WEST VIRGINIA CODE CHAPTER 16b ARTICLE 2

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§16B-2-1. Office of the Inspector General continued; appointment and qualifications of Director of Office of Health Facility Licensure and Certification and the Director of Investigations and Fraud Management Units.

(a) The Office of the Inspector General is continued as a separate and autonomous agency within the Department of Health. The Department of Health shall provide administrative support, at the request of the Office of Inspector General. Shared services shall be provided at the request of the Office of the Inspector General when the same cannot be accomplished with current staffing within the Office of the Inspector General. The Office of Inspector General shall be headed by the Inspector General and is comprised of the offices as provided in §5F-2-1a of this code. Any administrative supports or shared services provided or received by the Office of the Inspector General are not subject to review by the Department of Health, the Department of Human Services, or the Department of Health Facilities.

(b) (1) The Inspector General shall be appointed by the Governor, within 90 days of a vacancy, subject to the advice and consent of the Senate.

(A) The term of the Inspector General is five years.

(B) At the end of a term, the Inspector General is eligible to be reappointed for one additional term. The Inspector General shall continue to serve until a successor is appointed.

(C) If a vacancy occurs in the office, an interim Inspector General may be appointed as successor to serve for the remainder of the unexpired term.

(2) The Inspector General may be removed by the Governor only for:

(A) Misconduct in office;

(B) Persistent failure to perform the duties of the Office; or

(C) Conduct prejudicial to the proper administration of justice.

(c) The Inspector General shall be professionally qualified through experience or education in at least two of the following areas:

(1) Law;

(2) Auditing;

(3) Government operations;

(4) Financial management; or

(5) Health policy.

(d) The Inspector General shall be paid an annual salary as provided in the budget.

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(e) Funding for the office shall be as provided in the state budget.

(f) The Inspector General shall:

(1) Conduct and supervise investigations, perform inspections, evaluations, and review, and provide quality control for the programs of the Department of Human Services, the Department of Health, and the Department of Health Facilities to promote legal, regulatory, programmatic, and fiscal compliance.

(2) Investigate fraud, waste, and abuse of the Department of Human Services, the Department of Health, and the Department of Health Facilities' funds, and conduct, whether by acts or omissions in the Department of Human Services, the Department of Health, and the Department of Health Facilities, that threatens or has the reasonable likelihood to threaten public safety or demonstrates negligence, incompetence, or malfeasance;

(3) Cooperate with and coordinate investigative efforts with the Medicaid Fraud Control Unit within the Office of the Attorney General, and where a preliminary investigation establishes a sufficient basis to warrant referral, shall refer such matters to the Medicaid Fraud Control Unit;

(4) Cooperate with and coordinate investigative efforts with departmental programs and other state and federal agencies to ensure a provider is not subject to duplicative audits; and

(5) Be empowered to consult with the Legislature for policy development;

(6) (A) Organize a board of review, consisting of a chairman appointed by the Inspector General and as many assistants or employees as may be determined by the Inspector General and as may be required by federal laws and rules respecting assistance; the board of review to have such powers of a review nature and such additional powers as may be granted to it by the Inspector General and as may be required by federal laws and rules respecting assistance;

(B) Provide by rules, review, and appeal procedures within the office as may be required by applicable federal laws and rules respecting assistance, and as will provide applicants for, and recipients of, all classes of assistance, an opportunity to be heard by the board of review, a member thereof, or individuals designated by the board, upon claims involving denial, reduction, closure, delay, or other action or inaction pertaining to public assistance;

(7) (A) May subpoena any person or evidence, administer oaths, take and certify affidavits, and take depositions and other testimony for the purpose of investigating fraud, waste, and abuse of Department of Health, Department of Human Services, or Department of Health Facilities' funds, or behavior in the same departments that threaten public safety or demonstrate negligence, incompetence, or malfeasance;

(B) If a person fails to comply with a lawful order or subpoena issued under this subsection, on petition of the Inspector General or a designated Assistant Inspector General, a court of

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competent jurisdiction may compel:

(i) Compliance with the order or subpoena; or

(ii) Testimony or the production of evidence;

(C) Within 30 business days after receiving a complaint or allegation, the Inspector General shall respond to the individual who filed the complaint or allegation with:

(i) A preliminary indication of whether the Office of the Inspector General is able to investigate the complaint or allegation; and

(ii) If the Office of the Inspector General is unable to investigate the complaint or allegation because of a conflict of interest, the Office of the Inspector General shall refer the complaint or allegation to another unit of government or law enforcement.

(g) Neither the secretary nor any employee of the Department of Human Services, Department of Health, or the Department of Health Facilities may prevent, inhibit, or prohibit or cause to be prevented, inhibited, or prohibited, the Inspector General or his or her employees from initiating, carrying out, or completing any investigation, inspection, evaluation, review, or other activity oversight of public integrity by the Office of the Inspector General.

(h) The Inspector General formulates, approves, and submits his or her budget to the Governor for consideration by the Governor.

(i) The Inspector General shall supervise all personnel of the Office of the Inspector General. Qualification, compensation, and personnel practice relating to the employees of the Office of the Inspector General, shall be governed by the classified service.

(j) Employ and discharge within the Office of the Inspector General employees, including professional employees such as investigators and other professional personnel as may be necessary to carry out the functions of the Inspector General, which employees shall continue to be within the classified service provisions of §29-6-1 *et seq*. of this code and rules promulgated thereunder, except for the Inspector General.

(k) Cause the various sections of the Office of the Inspector General to be operated effectively, efficiently, and economically, and to develop goals, policies, and plans that are necessary or desirable for the effective, efficient, and economical operation of the Office of the Inspector General.

(l) Eliminate or consolidate positions and name a person to fill more than one position.

(m) Reorganize internal functions or operations.

(n) Enter into contracts or agreements requiring the expenditure of public funds and

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authorize the expenditure or obligation of public funds as authorized by law: *Provided*, That the powers granted to the Inspector General to enter into agreements and to make expenditures or obligations of public funds under this provision shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature.

(o) Promulgate rules, as defined in §29A-1-2 of this code, to implement and make effective the powers, authority, and duties granted and imposed by the provisions of this chapter in accordance with the provisions of chapter 29A of this code. The Inspector General may promulgate emergency rules pursuant to §29A-3-15 of this code to effectuate the purposes of this section.

(p) Delegate to administrators the duties the Inspector General may deem appropriate, from time to time, to facilitate execution of the powers, authority, and duties delegated to the Inspector General.

(q) Transfer permanent state employees between units of the Inspector General.

(r) Enter into memorandums of understanding;

(s) Take any other action involving or relating to internal management not otherwise prohibited by law;

(t) All legislative rules currently in effect impact the Office of the Inspector General or its programs will continue to remain in full force and effect.

(u) (1) The Director of Office of Health Facility Licensure and Certification shall be appointed by the Governor, within 90 days of a vacancy, subject to the advice and consent of the Senate;

(2) The Director of the Office of Health Facility Licensure and Certification shall have at least eight years' experience in the field of licensure and regulatory matters; and

(v)(1) The Director of Investigations and Fraud Management shall be appointed by the Governor, subject to advice and consent of the Senate.

(2) The Director of Investigations and Fraud Management shall have at least eight years' experience in the field of investigations and fraud matters.

(w) The Inspector General, the Director of The Office of Health Facility Licensure and Certification and the Director of the Investigations and Fraud Management may not be the same person.

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§16B-2-2. Board of Review- judicial review of decisions of contested cases.

(a) The Board of Review shall provide a fair, impartial, and expeditious grievance and appeal process to applicants or recipients of assistance as defined in §9-1-2 *et seq*. of this code and to all parties of contested cases arising under §29A-5-1 *et seq*.

(b) The Bureau of Medical Services shall provide a fair, impartial, and expeditious grievance and appeal process to providers of Medicaid services.

(c) Any party adversely affected or aggrieved by a final decision or order of the board or the bureau may seek judicial review of that decision by filing an appeal to the Intermediate Court of Appeals as provided in §29A-5-4 *et seq*. of this code.

(d) The process established by this section is the exclusive remedy for judicial review of final decisions of the Board of Review and the Bureau for Medical Services.

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§16B-2-3. Board of Review; subpoena powers.

(a) The Inspector General and the Chair of the Board of Review may subpoena witnesses, papers, records, documents and any other information or data it considers necessary for its determination. They shall issue all subpoenas and subpoenas duces tecum in the name of the appropriate entity.

(b) Requests for subpoenas and subpoenas duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay all fees for the attendance and travel of witnesses.

(c) A subpoena or subpoena duces tecum issued at the request of an entity shall be served by the party at least five days before the return date, either by personal service by a person over 18 years of age or by registered or certified mail, return receipt requested. If service is by mail, the five-day notice period shall not begin until the date the person or entity receives the subpoena or subpoena duces tecum.

(d) Fees for the attendance of witnesses are the same as for witnesses before the circuit court of this State and shall be paid by the party requesting the issuance of the subpoena or subpoena duces tecum.

(e) In any case of disobedience or neglect of any subpoena or subpoena duces tecum, or any refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the issuing entity may apply to the Circuit Court of Kanawha County, and the court shall compel obedience through the same manner as a subpoena or subpoena duces tecum is enforced in Kanawha County Circuit Court.

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§16B-2-4. Authority of Investigations and Fraud Management Division to subpoena witnesses and documents.

(a) When the Investigations and Fraud Management Unit of the Office of the Inspector General, which is charged with investigating welfare fraud and intra-agency employee misconduct, has credible information that indicates a person has engaged in an act or activity related to the Department of Human Services, the Department of Health, or the Department of Health Facilities programs, benefits, or intra-agency employee misconduct which is subject to prosecution, it may conduct an investigation to determine if the act has been committed. To the extent necessary to the investigation, the Inspector General or an employee of the Office of the Inspector General may administer oaths or affirmations and issue subpoenas for witnesses and documents relevant to the investigation, including information concerning the existence, description, nature, custody, condition, and location of any book, record, documents or other tangible thing, and the identity and location of persons having knowledge of relevant facts or any matter reasonably calculated to lead to the discovery of admissible evidence.

When the Investigations and Fraud Management Unit has probable cause to believe that a person has engaged in an act or activity which is subject to prosecution relating to the Department of Human Services, the Department of Health, or the Department of Health Facilities programs, benefits, or intra-agency employee misconduct, the Inspector General or an employee of the Office of the Inspector General may request search warrants and present and swear or affirm criminal complaints.

(b) If documents necessary to an investigation of the Investigations and Fraud Management Unit appear to be located outside the state, the documents shall be made available by the person or entity within the jurisdiction of the state having control over such documents either at a convenient location within the state or, upon payment of necessary expenses to the division for transportation and inspection, at the place outside the state where these documents are maintained.

(c) Upon failure of a person to comply with a subpoena or a subpoena for the production of evidence or failure of a person to give testimony without lawful excuse and upon reasonable notice to all persons affected thereby, the Investigations and Fraud Management Division may apply to the circuit court of the county in which compliance is sought for appropriate orders to compel obedience with the provisions of this section.

(d) The Investigations and Fraud Management Unit may not make public the name or identity of a person whose acts or conduct is investigated pursuant to this section or the facts disclosed in an investigation except as the same may be used in any legal action or enforcement proceeding brought pursuant to this code or federal law.

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