



Testimony

Of

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Hearing

“Bolstering the Safety Net: Eliminating Medicaid Fraud”

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Mr. Chairman and Members of the Subcommittee: Good Afternoon. Thank you for the invitation to come before this committee. I am Brian Flood. I was appointed Inspector General by Texas Governor Rick Perry in 2003 to create and operate the Office of Inspector General for the Texas Health and Human Services Commission (HHSC). Today I will try to succinctly explain:

- Why an independent Inspector General is important in the control of waste, abuse and fraud.
- Why Texas created an Inspector General.
- What it takes to form an Office of Inspector General.
- Measuring the results or success of the new office.
- The necessity for the office to maintain constant vigilance.

Why is an independent Inspector General important to control waste, abuse, and fraud?

Appearance, credibility, and eliminating conflict of interest are key to a successful OIG operation. The State of Texas has taken a large step in establishing an independent OIG to oversee waste, abuse, and fraud activities for all health and human services (HHS) agencies.

An inspector general should be free from undue influences that may make attempts at controlling or interfering with its investigative, quality review, audit findings, imposition of appropriate sanctions, recommendations for improvement or change in state agency operations, policies or procedures, or the substance of investigative or audit reports or findings.

The function performed by an independent Inspector General is complementary to, but distinctly different from, the service performed by a state auditor. A state auditor's office is largely composed of audit staff that review accounting practices, policies and procedures, and performs audits on a rotating schedule. State audits are an important function. At the same time, we need to do more to ensure ultimate accountability with taxpayer funds.

An inspector general will not only look to see if agency policies and procedures are followed, but whether those policies and procedures ensure an efficient delivery of services. The Inspector General strives to minimize waste, abuse, and fraud while authorized to initiate recovery of funds lost to those activities and making recommendations to avoid future losses or risks.

The inspector general leads staff that includes auditors, program specialists, criminal investigators, lawyers, professional nurses, and subject matter experts authorized to inquire into all aspects of the subject agency's operations.

OIG should have clear authority to subpoena documents in civil and criminal investigations and coordinate with law enforcement to make sure that scam artists and crooks are brought to justice.

To accomplish its mission, the office requires broad authority to launch thorough investigations, and make sweeping recommendations for changes to the structure and culture of an agency.

Why did Texas create one?

The creation of the Office of Inspector General (OIG) occurred mostly in response to a state fiscal crisis, the same crisis many states are currently facing in their social services programs. It was created to instill, in Texas state government's largest reorganization in history, an independent voice and new accountability, so that shrinking state budgets could be better utilized for their intended purposes. This was done for better fiscal management not to create more government.

In response to this fiscal crisis, the 78th Texas Legislature in 2003 passed House Bill 2292, which, in part, reorganized the Texas HHS system, improving and streamlining operational and administrative effectiveness. Twelve HHS agencies were consolidated into five and a Governor appointed inspector general position was specifically created to combat waste, abuse, and fraud by providers, recipients, contractors, and employees in all HHS programs (including the state Medicaid program).

The independent OIG concept combining the investigative, audit, medical, legal, technical, and other related functions of the agencies ensures consistency, creates synergy, and eliminates differential treatment of HHS providers and clients across all programs and agencies. Prior to consolidation, the OIG functions were placed at various organizational levels of authority. The new OIG consolidated these fragmented units under one authority. Having a Governor appointed inspector general eliminates the perception of a conflict of interest and enhances credibility and objectivity when the OIG audits or investigates agency programs or staff.

Texas Governor Rick Perry has clearly stated his vision for inspector general programs:

One initiative that I believe is essential to government accountability is the creation of Inspector General positions at large state agencies.

I believe we need an independent voice at large state agencies that is accountable not to the bureaucracy but to independent boards or individual commissioners and ultimately, to the people.

The function performed by an independent inspector general is complimentary to but distinctly different from the service performed by the state auditor.¹

All of the states, at the local, county, state and federal levels are feeling the pinch from the increased budget loads that the various benefits programs place on them. Since 1999, the General Accounting Office and Centers for Medicare and Medicaid Services have made several reviews of the states. They found a wide variance in program sophistication and ability to address waste, abuse, and fraud. Texas is on the high end for performance, technology, and innovations to control spending and ensure proper payments.

I have testified in the New York and Missouri state senates regarding what changes we made in Texas. Texas, was cited in a February 3, 2006, edition of the *New York Times* in an article titled, "Texas' Medicaid Watchdog Shares Tips for Success," by Richard Perez-Pena, as a positive comparison model for Medicaid fraud control. Since January 2005, we have supplied similar

¹ Governor Perry's vision on waste, abuse, and fraud, can be found at <http://www.governor.state.tx.us/priorities/other/fraud..>
Speech - Remarks To the Texas Association of Broadcasters

information at the request of Georgia, Florida, Pennsylvania, Maryland, and New Jersey, and to the United States Congress and Senate.

What did it take to get it done?

A. People

The newly created OIG not only faced the demands inherent in any inspector general day-to-day operation, but also a massive effort to concurrently consolidate and transform legacy agency organizational structures and business units into a focused and interactive operation. Staff from diverse organizational cultures worked thousands of overtime hours to complete the transformation while not only sustaining daily business activities, but also to provide the greater rate of return expected by State leadership and the public. The transformation effort² contained four distinct phases:

- Consolidation – Merging of legacy agency personnel, budgets, and other resources to form the new OIG;
- Integration – Enabling working relations between legacy agency staff to perform the mandates of the new office;
- Optimization - Ensuring efficient, productive, and cooperative working relations and operations; and
- Transformation - Operating under the new structure.

Although each phase was critical in achieving the legislature's transformation goals, the optimization phase yielded the most significant structural changes to operations. OIG established clear optimization goals to:

- utilize the knowledge of legacy agency staff to identify appropriate and necessary OIG activity;
- employ organizational design tools to identify and review OIG roles, processes, and mandates;
- identify areas of improvement within OIG, including improvements to the organization, business processes, and existing technology support systems; and
- implement change based upon the findings from organizational tools and other analytics.

In 2004, OIG was organized to include distinct functions related to enforcement, compliance, sanctions, third party recovery, audit, utilization review, and technology and automated systems. These units operate collaboratively with clear objectives, priorities, and performance standards to:

- coordinate investigative efforts to aggressively recover Medicaid overpayments;
- allocate resources to cases that have the strongest supportive evidence and the greatest potential for recovery of money; and
- maximize the opportunities for referral of cases to the Office of Attorney General for prosecution.

² The transformation effort is detailed at http://www.hhs.state.tx.us/OIG/Reports/FY04_Semi_Annual_Report.shtml#TransformationProject

B. Technology

Governor Perry reinforced his desire for this project to proceed in his Executive Order RP36 issued on July 12, 2004, Relating to Preventing, Detecting, and Eliminating Fraud, Waste and Abuse,³ through which the OIG was directed to continually initiate proactive measures and deployment of advanced information technology systems to aggressively reduce, pursue, and recover expenditures not medically necessary or justified. In response, OIG enriched its technical infrastructure by implementing external systems allowing easier public access for complaints by phone and online. In addition to consolidating multiple fraud telephone hotlines and deploying several web-based applications and information technology tools, OIG is soundly committed to making it easier, faster, and more useful for recipients, providers, HHS employees, and the public to report potential cases of waste, abuse, and fraud.

As background, beginning in 1998, Texas was the first state in the nation to utilize learning and neural network technology to pinpoint potential waste, abuse, and fraud in the Medicaid program. This technology in Texas is called the Medicaid Fraud and Abuse Detection System. It is an automated system designed to detect potential fraud and abuse using predictive neural network models and targeted detection queries. It is designed to identify known and unknown patterns of conduct and changes in provider activities and trends.

Since 2004, we have improved our automated systems that enhance our capability for identifying inappropriate patterns of behavior and allow investigative resources to target cases with the strongest supporting evidence and greatest potential for monetary recovery.

What measurable results came out of creating the new office?

The consolidation of OIG functions has resulted in substantial cost benefit to the State and taxpayers. A few of our recent performance statistics amply demonstrate the results.

A. SFY 2004

In the first state fiscal year (SFY) of consolidated operation (SFY 2004), OIG recovered \$349,500,000 (cash) and achieved cost avoidance of \$389,500,000. Total recovery and cost avoidance for SFY 2004 was \$739,000,000. Excluding third party recovery and audit, OIG achieved a 23 percent increase in recoveries in SFY 2004 over SFY 2003.

Also in SFY 2004, OIG referred a record 257 provider cases to the Texas Office of the Attorney General - which received the nation's top Medicaid fraud-fighting award for opening a total of 348 cases - and referred in excess of 3,500 felonies and misdemeanor cases to district and county attorneys for prosecution and over 6,500 cases were completed and referred for administrative disqualification hearings.

B. SFY 2005

In the second year of consolidated operation (SFY 2005), OIG recovered \$441,551,341 (cash) and cost avoided \$362,489,120. As these funds are directed back into health and human

³ Executive Order RP36 is located at <http://www.governor.state.tx.us/divisions/press/exorders/rp36>.

services programs, we know that the \$804,040,461 is providing needed healthcare and other assistance to many Texans. Total recoveries in SFY 2005 increased by 26 percent over SFY 2004.

Therefore, in the first biennium of consolidated operation, OIG's efforts resulted in over \$1.5 billion in recoveries and cost avoidance for the State of Texas. For SFY 2004-2005 biennium, total recoveries exceeded \$791 million (cash) and total cost avoidance exceeded \$752 million.⁴

C. SFY 2006

For the first two quarters of SFY 2006, OIG has recovered (cash) \$220,100,295 and cost avoided \$177,312,439. For the same period, the number of provider complaints more than doubled from the same time frame in SFY 2005, from 213 to 438 cases – a 105% increase.

In addition, Texas requires all Managed Care Organizations (MCO's) contracting with the State of Texas to adopt a plan to prevent and reduce waste, abuse and fraud and file their plan annually with OIG's approval. For the first two quarters of FY 2006, OIG saw a 108% increase in complaint referrals from MCO's based on their mandated Special Investigative Units (SIUs).

The following tables provide additional activities for the first two quarters of the current state fiscal year.

WASTE, ABUSE, AND FRAUD REFERRALS RECEIVED SFY2006 (1ST & 2ND QUARTERS)

Referral Source	Received
Office of the Attorney General's Medicaid Fraud Control Unit (MFCU)	3
United States Department of Treasury	1
Medicare Matching Project	2
Assistant US Attorney's Office	1
Texas Department of Aging & Disability Services (DADS)	22
Texas Health Steps	31
Texas Department of State Health Services (DSHS)	9
Texas Medicaid Healthcare Partnership (TMHP)	5
Texas Department of Family and Protective Services (DFPS)	1
Law Enforcement Agency	1
Managed Care Organizations /SIUs	19
2005 PAM III Study (Comptroller's Office)	1
2005 Year Four Perm Study (Comptroller's Office)	4
TX Health Care Claims Study 2005 (Comptroller's Ofc)	4
Parent/Guardian	19
Provider	20
Public	66
Recipient	147
Anonymous	44
HHSC – Internal Affairs	3
HHSC – Medicaid/Chip Division	2
HHSC – MPI-OIG Self-initiated (MPI)	16
HHSC – Utilization Review	14
Vendor Drug	3
Total Cases Received:	438

⁴ OIG published report may be found at: http://www.hhs.state.tx.us/OIG/OIE_Reports.asp

WASTE, ABUSE, AND FRAUD REFERRALS SENT SFY2006 (1ST & 2ND QUARTERS)

Referral Source	Referred
Office of the Attorney General's Medicaid Fraud Control Unit (MFCU)	89
Medicare Part A& B	7
Palmetto GBA	1
Department of Family and Protective Services (DPRS)	2
Texas Department of Aging & Disability Services (DADS)	5
Texas Department of State Health Services	1
Texas Department of Transportation (TXDOT)	2
Board of Dental Examiners	5
Board of Medical Examiners	4
Board of Nurse Examiners	2
Board of Pharmacy	1
Claims Administrator – Educational Contract	30
Claims Administrator – Claims/Record Review	1
HHSC – Audit	1
Vendor Drug	1
Total Cases Sent:	152

MEDICAID WASTE, ABUSE, AND FRAUD WORKLOAD STATISTICS AND RECOUPMENTS

Action	1st Quarter SFY2006	2nd Quarter SFY2006	Total SFY2006
Medicaid Provider Integrity			
• Cases Opened	235	203	438
• Cases Closed	74	71	145
• Criminal History Checks Conducted	0 ⁵	3,923	3,923
Medicaid Fraud & Abuse Detection System (MFADS) ⁶			
• Cases Opened	367	1,259	1,626
• Cases Closed	621	1,079	1,700
Office of Inspector General Recoupments ⁷			
Sanctions ⁷	\$ 3,430,511	6,042,488	\$ 9,472,999
Providers Excluded	55	77	132

What exactly do you do now?

The Office of Inspector General now has over 550 employees providing oversight for a wide variety of programs and activities, including Medicaid, Food Stamps, Temporary Assistance for Needy Families, the Children's Health Insurance Program, the Women, Infants and Children program, and the Bureau of Vital Statistics, among others.

⁵ Criminal history process not initiated during the 1st quarter.

⁶ MFADS is a detection source and as such the numbers are duplicated within sections that work or take action on MFADS generated cases.

⁷ May include OAG identified amounts and Medicaid global settlements. Amounts listed in OAG's statistics may also include potential overpayments identified by OIG.

A constant game of one-upmanship takes place between the OIG, the system's guardian, and the increasingly sophisticated parties who seek to misuse or abuse it. We face challenges that investigators and compliance personnel could not have imagined ten years ago. New technologies and fiscal pressures have changed the rules of the game. We have had to build a better system to better utilize limited resources so we can produce the maximum results and keep the quality that we expect for the state and the taxpayer.

OIG is focused on enriching its business organization and processes, expanding stakeholder partnerships and recommending policies to strengthen fraud prevention. To ensure quality, OIG operates in accordance to the National Association of Inspectors General principles and standards, and all audit activity is performed in accordance to United States General Accounting Office Government Auditing Standards.

To advance the operational process of identifying and eliminating waste, abuse, and fraud, OIG has increased training, technology, and staff awareness of its role in supporting the overall HHS purpose and mission. Specialized training was acquired from organizations such as the National White Collar Crime Center (NW3C) and Association of Certified Fraud Examiners. We host ongoing training to the provider community. Last year, we trained over 1700 provider staff on Medicaid policy and billing. In the last two years, we have also appeared at many provider and legal forums to explain how we operate. We believe that an informed relationship better serves the program, the providers, and the beneficiaries.

OIG continues to assess and improve the quality of its audits, investigations, reviews, advanced automated analysis tools, and monitoring through standardization of practices, policies, and ethics, encouragement of professional development by providing educational opportunities, and the establishment of a quality assurance function.

We continually initiate proactive measures and deploy advanced information technology systems to aggressively reduce, pursue, and recover expenditures not medically necessary or justified. For example, our Texas Health Analytics System Information Technology (TxHASIT) project is a joint effort between OIG and the University of Texas at Dallas (UTD) to solve vital HHS issues. Since September 2004, OIG and UTD School of Social Sciences and Erik Jonsson School of Engineering and Computer Science have been working in partnership to create a groundbreaking data resource that will facilitate scientific measurements and studies of numerous social services phenomena. This data resource will enable social scientists to apply advanced research methodologies and theories to understand behaviors, procedures, and policies that result in excessive waste, abuse, and fraud of HHS funds. TxHASIT incorporates a multifaceted team of inspector general staff and Medicaid healthcare experts from HHSC and computer engineers, data analysts and social scientists. It has already answered significant questions, including diabetes and renal failure, that were previously unattainable.

We continually monitor our case processing to ensure timely investigation of potentially fraudulent providers. Roles and expectations of each agency are documented and regularly updated. Additionally, OIG regularly enhances educational training for providers and claims administrator contractors and utilizes medical consultants to increase cost avoidance activities, improve quality of care, and decrease claim-processing errors.

Most recently, in December 2005, OIG initiated a process to conduct criminal history background checks for all potential Medicaid, Medicaid Managed Care, and Children with Special

Health Care Needs (CSHCN) Services Program providers submitting an enrollment application through Texas's claims processing and case management administrator, the Texas Medicaid and Healthcare Partnership. To date during the 2nd Quarter of the current SFY 2006 (December 2005 – February 2006), OIG conducted nearly 4,000 criminal history checks on Medicaid providers. Of those, 155 were denied or are pending based on return information. Additionally, criminal background checks are performed for any person or business entity that meets the definition of "indirect ownership interest" as defined in the Texas Administrative Code, Title 1, §371.1601 who are applying to become a Medicaid provider, or who are applying to obtain a new provider number or a performing provider number.

To put all of this in perspective, our efforts over the past 2 years resulted in the equivalent of over 130,000 new Texas Medicaid recipients receiving benefits for a year and a return to the state and the taxpayer, in cash, \$10 dollars for every one dollar spent on its operational budget.

Although we have been praised in some circles as a leader in waste, abuse, and fraud prevention, we realize that much more needs to be done as Medicaid and other service programs consume more and more of our tax dollars. We know we must continue to strive to ensure that each dollar is spent effectively. That is what we, in OIG, do. On behalf of my incredible staff, I thank you for the opportunity to speak to you today.