

1 State of Arkansas  
2 92nd General Assembly  
3 Regular Session, 2019  
4

# A Bill

HOUSE BILL 1116

5 By: Representative A. Davis  
6 By: Senator Hester  
7

## For An Act To Be Entitled

9 AN ACT TO CREATE THE TRANSFORMATION AND EFFICIENCIES  
10 ACT OF 2019; TO ESTABLISH CABINET-LEVEL DEPARTMENTS;  
11 TO ESTABLISH THE CABINET-LEVEL DEPARTMENT OF THE  
12 INSPECTOR GENERAL; TO TRANSFER STATE ENTITIES; TO  
13 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.  
14

## Subtitle

15  
16 AN ACT TO CREATE THE TRANSFORMATION AND  
17 EFFICIENCIES ACT OF 2019; TO ESTABLISH  
18 CABINET-LEVEL DEPARTMENTS; TO ESTABLISH  
19 THE CABINET-LEVEL DEPARTMENT OF THE  
20 INSPECTOR GENERAL; TO TRANSFER STATE  
21 ENTITIES; AND TO DECLARE AN EMERGENCY.  
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24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
26

27 SECTION 1. Arkansas Code Title 25, Chapter 43, Subchapter 10 is  
28 amended to read as follows:

### Subchapter 10 – Department of the Inspector General

30  
31 25-43-1001. Department of Inspector General.

32 There is created the Department of the Inspector General as a cabinet-  
33 level department.  
34

35 25-43-1002. State entities transferred to Department of Inspector  
36 General.



1           (a) The administrative functions of the following state entities are  
 2 transferred to the Department of the Inspector General under a cabinet-level  
 3 transfer:

4                   (1) The Arkansas Fair Housing Commission, created under § 16-  
 5 123-303;

6                   (2) The Internal Audit Section, created under § 19-4-105; and

7                   (3) The Office of Medicaid Inspector General, created under §  
 8 20-77-2503.

9           (b) Each entity transferred shall retain its specified statutory  
 10 duties.

11  
 12                   25-43-1003. Secretary of Department of Inspector General.

13           (a) The executive head of the Department of the Inspector General  
 14 shall be the Secretary of the Department of the Inspector General.

15           (b) The secretary shall be appointed by the Governor and shall serve  
 16 at the pleasure of the Governor.

17           (c)(1) All personnel of the department shall be employed by the  
 18 secretary.

19                   (2)(A) Members of a statutory board or commission shall continue  
 20 to be selected in the manner and serve for the terms provided by the statutes  
 21 applicable to that board or commission as the statutes may from time to time  
 22 be amended.

23                   (B) All personnel employed by a statutory board or  
 24 commission shall be employees of the department.

25           (d) Nothing in this section shall reduce any right that an employee of  
 26 the department has under any civil service or merit system.

27           (e) Each division of the department shall be under the direction,  
 28 control, and supervision of the secretary. The secretary may delegate his or  
 29 her functions, powers, and duties to various divisions or employees of the  
 30 department as he or she shall deem desirable and necessary for the effective  
 31 and efficient operation of the department.

32           (f) The secretary has the authority to direct the department as  
 33 necessary to conduct and supervise activities to prevent, detect, and  
 34 investigate fraud and abuse.

35  
 36           SECTION 2. Arkansas Code § 16-123-305 is amended to read as follows:

1 16-123-305. Director.

2 (a)(1) The Governor shall appoint a Director of the Arkansas Fair  
3 Housing Commission who shall serve at the pleasure of the Governor.

4 (2) The Arkansas Fair Housing Commission may fix the  
5 compensation, duties, authority, and responsibilities of the director.

6 ~~The commission may authorize the director to hire necessary staff~~  
7 ~~and to provide for services, furnishings, equipment, and office space~~  
8 Employees of the Arkansas Fair Housing Commission shall be employed by the  
9 Department of Inspector General.

10  
11 SECTION 3. Arkansas Code § 19-4-105, is amended to read as follows:

12 19-4-105. Continuing studies and investigations – Duties of Chief  
13 Fiscal Officer of the State and Internal Audit Section – Exemption of  
14 internal audit documentation from Freedom of Information Act of 1967.

15 (a) ~~The Chief Fiscal Officer of the State~~ Secretary of the Department  
16 of Inspector General is directed to make continuing studies and  
17 investigations of the operation of state agencies and to make recommendations  
18 to the General Assembly, the Legislative Council, and the Governor about  
19 improvements which should be made in order to:

- 20 (1) Safeguard against excessive expenditures of appropriations  
21 and funds;
- 22 (2) Promote economy, efficiency, and control in the operation of  
23 state agencies;
- 24 (3) Properly execute budgets; and
- 25 (4) Accomplish the purposes of this chapter as intended by the  
26 General Assembly.

27 (b) The Internal Audit Section created under the Department of Finance  
28 and Administration by Governor’s Executive Order 99-08 and transferred to the  
29 Department of the Inspector General by a cabinet-level department transfer  
30 under § 25-43-1002 shall conduct its audits using the suggested standards for  
31 the professional practice of internal auditing as adopted by the Institute of  
32 Internal Auditors.

33 (c) The Internal Audit Section shall:

- 34 (1) Review the financial and operating controls and the  
35 transactions of state agencies to determine the level of conformity with  
36 established laws, standards, regulations, and procedures;

1 (2) Review the various functions within an enterprise to  
 2 appraise the efficiency and economy of operations and the effectiveness with  
 3 which those functions achieve the stated objectives, including without  
 4 limitation a review of established internal control activities;

5 (3) Investigate reported occurrences of fraud, embezzlement,  
 6 theft, waste, abuse, or mismanagement of state resources;

7 (4) Recommend controls to prevent occurrences of fraud,  
 8 embezzlement, theft, waste, abuse, or mismanagement of state resources;

9 (5) Assist state agencies to resolve areas of concern;

10 (6) Assist state agencies in establishing appropriate internal  
 11 controls that will prevent errors or irregularities;

12 (7) Provide objective analysis, appraisals, and recommendations  
 13 concerning the activities it reviews; and

14 (8) Perform other functions as directed by the Governor, ~~Chief~~  
 15 ~~Fiscal Officer of the State~~ or the Secretary of the Department of Inspector  
 16 General, or other board or government entity charged with authority over the  
 17 Internal Audit Section by executive order.

18 (d) After an audit is completed, the Internal Audit Section shall file  
 19 a written final report concerning the actions and determinations made under  
 20 this section with:

21 (1) ~~The Chief Fiscal Officer of the State~~ Secretary of the  
 22 Department of Inspector General;

23 (2) The Governor;

24 (3) The State Board of Finance; and

25 (4) Arkansas Legislative Audit; ~~and~~

26 ~~(5) Any other board or government entity charged with authority~~  
 27 ~~over the Internal Audit Section by executive order.~~

28 (e) Employees of the Internal Audit Section shall:

29 (1) Be employed by the ~~Governor or other board or government~~  
 30 ~~entity charged with authority over the Internal Audit Section by executive~~  
 31 ~~order~~ Secretary of the Department of Inspector General as employees of the  
 32 Department of Inspector General; and

33 (2) Serve at the pleasure of the ~~Governor or other board or~~  
 34 ~~government entity charged with authority over the Internal Audit Section by~~  
 35 ~~executive order~~ Secretary of the Department of Inspector General.

36 (f)(1) All internal audit documentation, including notes, memoranda,

1 preliminary drafts of audit reports, and other data gathered in the  
 2 preparation of internal audit reports by the Internal Audit Section, are  
 3 privileged and confidential and are exempt from the Freedom of Information  
 4 Act of 1967, § 25-19-101 et seq., except as provided in subdivision (f)(2) of  
 5 this section.

6 (2)(A) The exemption shall not apply to completed internal  
 7 audits of the Internal Audit Section after a final report of the internal  
 8 audit has been presented to:

9 (i) ~~The Chief Fiscal Officer of the State~~ Secretary  
 10 of the Department of Inspector General;

11 (ii) The Governor or the Governor's designee;

12 (iii) The State Board of Finance; or

13 (iv) Arkansas Legislative Audit; ~~or~~

14 ~~(v) Any other board or government entity charged~~  
 15 ~~with authority over the Internal Audit Section by executive order.~~

16 (B) The final report and copies of any supporting  
 17 documentation shall then be open to public inspection and copying, except for  
 18 documents that are exempt from disclosure under other law.

19  
 20 SECTION 4. Arkansas Code § 20-77-2503 is amended to read as follows:

21 20-77-2503. Office of Medicaid Inspector General – Created.

22 The Office of Medicaid Inspector General is created within the ~~office~~  
 23 ~~of the Governor~~ Department of the Inspector General and is independent from  
 24 the Department of Human Services.

25  
 26 SECTION 5. Arkansas Code § 20-77-2504 is amended to read as follows:

27 20-77-2504. Medicaid Inspector General – ~~Appointment~~ Employment –  
 28 Qualifications.

29 (a)(1) The Medicaid Inspector General shall be appointed by the  
 30 Governor, with the advice and consent of the Senate.

31 (2) The inspector shall serve at the pleasure of the Governor.

32 (b) The inspector shall report directly to the Governor.

33 (c) The Medicaid Inspector General shall be the Director of the Office  
 34 of Medicaid Inspector General.

35 (d) The ~~inspector~~ Medicaid Inspector General shall have not less than  
 36 ten (10) years of professional experience in one (1) or more of the following

1 areas of expertise:

- 2 (1) Prosecution for fraud;
- 3 (2) Fraud investigation;
- 4 (3) Auditing; or
- 5 (4) Comparable alternate experience in health care, if the

6 healthcare experience involves some consideration of fraud.

7  
 8 SECTION 6. Arkansas Code § 20-77-2506 is amended to read as follows:  
 9 20-77-2506. Medicaid Inspector General – Duties.

10 The Medicaid Inspector General shall, with the approval of the  
 11 Secretary of the Department of the Inspector General:

12 (1) Hire deputies, directors, assistants, and other officers and  
 13 employees needed for the performance of his or her duties and prescribe the  
 14 duties of deputies, directors, assistants, and other officers and fix the  
 15 compensation of deputies, directors, assistants, and other officers within  
 16 the amounts appropriated;

17 (2)(A) Conduct and supervise activities to prevent, detect, and  
 18 investigate medical assistance program fraud and abuse.

19 (B)(i) The Office of Medicaid Inspector General shall  
 20 review provider records only for the three (3) years before an investigation  
 21 begins.

22 (ii) However, if a credible allegation of fraud has  
 23 been made or if the ~~office~~ Office of Medicaid Inspector General has reason to  
 24 believe that fraud has occurred, the Office of Medicaid Inspector General may  
 25 review provider records for the five (5) years before the investigation  
 26 began;

27 (3) Work in a coordinated and cooperative manner with:

- 28 (A) Federal, state, and local law enforcement agencies;
- 29 (B) The Medicaid Fraud Control Unit of the office of the
- 30 Attorney General;
- 31 (C) United States Attorneys;
- 32 (D) The United States Department of Health and Human
- 33 Services' Office of Inspector General;
- 34 (E) The Federal Bureau of Investigation;
- 35 (F) The United States Drug Enforcement Administration;
- 36 (G) Prosecuting attorneys;

1 (H) The Centers for Medicare and Medicaid Services; and

2 (I) An investigative unit maintained by a health insurer;

3 (4) Solicit, receive, and investigate complaints related to  
4 fraud and abuse within the medical assistance program;

5 (5)(A) Inform the Governor, the Secretary of the Department of  
6 the Inspector General, the Attorney General, the President Pro Tempore of the  
7 Senate, and the Speaker of the House of Representatives regarding efforts to  
8 prevent, detect, investigate, and prosecute fraud and abuse within the  
9 medical assistance program.

10 (B) All cases in which fraud is determined to have  
11 occurred shall be referred to the appropriate law enforcement agency for  
12 prosecution;

13 (6)(A) Pursue civil and administrative enforcement actions  
14 against an individual or entity that engages in fraud, abuse, or illegal or  
15 improper acts within the medical assistance program, including without  
16 limitation:

17 (i) Referral of information and evidence to  
18 regulatory agencies and licensure boards;

19 (ii) Withholding payment of medical assistance funds  
20 in accordance with state laws and rules and federal laws and regulations;

21 (iii) Imposition of administrative sanctions and  
22 penalties in accordance with state laws and rules and federal laws and  
23 regulations;

24 (iv) Exclusion of providers, vendors, and  
25 contractors from participation in the medical assistance program;

26 (v) Initiating and maintaining actions for civil  
27 recovery and, where authorized by law, seizure of property or other assets  
28 connected with improper payments;

29 (vi) Entering into civil settlements; and

30 (vii) Recovery of improperly expended medical  
31 assistance program funds from those who engage in fraud or abuse or illegal  
32 or improper acts perpetrated within the medical assistance program.

33 (B) In investigating civil and administrative enforcement  
34 actions under subdivision (a)(6)(A) of this section, the Medicaid Inspector  
35 General shall consider the quality and availability of medical care and  
36 services and the best interest of both the medical assistance program and

1 recipients;

2 (7) Make available to appropriate law enforcement officials  
3 information and evidence relating to suspected criminal acts that have been  
4 obtained in the course of the Medicaid Inspector General's duties;

5 (8)(A) Refer suspected fraud or criminal activity to the  
6 Medicaid Fraud Control Unit.

7 (B) After a referral and with ten (10) days' written  
8 notice to the Medicaid Fraud Control Unit, the Medicaid Inspector General may  
9 provide relevant information about suspected fraud or criminal activity to  
10 another federal or state law enforcement agency that the ~~inspector~~ Medicaid  
11 Inspector General deems appropriate under the circumstances;

12 (9) Subpoena and enforce the attendance of witnesses, administer  
13 oaths or affirmations, examine witnesses under oath, and take testimony in  
14 connection with an investigation or audit under this subchapter and under  
15 rules governing these investigations;

16 (10) Require and compel the production of books, papers,  
17 records, and documents as he or she deems relevant or material to an  
18 investigation, examination, or review undertaken under this section;

19 (11)(A) Examine and copy or remove documents or records related  
20 to the medical assistance program or necessary for the Medicaid Inspector  
21 General to perform his or her duties if the documents are prepared,  
22 maintained, or held by or available to a state agency or local governmental  
23 entity the patients or clients of which are served by the medical assistance  
24 program, or the entity is otherwise responsible for the control of fraud and  
25 abuse within the medical assistance program.

26 (B) A document or record examined and copied or removed by  
27 the Medicaid Inspector General under subdivision (11)(A) of this section is  
28 confidential.

29 (C) The removal of a record under subdivision (11)(A) of  
30 this section is limited to circumstances in which a copy of the record is  
31 insufficient for an appropriate legal or investigative purpose.

32 (D) For a removal under subdivision (11)(A) of this  
33 section, the Medicaid Inspector General shall copy the record and ensure the  
34 expedited return of the original, or of a copy if the original is required  
35 for an appropriate legal or investigative purpose, so that the information is  
36 expedited and the original or copy is readily accessible for the care and



1 treatment needs of the patient;

2 (12)(A) Recommend and implement policies relating to the  
3 prevention and detection of fraud and abuse.

4 (B) The Medicaid Inspector General shall obtain the  
5 consent of the Attorney General before the implementation of a policy under  
6 subdivision (12)(A) of this section that may affect the operations of the  
7 office of the Attorney General;

8 (13)(A) Monitor the implementation of a recommendation made by  
9 the Office of Medicaid Inspector General to an agency or other entity with  
10 responsibility for administration of the medical assistance program and  
11 produce a report detailing the results of its monitoring activity as  
12 necessary.

13 (B) The report shall be submitted to the:

14 (i) ~~Governor~~ Secretary of the Department of the  
15 Inspector General;

16 (ii) President Pro Tempore of the Senate;

17 (iii) Speaker of the House of Representatives;

18 (iv) Legislative Council;

19 (v) Arkansas Legislative Audit; and

20 (vi) Attorney General;

21 (14) Prepare cases, provide testimony, and support  
22 administrative hearings and other legal proceedings;

23 (15) Review and audit contracts, cost reports, claims, bills,  
24 and other expenditures of medical assistance program funds to determine  
25 compliance with applicable state laws and rules and federal laws and  
26 regulations and take actions authorized by state laws and rules and federal  
27 laws and regulations;

28 (16)(A) Work with the fiscal agent employed to operate the  
29 Medicaid Management Information System of the Department of Human Services to  
30 optimize the system, including without limitation the ability to add edits  
31 and audits in consultation with the Department of Human Services.

32 (B) The Medicaid Inspector General shall be consulted  
33 before an edit or audit is added or discontinued by the Department of Human  
34 Services;

35 (17) Work in a coordinated and cooperative manner with relevant  
36 agencies in the implementation of information technology relating to the

1 prevention and identification of fraud and abuse in the medical assistance  
2 program;

3 (18)(A) Conduct educational programs for medical assistance  
4 program providers, vendors, contractors, and recipients designed to limit  
5 fraud and abuse within the medical assistance program.

6 (B) The Office of Medicaid Inspector General shall  
7 regularly communicate with and educate providers about the Office of Medicaid  
8 Inspector General's fraud and abuse prevention program and its audit policies  
9 and procedures.

10 (C) The Office of Medicaid Inspector General shall educate  
11 providers annually concerning its areas of focus within the medical  
12 assistance program, appropriate billing and documentation, and methods for  
13 improving compliance with program rules, policies, and procedures;

14 (19)(A) Develop protocols to facilitate the efficient self-  
15 disclosure consistent with the Patient Protection and Affordable Care Act,  
16 Pub. L. No. 111-148, and the collection of overpayments and monitor  
17 collections, including those that are self-disclosed by providers.

18 (B) A provider's good faith self-disclosure of  
19 overpayments may be considered as a mitigating factor in the determination of  
20 an administrative enforcement action;

21 (20) Receive and investigate complaints of alleged failures of  
22 state and local officials to prevent, detect, and prosecute fraud and abuse  
23 in the medical assistance program;

24 (21) Implement rules relating to the prevention, detection,  
25 investigation, and referral of fraud and abuse within the medical assistance  
26 program and to the recovery of improperly expended medical assistance program  
27 funds;

28 (22) Conduct, in the context of the investigation of fraud and  
29 abuse, on-site inspections of a facility or an office;

30 (23)(A) Take appropriate authorized actions to ensure that the  
31 medical assistance program is the payor of last resort; and

32 (B) Recommend to the ~~department~~ Department of Human  
33 Services that it take appropriate actions authorized under the ~~department's~~  
34 jurisdiction of the Department of Human Services to ensure that the medical  
35 assistance program is the payor of last resort;

36 (24) Annually submit a budget request for the next state fiscal

1 year to the Governor;

2 (25) Identify and order the return of underpayments to  
3 providers;

4 (26) Maintain the confidentiality of all information and  
5 documents that are deemed confidential by law;

6 (27) Implement, facilitate, and maintain federally required  
7 directives and contracts required for Medicaid integrity programs;

8 (28) Implement and maintain a hotline for reporting complaints  
9 regarding fraud, waste, and abuse by providers;

10 (29) Audit, investigate, and access Medicaid encounter data,  
11 premium data, or other information from an entity contracted with for the  
12 purpose of serving Medicaid programs;

13 (30)(A) Promulgate administrative rules to establish policies  
14 and procedures for audits and investigations that are consistent with the  
15 duties of the Office of Medicaid Inspector General under this chapter.

16 (B) The rules shall be posted on the Office of Medicaid  
17 Inspector General's website;

18 (31) Identify conflicts between the Medicaid state plan,  
19 ~~department~~ Department of Human Services rules, Medicaid provider manuals,  
20 Medicaid notices, or other guidance and recommend that the ~~department~~  
21 Department of Human Services reconcile inconsistencies;

22 (32) When conducting an audit, investigation, or review under  
23 this subchapter, classify violations as either:

24 (A) Errors that do not rise to the level of fraud or  
25 abuse; or

26 (B) Fraud or abuse;

27 (33)(A) If a credible allegation of fraud has been made, review  
28 provider records that have been the subject of a previous audit or review for  
29 the purpose of fraud investigation and referral.

30 (B) However, the Medicaid Inspector General shall not  
31 duplicate an audit of a contract, cost report, claim, bill, or expenditure of  
32 a medical assistance program fund that has been the subject of a previous  
33 audit or review by or on behalf of the Office of Medicaid Inspector General,  
34 the Medicaid Fraud Control Unit, or other federal agency with authority over  
35 the medical assistance program if the audit or review was performed in  
36 accordance with the Government Auditing Standards;

1           (34)(A) Utilize a quality improvement organization as part of  
2 the assessment of quality of services.

3           (B) The quality improvement organization shall refer all  
4 identified improper payments due to technical deficiencies, abuse, waste, or  
5 fraud to the Medicaid Inspector General for further investigation and  
6 appropriate action, including without limitation recovery; and

7           (35) Perform other functions necessary or appropriate to fulfill  
8 the duties and responsibilities of the Office of Medicaid Inspector General.

9  
10           SECTION 7. Arkansas Code § 20-77-2509(a), concerning the reports  
11 required of the Medicaid Inspector General, is amended to read as follows:

12           20-77-2509. Reports required of Medicaid Inspector General.

13           (a) The Medicaid Inspector General shall, no later than October 1 of  
14 each year, submit to the ~~Governor~~ Secretary of the Department of the  
15 Inspector General, the President Pro Tempore of the Senate, the Speaker of  
16 the House of Representatives, Arkansas Legislative Audit, the Legislative  
17 Council, and the Attorney General a report summarizing the activities of the  
18 Office of Medicaid Inspector General during the preceding calendar year.

19  
20           SECTION 8. Arkansas Code § 20-77-2509(d) and (e), concerning the  
21 reports required of the Medicaid Inspector General, are amended to read as  
22 follows:

23           (d)(1) In making the report required under subsection (a) of this  
24 section, the ~~inspector~~ Medicaid Inspector General shall not disclose  
25 information that jeopardizes an ongoing investigation or proceeding.

26           (2) The ~~inspector~~ Medicaid Inspector General may disclose  
27 information in the report required under subsection (a) of this section if  
28 the information does not jeopardize an ongoing investigation or proceeding  
29 and the inspector fully apprises the designated recipients of the scope and  
30 quality of the office's activities.

31           (e) Quarterly by April 1, July 1, October 1, and January 1 of each  
32 year, the ~~inspector~~ Medicaid Inspector General shall submit to the Governor,  
33 the President Pro Tempore of the Senate, the Speaker of the House of  
34 Representatives, the Division of Legislative Audit, the Legislative Council,  
35 and the Attorney General an accountability statement providing a statistical  
36 profile of the referrals made to the Medicaid Fraud Control Unit of the

1 office of the Attorney General, audits, investigations, and recoveries.

2  
 3       SECTION 9. EMERGENCY CLAUSE. It is found and determined by the  
 4 General Assembly of the State of Arkansas that this act revises the duties of  
 5 certain state entities; that this act establishes new departments of the  
 6 state; that these revisions impact the expenses and operations of state  
 7 government; and that the provisions of this act should become effective to  
 8 allow for implementation of the new provisions in advance of the upcoming  
 9 fiscal year. Therefore, an emergency is declared to exist, and this act  
 10 being necessary for the preservation of the public peace, health, and safety  
 11 shall become effective on July 1, 2019.