

2020

Office of the Medicaid Inspector General

Calendar Year 2020 Annual Report
January 1 – December 31, 2020

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**KANSAS
ATTORNEY GENERAL**

DEREK SCHMIDT

Table of Contents

Letter from the Office of Inspector General	2
Introduction.....	3
Background.....	4
OIG Staffing.....	5
Summary of CY 2020 OIG Activities	6

Letter from the Office of Inspector General

February 17, 2021

Dear Fellow Kansans:

It is our pleasure to submit the annual report of the Medicaid Inspector General within the Office of Attorney General Derek Schmidt for calendar year 2020. This report is issued in accordance with K.S.A. 75-7427(i) and is respectfully submitted to:

- The Citizens of the State of Kansas
- Governor Laura Kelly
- Members of the Kansas Senate Committee on Ways and Means
- Members of the Kansas House of Representatives Committee on Appropriations
- Kansas Department of Health and Environment Secretary Lee Norman
- Kansas Department for Aging and Disability Services Secretary Laura Howard
- Legislative Post Auditor Justin Stowe
- Kansas Attorney General Derek Schmidt

This report provides an overview of the Kansas Medicaid Inspector General's Office and describes the office's activities during calendar year 2020. We welcome any comments or questions you may have regarding this report or our operations.

Respectfully submitted,

Jay Scott Emler
Administrator for the Office of Inspector General

Introduction

The Office of Inspector General (OIG) is charged with overseeing the Kansas Medicaid program (KanCare), the MediKan program, and the State Children’s Health Insurance Program (SCHIP).

K.S.A. 75-7427(b)(1) states that the purpose of the OIG is: “to establish a full-time program of audit, investigation and performance review to provide increased accountability, integrity and oversight . . . and to assist in improving agency and program operations and in deterring and identifying fraud, waste, abuse and illegal acts.” The same statute requires the Medicaid inspector general to be “independent and free from political influence” in performing the duties of the position.

The OIG is an independent division of the Kansas Attorney General’s Office. The Medicaid inspector general reports directly to the attorney general. In accordance with K.S.A. 75-7427(b)(1), all budgeting, purchasing, related management functions and personnel are administered under the direction and supervision of the attorney general. In accordance with K.S.A. 75-7427(1), the scope, timing, and completion of all audits and investigations conducted by the OIG shall be within the discretion of the Medicaid inspector general.

Background

2007 Senate Bill 11 created the Office of Inspector General (OIG) within the Kansas Health Policy Authority (KHPA). The original statutory provisions contained in that bill remain virtually unchanged today.

In 2011, Executive Reorganization Order No. 38 abolished the KHPA and transferred all powers, duties, and functions of the KHPA to the Division of Health Care Finance within the Kansas Department of Health and Environment (KDHE). The OIG was transferred to KDHE as part of that Executive Reorganization Order.

2017 Senate Bill 149 moved the OIG from KDHE to the attorney general's office effective June 1, 2017. On October 9, 2018, the Senate Confirmation Oversight Committee voted to authorize Sarah Fertig, the attorney general's nominee for the Medicaid inspector general position, to exercise the powers of the office pending confirmation by the full Senate. The Senate voted to confirm Ms. Fertig on January 19, 2019.

The OIG had been non-functional for nearly four years before the inspector general assumed the duties of the office on October 9, 2018. Upon assuming those duties, the inspector general began rebuilding the OIG function from scratch.

OIG Staffing

Between January and June 2019, the OIG had one staff member, the Medicaid inspector general. The OIG hired an assistant Medicaid inspector general in June of 2019 and a Data Analyst in February of 2020.

The OIG began the process of recruiting a new Medicaid inspector general in July of 2020 due to the resignation of Sarah Fertig. Ms. Fertig assumed a new position within the State of Kansas on July 13, 2020. Her last day serving as inspector general was on July 10, 2020.

Attorney General Derek Schmidt appointed Jay Scott Emler (Deputy Attorney General/Chief Information Security Officer) to serve as the administrator for the OIG during the transition.

Between July and December of 2020, OIG staff continued to make steady progress towards rebuilding the Medicaid IG function while awaiting the appointment and confirmation of a new inspector general.

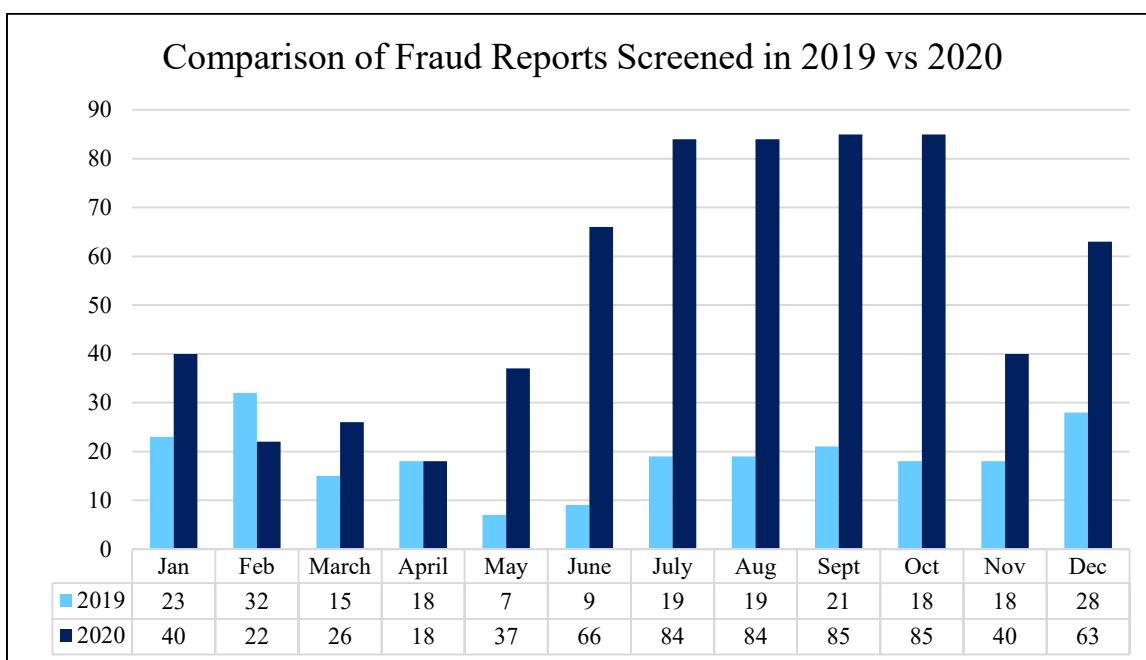
Summary of CY 2020 OIG Activities

Detecting and Preventing Fraud, Waste, Abuse, and Illegal Acts

K.S.A. 2018 Supp. 75-7427(k)(1) requires the inspector general to “make provision to solicit and receive reports of fraud, waste, abuse, and illegal acts.” To that end, the inspector general has a dedicated email address, MedicaidIG@ag.ks.gov, that concerned citizens or state agencies may use to submit such reports.

The majority of reports received are submitted by the Kansas Department for Children and Families (DCF) and primarily allege beneficiary eligibility fraud. OIG staff currently screen each report received on a daily basis for substance and jurisdiction. If staff determine there is a need for eligibility clarification, the report is forwarded to the KanCare Clearinghouse for review and possible follow-up.

As the division has matured, the OIG has experienced a significant increase in the number of fraud reports received.



In CY 2020 the OIG screened a total of **650** fraud reports for substance and jurisdiction. Out of the **650** fraud reports screened, **629** (97%) were submitted by DCF. In CY 2019, the OIG screened a total of **227** fraud reports which were primarily submitted by DCF as well.

As the number of individuals enrolled in Medicaid increases, the amount of funds being expended by the program significantly increases the risk for fraudulent activity. To that end, the OIG has been working on a process improvement plan that will provide more insight to policymakers about the types, amounts, and outcomes of the fraud reports received. The OIG will provide more detailed information in the 2021 annual report.

CY 2020 Oversight Activities

The Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services and KanCare Oversight is a standing committee of the Kansas State Legislature. The OIG has ongoing interaction with the committee to ensure that policymakers are aware of the strengths and vulnerabilities in the Medicaid, MediKan, and SCHIP programs.

In CY 2020, the OIG attended a total of four (4) committee meetings. During each meeting, the OIG presented reports from reviews and provided updates of the OIG's current activities to the committee. Listed below are the dates of each meeting along with a short description of each review that was presented to members of the committee.¹

ID	Date of Meeting	Subject	Type	Formal Report Issued	Report No.
1	02/28/20	Analysis of Transportation Grievances	Review	No	N/A
2	06/22/20	HHS OIG Exclusion List	Review	Yes	20-03
3	09/28/20	Overlapping PCA & Inpatient Claims	Investigation	No	N/A
4	09/28/20	Follow-Up Review of Appriss	Review	No	N/A
5	12/09/20	Capitation Payments Made After Beneficiaries' Deaths	Review	No	N/A

1. Analysis of Transportation Grievances

During the November 19, 2019, committee meeting, KDHE presented data on the top five Managed Care Organization (MCO) grievance trends for the third quarter of calendar year 2019. The data showed that across all three MCOs, the majority of grievances filed by members involved non-emergency medical transportation (NEMT) services. Committee members expressed concern about these grievances, particularly those categorized as "Transportation – No Show."

The OIG requested transportation grievance documentation from all three MCOs. The OIG selected the "no-show" category for further review because it appears to be the highest risk, both in terms of potential health risk to beneficiaries and risk to the state for improper claims.

A total of 250 transportation grievances were filed during the third quarter of 2019. Thirty-three (33) of those grievances were categorized by the MCOs as "Transportation- No Show". The remaining 217 transportation grievances were categorized by the MCOs as "Transportation – Late" or "Transportation – Other".

¹ Copies of all testimony can be found at <http://www.kslegislature.org>, unless otherwise noted under the description of each review.

The OIG determined that only three (3) of the 33 grievances categorized as "Transportation-No Show" appeared to be true instances in which the scheduled transportation never arrived.

MCO documentation indicated that these three (3) no-shows were due to the following circumstances:

- The Customer Service Agent accidentally cancelled the wrong day of service;
- The transportation providers notification system was down; or,
- The transportation provider does not operate on Saturdays, which was unknown at the time the transport was scheduled.

The remaining 30 transactions tested did not appear to be true no-shows, but rather involved late arrivals or miscommunication between the beneficiary and the provider.

This report was intended for informational purposes only and did not include any recommendations for policy change.

2. HHS OIG Exclusion List

On June 5, 2020, the OIG issued Report No. 20-03.² This report contained findings from a review of the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals/Entities (LEIE). The OIG compared the LEIE to the list of personal care attendants (PCAs) classified as "active" in the state's billing system for personal care services (PCS.)

The OIG determined that despite policies in place to prevent HHS OIG-excluded individuals from participating in the Kansas' Medicaid program, four (4) excluded individuals were hired to provide PCS to Medicaid beneficiaries. In one case, the PCA worked for Medicaid beneficiaries but was paid with non-Medicaid funds. In the other three cases, we determined that failure to comply with existing HCBS provider background check policies resulted in Medicaid monies being used to pay for services provided by an HHS OIG-excluded individual. In total, the OIG identified **\$6,044.12** in payments for personal care services provided by three HHS OIG-excluded individuals.

The OIG made three (3) recommendations to address these findings. In addition, the OIG referred three (3) PCA's to the Medicaid Fraud Control Unit (MFCU) division of the Attorney General's Office for possible prosecution.

3. Overlapping PCA & Inpatient Claims

In order to improve the overall process of protecting the integrity of the Kansas Medicaid program, the OIG ran claims data from 01/01/19 through 06/30/20 to see if there were any PCS billed on the same day as an inpatient hospital stay. Research was then conducted using an

² <https://ag.ks.gov/fraud-abuse/medicaid-inspector-general>

Electronic Visit Verification (EVV) system to determine if there were any instances of suspected fraud, waste, or abuse.

The OIG identified **\$49,294.67** in possible improper payments that were claimed by thirty (30) different PCAs while the beneficiary was hospitalized. The OIG referred all thirty (30) PCAs to the MFCU division of the Attorney General's office for possible prosecution.

This report was intended for informational purposes only and did not include any recommendations for policy change.

4. Follow-Up Review of Appriss Notifications

In August 2019, KDHE implemented a new data exchange with Appriss to provide KDHE with near real-time notification when an adult Kansas Medicaid beneficiary enters a jail or detention center.

A previous OIG audit (Report No. 20-01)³ conducted by the OIG determined that KDHE had improperly made capitation payments to Managed Care Organizations (MCO's) in the amount of **\$184,997.43** for incarcerated beneficiaries. That sum included **\$26,511.72** in capitation payments for jail inmates. This suggested that the Appriss data exchange that was being implemented could lead to significant savings by allowing KDHE to take timely eligibility action on jail inmates.

The objective of the follow-up review was to determine if the Appriss notification system was working as intended, and if the KanCare Clearinghouse staff was taking appropriate action based on Appriss notifications.

The results of OIG's review indicate that KDHE's new data exchange with Appriss appeared to be an effective tool for the state of Kansas. The Appriss data exchange provides real-time information on the incarceration status of beneficiaries. The KanCare Clearinghouse can make timely and informed decisions regarding the Medicaid eligibility of individuals who are in the custody of law enforcement agencies. This reduces the amount of capitation payments that are being made to MCO's. In addition, KDHE is able to reinstate the benefits of eligible members after release or approve MediKan reintegration and send a new benefits application. This allows inmates the ability to receive quick access to mental health care in the community following discharge from jail or prison.

This report was intended for informational purposes only and did not include any recommendations for policy change.

5. Capitation Payments Made After Beneficiaries' Deaths Review

The objective of this review was to determine if KDHE made capitation payments to MCO's on behalf of deceased beneficiaries. The scope of review included any capitation payments made to

³ <https://ag.ks.gov/fraud-abuse/medicaid-inspector-general>

MCO's between February 2015 (eligible in January 2015) and September of 2020 for beneficiaries who were identified as no longer enrolled in Medicaid.

OIG identified **\$1,313,175.55** in monthly capitation payments that were made on behalf of twenty-five (25) beneficiaries whose dates of death preceded the payment dates. In some cases, the improper payments continued for as long as five years after the date of death. All KDHE policies and procedures reviewed appeared to be sufficient. Therefore, the OIG conducted research to see why the improper payments were made. After research was conducted, OIG noted the following:

Twenty-three (23) beneficiaries out of twenty-five (25), were mailed voter registration letters generated on September 16, 2020. The majority of voter registration letters were sent back to the KanCare Clearinghouse as returned mail. Tasks were created in the eligibility system, which allowed workers to conduct research to determine why the letters were returned. Once workers were able to confirm that the beneficiary was deceased, the computer system was updated with the necessary changes.

OIG was able to confirm that shortly after the necessary changes were made to the beneficiary's files, improper payments in the amount of **\$1,142,196.84** were automatically offset from three MCO's monthly capitation payments. The improper payments made to the MCO Amerigroup, were not offset because Amerigroup's contract with KDHE ended on December 31, 2018.

The OIG recommended that KDHE review the validity of this information and update procedures accordingly if needed. In addition, the OIG recommended that KDHE determine if capitation over payments to Amerigroup in the amount of **\$170,975.71** can be recovered.

This report was intended for informational purposes only and did not include any recommendations for policy change.

K.S.A. 75-7427(i) requires the inspector general to include the following information in this annual report:

Aggregate provider billing and payment information:

The OIG has obtained the following FY 2020 aggregate provider billing and payment information from KDHE. The amounts for Medicaid and SCHIP are rounded to the nearest dollar and include payments made to providers under both the fee-for-service and KanCare models.

Medicaid:

- Total Medicaid provider payments: \$3,022,469,152.00
- Number of Medicaid provider claims: 12,326,651

MediKan:

- Total MediKan provider payments: \$5,750,097.00
- Number of MediKan provider claims: 37,342

SCHIP:

- Total SCHIP provider payments: \$90,260,041.00
- Number of SCHIP provider claims: 629,035

KanCare Capitation Payments:

- Total Medicaid managed care capitation payments: \$3,568,411,549.00
- Total SCHIP managed care capitation payments: \$118,447,294.00

The number of audits of Medicaid, MediKan, and SCHIP and the dollar savings, if any, resulting from those audits:

No performance audits were completed in CY 2020 due to the resignation of the inspector general. The OIG completed four (4) reviews in CY 2020, which are summarized above.

Health care provider sanctions, in the aggregate, including terminations and suspensions:

No providers were sanctioned as a result of activities in CY 2020.

A detailed summary of the investigations undertaken in the previous fiscal year:

See Investigation #3, Overlapping PCA & Inpatient Claims.



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