



**To:** Senate Ways and Means Committee  
**From:** Gina C. Maree, Vice President for Health Policy  
**Date:** March 2, 2009  
**Re:** Office of Inspector General

Following the testimony at the Senate Ways and Means Committee on February 25<sup>th</sup> regarding the Kansas Office of Inspector General (KS OIG), the Committee might be interested in background information regarding how the federal government has addressed the issue of independence of IG offices.

Attached is an overview of how the federal government addresses the hiring and removal of Inspectors General and the location of OIGs within the federal government. Federal OIGs are identified as independent agencies and are the only federal agency that has a dual reporting responsibility to both the executive and legislative branches.

My experience as a Deputy Regional Inspector General for the U. S. Department of Health and Human Services, Office of Inspector General (DHHS OIG), has led me to the conclusion that addressing the structure and location of the KS OIG resolve some of the issues of independence, but alone they are not sufficient to ensure its independence. Other measures are necessary to ensure that the KS OIG is free both in fact and in appearance from impairments to independence. The attached document provides a brief description of how DHHS OIG safeguards independence through policies addressing the OIG's budget, personnel and resources, legal counsel, access to information, plan of work, scope of work, reporting of results and reporting to Congress.

The DHHS OIG is highly regarded within the federal OIG community and is most analogous to the mission of the KS OIG. Understanding the approach to independence may provide a framework for policymakers to evaluate policy needs and opportunities. The DHHS OIG has proven to be a successful organization, reporting savings and expected recoveries of \$20.4 billion in fiscal year 2008 alone. Although the potential for savings and recoveries in Kansas is much smaller, the state has a similar opportunity to significantly improve the operations and efficiency of its programs with an equally effective KS OIG.

If additional information about the structure or function of the federal OIGs would be helpful, please do not hesitate to contact me.

## Office of Inspector General

As the Legislature reevaluates the structure and location of the Kansas Office of Inspector General (KS OIG) and addresses concerns regarding the KS OIG's independence, it might find useful a brief description of how the federal government has addressed these issues. The Inspector General Act of 1978, as amended, as well as the Quality Standards for Federal Offices of Inspector General, has addressed many of the issues now facing the state.

### Structure of the OIG

**Inspector General Hiring and Removal** – Congress has created 67 Inspectors General (IGs) for federal departments, agencies and other entities. IGs for the largest departments are appointed by the President of the United States and confirmed by the Senate. The Inspector General Reform Act of 2008 reaffirmed that the President is the only authority that can remove an IG. However, it goes further to say that the reasons for removal must be provided in writing to Congress within 30 days. IGs can only be removed for just cause. Restricting how and by whom the IG can be removed safeguards against using the threat of removal as a means to influence the office.

**Location of the OIG within Federal Government** – Federal OIGs are identified as independent agencies and are the only federal agency that has a dual reporting responsibility to both the executive and legislative branches. Although the OIGs are administratively “housed” within the departments they oversee, they are also required by statute to report to Congress. Dual reporting ensures the OIG direct access to Congress, which minimizes a department's ability to influence a OIGs work. It also minimizes the potential for Congress to politicize an OIG office.

### Safeguarding Independence

Although the structure of an OIG addresses many issues of independence, that structure alone is not sufficient to ensure that the OIG is free both in fact and appearance from impairments to its independence. The U.S. Department of Health and Human Services, Office of Inspector General (DHHS OIG) is the largest OIG in the federal government and was one of the original 12 when the IG Act of 1978 was enacted. Because the DHHS OIG is highly regarded and most directly analogous to the mission of the KS OIG, the following are relevant examples of steps taken to safeguard its independence. These steps are based on federal statute, the Quality Standards for Federal Office of Inspector General, and thirty years of experience.

**Budget** – The majority of the DHHS OIG budget comes from specific funds set aside by Congress to review Medicare and Medicaid. The small portion of the DHHS OIG budget that goes through the traditional departmental appropriations process has specific federal statutes that address how the DHHS OIG budget proposal should be handled. For example, the Secretary's budget proposal must include comments from the IG. The IG's comments also must be included in the President's budget if the IG concludes that the budget submitted by the President would substantially inhibit the IG from performing the duties of the office.

**Personnel and Resources** – The DHHS OIG is in direct control of its own budget, to protect the office's ability to make its own personnel and resource decisions. This safeguards the DHHS OIG from attempts by the department to assert authority or influence over it by

restricting personnel or resources. Although the DHHS OIG conforms to many of the department's practices in personnel and resource matters, it is not required to do so. For example, if the Secretary limits travel or institutes a hiring freeze and the IG believes this would impede the ability of the DHHS OIG to perform its critical functions, the DHHS OIG does not have to comply. A point of contention has been the issue of shared IT functions. Based on the sensitive nature of information and the potential ability to damage evidence, the DHHS OIG has limited shared IT functions with the department.

**Legal Counsel** – The DHHS OIG often needs to consult legal counsel on matters that could affect the department. The department often needs to consult legal counsel regarding issues surfaced by the DHHS OIG. Based on the high probability for a conflict of interest, the DHHS OIG has its own separate legal counsel. The IG Reform Act of 2008, states that the IG shall obtain legal advice from counsel that either reports directly to the IG or to another IG.

**Access to Information** – The DHHS OIG has the authority to access any and all necessary information, including subpoena authority for information outside the agency. Although the authority given to the DHHS OIG does not specifically provide a timeframe for access to the information, the DHHS OIG has the authority to alert Congress if they believe a delay is a deliberate attempt to impede a review.

**Plan of Work** – Each year the DHHS OIG goes through a work planning process and develops a work plan for public release. The DHHS OIG staff engages agency officials to learn about their issues or concerns but is not obligated to plan work based on their input. The department and Congress can directly request the DHHS OIG to conduct a review, but it has the ability to say no. Once a draft work plan is completed the department has an opportunity to provide comments. The DHHS OIG decides if changes are needed based on the comments received. Although these interactions occur, neither the department nor Congress approves or prohibits work planned by the DHHS OIG.

**Scope of Work** – The department is alerted when the DHHS OIG begins a review (excluding criminal investigations). The DHHS OIG allows the department to provide input on the scope but has no obligation to follow the department's suggestions. The DHHS OIG must guard against external interference or influence that could improperly limit or modify a planned review.

**Reporting Results** – At the conclusion of a review, the department has the opportunity to review the draft report and is required to comment on whether they agree or disagree with the recommendations. All decisions regarding the content of the report are the sole prerogative of the DHHS OIG and the IG has final say on all reports. Neither the department nor Congress has the authority to impede or stop the production or release of any report unless there is a concern for national security. This eliminates the ability to influence results by quashing a report. Although the department has the opportunity to comment, they have a limited timeframe. If the allotted time elapses without comment, the IG has the authority to release the report without comment or to wait longer depending on the reason for the delay.

**Semi-annual Reporting** – The DHHS OIG is required to report to Congress on a semi-annual basis. The information reported is based on work completed. The DHHS OIG is not obligated to discuss with Congress work in progress. This is a safeguard to protect the independence of the process, as well as to ensure that the review is not compromised. The DHHS OIG reports to Congress all recommendations that the department has not implemented.

## **Conclusion**

In conclusion, the independence of an Office of Inspector General depends not just on its administrative location and structure, but also on its ability to function free of influence from both branches of government. As Kansas policymakers consider changes to strengthen the KS OIG, these and other measures used by the federal government to help ensure the integrity and independence of the DHHS OIG may offer some valuable insights.