

EXECUTIVE REORGANIZATION ORDER (EXCERPT)
E.R.O. No. 2010-1

333.26368 Creation of office of health services inspector general; transfer of powers and duties necessary for office to perform duties from department of community health.

WHEREAS, Section 1 of Article V of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the Governor;

WHEREAS, Section 2 of Article V of the Michigan Constitution of 1963 empowers the Governor to make changes in the organization of the executive branch of state government or in the assignment of functions amongst its units that the Governor considers necessary for efficient administration;

WHEREAS, fraud, waste, and abuse in the state's health services programs affect all Michigan citizens by increasing health care costs and by undermining the trust of taxpayers funding the program;

WHEREAS, the current fraud, waste, and abuse control activities conducted by the Department of Community Health have been successful in recouping, withholding, or avoiding unnecessary spending;

WHEREAS, notwithstanding the success of these efforts, the current system would benefit from consolidation of fraud, waste, and abuse responsibilities and increased focus on specific auditing and fraud prevention goals;

WHEREAS, further reduction in fraud, waste, and abuse in the state's health services programs will benefit this state and Michigan taxpayers;

WHEREAS, the State of Michigan should safeguard taxpayer dollars by using innovative strategies to reduce fraud, waste, and abuse in health services programs;

WHEREAS, there is a continuing need to reorganize functions amongst state departments to ensure efficient administration and effectiveness of government;

NOW, THEREFORE, I, Jennifer M. Granholm, Governor of the State of Michigan, by virtue of the power and authority vested in the Governor by the Michigan Constitution of 1963 and Michigan law, order the following:

I. DEFINITIONS

As used in this Order:

A. "Children's Special Health Care Services Program" means the program for medical assistance for mothers and children provided under Part 58 of the Public Health Code, 1978 PA 368, MCL 333.5801 to 333.5879, including the program for medical assistance for mothers and children established under the Title V of the federal Social Security Act, 42 USC 701 to 710.

B. "Civil Service Commission" means the commission required under Section 5 of Article XI of the Michigan Constitution of 1963.

C. "Department of Community Health" or "Department" means the principal department of state government created as the Department of Mental Health under Section 400 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.500, and renamed the "Department of Community Health" under Executive Order 1996-1, MCL 330.3101.

D. "Department of Human Services Office of Inspector General" means the office within the Department of Human Services created under Section 43b of The Social Welfare Act, 1939 PA 280, MCL 400.43b.

E. "Department of Technology, Management, and Budget" means the principal department of state government created as the Department of Management and Budget under Section 121 of The Management and Budget Act, 1984 PA 431, MCL 18.1121, and renamed the "Department of Technology, Management, and Budget" under Executive Order 2009-55.

F. "Health Services Programs" means this state's Medicaid Program, Mental Health Program, MIChild Program, and Children's Special Health Care Services Program.

G. "Health Services Inspector General" means the head of the Office of Health Services Inspector General created within the Department of Community Health under this Order.

H. "Medicaid Program" means the program for medical assistance for the medically indigent provided in accordance with The Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.119b, including the program for medical assistance established under Title XIX of the federal Social Security Act, 42 USC 1396 to 1396w-2.

I. "Medical Services Administration" means the agency within the Department of Community Health referenced in Section I of Executive Order 1997-4, MCL 333.26324, with oversight of the state Medicaid Program and MI Child Program.

J. "Mental Health Program" means the program for mental health services provided under the Mental Health Code, 1974 PA 258, MCL 330.1001 to 330.2106, which includes the provision of prepaid inpatient health plans under the Medicaid Program.

K. "MI Child Program" means the program for medical assistance for low income individuals provided in

accordance with The Social Welfare Act, 1939 PA 280, MCL 400.1 to 400.119b, which includes the program for health insurance established under Title XXI of the federal Social Security Act, 42 USC 1397aa to 1397mm.

L. "Office of Health Services Inspector General" or "Office" means the office created within the Department of Community Health under this Order.

M. "State Budget Director" means the individual appointed by the Governor under Section 321 of The Management and Budget Act, 1984 PA 431, MCL 18.1321.

II. CREATION OF THE OFFICE OF HEALTH SERVICES INSPECTOR GENERAL

A. The Office of Health Services Inspector General is created as an independent and autonomous entity within the Department of Community Health.

B. The Office shall exercise its prescribed powers, duties, responsibilities, and functions independently of the Director of the Department of Community Health, including, but not limited to, budget, procurement, and related management functions. The Department of Community Health shall assist the Office with budget, procurement, and related management functions, as requested by the Office. The Office shall be headed by the Health Services Inspector General, who shall be a member of the classified state civil service. The appointing authority for the Health Services Inspector General shall be the Governor. The Health Services Inspector General shall administer the personnel functions of the Office and be the appointing authority for employees of the Office. The Department of Community Health shall assist the Office with personnel functions, as requested by the Health Services Inspector General.

C. All of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Department of Community Health necessary for the Office to perform the powers and duties vested in the Office under this Order are transferred to the Office.

D. The Medical Services Administration, Mental Health and Substance Abuse Administration, and the other appropriate administrative divisions within the Department of Community Health shall retain and share with the Office their respective authority, powers, duties, and functions relating to administrative or civil enforcement actions or collections with respect to Health Services Programs. These entities shall continue to pursue actions on mispayments and other errors that do not rise to the level of fraud or abuse, as determined by the Office. Nothing in this paragraph shall be interpreted to diminish the ability of the Office to exercise its powers, duties, responsibilities, and functions independently of the Department of Community Health, subject to Section III.A.23. of this Order.

III. POWERS AND DUTIES OF THE OFFICE OF HEALTH SERVICES INSPECTOR GENERAL

A. The Office of Health Services Inspector General shall conduct and supervise activities to prevent, detect, and investigate fraud, waste, and abuse in Health Services Programs. Specifically, the Office shall do all of the following:

1. Solicit, receive, and investigate complaints related to fraud, waste, and abuse in Health Services Programs.

2. Undertake and be responsible for the Department of Community Health's duties under federal law with respect to fraud, waste, and abuse for the administration of the Health Services Programs in Michigan.

3. Actively seek out fraudulent billing practices of providers and develop techniques and procedures for detecting suspect billing patterns through the use of existing database resources managed by the Department of Community Health and available from federal sources.

4. Pursuant to Section 8 of The Social Welfare Act, 1939 PA 280, MCL 400.8, subpoena and enforce the attendance of witnesses, administer oaths or affirmations, examine witnesses under oath, and take testimony as the Health Services Inspector General deems relevant or material to an investigation, examination, or review undertaken by the Office.

5. Require and compel the production of such books, papers, records, and documents as the Health Services Inspector General deems to be relevant or material to an investigation, examination, or review undertaken by the Office.

6. Examine and copy or remove documents or records of any kind related to Health Services Programs or necessary for the Office to perform its duties and responsibilities that are prepared, maintained, or held by, or available to, any state agency or local unit of government entity or contractor to a state agency or local unit of government. Any such documents or records shall be afforded confidentiality protections as provided under state and federal law. The removal of records shall be limited to those circumstances in which a copy is insufficient for an appropriate legal or investigative purpose.

7. Request information, assistance, and cooperation from any federal, state, or local government

department, board, bureau, commission, or other agency or unit thereof as may be necessary for carrying out the duties imposed upon the Health Services Inspector General by this Order. State departments and agencies, political subdivisions of this state, and their contractors shall provide such information, assistance, and cooperation.

8. Pursue administrative and civil enforcement actions or collections against any individual or entity that engages in fraud, abuse, or illegal or improper acts or unacceptable practices perpetrated within Health Services Programs, including but not limited to:

- a. Referring information and evidence to regulatory agencies and licensure boards.
- b. Withholding payment of medical assistance funds in accordance with state and federal laws and regulations.
- c. Excluding providers, vendors, and contractors from participation in the Medicaid program.
- d. Imposing administrative sanctions and penalties in accordance with state and federal laws and regulations.
- e. Initiating and maintaining actions for civil recovery and, where authorized by law, seizure of property or other assets connected with improper payments.
- f. Entering into administrative or civil settlements.
- g. Pursuing any other formal or informal enforcement action relating to fraud, waste, and abuse that the Department of Community Health is authorized to take under state or federal law, including, but not limited to, any actions under Sections 111a to 111h of The Social Welfare Act, 1939 PA 280, MCL 400.111a to 400.111h, or 1979 AC, R 400.3401 to 400.3425.

9. Promptly provide information and evidence relating to suspected criminal acts to the Medicaid Fraud Control Unit of the Department of Attorney General, or any successor entity, to the extent required by federal law. A criminal referral does not preclude the Office from continuing its investigation, which may lead to administrative or civil sanctions. Nothing in this paragraph shall restrict the Office from referring cases of suspected criminal acts to any appropriate law enforcement agency, including, but not limited to, federal and local prosecutors.

10. Promptly provide all information and evidence relating to suspected fraud, waste or abuse by Health Services Programs beneficiaries to the Department of Human Services Office of Inspector General. The Office and the Department of Human Services Office of Inspector General shall collaborate on investigations as necessary.

11. Prepare cases, provide testimony, and support administrative hearings and other legal proceedings.

12. Review managed care contracts, prepaid inpatient health plans, other health plans, or any other provider service arrangements for Health Services Programs to minimize the risk of fraud, and to monitor billing, encounter data, and subcontracting arrangements between Medicaid managed care companies, providers, and services provided to beneficiaries for fraud, waste, or abuse, and make recommendations to the Department of Community Health for clauses which should be included in future contracts.

13. Serve as the central point of contact with entities having contracts with the Department of Community Health to report, monitor, audit, or investigate fraud, waste, or abuse in Health Services Programs.

14. Promulgate rules or regulations relating to fraud, waste, and abuse under Sections 6, 9, and 10 of The Social Welfare Act, 1939 PA 280, MCL 400.6, 400.9, and 400.10, or other applicable law.

15. Develop procedures to collect overpayments, restitution amounts, and settlement proceeds.

16. Monitor compliance by entities participating in Medicaid programs with requirements to inform their employees, contractors, and agents about the details of state and federal false claims statutes.

17. Communicate information to the public and beneficiaries of Health Services Programs describing fraud schemes and practices to encourage reporting of fraud, waste, and abuse to the Office.

18. Work with municipal and county units administering Health Services Programs to identify questionable claims and the existence of fraud, waste or abuse, including establishing cooperative agreements to review, refer, investigate, and audit such claims.

19. Keep the Governor and the Director of the Department of Community Health apprised of efforts to prevent, detect, investigate, and prosecute fraud, waste, and abuse in Health Services Programs.

20. Advise the Governor and the Director of the Department of Community Health of programs and practices that increase the risk of waste of funds and recommend policies to prevent and better detect fraud, waste, and abuse in Health Services Programs.

21. Monitor the implementation of any recommendations made by the Office to departments, agencies, or other entities.

22. Prepare an annual report for the Governor and the Director of the Department of Community Health on the progress of implementing the Office of Health Services Inspector General, fraud control initiatives, results, and recommendations. The report shall include at a minimum the number of audits, investigations,

and administrative and civil enforcement proceedings initiated and completed; funds recovered by administrative or civil collection proceedings or settlements; the number of referrals to the Department of Attorney General or other law enforcement agencies for criminal investigation; and the number of referrals to regulatory agencies and licensure boards.

23. Make every effort to collaborate with the Medical Services Administration, the Mental Health and Substance Abuse Administration, or other administrative divisions of the Department of Community Health while carrying out its duties, including, but not limited to, regular communication regarding actions of the Office which impact the operations of these entities.

24. Perform any other functions necessary or appropriate to fulfill the duties and responsibilities of the Office.

25. Comply with applicable federal law.

B. The Office shall submit all administrative cost allocations relative to federal financial participation consistent and in accordance with the State of Michigan's cost allocation plan. The Department of Community Health shall, as necessary, prepare and submit for approval, consistent with 45 CFR 95.501 to 95.519 and other applicable law, a cost allocation plan amendment.

IV. IMPLEMENTATION

A. All records, property, grants, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available or to be made available to the Department of Community Health, the Department of Human Services, or any other entity for the authority, activities, powers, duties, functions, and responsibilities vested in the Office of Health Services Inspector General under this Order are transferred to the Office.

B. The personnel currently assigned to the Program Investigation Section, Bureau of Medicaid Financial Management and Administrative Services, Medical Services Administration within the Department of Community Health shall be transferred to the Office. The Office shall immediately assume the functions performed by the Program Investigation Section on the effective date of this Order.

C. Personnel in other offices, divisions, or entities within the Department of Community Health who are currently assigned to perform fraud, waste, or abuse related activity, including, but not limited to, detection, monitoring, audit, or other related audit functions that fall under the area of responsibility of the Office described in this Order, shall be transferred to the Office.

D. An individual designated by the Governor as the Health Services Inspector General Transition Director (hereinafter, "Transition Director") shall provide executive direction and supervision for the implementation of all transfers under this Order. The Transition Director shall identify the positions that will be transferred to the Office, consistent with this Order. The Transition Director and the Director of the Department of Community Health shall make every effort to develop agreements specifying the positions that will be transferred by the effective date of this Order. In the event of a failure to reach agreement on the positions to be transferred, the Transition Director shall develop a written recommendation specifying the positions to be transferred and submit the recommendation to the Governor for consideration and approval. All transfers to the Office shall be consistent with this Order and documented by a memorandum of understanding between the Transition Director and the Director of Department of Community Health.

E. State departments, agencies, and state officers shall fully and actively cooperate with the Office and the Transition Director in the implementation of this Order.

F. The Health Services Inspector General shall administer the functions transferred under this Order in such ways as to promote efficient administration and shall make internal organizational changes as may be administratively necessary to complete the realignment of responsibilities under this Order.

G. The Health Services Inspector General may delegate within the Office a duty or power conferred on the Health Services Inspector General by this Order or by other law, and the person to whom the duty or power is delegated may perform the duty or exercise the power at the time and to the extent that the duty or power is delegated by the Health Services Inspector General.

H. The Health Services Inspector General may hire or retain such contractors, subcontractors, advisors, consultants, and agents as the Health Services Inspector General may deem advisable and necessary, in accordance with relevant law and the procedures, rules, and regulations of the Civil Service Commission and the Department of Technology, Management, and Budget, and may make and enter into contracts necessary or incidental to the exercise of powers and performance of the duties of the Office.

I. The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in the state's financial management system necessary for the implementation of this Order.

V. MISCELLANEOUS

A. All rules, orders, contracts, and agreements relating to the functions transferred under this Order lawfully adopted prior to the effective date of this Order shall continue to be effective until revised, amended, repealed, or rescinded.

B. This Order shall not abate any suit, action, or other proceeding lawfully commenced by, against, or before any entity affected under this Order. Any suit, action, or other proceeding may be maintained by, against, or before the appropriate successor of any entity affected under this Order.

C. This Order shall not abate any criminal action commenced by this state prior to the effective date of this Order.

D. The invalidity of any portion of this Order shall not affect the validity of the remainder of the Order, which may be given effect without any invalid portion. Any portion of this Order found invalid by a court or other entity with proper jurisdiction shall be severable from the remaining portions of this Order.

In fulfillment of the requirements under Section 2 of Article V of the Michigan Constitution of 1963, the provisions of this Order are effective October 1, 2010 at 12:01 a.m.

History: 2010, E.R.O. No. 2010-1, Eff. Oct. 1, 2010.

Compiler's note: For transfer of powers and duties of office of health services inspector general from department of community health to department of health and human services office of inspector general, and abolishment of position of health services inspector general, see E.R.O. No. 2015-1, compiled at MCL 400.227.

For transfer of powers and duties of the medical services administration to the health and aging services administration created within the department of health and human services; and abolishment of the medical services administration, see E.R.O. No. 2021-2, compiled at MCL 400.562.