine a rate of payment by the medicaid program, or its fiscal agent.

New Sec. 3. (a) Making a false claim, statement, or representation to the medicaid program is, knowingly and with intent to defraud, engaging in a pattern of making, presenting, submitting, offering or causing to be made, presented, submitted or offered:

(1) Any false or fraudulent claim for payment for any goods, service, item, facility, accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(2) any false or fraudulent statement or representation for use in determining payments which may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(3) any false or fraudulent report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(4) any false or fraudulent statement or representation made in connection with any report or filing which is or may be used in computing or determining a rate of payment for any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable;

(5) any statement or representation for use by another in obtaining any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program, knowing the statement or representation to be false, in whole or in part, by commission or omission, whether or not the claim is allowed or allowable;

(6) any claim for payment, for any goods, service, item, facility, or accommodation, which is not medically necessary in accordance with professionally recognized parameters or as otherwise required by law, for which payment may be made, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable; or

(7) any wholly or partially false or fraudulent book, record, document, data or instrument, which is required to be kept or which is kept as documentation for any goods, service, item, facility or accommodation or of any cost or expense claimed for reimbursement for any goods, service, item, facility or accommodation for which payment is, has been, or can be sought, in whole or in part, under the medicaid program, whether or not the claim is allowed or allowable.

(8) Any wholly or partially false or fraudulent book, record, document, data or instrument to any properly identified law enforcement officer, any properly identified employee or authorized representative of the attorney general, or to any properly identified employee or agent of the department of social and rehabilitation services, or its fiscal agent, in connection with any audit or investigation involving any claim for payment or rate of payment for any goods, service, item, facility or accommodation payable, in whole or in part, under the medicaid program.

(9) Any false or fraudulent statement or representation made, with the intent to influence any acts or decision of any official, employee or agent of a state or federal agency having regulatory or administrative authority over the Kansas medicaid program.

(b) (1) As defined by subsection (a)(1) through (a)(7), making a false claim, statement or representation to the medicaid program where the aggregate amount of payments illegally claimed is \$25,000 or more is a severity level 7, nonperson felony.

(2) As defined by subsection (a)(1) through (a)(7), making a false claim, statement or representation to the medicaid program where the aggregate amount of payments illegally claimed is at least \$500 but less than \$25,000 is a severity level 9, nonperson felony.

(3) As defined by subsection (a)(1) through (a)(7), making a false claim, statement or representation to the medicaid program where the

aggregate amount of payments illegally claimed is less than \$500 is a class A misdemeanor.

(4) As defined by subsections (a)(8) and (a)(9), making a false claim, statement or representation to the medicaid program is a severity level 9, nonperson felony.

(c) In determining what is medically necessary pursuant to subsection (a)(6) of this section the attorney general may contract with or consult with qualified health care providers and other qualified individuals to identify professionally recognized parameters for the diagnosis or treatment of the recipient's condition, illness or injury.

New Sec. 4. (a) No person nor family member of such person shall:

(1) Knowingly and intentionally solicit or receive any remuneration, including but not limited to any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind:

(A) In return for referring or refraining from referring an individual to a person for the furnishing or arranging for the furnishing of any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program; or

(B) in return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program.

(2) Knowingly and intentionally offer or pay any remuneration, including, but not limited to, any kickback, bribe or rebate, directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person:

(A) To refer or refrain from referring an individual to a person for the furnishing or arranging for the furnishing of any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program; or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the medicaid program.

(b) A violation of this section is a severity level 7, nonperson felony.

(c) This section shall not apply to a refund, discount, copayment, deductible, incentive or other reduction obtained by a provider in the ordinary course of business, and appropriately reflected in the claims or reports submitted to the medicaid program, or its fiscal agent, nor shall it be construed to prohibit deductibles, copayments or any other cost or risk sharing arrangements which are a part of any program operated by or pursuant to contracts with the medicaid program.

New Sec. 5. (a) Failure to maintain adequate records is negligently failing to maintain such records as are necessary to disclose fully the nature of the goods, services, items, facilities or accommodations for which a claim was submitted or payment was received under the medicaid program, or such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based under the medicaid program. Upon submitting a claim for or upon receiving payment for goods, services, items, facilities or accommodations under the medicaid program, a person shall maintain adequate records for five years after the date on which payment was received, if payment was received, or for five years after the date on which the claim was submitted, if the payment was not received.

(b) Failure to maintain adequate records is a class A, nonperson misdemeanor.

New Sec. 6. (a) Destruction or concealment of records is intentionally destroying or concealing such records as are necessary to disclose fully the nature of the goods, services, items, facilities or accommodations for which a claim was submitted or payment was received under the medicaid program, or such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based under the medicaid program. Upon submitting a claim for or upon receiving payment for goods, services, items, facilities or accommodations under the medicaid program, a person shall not destroy or conceal any records for five years after the date on which payment was received, if payment

was received, or for five years after the date on which the claim was submitted, if the payment was not received.

(b) Destruction or concealment of records is a severity level 9, non-person felony.

New Sec. 7. Offers of repayment or repayment occurring after the filing of criminal charges of payments, goods, services, items, facilities or accommodations wrongfully obtained shall not constitute a defense to or ground for dismissal of criminal charges brought pursuant to this act.

New Sec. 8. (a) Any person convicted of a violation of this act, may be liable, in addition to any other criminal penalties provided by law, for all of the following:

(1) Payment of full restitution of the amount of the excess payments;

(2) payment of interest on the amount of any excess payments at the maximum legal rate in effect on the date the payment was made to the person for the period from the date upon which payment was made, to the date upon which repayment is made;

(3) payment of all reasonable expenses that have been necessarily incurred in the enforcement of this act, including, but not limited to, the costs of the investigation, litigation and attorney fees.

(b) All moneys recovered pursuant to subsection (a)(1) and (2), shall be paid and deposited in the state treasury and credited to the medicaid fraud reimbursement fund, which is hereby established in the state treasury. Moneys in the medicaid fraud reimbursement fund shall be divided and payments made from such fund to the federal government and affected state agencies for the refund of moneys falsely obtained from the federal and state governments.

(c) All moneys recovered pursuant to subsection (a)(3) shall be deposited in the state treasury and credited to the medicaid fraud prosecution revolving fund, which is hereby established in the state treasury. Moneys in the medicaid fraud prosecution revolving fund may be appropriated to the attorney general, or to any county or district attorney who has successfully prosecuted an action for a violation of this act and been awarded such costs of prosecution, in order to defray the costs of the attorney general and any such county or district attorney in connection with their duties provided by this act. No moneys shall be paid into the medicaid fraud prosecution revolving fund pursuant to this section unless the attorney general or appropriate county or district attorney has commenced a prosecution pursuant to this section, and the court finds in its discretion that payment of attorney fees and investigative costs is appropriate under all the circumstances, and the attorney general, or county or district attorney has proven to the court that the expenses were reasonable and necessary to the investigation and prosecution of such case, and the court approves such expenses as being reasonable and necessary.

New Sec. 9. (a) There is hereby created within the office of the attorney general a medicaid fraud and abuse division.

(b) The medicaid fraud and abuse division shall be the same entity to which all cases of suspected medicaid fraud shall be referred by the department of social and rehabilitation services, or its fiscal agent, for the purpose of investigation, criminal prosecution or referral to the district or county attorney for criminal prosecution.

(c) In carrying out these responsibilities, the attorney general shall have all the powers necessary to comply with the federal laws and regulations relative to the operation of the medicaid fraud and abuse division, the power to investigate, criminally prosecute violations of this act, the power to cross-designate assistant United States attorneys as assistant attorneys general, the power to issue, serve or cause to be issued or served subpoenas or other process in aid of investigations and prosecutions, the power to administer oaths and take sworn statements under penalty of perjury, the power to serve and execute in any county, search warrants which relate to investigations authorized by this act, and the powers of a district or county attorney.

New Sec. 10. (a) The attorney general shall be allowed access to all records which are held by a provider that are directly related to an alleged violation of this act and which are necessary for the purpose of investigating whether any person may have violated this act, or for use or potential use in any legal, administrative or judicial proceeding pursuant to the Kansas medicaid fraud control act.

(b) No person holding such records may refuse to provide the attorney general with access to such records on the basis that release would violate any recipient's right of privacy, any recipient's privilege against disclosure or use, or any professional or other privilege or right. The disclosure of patient information as required by this act shall not subject any provider to liability for breach of any confidential relationship between a patient and a provider. Notwithstanding K.S.A. 60-427 and amendments thereto, there shall be no privilege preventing the furnishing of such information or reports as required by this act by any person.

New Sec. 11. The provisions of this act are not intended to be exclusive remedies and do not preclude the use of any other criminal or civil remedy.

New Sec. 12. If any section, subsection, paragraph or provision of this act shall be held to be invalid by any court for any reason, it shall be presumed that this act would have been passed by the legislature without such invalid section, subsection, paragraph or provision, and such finding or construction shall not in any way affect the remainder of this act.

Sec. 13. K.S.A. 21-3106 is hereby amended to read as follows: 21-3106. (1) A prosecution for murder may be commenced at any time.

(2) Except as provided by subsection (6) (7), a prosecution for any of the following crimes must be commenced within five years after its commission if the victim is less than 16 years of age: (a) Indecent liberties with a child as defined in K.S.A. 21-3503 and amendments thereto; (b) aggravated indecent liberties with a child as defined in K.S.A. 21-3504 and amendments thereto; (c) enticement of a child as defined in K.S.A. 21-3509 and amendments thereto; (d) indecent solicitation of a child as defined in K.S.A. 21-3510 and amendments thereto; (e) aggravated indecent solicitation of a child as defined in K.S.A. 21-3511 and amendments thereto; (f) sexual exploitation of a child as defined in K.S.A. 21-3516 and amendments thereto; or (g) aggravated incest as defined in K.S.A. 21-3603 and amendments thereto.

(3) Except as provided in subsection (6) (7), a prosecution for any crime must be commenced within 10 years after its commission if the victim is the Kansas public employees retirement system.

(4) Except as provided by subsection (6) (7), a prosecution for rape, as defined in K.S.A. 21-3502 and amendments thereto, or aggravated criminal sodomy, as defined in K.S.A. 21-3506 and amendments thereto, must be commenced within five years after its commission.

(5) *Except as provided in subsection (7), a prosecution for any crime found in the Kansas medicaid fraud control act must be commenced within five years after its commission.*

(5) (6) Except as provided by subsection (6) (7), a prosecution for any crime not governed by subsections (1), (2), (3) and (4) and (5) must be commenced within two years after it is committed.

(6) (7) The period within which a prosecution must be commenced shall not include any period in which:

- (a) The accused is absent from the state;
- (b) the accused is concealed within the state so that process cannot be served upon the accused;
- (c) the fact of the crime is concealed;
- (d) a prosecution is pending against the defendant for the same conduct, even if the indictment or information which commences the prosecution is quashed or the proceedings thereon are set aside, or are reversed on appeal;
- (e) an administrative agency is restrained by court order from investigating or otherwise proceeding on a matter before it as to any criminal conduct defined as a violation of any of the provisions of article 41 of chapter 25 and article 2 of chapter 46 of the Kansas Statutes Annotated which may be discovered as a result thereof regardless of who obtains the order of restraint; or

(f) whether or not the fact of the crime is concealed by the active act or conduct of the accused, there is substantially competent evidence to believe two or more of the following factors are present: (i) The victim was a child under 15 years of age at the time of the crime; (ii) the victim was of such age or intelligence that the victim was unable to determine that the acts constituted a crime; (iii) the victim was prevented by a parent or other legal authority from making known to law enforcement author-

ities the fact of the crime whether or not the parent or other legal authority is the accused; and (iv) there is substantially competent expert testimony indicating the victim psychologically repressed such witness' memory of the fact of the crime, and in the expert's professional opinion the recall of such memory is accurate and free of undue manipulation, and substantial corroborating evidence can be produced in support of the allegations contained in the complaint or information but in no event may a prosecution be commenced as provided in this section later than the date the victim turns 23 years of age. Corroborating evidence may include, but is not limited to, evidence the defendant committed similar acts against other persons or evidence of contemporaneous physical manifestations of the crime. "Parent or other legal authority" shall include but not be limited to natural and stepparents, grandparents, aunts, uncles or siblings.

(7) (8) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing offense plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(8) (9) A prosecution is commenced when a complaint or information is filed, or an indictment returned, and a warrant thereon is delivered to the sheriff or other officer for execution. No such prosecution shall be deemed to have been commenced if the warrant so issued is not executed without unreasonable delay.

Sec. 14. K.S.A. 21-4720 is hereby amended to read as follows: 21-4720. (a) The provisions of subsections (a), (b), (c), (d), (e) and (h) of K.S.A. 21-4608 and amendments thereto regarding multiple sentences shall apply to the sentencing of offenders for crimes committed on or after July 1, 1993, pursuant to the sentencing guidelines system as provided in this act. The mandatory consecutive requirements contained in subsections (c), (d) and (e) shall not apply if such application would result in a manifest injustice.

(b) The sentencing judge shall otherwise have discretion to impose concurrent or consecutive sentences in multiple conviction cases. *The sentencing judge shall state on the record if the sentence is to be served concurrently or consecutively. Whenever the record is silent as to the manner in which two or more sentences imposed at the same time shall be served, they shall be served concurrently, except as provided in subsections (e), (d) and (e) of K.S.A. 21-4608 and amendments thereto.* In cases where consecutive sentences may be imposed by the sentencing judge, the following shall apply:

(1) When the sentencing judge imposes multiple sentences consecutively, the consecutive sentences shall consist of an imprisonment term which is the sum of the consecutive imprisonment terms, and a supervision term. The postrelease supervision term will be based on the longest supervision term imposed for any of the crimes.

(2) The sentencing judge must establish a base sentence for the primary crime. The primary crime is the crime with the highest crime severity ranking. An off-grid crime shall not be used as the primary crime in determining the base sentence when imposing multiple sentences. If sentences for off-grid and on-grid convictions are ordered to run consecutively, the offender shall not begin to serve the on-grid sentence until paroled from the off-grid sentence, and the postrelease supervision term will be based on the off-grid crime. If more than one crime of conviction is classified in the same crime category, the sentencing judge must designate which crime will serve as the primary crime. In the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of imprisonment and probation, the sentencing judge will use the crime which presumes imprisonment as the primary crime. In the instance of sentencing with both the drug grid and the nondrug grid and simultaneously having a presumption of either both probation or both imprisonment, the sentencing judge will use the crime with the longest sentence term within the grid block range as the primary crime.

(3) The base sentence is set using the total criminal history score assigned.

(4) The total prison sentence imposed in a case involving multiple

convictions arising from multiple counts within an information, complaint or indictment cannot exceed twice the base sentence. This limit shall apply only to the total sentence, and it shall not be necessary to reduce the duration of any of the nonbase sentences imposed to be served consecutively to the base sentence. The postrelease supervision term will reflect only the longest such term assigned to any of the crimes for which consecutive sentences are imposed. Supervision periods will not be aggregated.

(5) Nonbase sentences will not have criminal history scores applied, as calculated in the criminal history I column of the grid, but base sentences will have the full criminal history score assigned.

(6) If the sentence for the primary crime is a prison term, the entire imprisonment term of the consecutive sentences will be served in prison.

(7) If the sentence for the consecutive sentences is a prison term, the postrelease supervision term is a term of postrelease supervision as established for the primary crime.

(8) If the sentence for the primary crime is a nonprison sentence, a nonprison term will be imposed for each crime conviction, but the nonprison terms shall not be aggregated or served consecutively even though the underlying prison sentences have been ordered to be served consecutively. Upon revocation of the nonprison sentence, the offender shall serve the prison sentences consecutively as provided in this section.

(c) The following shall apply for a departure from the presumptive sentence based on aggravating factors within the context of consecutive sentences:

(1) The court may depart from the presumptive limits for consecutive sentences only if the judge finds substantial and compelling reasons to impose a departure sentence for any of the individual crimes being sentenced consecutively.

(2) When a departure sentence is imposed for any of the individual crimes sentenced consecutively, the imprisonment term of that departure sentence shall not exceed twice the maximum presumptive imprisonment term that may be imposed for that crime.

(3) The total imprisonment term of the consecutive sentences, including the imprisonment term for the departure crime, shall not exceed twice the maximum presumptive imprisonment term of the departure sentence following aggravation.

See. 15. K.S.A. 22-3717, as amended by section 8 of 1996 House Bill No. 2838, is hereby amended to read as follows: 22-3717. (a) Except as otherwise provided by this section, K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638 and amendments thereto, an inmate, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving the entire minimum sentence imposed by the court, less good time credits.

(b) (1) Except as provided by K.S.A. 21-4635 through 21-4638 and amendments thereto, an inmate sentenced to imprisonment for the crime of capital murder, or an inmate sentenced for the crime of murder in the first degree based upon a finding of premeditated murder, committed on or after July 1, 1994, shall be eligible for parole after serving 25 years of confinement, without deduction of any good time credits.

(2) Except as provided by subsection (b)(1) or (b)(4), K.S.A. 1993 Supp. 21-4628 prior to its repeal and K.S.A. 21-4635 through 21-4638, and amendments thereto, an inmate sentenced to imprisonment for an off-grid offense committed on or after July 1, 1993, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(3) Except as provided by K.S.A. 1993 Supp. 21-4628 prior to its repeal, an inmate sentenced for a class A felony committed before July 1, 1993, including an inmate sentenced pursuant to K.S.A. 21-4618 and amendments thereto, shall be eligible for parole after serving 15 years of confinement, without deduction of any good time credits.

(4) An inmate sentenced to imprisonment for a violation of subsection (a) of K.S.A. 21-3402 and amendments thereto committed on or after July 1, 1996, shall be eligible for parole after serving 10 years of confinement without deduction of any good time credits.

(c) Except as provided in subsection (e), if an inmate is sentenced to

imprisonment for more than one crime and the sentences run consecutively, the inmate shall be eligible for parole after serving the total of:

(1) The aggregate minimum sentences, as determined pursuant to K.S.A. 21-4608 and amendments thereto, less good time credits for those crimes which are not class A felonies; and

(2) an additional 15 years, without deduction of good time credits, for each crime which is a class A felony.

(d) (1) Persons sentenced for crimes, other than off-grid crimes, committed on or after July 1, 1993, will not be eligible for parole, but will be released to a mandatory period of postrelease supervision upon completion of the prison portion of their sentence as follows:

(A) Except as provided in subparagraphs (C) and (D), persons sentenced for nondrug severity level 1 through 6 crimes and drug severity levels 1 through 3 crimes must serve 36 months, plus the amount of good time earned and retained pursuant to K.S.A. 21-4722 and amendments thereto, on postrelease supervision.

(B) Except as provided in subparagraphs (C) and (D), persons sentenced for nondrug severity level 7 through 10 crimes and drug severity level 4 crimes must serve 24 months, plus the amount of good time earned and retained pursuant to K.S.A. 21-4722 and amendments thereto, on postrelease supervision.

(C) (i) The sentencing judge shall impose the postrelease supervision period provided in subparagraph (d)(1)(A) or (d)(1)(B), unless the judge finds substantial and compelling reasons to impose a departure based upon a finding that the current crime of conviction was sexually violent or sexually motivated. In that event, departure may be imposed to extend the postrelease supervision to a period of up to 60 months.

(ii) If the sentencing judge departs from the presumptive postrelease supervision period, the judge shall state on the record at the time of sentencing the substantial and compelling reasons for the departure. Departures in this section are subject to appeal pursuant to K.S.A. 21-4721 and amendments thereto.

(iii) In determining whether substantial and compelling reasons exist, the court shall consider:

(a) Written briefs or oral arguments submitted by either the defendant or the state;

(b) any evidence received during the proceeding;

(c) the presentence report, the victim's impact statement and any psychological evaluation as ordered by the court pursuant to subsection (e) of K.S.A. 21-4714 and amendments thereto; and

(d) any other evidence the court finds trustworthy and reliable.

(iv) The sentencing judge may order that a psychological evaluation be prepared and the recommended programming be completed by the offender. The department of corrections or the parole board shall ensure that court ordered sex offender treatment be carried out.

(v) In carrying out the provisions of subparagraph (d)(1)(C), the court shall refer to K.S.A. 21-4718 and amendments thereto.

(vi) Upon petition, the parole board may provide for early discharge from the postrelease supervision period upon completion of court ordered programs and completion of the presumptive postrelease supervision period, as determined by the crime of conviction, pursuant to subparagraph (d)(1)(A) or (B). Early discharge from postrelease supervision is at the discretion of the parole board.

(vii) Persons convicted of crimes deemed sexually violent or sexually motivated, shall be registered according to the habitual sex offender registration act, K.S.A. 22-4901 through 22-4910 and amendments thereto.

(D) The period of postrelease supervision provided in subparagraphs (A) and (B) may be reduced by up to 12 months based on the offender's compliance with conditions of supervision and overall performance while on postrelease supervision. The reduction in the supervision period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(E) In cases where sentences for crimes from more than one severity level have been imposed, the highest severity level offense will dictate the period of postrelease supervision. Supervision periods will not aggregate.

(2) As used in this section, "sexually violent crime" means:

(A) Rape, K.S.A. 21-3502, and amendments thereto;

(B) indecent liberties with a child, K.S.A. 21-3503, and amendments thereto;

(C) aggravated indecent liberties with a child, K.S.A. 21-3504, and amendments thereto;

(D) criminal sodomy, subsection (a)(2) and (a)(3) of K.S.A. 21-3505 and amendments thereto;

(E) aggravated criminal sodomy, K.S.A. 21-3506, and amendments thereto;

(F) indecent solicitation of a child, K.S.A. 21-3510, and amendments thereto;

(G) aggravated indecent solicitation of a child, K.S.A. 21-3511, and amendments thereto;

(H) sexual exploitation of a child, K.S.A. 21-3516, and amendments thereto;

(I) aggravated sexual battery, K.S.A. 21-3518, and amendments thereto;

(J) any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent crime as defined in subparagraphs (A) through (I), or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent crime as defined in this section;

(K) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302, 21-3303, and amendments thereto, of a sexually violent crime as defined in this section; or

(L) any act which at the time of sentencing for the offense has been determined beyond a reasonable doubt to have been sexually motivated. As used in this subparagraph, "sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) If an inmate is sentenced to imprisonment for a crime committed while on parole or conditional release, the inmate shall be eligible for parole as provided by subsection (c), except that the Kansas parole board may postpone the inmate's parole eligibility date by assessing a penalty not exceeding the period of time which could have been assessed if the inmate's parole or conditional release had been violated for reasons other than conviction of a crime.

(f) If a person is sentenced to prison for a crime committed on or after July 1, 1993, while on probation, parole, conditional release or in a community corrections program, for a crime committed prior to July 1, 1993, and the person is not eligible for retroactive application of the sentencing guidelines and amendments thereto pursuant to K.S.A. 21-4724 and amendments thereto, the new sentence shall not be aggregated with the old sentence, but shall begin when the person is paroled or reaches the conditional release date on the old sentence. If the offender was past the offender's conditional release date at the time the new offense was committed, the new sentence shall not be aggregated with the old sentence but shall begin when the person is ordered released by the Kansas parole board or reaches the maximum sentence expiration date on the old sentence, whichever is earlier. The new sentence shall then be served as otherwise provided by law. The period of postrelease supervision shall be based on the new sentence, except that those offenders whose old sentence is a term of imprisonment for life, imposed pursuant to K.S.A. 1993 Supp. 21-4628 prior to its repeal, or an indeterminate sentence with a maximum term of life imprisonment, for which there is no conditional release or maximum sentence expiration date, shall remain on postrelease supervision for life or until discharged from supervision by the Kansas parole board.

(g) Subject to the provisions of this section, the Kansas parole board may release on parole those persons confined in institutions who are eligible for parole when: (1) The board believes that the inmate should be released for hospitalization, for deportation or to answer the warrant or other process of a court and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate; or (2) the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement, and the board believes that the inmate is able and willing to fulfill the obligations of a

law abiding citizen and is of the opinion that there is reasonable probability that the inmate can be released without detriment to the community or to the inmate. Parole shall not be granted as an award of clemency and shall not be considered a reduction of sentence or a pardon.

(h) The Kansas parole board shall hold a parole hearing during the month prior to the month an inmate will be eligible for parole under subsections (a), (b) and (c). At least the month preceding the parole hearing, the county or district attorney of the county where the inmate was convicted shall give written notice of the time and place of the public comment sessions for the inmate to any victim of the inmate's crime who is alive and whose address is known to the county or district attorney or, if the victim is deceased, to the victim's family if the family's address is known to the county or district attorney. Except as otherwise provided, failure to notify pursuant to this section shall not be a reason to postpone a parole hearing. In the case of any inmate convicted of a class A felony the secretary of corrections shall give written notice of the time and place of the public comment session for such inmate at least one month preceding the public comment session to any victim of such inmate's crime or the victim's family pursuant to K.S.A. 74-7338 and amendments thereto. If notification is not given to such victim or such victim's family in the case of any inmate convicted of a class A felony, the board shall postpone a decision on parole of the inmate to a time at least 30 days after notification is given as provided in this section. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this section. If granted parole, the inmate may be released on parole on the date specified by the board, but not earlier than the date the inmate is eligible for parole under subsections (a), (b) and (c). At each parole hearing and, if parole is not granted, at such intervals thereafter as it determines appropriate, the Kansas parole board shall consider: (1) Whether the inmate has satisfactorily completed the programs required by any agreement entered under K.S.A. 75-5210a and amendments thereto, or any revision of such agreement; and (2) all pertinent information regarding such inmate, including, but not limited to, the circumstances of the offense of the inmate; the presentence report; the previous social history and criminal record of the inmate; the conduct, employment, and attitude of the inmate in prison; the reports of such physical and mental examinations as have been made; comments of the victim and the victim's family; comments of the public; official comments; and capacity of state correctional institutions.

(i) In those cases involving inmates sentenced for a crime committed after July 1, 1993, the parole board will review the inmates proposed release plan. The board may schedule a hearing if they desire. The board may impose any condition they deem necessary to insure public safety, aid in the reintegration of the inmate into the community, or items not completed under the agreement entered into under K.S.A. 75-5210a and amendments thereto. The board may not advance or delay an inmate's release date. Every inmate while on postrelease supervision shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary.

(j) Within a reasonable time after an inmate is committed to the custody of the secretary of corrections, a member of the Kansas parole board, or a designee of the board, shall hold an initial informational hearing with such inmate and other inmates.

(k) Before ordering the parole of any inmate, the Kansas parole board shall have the inmate appear before it and shall interview the inmate unless impractical because of the inmate's physical or mental condition or absence from the institution. Every inmate while on parole shall remain in the legal custody of the secretary of corrections and is subject to the orders of the secretary. Whenever the Kansas parole board formally considers placing an inmate on parole and no agreement has been entered into with the inmate under K.S.A. 75-5210a and amendments thereto, the board shall notify the inmate in writing of the reasons for not granting parole. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the inmate has not satisfactorily completed the programs specified in the agreement, or any revision of such agreement, the board shall notify the inmate in writing of the specific programs the inmate must satisfactorily complete before parole will be granted. If pa-

role is not granted only because of a failure to satisfactorily complete such programs, the board shall grant parole upon the secretary's certification that the inmate has successfully completed such programs. If an agreement has been entered under K.S.A. 75-5210a and amendments thereto and the secretary of corrections has reported to the board in writing that the inmate has satisfactorily completed the programs required by such agreement, or any revision thereof, the board shall not require further program participation. However, if the board determines that other pertinent information regarding the inmate warrants the inmate's not being released on parole, the board shall state in writing the reasons for not granting the parole. If parole is denied for an inmate sentenced for a crime other than a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than one year after the denial unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next three years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to three years but any such deferral by the board shall require the board to state the basis for its findings. If parole is denied for an inmate sentenced for a class A or class B felony or an off-grid felony, the board shall hold another parole hearing for the inmate not later than three years after the denial and shall conduct an annual file review for such inmate. Written notice of such annual file review shall be given to the inmate. The provisions of this subsection shall not be applicable to inmates sentenced for crimes committed on or after July 1, 1988 unless the parole board finds that it is not reasonable to expect that parole would be granted at a hearing if held in the next 10 years or during the interim period of a deferral. In such case, the parole board may defer subsequent parole hearings for up to 10 years but any such deferral shall require the board to state the basis for its findings.

(l) Parolees and persons on postrelease supervision shall be assigned, upon release, to the appropriate level of supervision pursuant to the criteria established by the secretary of corrections.

(m) The Kansas parole board shall adopt rules and regulations in accordance with K.S.A. 77-415 *et seq.*, and amendments thereto, not inconsistent with the law and as it may deem proper or necessary, with respect to the conduct of parole hearings, postrelease supervision reviews, revocation hearings, orders of restitution and other conditions to be imposed upon parolees or releasees. Whenever an order for parole or postrelease supervision is issued it shall recite the conditions thereof.

(n) Whenever the Kansas parole board orders the parole of an inmate or establishes conditions for an inmate placed on postrelease supervision, the board:

(1) Unless it finds compelling circumstances which would render a plan of payment unworkable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision pay any transportation expenses resulting from returning the parolee or the person on postrelease supervision to this state to answer criminal charges or a warrant for a violation of a condition of probation, assignment to a community correctional services program, parole, conditional release or postrelease supervision;

(2) to the extent practicable, shall order as a condition of parole or postrelease supervision that the parolee or the person on postrelease supervision make progress towards or successfully complete the equivalent of a secondary education if the inmate has not previously completed such educational equivalent and is capable of doing so; and

(3) may order that the parolee or person on postrelease supervision perform community or public service work for local governmental agencies, private corporations organized not-for-profit or charitable or social service organizations performing services for the community.

(o) If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the Kansas parole board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances which would render a plan of restitution unworkable. If the parolee was sentenced before July 1, 1986, and the court did not specify at the time of sentencing the

amount and the recipient of any restitution ordered as a condition of parole, the parole board shall order as a condition of parole that the parolee make restitution for the damage or loss caused by the parolee's crime in an amount and manner determined by the board unless the board finds compelling circumstances which would render a plan of restitution unworkable. If the parolee was sentenced on or after July 1, 1986, and the court did not specify at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or post-release supervision, the parole board shall not order restitution as a condition of parole or postrelease supervision unless the board finds compelling circumstances which justify such an order.

(p) Whenever the Kansas parole board grants the parole of an inmate, the board, within 10 days of the date of the decision to grant parole, shall give written notice of the decision to the county or district attorney of the county where the inmate was sentenced.

(q) When an inmate is to be released on postrelease supervision, the secretary, within 30 days prior to release, shall provide the county or district attorney of the county where the inmate was sentenced written notice of the release date.

(r) Inmates shall be released on postrelease supervision upon the termination of the prison portion of their sentence. Time served while on postrelease supervision will vest.

(s) An inmate who is allocated regular good time credits as provided in K.S.A. 22-3725 and amendments thereto may receive meritorious good time credits in increments of not more than 90 days per meritorious act. These credits may be awarded by the secretary of corrections when an inmate has acted in a heroic or outstanding manner in coming to the assistance of another person in a life threatening situation, preventing injury or death to a person, preventing the destruction of property or taking actions which result in a financial savings to the state.

Sec. 16. K.S.A. 1995 Supp. 75-5217 is hereby amended to read as follows: 75-5217. (a) At any time during release on parole, conditional release or postrelease supervision, the secretary of corrections may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the released inmate. The warrant shall authorize any law enforcement officer to arrest and deliver the released inmate to a place as provided by subsection (f). Any parole officer may arrest such released inmate without a warrant, or may deputize any other officer with power of arrest to do so by giving such officer a written arrest and detain order setting forth that the released inmate has, in the judgment of the parole officer, violated the conditions of the inmate's release. The written arrest and detain order delivered with the released inmate by the arresting officer to the official in charge of the institution or place to which the released inmate is brought for detention shall be sufficient warrant for detaining the inmate. After making an arrest the parole officer shall present to the detaining authorities a similar arrest and detain order and statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation the released inmate shall remain incarcerated in the institution or place to which the inmate is taken for detention.

(b) Upon such arrest and detention, the parole officer shall notify the secretary of corrections, or the secretary's designee, within five days and shall submit in writing a report showing in what manner the released inmate had violated the conditions of release. After such notification is given to the secretary of corrections, or upon an arrest by warrant as herein provided, and the finding of probable cause pursuant to procedures established by the secretary of a violation of the released inmate's conditions of release, the secretary shall cause the released inmate to be brought before the Kansas parole board, its designee or designees, for a hearing on the violation charged, under such rules and regulations as the board may adopt. *It is within the discretion of the Kansas parole board whether such hearing requires the released inmate to appear personally before the board when such inmate's violation results from a conviction for a new felony or misdemeanor.* Relevant written statements made under oath shall be admitted and considered by the Kansas parole board, its designee or designees, along with other evidence presented at the

hearing. If the violation is established to the satisfaction of the Kansas parole board, the board may continue or revoke the parole or conditional release, or enter such other order as the board may see fit. Revocations of release of inmates who are on a specified period of postrelease supervision shall be for a 180-day period of confinement from the date of the revocation hearing before the board, if the violation does not result from a conviction for a new felony or misdemeanor. Such period of confinement may be reduced by not more than 90 days based on the inmate's conduct, work and program participating during the incarceration period. The reduction in the incarceration period shall be on an earned basis pursuant to rules and regulations adopted by the secretary of corrections.

(c) If the violation does result from a conviction for a new felony or misdemeanor, upon revocation the inmate shall serve the entire remaining balance of the period of postrelease supervision even if the new conviction did not result in the imposition of a new term of imprisonment.

(d) In the event the released inmate reaches conditional release date as provided by K.S.A. 22-3718 and amendments thereto after a finding of probable cause, pursuant to procedures established by the secretary of corrections of a violation of the released inmate's conditions of release, but prior to a hearing before the Kansas parole board, the secretary of corrections shall be authorized to detain the inmate until the hearing by the Kansas parole board. The secretary shall then enforce the order issued by the Kansas parole board.

(e) If the secretary of corrections issues a warrant for the arrest of a released inmate for violation of any of the conditions of release and the released inmate is subsequently arrested in the state of Kansas, either pursuant to the warrant issued by the secretary of corrections or for any other reason, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest.

If a released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state, and the released inmate has been authorized as a condition of such inmate's release to reside in or travel to the state in which the released inmate was arrested, and the released inmate has not absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant to the date of the released inmate's arrest. If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of the conditions of release is subsequently arrested in another state for reasons other than the secretary's warrant and the released inmate does not have authorization to be in the other state or if authorized to be in the other state has been charged by the secretary with having absconded from supervision, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the warrant by the secretary to the date the released inmate is first available to be returned to the state of Kansas. If the released inmate for whom a warrant has been issued by the secretary of corrections for violation of a condition of release is subsequently arrested in another state pursuant only to the secretary's warrant, the released inmate's sentence shall not be credited with the period of time from the date of the issuance of the secretary's warrant to the date of the released inmate's arrest, regardless of whether the released inmate's presence in the other state was authorized or the released inmate had absconded from supervision.

The secretary may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release and may direct that all reasonable means to serve the warrant and detain such released inmate be employed including but not limited to notifying the federal bureau of investigation of such violation and issuance of warrant and requesting from the federal bureau of investigation any pertinent information it may possess concerning the whereabouts of the released inmate.

(f) Law enforcement officers shall execute warrants issued by the secretary of corrections pursuant to subsection (a) or (d), and shall deliver the inmate named therein to the jail used by the county where the inmate is arrested unless some other place is designated by the secretary, in the same manner as for the execution of any arrest warrant.

Sec. 17. K.S.A. 21-3106, 21-4720 and 22-3717, as amended by sec-

tion 8 of 1996 House Bill No. 2838, and K.S.A. 1995 Supp. 75-5217 are hereby repealed.

Sec. 18. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the House, and passed that body

February 15, 1996

House adopted  
Conference Committee Report April 27, 1996

Jim Shull  
Speaker of the House.

Joan P. Jones  
Chief Clerk of the House.

Passed the SENATE  
as amended March 28, 1996

SENATE adopted  
Conference Committee Report April 26, 1996

Paul G. Burke, Jr.  
President of the Senate

Pat Saville  
Secretary of the Senate.

APPROVED May 17, 1996  
Bill J. J.  
Governor.

# Appendix D

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## STATE CRIMINAL STATUTES USED TO COMBAT HEALTH CARE FRAUD

**K.S.A. 21-3701. Theft.** Obtain or exert unauthorized control over property or obtain by deception control over property with the intent to deprive the owner permanently of the possession, use or benefit of the owner's property. Class A misdemeanor, severity level 9 nonperson felony, and severity level 7 nonperson felony.

**K.S.A. 21-3710. Forgery.** Forgery can be committed several different ways. Each of the avenues requires that the act be done knowingly and with the intent to defraud. Severity level 8 nonperson felony.

1. Make, alter, or endorse any written instrument in such manner that it purposes to have been made, altered, or endorsed by another person.
2. Alter any written instrument in such manner that it purports to have been made at another time or with different provisions without the authority of the maker thereof.
3. Make, alter, or endorse any written instrument in such manner that it purports to have been made, altered, or endorsed with the authority of one who did not give such authority.
4. Issue or deliver such written instrument knowing it to have been thus made, altered, or endorsed.
5. Possess, with the intent to issue or deliver, any such written instrument knowing it to have been thus made, altered, or endorsed.

**K.S.A. 21-3711. Making a False Writing.** Make, draw, or cause to be made or drawn, any written instrument or entry in a book of account with knowledge that such writing falsely states or represents a material matter or is not what it purports to be, with the intent to defraud or induce official action. Severity level 8 nonperson felony.

**K.S.A. 21-3755. Computer Crime.** Using a computer, computer system, computer network or any other property for the purpose of devising or executing a scheme or artifice with the intent to defraud or for the purpose of obtaining money, property, services or any other thing of value by means of false or fraudulent pretense or representation. Class A misdemeanor, severity level 7 nonperson felony, and severity level 9 nonperson felony.

**K.S.A. 21-3805. Perjury.** Intentionally, knowing, and falsely swearing, testifying, affirming, declaring or subscribing to any material fact upon any oath or affirmation legally administered in any cause, matter or proceeding before any

court, tribunal, public body, notary public, or other officer authorized to administer oaths. Severity level 9 nonperson felony.

**K.S.A. 21-3824. False Impersonation.** Representing oneself to be a . . . person licensed to practice or engage in any profession or vocation for which a license is required by the laws of the state of Kansas, with knowledge that such representation is false. Class B misdemeanor.

**K.S.A. 21-3901. Bribery.** Offer, give, or promise to give, directly or indirectly, to any person who is a public officer, candidate for public office or public employee any benefit, reward, or consideration to which the person is not legally entitled with intent thereby to influence the person with respect to the performance of the person's powers or duties as a public officer or employee. Severity level 7 nonperson felony.

**K.S.A. 21-3904. Presenting a False Claim.** Knowingly and with intent to defraud, present a claim or demand which is false, in whole or in part, to a public officer or body authorized to audit, allow, or pay such claim. Class A misdemeanor, severity level 9 nonperson felony, and severity level 7 nonperson felony.

**K.S.A. 21-4214. Obtaining a Prescription-Only Drug by Fraudulent Means.**

This offense may be committed five (5) ways. Class A misdemeanor--first offense, and severity level 9 nonperson felony--second and subsequent offense.

1. Make, alter, or sign a prescription order by a person other than a practitioner.
2. Deliver a prescription order, knowing it to have been made, altered, or signed by a person other than a practitioner.
3. Possess a prescription order with intent to deliver it and knowing it to have been made, altered, or signed by a person other than a practitioner.
4. Possess a prescription-only drug knowing it to have been obtained pursuant to a prescription order made, altered, or signed by a person other than a practitioner.
5. Provide false information to a practitioner for the purpose of obtaining a prescription-only drug.

**K.S.A. 21-4215. Obtaining a Prescription-Only Drug by Fraudulent Means for Resale.**

Obtaining a prescription-only drug by fraudulent means as defined by K.S.A. 21-4214 and selling, offering for sale, or possessing with the intent to sell, the prescription-only drug. Severity level 6 nonperson felony.

**K.S.A. 21-4403. Deception Commercial Practices.** A deceptive commercial practice is the act, use, or employment by any person of any deception, fraud, false pretense, false promise, or knowing misrepresentation of a material fact, with the intent that others shall rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby. Class B misdemeanor.

**K.S.A. 39-709b. Use of Public Lists.** Knowingly make use of or disclose the lists or names or addresses contained in the public list for commercial or political purposes of any nature or to make use of or disclose confidential information. Class B misdemeanor.

## HEALTH CARE ABUSE/NEGLECT

**K.S.A. 21-3401. Murder in the first degree.** Murder in the first degree is the killing of a human being committed intentionally and with premeditation, or in the commission of, attempt to commit, or flight from an inherently dangerous felony. Murder in the first degree is an off-grid person felony.

**K.S.A. 21-3402. Murder in the second degree.** Murder in the second degree is the killing of a human being committed intentionally or unintentionally but recklessly under circumstances manifesting extreme indifference to the value of human life. Murder in the second degree is a severity level 1 or 2, person felony.

**K.S.A. 21-3403. Voluntary manslaughter.** Voluntary manslaughter is the intentional killing of a human being committed upon a sudden quarrel or in the heat of passion or upon an unreasonable but honest belief that circumstances existed that justified deadly force. Voluntary manslaughter is a severity level 3, person felony.

**K.S.A. 21-3404. Involuntary manslaughter.** Involuntary manslaughter is the unintentional killing of a human being committed:

- (a) recklessly;
- (b) in the commission of, or attempt to commit, or flight from any felony, other than an inherently dangerous felony that is enacted for the protection of human life or safety or a misdemeanor that is enacted for the protection of human life or safety; or
- (c) during the commission of a lawful act in an unlawful manner.

Involuntary manslaughter is a severity level 5, person felony.

**K.S.A. 21-3408. Assault.** Assault is intentionally placing another person in reasonable apprehension of immediate bodily harm. Assault is a class C person misdemeanor.

**K.S.A. 21-3412. Battery.** Battery is intentionally or recklessly causing bodily harm to another person or intentionally causing physical contact with another person when done in a rude, insulting or angry manner. Battery is a class B person misdemeanor.

**K.S.A. 21-3414. Aggravated battery.** Aggravated battery is

- (a) intentionally causing great bodily harm to another person or disfigurement of another person;
- (b) intentionally causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted;
- (c) intentionally causing physical contact with another person when done in a rude, insulting or angry manner with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted;
- (d) recklessly causing great bodily harm to another person or disfigurement of another person;
- (e) recklessly causing bodily harm to another person with a deadly weapon, or in any manner whereby great bodily harm, disfigurement or death can be inflicted.

Aggravated battery is a severity level 4, 5, 7, or 8, person felony.

**K.S.A. 21-3419. Criminal threat.** A criminal threat is any threat to commit violence communicated with intent to terrorize another, or to cause the evacuation of any building, place of assembly or facility of transportation, or in reckless disregard of the risk of causing such terror or evacuation or adulterate or contaminate any food, beverage, drug or public water supply. A criminal threat is a severity level 9, person felony.

**K.S.A. 21-3423. Interference with custody of a committed person.**

Interference with custody of a committed person is knowingly taking or enticing any committed person away from the control of such person's lawful custodian without privilege to do so. A committed person is any person committed other than by criminal process to any institution or other custodian by any court or other officer or agency authorized by law to make such commitment. Interference with custody of a committed person is a class A nonperson misdemeanor.

**K.S.A. 21-3424. Criminal restraint.** Criminal restraint is knowingly and without legal authority restraining another person so as to interfere substantially with such person's liberty. Criminal restraint is a class A person misdemeanor.

**K.S.A. 21-3425. Mistreatment of a confined person.** Mistreatment of a confined person is the intentional abuse, neglect or ill-treatment of any person, who is detained or confined and who is physically disabled, mentally ill or mentally retarded or whose detention or confinement is involuntary, by any law enforcement officer or by any person in charge of or employed by the owner or operator of any correctional institution or any public or private hospital or nursing home. Mistreatment of a confined person is a class A person misdemeanor.

**K.S.A. 21-3502. Rape.** Rape is sexual intercourse with a person who does not consent to the sexual intercourse, under any of the following circumstances:

- (a) when the victim is overcome by force or fear;
- (b) when the victim is unconscious or physically powerless; or
- (c) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender;

Rape is sexual intercourse with a child who is under 14 years of age. Rape is a severity level 2, person felony.

**K.S.A. 21-3503. Indecent liberties with a child, who is 14 or 15 years of age.**

Indecent liberties with a child is engaging in any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both or soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another. Indecent liberties with a child is a severity level 5, person felony.

**K.S.A. 21-3504. Aggravated indecent liberties with a child.** Aggravated indecent liberties with a child is sexual intercourse with a child who is 14 or more years of age but less than 16 years of age. Aggravated indecent liberties with a child is engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age and who does not consent thereto:

- (a) any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or satisfy the sexual desires of either the child or the offender, or both; or
- (b) causing the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

Aggravated indecent liberties with a child is engaging in any of the following acts with a child who is under 14 years of age:

- (a) any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or
- (b) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

Aggravated indecent liberties with a child is a severity level 3 or 4, person felony.

**K.S.A. 21-3505. Criminal sodomy.** Criminal sodomy is sodomy between persons who are 16 or more years of age and members of the same sex or between a person and an animal, sodomy with a child who is 14 or more years of age but less than 16 years of age, causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal. Criminal sodomy is a class B nonperson misdemeanor or a severity level 3, person felony.

**K.S.A. 21-3506. Aggravated criminal sodomy.** Aggravated criminal sodomy is sodomy with a child who is under 14 years of age, causing a child under 14 years of age to engage in sodomy with any person or an animal, or sodomy with a person who does not consent to the sodomy or causing a person, without the person's consent, to engage in sodomy with any person or an animal, under any of the following circumstances:

- (a) when the victim is overcome by force or fear;
- (b) when the victim is unconscious or physically powerless; or
- (c) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor,

narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender.

Aggravated criminal sodomy is a severity level 2, person felony.

**K.S.A. 21-3510. Indecent solicitation of a child.** Indecent solicitation of a child is enticing or soliciting a child 14 or more years of age but less than 16 years of age to commit or to submit to an unlawful sexual act or inviting, persuading or attempting to persuade a child 14 or more years of age but less than 16 years of age to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child. Indecent solicitation of a child is a severity level 7, person felony.

**K.S.A. 21-3511. Aggravated indecent solicitation of a child.** Aggravated indecent solicitation of a child is enticing or soliciting a child under the age of 14 years to commit or to submit to an unlawful sexual act or inviting, persuading or attempting to persuade a child under the age of 14 years to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child. Aggravated indecent solicitation of a child is a severity level 6, person felony.

**K.S.A. 21-3516. Sexual exploitation of a child.** Sexual exploitation of a child is employing, using, persuading, inducing, enticing or coercing a child under 16 years of age to engage in sexually explicit conduct for the purpose of promoting any performance, possessing any film, photograph, negative, slide, book, magazine or other printed or visual medium or any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk in which a real child under 16 years of age is shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender, the child or another, being a parent, guardian or other person having custody or control of a child under 16 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose, or promoting any performance that includes sexually explicit conduct by a child under 16 years of age, knowing the character and content of the performance. Sexual exploitation of a child is a severity level 5, person felony.

**K.S.A. 21-3517. Sexual battery.** Sexual battery is the intentional touching of the person of another who is 16 or more years of age, who is not the spouse of the offender and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another. Sexual battery is a class A person misdemeanor.

**K.S.A. 21-3518. Aggravated sexual battery.** Aggravated sexual battery is the intentional touching of the person of another who is 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another under any of the following circumstances:

- (a) when the victim is overcome by force or fear;
- (b) when the victim is unconscious or physically powerless;
- (c) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.

Aggravated sexual battery is a severity level 5, person felony.

**K.S.A. 21-3608. Endangering a child.** Endangering a child is intentionally and unreasonably causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health may be injured or endangered. Endangering a child is a class A person misdemeanor.

**K.S.A. 21-3609. Abuse of a child.** Abuse of a child is intentionally torturing, cruelly beating, shaking which results in great bodily harm or inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years. Abuse of a child is a severity level 5, person felony.

# Appendix E

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# Presentations

Date of Presentation	Topic	Presenter	Sponsors	Location	Attendees	Approx. Attendance
September 22, 1995	Medicaid Fraud	Martha Hodgesmith, Deputy Attorney General	Kansas Legal Services	Topeka, KS	Legal Services Attorneys	35
October 17, 1995	Medicaid Fraud	John McIntyre, Administrative Assistant	Economics of Crime Task Force - Koch Crime Commission	Topeka, KS	Attorneys, Criminal Justice Professionals	15
November 16, 1995	Medicaid Fraud and Patient Abuse	Martha Hodgesmith	Stormont Vail, St. Francis, Shawnee County Health Department	Topeka, KS	Home Health Professionals	35
January 31, 1996	Medicaid Fraud and Patient Abuse/ Medicaid Fraud Control Act	Martha Hodgesmith and Gayle Larkin, Assistant Attorney General	Attorney General's Call	Topeka, KS	State and local prosecutors	50
February 8, 1996	Medicaid Fraud and Abuse	Attorney General Carla Stovall	Kansas State Nurses Association	Topeka, KS	Nurses and nursing students	800
February 23, 1996	Kansas U.S. Attorney Health Care Fraud Working Group	Martha Hodgesmith	U.S. Attorney	Topeka, KS	Attorneys, investigators, public officials	60
February 26, 1996	Audit Responsibilities in Criminal Investigations in the Public Health Arena	Curt Landis, Auditor and Tom Lyndon, Chief Investigator	Kansas State Internal Auditors Forum	Topeka, KS	State auditors	19
March 2, 1996	Elder Law Practice in Changing Times	Martha Hodgesmith	Kansas Bar Association	Satellite presentation	Attorneys, paralegals	233

# Presentations

Date of Presentation	Topic	Presenter	Sponsors	Location	Attendees	Approx. Attendance
March 29, 1996	Criminal Investigation and Prosecution of Health Care Fraud	Tom Lyndon and Gayle Larkin	Medicaid Fraud and Abuse Division	Topeka, KS	State Medicaid agency staff and Fiscal agent staff	25
April 17, 1996	Medicaid Fraud and Abuse Division	John McIntyre	Kansas University Capitol Complex Monthly Meeting	Topeka, KS	MPA students	4
May 1, 1996	Medicaid Fraud	Martha Hodgesmith	Franklin/Osage/Coffey County Legal Secretaries	Pomona, KS	Legal Secretaries	20
May 17, 1996	Medicaid Fraud and Abuse/ Health Care Law CLE	Martha Hodgesmith	Kansas Bar Association	Wichita, KS	Attorneys, paralegals	56
May 30, 1996	Health Care Fraud	Martha Hodgesmith	AFL-CIO	Topeka, KS	Labor Union Rep.	80
June 13, 1996	Elder Law Practice in Changing Times	Martha Hodgesmith	Kansas Bar Association	Satellite presentation (rebroadcast)	Attorneys, paralegals	75
June 17, 1996	Health Care Fraud	Martha Hodgesmith	Newton Kiwanis	Newton, KS	Kiwanis group	50

# Appendix F

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# Medicaid fraud unit created by attorney general's office

## Medicaid watchdog formed

Kansas to have a new division to investigate abuse.



Stovall Wants Action On Medicaid Fraud

New A.G. division polices Medicaid fraud

Stovall asks for harsher penalties for Medicaid fraud

Attorney general announces formation of Medicaid Fraud Division and health care fraud settlement

Consumer education the best deterrent, attorney general says

Medicaid fraud will be tracked

Medicaid fraud probes change agency hands

## State goes on attack against health fraud

KANSAS PHYSICIAN

Medicaid fraud bill introduced

Medicaid fraud case results in \$460,000 payoff to state

Pittsburg Sun 8-31-95

The Great Bend Tribune on new fraud unit:

Way to go Carla!

Attorney General Carla Stovall is attacking some of the crumbs who steal from us, from all of us and from our government, too.

Stovall has established a new division within her office to investigate Medicaid fraud ...

While Medicaid is federally funded, it is administered through Social and Rehabilitation Services in Kansas and federal regulations require that an outside agency conduct investigations. Also, it doesn't hurt to have someone as tenacious as Stovall to oversee the investigations.

The Kansas Medicaid budget is about \$750 million, which allows for a lot of abuse ...

The new division is supposed to cost about \$400,000 a year and Kansas has received \$461,268 as its part of a settlement of a Medicaid lawsuit involving kickbacks and over billing across the nation.

... While this money is going to SRS and the state general fund, it just goes to show what can be collected when someone bothers to attack the crooks.

There is no reason to believe Kansas is free from those same crooks and with the oversight of Carla Stovall, they are going to pay.

# Medicaid fraud unit created by attorney general's office

By ROGER MYERS  
The Capital-Journal

8-24-95

**A** fraud unit that will go after health care providers who overcharge for their services to low-income Medicaid patients will be established in the office of Attorney General Carla Stovall, it was announced Wednesday.

Stovall announced creation of the Medicaid Fraud and Abuse Division during a news conference and said the unit eventually will be staffed by eight people, including attorneys, investigators and auditors. She said it will start with an initial budget of \$400,000 and is scheduled to be in operation by October.

Rochelle Chronister, secretary of the Department of Social and Rehabilitation Services, said she expects the unit will recover far more than its annual budget.

She said Kansas has a better record than most states in avoiding fraud by Medicaid providers, saying Kansas probably is in the top 10 percent of the states in getting all the Medicaid services from providers that it pays for.

Stovall also announced the state had received \$461,268 as its share of the largest Medicaid fraud settlement ever obtained, part of a \$161 million civil settlement against Illinois-based

Caremark, Inc., a provider of home care services.

She said the case against Caremark alleged kickbacks to providers and over billing to the Medicaid programs in all 50 states.

The amount Kansas received from the settlement represented the proportion of services that the state's Medicaid program received from Caremark. Part of the money, \$175,282, will go to SRS as restitution for Medicaid funds, while \$295,986, representing penalties for kickbacks, will go into the state's general fund.

Chronister said SRS had been operating the state's only Medicaid fraud unit, but now most of that work will be turned over to the new division in Stovall's office. She said two auditors will remain on the SRS staff to check for fraud by individual Medicaid recipients.

John Badger, chief counsel for SRS, said, "We have a couple of cases we'll be wanting to talk with them about immediately."

The federal government will pay 90 percent of the unit's cost during the first three years and 75 percent of its costs thereafter. The federal government required the creation of Medicaid fraud units outside of agencies that administer the program of health care for welfare recipients and people with low incomes.

SRS administers Medicaid in Kansas, a state-federal program that is funded about 60 percent by the federal government and about 40 percent by the state. There are about 200,000 Medicaid recipients in Kansas, and the program has a budget of approximately \$155 million this fiscal year.

Stovall named Martha Hodgesmith to head the Medicaid Fraud and Abuse Division. Hodgesmith is a former SRS attorney and SRS area office administrator with 17 years of legal experience in benefits programs.



Carla Stovall

AUG 28 1995

## Attorney general announces formation of Medicaid Fraud Division and health care fraud settlement

Attorney General Carla J. Stovall announced the formation of a Medicaid Fraud and Abuse division within the Office of Attorney General. She also announced, along with Department of Social Rehabilitation Services Secretary Rochelle Chronister, the state's share of a \$44.5 million dollar settlement of a Medicaid fraud case against an Illinois-based health care corporation.

At a Topeka news conference, Attorney General Stovall introduced Deputy Attorney General Martha Hodgesmith who will head up the Medicaid Fraud and Abuse division in the Attorney General's office. Hodgesmith is a 1978 graduate of the University of Kansas School of Law and a 1974 graduate of the University of Kansas. She was most recently employed as the associate director of the Kansas Association of Rehabilitation Facilities which represents providers of community based services for people with disabilities. Attorney General Stovall also introduced John McIntyre who will serve as administrative assistant to the Medicaid Fraud and Abuse division. McIntyre is a graduate of the University of Wisconsin and will receive his Masters in Public Administration from the University of Kansas in May 1996. Six additional staff members, including investigators, attorneys and auditors, will make up the Medicaid Fraud and Abuse division when it begins operation in October 1995.

Also during the Topeka news conference, Attorney General Stovall turned over a check for \$461,268.42 to Secretary Chronister and the State of Kansas. The money represents the state's share of the largest Medicaid fraud settlement ever involving kickbacks and overbilling to the Medicaid programs of all 50 states

and the District of Columbia. Kansas received the money as part of a \$161 million joint federal/state prosecution and civil settlement against Caremark, Inc., a multi-billion dollar home health care company. Attorney General Stovall said part of the money, \$175,282, will go to SRS in restitution for Medicaid funds fraudulently taken by Caremark. The rest of the money, \$285,986, representing penalties for kickbacks, will go to the State General Fund.

The Attorney General said the settlement includes fines, penalties, and damages to be paid to the states for Caremark's fraudulent activities including improper payments to induce physician referrals, submission of inflated bills to state Medicaid programs for home infusion, hemophilia, oncology, human growth hormone treatments, and related supplies, and for waiver of copayments. Caremark pleaded guilty in U.S. District Courts in Minnesota and Ohio in June to charges that it defrauded federal health care programs by making improper payments to induce doctors and other professionals to refer patients.

"Much of the credit for Kansas receiving its share of the settlement money goes not only to members of my staff who coordinated the effort, but also to the staff at SRS who identified the dollars at stake as a result of Caremark's fraudulent activities in Kansas," Stovall said. "I want to thank Secretary Chronister and her staff for their cooperation in this joint effort.

"My Medicaid Fraud and Abuse division and I look forward to continued cooperation with SRS in identifying and prosecuting those individuals and companies who steal taxpayers' dollars that are intended to provide health care for those who need it."

SEP - 7 1995

## Medicaid fraud case results in \$460,000 payoff to state

State officials received nearly half a million dollars in settlement of a Medicaid fraud case late last week. In addition, the attorney general's office made a move to reduce such fraud by forming a Medicaid Fraud and Abuse division.

At a Topeka news conference Wednesday, Attorney General Carl Stovall announced that Martha Hodgesmith, deputy attorney general, would head the new fraud and abuse division.

Stovall also said John McIntyre would serve as administrative assistant in the division. Six other staff members, including investigators will make up the division when it begins operation in October.

During the same news conference, Stovall turned over to SRS Secretary Rochelle Chronister a check for \$461,268. The money represented the state's share of the largest Medicaid fraud settlement in history, \$44.5 million.

The case against an Illinois-based health care corporation, involved kickbacks and overbilling to the Medicaid programs of all 50 states and the District of Columbia, Stovall said.

Kansas received the money as part of a \$161 million joint federal/state prosecution and civil settlement against Caremark, Inc., a multi-billion-dollar home health care company.

Stovall said part of the money, \$175,282, would go to the Department of Social and Rehabilitation Services in restitution for Medicaid funds fraudulently taken by Caremark.

The rest of the money, representing penalties for kickbacks, will go the state general fund.

Stovall said the settlement included fines, penalties and damages to be paid to the states for Caremark's fraudulent activities, including improper payments to induce physician referrals, submission of inflated bills to state Medicaid programs for home infusion, hemophilia, oncology, human growth hormone treatments and related supplies and for waiver of copayments.

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"My Medicaid Fraud and Abuse division and I look forward to continued cooperation with SRS in identifying and prosecuting those individuals and companies who steal taxpayers' dollars that are intended to provide health care for those who need it."

# Appendix G

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Division of Medicaid Fraud and Abuse  
Report of Expenditures for the period of October 1, 1995 thru June 30, 1996

Salaries		\$174,551
Payroll and Fringes Benefits		25,272
Travel		11,731
Equipment Purchases		74,279
Supplies		
Office Supplies	\$ 5,754	
Postage and Printing	1,057	
One-time items	<u>14,456</u>	
Total Supplies		21,267
Contractual Services		
Rent	\$21,720	
Copier Lease & Maintenance	1,400	
Security System	1,382	
Telephone Charges	4,559	
Computer Line Charges	732	
Computer Installation	1,832	
Computer Training	1,395	
Rent of State Automobiles	<u>1,693</u>	
Total Contractual Services		34,713
Other		
Reference Materials	\$ 1,321	
Legal Materials	2,728	
Membership Fees	3,847	
Registration Fees	4,880	
Other Miscellaneous	<u>2,814</u>	
Total Other		<u>15,590</u>
Total Expenditures		<u>\$357,403</u>

# Appendix H

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## Case Data Information

The Kansas Medicaid Fraud and Abuse Division has referred 13 cases for consideration for investigation/presentation by other agencies. Eleven cases were referred to the U.S. Department of Health and Human Services, 1 to the Kansas U.S. Attorney ACE program and 1 to the Kansas Department of Social and Rehabilitation Services. All cases are pending with outcomes unknown at this time.

Twenty-three complaints of abuse/neglect of patients in health care facilities were received. Two cases were referred to other agencies; the Missouri MFCU and the Kansas Department of Health and Environment. The remaining cases are under review.

### Medicaid Agency Recoveries

Provider Type	Identified Amount	Recovered Amount
Home Community Based Service	\$ 1,575	Pending

### Other Agency Recoveries

Provider Type	Identified Amount	Recovered Amount
Laboratory		
A	\$ 6,549,527	\$ 461,268.42
B	\$ 691,753	Pending
C	\$ 51,876	Pending
D	under \$ 50,000	Pending