



DAVID CRAIG

STATE SENATOR

Senate Committee on Insurance, Financial Services, Government Oversight and Courts
February 13, 2020
Senate Bill 742
Senator David Craig

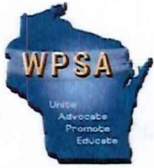
Vice-Chairman Stroebel and members of the Committee, thank you for taking the time to hear my testimony on Senate Bill 742.

Legislative oversight of the executive branch is one of the core authorities and duties of the legislature. To increase legislative oversight, I have authored legislation to place Inspectors General who report to the legislature within executive agencies. I want to note that I have authored similar legislation in previous sessions when a member of my party was the Governor.

Currently, the Legislative Audit Bureau (LAB) delivers audits as statutorily required or at the direction of the Joint Legislative Audit Committee, however, this is generally a reactive process. Too often, by the time a potential problem in government has been identified, an audit is ordered, and the audit report comes back to the legislature, the political will to pursue reform is lost. The Legislative Office of Inspector General created by this legislation would complement the Audit Bureau, by providing a proactive organization that will pursue waste, fraud, and abuse continually. Under the bill, this program would be funded using already appropriated funds. I have little doubt that this investment in government oversight will more than pay for itself in taxpayer savings.

This legislation would expand on the work of the LAB by placing Inspectors General, who work for the legislature, inside state agencies. These Inspectors General would have carte blanche to investigate waste, fraud, and abuse within agencies, and at the joint direction of the committee chairs of jurisdiction in the Assembly and Senate. Additionally, the Assembly Speaker and the Senate Majority Leader working in concert could also direct an Inspector General to look at specific issues within an agency. An additional benefit of this bill is that it would make legislative committees more engaged in overseeing their agencies of jurisdiction. In addition to this new oversight, citizens affected by agency action will gain the ability to petition an inspector general to determine if the action was consistent with the law or administrative rule.

In closing, this new oversight authority will help make our government more responsible not only to the legislature, but also to our constituents who deal with our executive agencies on a daily business. Thank you for hearing my testimony.



Wisconsin Personal Services Association, Inc.

139 E Wisconsin Avenue, Oconomowoc WI 53066

Wisconsin Personal Services Association Testimony for Information Only

Senate Bill 742: creating a legislative office of inspector general

Senate Committee on Insurance, Financial Services, Government Oversight and Courts

February 13, 2020

Dear Chair Craig and Committee Members:

On behalf of the Wisconsin Personal Services Association, Inc. (WPSA) we would like to thank you for the opportunity to provide input on Senate Bill 742, which eliminates the current Department of Health Services (DHS) Office of Inspector General.

WPSA is the leading statewide association of personal care and home care providers. We have educated, advocated, and united agencies and individuals in all Wisconsin counties for over 25 years to provide quality personal/supportive home care services to over 10,000 consumers and as many, if not more, direct care workers.

WPSA members and personal care agencies across the state have been negatively impacted by the current DHS OIG practices. Agencies are currently subject to rigorous oversight through the Department of Health Services' Division of Quality Assurance (DQA), which certifies agencies as being in compliance with Medicaid regulations and then completes regular "surveys" after the initial certification process to ensure ongoing regulatory compliance. However, over the past several years, the Department of Health Services Office of Inspector General (DHS OIG) has subjected direct care providers to frequent and intense compliance audits that are often in stark contrast to DQA's findings.

For example, one Wisconsin agency worked very closely with DHS to set up their policies and procedures and to get certified. This agency was also surveyed/audited by the Division of Quality Assurance (DQA) seven times between 2010 and the present. DQA came in and examined the agency's paperwork, charts, policies, procedures, client notes, etc. These were thorough audits and the feedback from DQA was always positive and constructive. They never had one infraction charged against them as part of these frequent DQA surveys. Despite going through rigorous review by DQA and having no issues found, the DHS OIG completed an audit of this agency and ordered them to pay back more than \$530,000. DHS OIG's findings and interpretation of Medicaid personal care regulations directly contradicted many of the protocols that DQA directed the agency to follow.

There have also been cases where an agency was asked to pay back funds because a worker had bad penmanship or accidentally wrote the wrong day. One agency missed the required 60-

day RN Supervisory Visit by one day, and was required to pay back all care that took place during the one-year authorization period.

Unfortunately, stories like these are common among Wisconsin personal care provider agencies. Multiple Wisconsin courts have ruled that DHS OIG audit and recoupment practices exceed statutory authority and hold Medicaid providers to an unfair 'perfection standard.'

DHS OIG is using this 'perfection standard' to recoup hard-earned dollars from Wisconsin personal care agencies in cases where care was indisputably and appropriately provided. This leaves many personal care agencies that are already struggling to stay in business with no choice but to pay unfair recoupments—sometimes totaling hundreds of thousands of dollars for clerical errors—or pay attorney fees to contest the audit findings.

These punitive and unfair practices are driving dedicated caregivers out of the profession at a time when our provider network is on the brink of collapse due to historical underfunding and over-regulation. An April 2019 survey by the Wisconsin Personal Services Association, the state's leading association of personal care agencies, found that:

- 60% of agencies are considering no longer providing Medicaid personal care services; and
- 100% of WPSA agencies have had to turn away clients during the past year.

WPSA supports the provision of this bill, which would eliminate the DHS OIG office, which has repeatedly overreached and applied standards inconsistent with DQA. We do, however, have questions about how the new, non-partisan inspector generals created by this bill would differ in their oversight of personal care agencies and other Medicaid providers. Would the new inspector generals continue to have an oversight role of personal care agencies? If so, we would have concerns with this approach. It is our position that there should only be one regulatory entity for agencies—DQA. In addition, we support clearer statutory language to make it clear that recovery efforts are limited to instances where services billed to Medicaid were not actually provided, the claim amount was inaccurate or inappropriate, or the service is not a covered benefit. We understand the statutes to currently limit recoupment to these instances, but the DHS Inspector General has a different view. (Wis. Stat. sec. 49.25(3)(f)).

Thank you for the opportunity to provide input to you. Please don't hesitate to contact us if you have any questions.

Sincerely,

Todd Costello, WPSA Legislative Chairperson
costellot@clanet.org
(608) 242-8335 ext. 1378