



Independent Democratic Conference

Streamlining New York's Patchwork IG System

Rooting Out Corruption Once and For All

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Report by
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Introduction

When Governor Cuomo launched his campaign for office in 2010, he vowed to clean up Albany once and for all and created a rigorous and comprehensive 5-point plan to change “business as usual,” restore integrity and honor to our government, and get the State’s fiscal house in order. A central part of his plan to overhaul government includes making it more cost-effective and efficient for taxpayers.

As New York grapples with a \$30 billion budget gap over the next three years, the old adage of “the bigger, the better” is being replaced with a new one: “cutting fat and building muscle.” What is clear is that “New York can no longer afford the size of government it has amassed over the past several decades, nor can we burden already-struggling New Yorkers with rising taxes to pay for it.”¹

In order to implement his goals, the Governor created a commission charged with identifying cost efficiencies and proposing recommendations to eliminate 20% of all agencies and authorities. Also known as the Spending and Government Efficiency (SAGE) Commission, SAGE began its work in early January and is expected to issue its first set of recommendations by May 1st of this year.

New York’s Patchwork System of Inspectors General

While Governor Cuomo’s *New NY Agenda* offers a wide range of ideas to streamline government operations, one proposal in particular jumps out that merits further exploration: a consolidation of the current system of inspectors general. Most New Yorkers, in fact, may not even be aware of the complex web that constitutes our inspectors general system. Not only does New York have a State Inspector General, charged with investigating corruption, fraud, and other criminal activities, but in addition, there exist several Inspectors General responsible for detecting corruption and fraud within their respective agencies. The best examples that come to mind are the Medicaid Inspector General and the MTA Inspector General, to name a few.

The problem that Governor Cuomo so precisely identified is that “[t]he current Inspectors General oversight system was constructed, not as a unified and coherent approach to preventing and identifying corruption, but as a series of ‘add-ons,’ each responding to the crisis of the moment.”² This patchwork of IGs, in turn, has created both administrative and operational inefficiencies in that investigations conducted in one agency can easily overlap with another – or, conversely, that individuals attempting to defraud one agency could be doing the same at another without getting caught. Because all IG offices currently operate separately and under their own purview, there is no

¹ Governor Andrew Cuomo, “Chapter 2: Get Our Fiscal House In Order,” *The New NY Agenda*, p.2, retrieved 16 February 2011 from Cuomo 2010 website, available at: http://www.andrewcuomo.com/system/storage/6/d0/1/389/acbook_ch2.pdf.

² Governor Andrew Cuomo, “Clean Up Albany: Make It Work,” *The New NY Agenda: 4th in a Series*, pp.60-61, retrieved 16 February 2011 from Cuomo 2010 website, available at: http://www.andrewcuomo.com/system/storage/6/2a/3/1101/andrew_cuomo_clean_up_albany.pdf.

streamlined process to address systemic corruption, fraud, abuse, and other types of misconduct in governmental entities.

In order to ensure the watchdog in charge of overseeing government operations truly helps guard against the waste and abuse of public resources, the existing patchwork of inspectors general must be consolidated to allow for one streamlined, systematic, and coherent approach. Similar proposals to eliminate operational overlap have been introduced in other states, such as Virginia³ and New Jersey,⁴ as well. New York must not only jump onto the consolidation bandwagon but, more importantly, play a leading role in exercising smart government – and that role can start with the IG system.

New York's Executive Department: Background

As Governor Cuomo explains in his Agenda for a New NY, the state bureaucracy has been consistently growing for the past 80 years. In 1927, the Executive Department was created, subject to the constitutional limit of no more than 20 departments, "to assist Governors in the performance of their duties of budgeting, supervision and coordination of the Executive Branch."⁵ After the 20th department was created, the Legislature circumvented the constitutional limit by placing all subsequent agencies into the Executive Department, all 75 of which are now frozen into statute.

In addition to Executive branch agencies, public authorities were created "as a means to circumvent the Constitutional requirement of voter approval of State debt. Today, the State has several hundred or more public authorities created either by statute or as subsidiaries of other authorities."⁶ According the Governor's *New NY Agenda*, "[a]uthorities are responsible for approximately 93 percent of the State's indebtedness and the ownership and operation of 85 percent of the State's infrastructure."⁷

³ Virginia's proposal involves consolidating "disparate positions into one central, independent agency and transform[ing] the State's Internal Auditor into an Inspector General with enhanced authority to proactively pursue complaints concerning fraud, waste and abuse in state government." (WHSV, "McDonnell Introduces Government Reform Bills," retrieved 22 February 2011, from WHSV website, available at: [http://www.wHSV.com/home/headlines/McDonnell Introduces Government Reform Bills 113469734.html](http://www.wHSV.com/home/headlines/McDonnell+Introduces+Government+Reform+Bills+113469734.html).)

⁴ On June 21 of last year, New Jersey's Legislature introduced S.2099 to consolidate the functions of the State IG and the Medicaid IG under the Office of the State Comptroller. In its legislative intent, the bill stated: "While the ongoing review of government operations helps guard against the waste, and fraud of public resources, the overlapping of the mission of the Office of the Inspector General, Office of the Medicaid Inspector General, and the Office of the State Comptroller has the potential to lead to inefficiencies in the performance of these critical functions." It is the sponsors' hope that "[t]he consolidation of the powers and duties of these existing State offices [...] will allow for the systematic, efficient, and coordinated review and oversight of the State and its subdivisions" (S.2099 (2009/2010), p.2).

⁵ Ibid, pp.65-66.

⁶ Governor Andrew A. Cuomo, *The New NY Agenda: A Plan For Action*, "Chapter 3: Rightsizing Government," p.67, retrieved 22 February 2011, from Cuomo 2010 website, available at: http://www.andrewcuomo.com/system/storage/6/73/7/390/acbook_ch3.pdf.

⁷ Ibid.

Although many authorities deliver crucial public services such as mass transit, economic development, and housing, “they exist outside the checks and balances that apply to other levels of government. Run by hundreds of unelected board members, authorities are responsible neither to the governor nor [to the] legislature,” making them susceptible to deceitful practices such as excessive “backdoor borrowing.”⁸

Since 1927, the State has enlarged its workforce from 29,000 to more than 195,700 and increased its budget from a mere \$239 million to as much as \$135 billion. “It was politically easy to create new agencies and difficult to abolish old ones, even when their functions had all but evaporated.”⁹ Little thought was given to where and how these agencies fit into the total structure of State government. And as the number of agencies skyrocketed, so did the number of inspectors, auditors, and other types of in-house investigators.

The State Inspector General

On October 14, 1987, Governor Mario Cuomo established the Office of the State Inspector to “examine, investigate, and make recommendations with respect to the prevention and detection of fraud, abuse and corruption in the State agencies, departments and divisions of State government the heads of which are nominated or appointed by the Governor.”¹⁰ In his Executive Order, Cuomo specified that “[e]xisting State agency inspectors general in agencies covered by this order (hereinafter “covered agencies”) shall serve concurrently in their present positions and in the Office of the State Inspector General. They shall report to and follow the direction of the State Inspector General, as well as the commissioner or director of their respective agencies.”¹¹

At the time the Executive Order was issued, “covered agencies” meant the following:

- Department of Environmental Conservation;
- Office of General Services;
- Division of Housing and Community Renewal;
- Insurance Department;
- State Liquor Authority;
- New York State Lottery;
- Department of Transportation;
- Division for Youth; and
- any other agencies determined by the State IG.

⁸ Ibid, p.68.

⁹ Governor Andrew A. Cuomo, *The New NY Agenda: A Plan For Action*, “Chapter 3: Rightsizing Government,” p.63, retrieved 17 February 2011, from Cuomo 2010 website, available at: http://www.andrewcuomo.com/system/storage/6/73/7/390/acbook_ch3.pdf.

¹⁰ Governor Mario M. Cuomo, “Executive Order No.103: Establishing the Office of the State Inspector General,” N.Y. Comp. Codes R. & Regs. tit. 9, § 4.103.

¹¹ Ibid.

These agency IGs were instructed, along with their commissioners or directors, to report all complaints of fraud, abuse, or corruption to the State Inspector General. It was the understanding at the time that these agency inspectors were the “in-house cops” and that the IG had the authority to appoint one or more Deputy IGs, as needed, “to serve at his pleasure and at his discretion.” In addition, the State IG was allowed to assign these Deputy IGs “to designated agencies, departments, and divisions of State government.”¹²

On July 28, 1993, Governor Mario Cuomo added public authorities to the mix to establish accountability for entities that “enjoy financial, jurisdictional and administrative flexibility not generally available to the State’s agencies.”¹³ In his Executive Order 173, he required the establishment of an “Inspector General, Internal Auditor or other person capable of carrying out similar functions and duties.”¹⁴ While public authorities generally were ordered to report receipts and expenditures to the Division of Budget, their IGs were not explicitly directed to report to anyone other than the heads of their respective authorities.

As the layers of government bureaucracy expanded, so did the number of watchdogs created to oversee the growing number of agencies, departments, offices, and authorities. In an effort to streamline the State’s IG system and “enhance and promote integrity, honesty and efficiency in State government,” Governor George Pataki issued Executive Order No. 39,¹⁵ effectively consolidating the State’s IG activities into one centralized office. Instead of operating as separate, semi-independent deputy IGs located within the agencies they served, these deputy IGs were now merged with the State IG’s Office in pursuit of the Office’s greater purpose.

“Led by the Inspector General, who is appointed by the Governor, the Office is [now] headquartered in Albany and has offices in New York City and Buffalo.”¹⁶ For FY 2011-12, the State IG’s office is expected to receive an annual budget of \$5.6 million, representing a decrease of \$614,000 (-10%) attributable to the 10% decrease of each agency’s General Fund State Operations budget. The State IG, currently Ellen Biben, will have 58 full-time employees at her disposal, the same level as the year before. In FY 2010-2011, “[the State IG’s Office] anticipates receiving approximately 2,600 complaints of fraud, criminal activity, waste and abuse involving State employees and resources]” amounting to an overall increase in 400 complaints from the year before.¹⁷

¹² Ibid.

¹³ Governor Mario M. Cuomo, “Executive Order No. 173: Establishing Public Authorities Accountability,” N.Y. Comp. Codes R. & Regs. tit. 9, § 4.173.

¹⁴ Ibid.

¹⁵ Governor George E. Pataki, “Executive Order No.39: Reforming the Office of the State Inspector General,” N.Y. Comp. Codes. R. & Regs. tit. 9, § 5.39.

¹⁶ 2011-12 Executive Budget, Agency Presentations, “Office of the State Inspector General,” p.188, retrieved 24 February 2011 from Division of Budget website, available at: <http://publications.budget.state.ny.us/eBudget1112/agencyPresentations/pdf/AgencyPresentations.pdf>.

¹⁷ Ibid.

Between May 2008 and September 2010, the State IG's Office opened 524 investigations, 145 of which involved 53 agencies and were publicly reported during that time period. In addition, the State IG exposed approximately \$9.6 million in fraudulent activities, including the misuse of State resources, unlawful and improper contracts, and theft of state property. The Office's investigations resulted in \$1.5 million in restitution and repayments, with an additional \$3 million more pending the completion of reimbursement actions that were initiated between 2008 and 2010. A total of 82 state employees (and others) were arrested and either left state service or faced agency disciplinary proceedings as a result of the IG's investigations.¹⁸

The Other Players in the IG System

Unfortunately, while the IG's Office currently has jurisdiction over approximately 150 government entities employing nearly 190,000 public servants as well as all private entities that do business with the state,¹⁹ it does not cover entities that have their own statutory IGs. In fact, when Governor Pataki issued his Executive Order, the term "covered agency" was amended to include "all executive branch agencies, departments, divisions, offices, boards, commissions, public authorities (other than multi-state or multi-national authorities), and public benefit corporations, the heads of which are appointed by the Governor and *which do not have their own Inspector General by law.*"²⁰

Determining which agency IGs are *not* covered by the State Inspector General is actually a lot more difficult than expected. The Department of Correctional Services (DOCS), for example, has an "Inspector General's Office" which "tracks down inmates who have absconded and investigates wrong-doing in State prisons."²¹ The State Comptroller specifically stated in one of his audits that DOCS' "Office of the Inspector General is independent of the State Inspector General's Office, which has jurisdiction over related activities. The employee known as the Department's Inspector General holds the title of Chief of Corrections Audits and Investigations, reports to the Commissioner, and does not report to the State Inspector General"²² – a practice that is common in many other agencies as well.

¹⁸ Office of the New York State Inspector General, "Two-Year Report: 2008-2010," p.22, retrieved 2 March 2011 from NYSIG website, available at: <http://www.ig.state.ny.us/pdfs/Two-Year%20Report.%202008-2010.pdf>.

¹⁹ NYSIG, "Message from the IG," retrieved 18 February 2011 from NYSIG's website, available at: <http://www.ig.state.ny.us/aboutIG/mission.html>.

²⁰ In addition, the Order contained a clause requiring all state officers and employees in covered agencies to "report promptly to the State Inspector General any information concerning corruption, fraud, criminal activity, conflicts of interest or abuse [...]. The knowing failure of any officer or employee so to report shall be cause for removal from office or employment or other appropriate penalty."

²¹ "Department of Correctional Services: Inspector General's Office," Report 96-S-58, Executive Summary, "Scope of Audit."

²² Ibid.

A search through New York's state laws reveals four statutory inspectors general, in addition to the State IG. These include:

1. the Workers Compensation Fraud Inspector General;
2. the MTA Inspector General;
3. the Medicaid Inspector General; and
4. the Welfare Inspector General;

I. Workers' Compensation Fraud Office of the Inspector General (OFIG)

The first statutory IG's Office that does not fall under the purview of the State IG is that of the Workers' Compensation Fraud Inspector General. Also known as OFIG, this office was created in 1996 to "investigate violations of the laws and regulations pertaining to the operation of the workers' compensation system."²³ OFIG is located within the State's Workers' Compensation Board, an agency whose primary responsibility is to protect the rights of all employers and employees by ensuring the proper delivery of benefits to those who were injured or became ill while on the job, and by promoting compliance with the law.²⁴

On March 13, 2007, the Workers' Compensation Reform Act ("Reform Act") was signed into law. In addition to raising the maximum benefits payable to injured workers, providing return-to-work initiatives, and implementing "duration caps" on indemnity benefits for permanently partial non-scheduled claims, the Reform Act strengthened penalties for fraud and abuse, and increased inter-agency cooperation and data sharing.^{25,26} According to the WCB's 2009 report, collaboration between OFIG and the State Insurance Department (NYSID),²⁷ the other agency responsible for investigating

²³ Workers' Compensation Board, Fraud Inspector General (OFIG), "Office of the Workers' Compensation Fraud Inspector General," retrieved 25 February 2011 from OFIG website, available at: <http://www.wcb.state.ny.us/content/main/fraud/Fraudpg.jsp>.

²⁴ Workers' Compensation Board, Fraud Inspector General (OFIG), "The Office of the Inspector General: About Our Office," retrieved 25 February 2011 from OFIG website, available at: <http://www.wcb.state.ny.us/content/main/fraud/FraudInsGeneral.jsp>.

²⁵ Workers' Compensation Board (WCB), "Joint Report to the Governor From the Superintendent of Insurance and Chair, Workers' Compensation Board, Summarizing and Benchmarking Workers' Compensation Data and Examining Progress on Prior Recommendations for Improvements in Data Collection," March 2009, p.5, retrieved 1 March 2011 from WCB website, available at: <http://www.wcb.state.ny.us/content/main/TheBoard/2009DataCollectionReport.pdf>.

²⁶ The Reform Act also enhanced the Board's enforcement capabilities by allowing it to use so-called "stop work" orders whenever an employer is found to lack coverage. Candidates for "stop work" orders are identified by use of "sweeps" – surprise inspections targeting employers by industry, geographic location, or other categories to determine compliance with statutory and regulatory requirements. (Workers' Compensation Board 2009 Annual Report, p.7).

²⁷ NYSID operates under the broader mandate to investigate all suspicious activities with regards to insurance while OFIG operates under a concurrent mandate to investigate only those activities that relate to workers' compensation fraud. Unlike NYSID, OFIG also has the power to oversee the self-insured trusts of private and public employers (Workers' Compensation Board 2009 Annual Report, p.104).

insurance fraud," resulted in decreased duplication of services and an increase of productivity in fraud prevention."²⁸

In 2008, OFIG identified 1,534 cases for investigation. 750 of these were referred for investigation of non-workers' compensation related issues; 137 were referred for prosecution, and the others were either pending or closed. In dollar terms, OFIG detected \$3.6 million in fraudulent activity, prevented \$4.6 million in fraud,²⁹ returned \$1.2 million to victims in restitution, and imposed \$321,000 in fines. An additional 150 cases were prosecuted by NYSID.³⁰

While the WCB is appointed by the Governor, "[t]he Inspector General and other WCB employees are [actually] employed by the WCB, since their salaries are part of the WCB's budget and are paid from its appropriations." Workers' Compensation Law §148 further states that "the reasonable and necessary traveling and other expenses of all [OFIG] employees, including the Inspector General, shall be paid from the State Treasury upon the audit and warrant of the Comptroller, upon vouchers approved by the Chair or Vice-Chair or Secretary of the WCB."³¹

For 2011-12, the Executive Budget recommends a WCB budget of \$204.7 million in All Funds and a staffing level of 1,466, a 16 person increase from the year before.³² WCB receives its funding strictly from a special revenue fund, through an assessment levied on the state's covered employers. This means, both WCB and OFIG operate outside of the State budget, i.e. without taxpayer funding.

II. Metropolitan Transportation Authority Office of the Inspector General (MTA OIG)

The second entity that has its own statutory IG is the Metropolitan Transportation Authority (MTA). Created in 1983, the MTA OIG provides oversight of all MTA operations and its constituent agencies, including:

- MTA New York City Transit (NYCT);
- MTA Long Island Rail Road (LIRR);
- MTA Metro-North Railroad (Metro-North);

²⁸ Ibid, p.104.

²⁹ Funds which insurance carriers had originally set aside to pay claimants before fraud was identified.

³⁰ Workers' Compensation Board (WCB), "Joint Report to the Governor From the Superintendent of Insurance and Chair, Workers' Compensation Board, Summarizing and Benchmarking Workers' Compensation Data and Examining Progress on Prior Recommendations for Improvements in Data Collection," March 2009, pp.105-106, retrieved 1 March 2011 from WCB website, available at: <http://www.wcb.state.ny.us/content/main/TheBoard/2009DataCollectionReport.pdf>.

³¹ Commission on Public Integrity, Advisory Opinion 10-01, retrieved 1 March 2011 from Commission on Public Integrity website, available at: <http://www.nyintegrity.org/advisory/cpi/2010/10-01.html>.

³² 2011-12 Executive Budget, Agency Presentations, "Workers' Compensation Board," p.336, retrieved 28 February 2011 from Division of Budget website, available at: <http://publications.budget.state.ny.us/eBudget1112/agencyPresentations/pdf/AgencyPresentations.pdf>.

- MTA Long Island Bus (LI Bus);
- MTA Bridges and Tunnels (Bridges and Tunnels);
- MTA Bus Company (MTA Bus); and
- MTA Capital Construction Company (Capital Construction).

Widely recognized as the largest public transportation network in North America, the MTA covers over 5,000 square miles and population base of 14.9 million. It operates in 14 counties in New York State and Connecticut, providing more than 8.7 million rides per day and serving nearly 300 million vehicles that use its bridges and tunnel crossings each year.³³ In 2008, the MTA's total operating expenses exceeded \$10.7 billion. Its proposed capital program budget for 2010-2014 is \$26.3 billion.³⁴

In order to ensure the efficiency and integrity of MTA operations, the MTA OIG's mission is to "prevent, detect, and combat waste, fraud, misconduct, and corruption on the part of employees and contractors working for the MTA and its constituent agencies."³⁵ MTA OIG performs its work with the help of three units: Investigations, Audit and Analysis, and Intake and Intelligence, all of which are staffed with investigators, attorneys, information technology specialists, performance auditors and accountants.

In monitoring the activities of the MTA and ensuring that it provides "a safe, reliable, clean and affordable public transportation system in the New York City metropolitan area," MTA OIG launches investigations either by its own initiative or in response to feedback or complaints that are received. Its Intake and Intelligence Unit handles all incoming complaints, conducts intelligence research, and analyzes trends in the complaints that are received. In 2009, MTA OIG staff reviewed 1,190 complaints representing a 39% increase from the year before.³⁶

In addition to responding to complaints, MTA OIG conducts in-depth audits and analyses of a variety of MTA business- and service-related activities through its Audit and Analysis Unit. After assessing the efficiency, safety, and cost-effectiveness of MTA operations, the

³³ Metropolitan Transportation Authority, Office of the Inspector General (MTA OIG), 2009 Annual Report, p.1, retrieved 25 February 2011 from MTA OIG website, available at: <http://mtaig.state.ny.us/assets/pdf/annual/09-annua.pdf>.

³⁴ Ibid. MTA's proposed capital program budget for 2010-2014 is \$26.3 billion. For 2011-12, the Governor's Executive Budget recommends approximately \$1 billion for the MTA's capital program from appropriations of the Rebuild and Renew New York Bond Act of 2005. In addition, the Executive Budget includes contingent appropriations of \$2.1 billion from the Dedicated Mass Transportation Fund and the MTA Support Program Fund. Within the Department of Transportation's budget, the Executive Budget recommends \$3.8 billion in appropriations, which represent a 3% decrease from last year due to a closer alignment of estimated tax receipts from the MTA Payroll Mobility Tax for the coming year (2011-12 Executive Budget, Agency Presentations, "Metropolitan Transportation Authority," p.228).

³⁵ Metropolitan Transportation Authority, Office of the Inspector General (MTA OIG), "OIG Organization," retrieved 25 February 2011 from MTA OIG website, available at: http://mtaig.state.ny.us/about_the_office.htm.

³⁶ Metropolitan Transportation Authority, Office of the Inspector General (MTA OIG), 2009 Annual Report, p.12, retrieved 25 February 2011 from MTA OIG website, available at: <http://mtaig.state.ny.us/assets/pdf/annual/09-annua.pdf>.

Unit may issue recommendations, as necessary. If evidence of fraud or criminal activity is found, then the OIG's Investigative Unit is brought in to review the Audit Unit's findings.^{37,38}

As a result of MTA OIG's investigations, most of which have occurred over the last two years, the Office has recovered fines, forfeitures, and restitutions totaling \$42.15 million, including \$9.8 million which are expected within the next 60 days. Furthermore, MTA OIG estimates that findings and recommendations proposed by its Audit Division have translated into a one-time savings amount of \$2.3 million and recurring annual savings of \$6.5 million. These figures are in addition to "any extrapolations of savings resulting from the "deterrent effect" of [their work] and prosecutorial partnerships."³⁹

The MTA IG is appointed directly by the Governor as a means of providing independent oversight to the MTA system. While the OIG's budget is funded directly by the MTA, any potential conflict of interest is negated through the statutory appeals process: in the event that the Board disapproves of any portion of the IG's budget request, the Commissioner of Transportation has the authority to transfer the requested amount directly to the OIG, provided he determines the Board's disapproval to be unreasonable.⁴⁰

In 2010, the MTA OIG had an operating budget of \$13 million, where labor expenses represented \$9.5 million. Its authorized budget for 2011 is \$13.9 million⁴¹ with anticipated labor expenses of \$9.7 million.⁴² The MTA OIG is authorized to have 86 positions, though its current staffing level is only 75. According to a spokesperson, MTA OIG does not intend to fill all open positions "given the serious fiscal situation facing the MTA and New York State" this year.⁴³

³⁷ Metropolitan Transportation Authority, Office of the Inspector General (MTA OIG), "OIG Organization," retrieved 25 February 2011 from MTA OIG website, available at: http://mtaig.state.ny.us/about_the_office.htm.

³⁸ In addition to identifying and deterring fraud and protecting the MTA's assets, the MTA OIG conducts fraud awareness training, visibility campaigns, and other educational initiatives to keep MTA subsidiaries, affiliates and other state and federal government entities apprised of MTA OIG's oversight role. Finally, the MTA OIG serves on a four-member oversight panel along with the State IG, the State Medicaid IG, and the State Division of Human Rights Commissioner, to ensure "that federal funds provided under the American Recovery and Reinvestment Act (ARRA) are utilized with transparency and accountability." (MTA OIG 2009 Annual Report, p.53 & p.4, respectively)

³⁹ MTA OIG, Memorandum, submitted 4 March 2011.

⁴⁰ Public Authorities Law, §1279.

⁴¹ Figure for 2011 authorized budget differs slightly from \$13.5 million stated in MTA 2011 Adopted Budget Report; retrieved from memorandum submitted by MTA OIG on 4 March 2011.

⁴² Metropolitan Transportation Authority (MTA), "MTA 2011 Adopted Budget: February Financial Plan 2011-2014," February 2011, retrieved 1 March 2010 from MTA website, available at: <http://www.mta.info/mta/budget/feb2011/master.pdf>.

⁴³ MTA OIG, Memorandum, submitted 4 March 2011.

III. Office of the Medicaid Inspector General (OMIG)

The third statutory IG's Office is that of the Medicaid Inspector General (OMIG). Created in 2006, OMIG was established to provide oversight to the State's Medicaid program, which provides health insurance for low-income individuals and families established in 1965 through Title XIX of the Federal Social Security Act. Now covering one-fourth of all residents in New York State, the program's costs have virtually skyrocketed over the past decade – to a staggering \$1 billion per week.”⁴⁴ This fiscal year alone, New York will spend nearly \$52 billion in federal, State, and local funding on Medicaid, with an additional \$1.8 billion increase in state operating funds expected in 2011-12.

Given the magnitude of the Medicaid program and its importance to the well-being of the State, OMIG was created as a separate entity with its own statute. OMIG's main responsibility is “to conduct and supervise activities to prevent, detect, and investigate Medicaid fraud and abuse with the goal of assuring integrity in the Medicaid program.”⁴⁵ Fraud and abuse in the Medicaid program are distinct in that “fraud detection and prevention activities focus on providers with bad intent” while “abuse focuses on the effect of the program, not the state of mind of the person submitting the claim.”⁴⁶

As part of its mission, OMIG leads an interagency workgroup to help coordinate Medicaid fraud, waste, and abuse control activities of the state agencies directly involved in administering the Medicaid program. These include:⁴⁷

- the Office of Alcoholism and Substance Abuse Services (OASAS);
- the Office for Persons with Developmental Disabilities (OPWDD);
- the Office of Mental Health (OMH);
- the Office of Children and Family Services (OCFS);
- the Office of Temporary and Disability Assistance (OTDA);
- the DOH Office of Health Insurance Programs (OHIP); and
- the Commission on Quality of Care and Advocacy for Persons with Disabilities.

In addition, OMIG collaborates with the Attorney General's Medicaid Fraud Control Unit (MFCU), the State Comptroller, federal prosecutors, district attorneys, the Welfare IG, and the special investigator units of each health insurer operating within the state.⁴⁸ Similar to the OFIG and the MTA OIG, OMIG lacks prosecutorial powers but it can pursue civil charges and turn more complex cases to federal authorities or the Attorney

⁴⁴ New York Post, “A Medicaid Miracle?” published 28 February 2011, retrieved 28 February 2011 from New York Post website, available at: http://www.nypost.com/p/news/opinion/editorials/medicaid_miracle_XtbQ5lqFyMAL0cve19RRzH.

⁴⁵ Office of the Medicaid Inspector General (OMIG), “2009 Annual Report,” p.1, retrieved 2 March 2011 from OMIG website, available at: http://www.omig.ny.gov/data/images/stories/2009_annual_report_10-19-10.pdf.

⁴⁶ Ibid.

⁴⁷ Ibid, p.13.

⁴⁸ Ibid, p.3.

General's Office, namely the MFCU.⁴⁹ According to OMIG's 2009 Annual Report, the agency "continues its efforts to improve and strengthen the relationship with the MFCU" whom it considers a valuable partner in the fight against Medicaid fraud.⁵⁰ Together, both agencies exceeded the federal recovery requirement of \$322 million under the Federal-State Healthcare Reform Partnership (F-SHRP), reaching a combined \$500 million.⁵¹

In a recent testimony to a joint legislative public hearing on the 2011-12 Executive Health and Medicaid Budget Proposal, Medicaid Inspector General James Sheehan asserted that New York is a leader in Medicaid fraud, waste and abuse detection and prevention, that serves as a role model on a federal level.⁵² In 2009, OMIG reportedly saved the State \$1.61 billion through cost saving activities. The agency initiated 3,697 investigations and completed 2,597. Two hundred and eight (208) cases were referred to the Attorney General's Office and 783 to other agencies, the majority of which was referred to investigations at a local level. In addition to investigations, OMIG initiated 1,852 audits and completed 1,053.⁵³

For 2011-12, the Executive Budget recommends a decrease of \$7.8 million, or 8.9%, in All Funds from the 2010-11 budget to support OMIG's operations, leaving the agency with an overall budget of \$80.4 million (including \$47.1 million Federal Funds, \$29.6 million General Funds, and \$3.7 million Other Funds) and a staff of 662 employees.⁵⁴

IV. Office of the Welfare Inspector General (OWIG)

Finally, the fourth and last statutory IG, the Office of the Welfare Inspector General (OWIG), was established in 1992 "to prevent, investigate, and prosecute welfare fraud, waste, abuse, and illegal acts involving social services programs at both the State and

⁴⁹ Medicaid fraud, abuse, or other illegal or unacceptable practices investigated by OMIG include: "referral of information and evidence to regulatory agencies, withholding Medicaid payments, imposition of administrative sanctions and penalties, excluding providers and contractors from participation, initiating and maintaining actions for civil recovery, and recovery of Medicaid funds" (2011-12 Executive Budget, Agency Presentations, p.155).

⁵⁰ Office of the Medicaid Inspector General (OMIG), "2009 Annual Report," p.12, retrieved 3 March 2011 from OMIG website, available at: http://www.omig.ny.gov/data/images/stories/2009_annual_report_10-19-10.pdf.

⁵¹ Ibid, p.5.

⁵² Testimony by Medicaid Inspector General James Sheehan, "Joint Legislative Public Hearing on 2011-12 Executive Budget Proposal: Health/Medicaid," held 3 March 2011, retrieved from New York State Senate website, available at: <http://www.nysenate.gov/event/2011/mar/03/joint-legislative-public-hearing-2011-2012-executive-budget-proposal-topic-health->.

⁵³ Office of the Medicaid Inspector General (OMIG), "2009 Annual Report," p.5, retrieved 3 March 2011 from OMIG website, available at: http://www.omig.ny.gov/data/images/stories/2009_annual_report_10-19-10.pdf.

⁵⁴ New York State 2011-12 Executive Budget, Agency Presentations, "Office of the Medicaid Inspector General," p.154, retrieved 24 February 2011 from Division of Budget website, available at: <http://publications.budget.state.ny.us/eBudget1112/agencyPresentations/pdf/AgencyPresentations.pdf>.

local levels.”⁵⁵ Welfare reform was a significant public issue at the time, both in New York and at the national level, and “members of both major [...] political parties were advancing proposals to reconfigure welfare policy and practice.”⁵⁶ A major part of welfare included Medicaid, the medical assistance program for low-income New Yorkers, which has since become by far the most expensive social and human services program in the State.

In 1996, New York State dissolved its primary welfare agency, the Department of Social Services (DSS), transferring its functions to the Department of Health (responsible for the Medicaid program), the Department of Labor (covering most job training and employment programs), and two new agencies: OTDA (responsible for programs such as TANF, Safety Net, food stamps, and child support enforcement), and OCFS (responsible for daycare, foster care, and child and adult protective services). The dissolution may have served a greater purpose, but it also created additional complexities in that a family receiving services under only DSS could now technically be subject to the jurisdiction of four different entities, each with its own rules, regulations, gate-keepers, and protocols.⁵⁷

Whatever the rationale for breaking up DSS, “the new regime created additional hurdles for those [...] who comprehensively investigate social services fraud.” Hence, OWIG was created to preside as the system’s central watchdog. Throughout the 1990s, reliance on welfare decreased as high employment rates and economic prosperity reduced overall demand for government assistance; however, that has since changed with the current economic climate. The cost of Medicaid alone is projected to skyrocket into the upper billions, and “under these circumstances of greater need, there are also increased opportunities for fraud, waste and abuse.”⁵⁸

Given the urgency to protect the State’s social and human services programs, OWIG is located in the Office of the Deputy Attorney General for Medicaid Fraud, within the Department of Law. OWIG is “unlike almost every office of inspector general in the United States (including every other office of inspector general in New York),” because it functions mostly as a prosecutor’s office.⁵⁹ In addition to being a state law enforcement agency, OWIG has the responsibility of conducting investigations into social/human services programs, including but not limited to misconduct committed by people who are

⁵⁵ 2011-12 Executive Budget, Agency Presentations, “Office of the Welfare Inspector general,” p.333, retrieved 24 February 2011 from Division of Budget website, available at: <http://publications.budget.state.ny.us/eBudget1112/agencyPresentations/pdf/AgencyPresentations.pdf>.

⁵⁶ Office of the Welfare Inspector General (OWIG), “Changing Definitions of ‘Welfare,’” retrieved 28 February 2011 from OWIG website, available at <http://www.owig.state.ny.us/owig/defwelfare.html>.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Office of the Welfare Inspector General (OWIG), “Message from the Welfare Inspector General,” retrieved 28 February 2011 from OWIG website, available at: <http://www.owig.state.ny.us/owig/>.

fraudulently collecting benefits.⁶⁰ Its goal is “to safeguard the State’s longstanding commitment to the vulnerable, poor, and disadvantaged [...] by promoting the integrity of social services programs and by deterring those who would [otherwise] defraud them.”⁶¹

And yet, while OWIG is located within a department headed by the State Attorney General, it is a separate entity, its IG appointed by the Governor with the advice and consent of the Senate.⁶² Furthermore, because OWIG is its own statutory IG, it also does not fall under the purview of the State Inspector General – though that, also, is debatable, since technically speaking there does not exist a “Department of Welfare,” but instead four separate welfare agencies, OTDA, DOH, OCFS, and DOL, mentioned above. In addition to those state entities, OWIG also has jurisdiction over the programs of all of the State’s 58 local social service districts (one for each county – except for New York City’s 5 counties, which together constitute one single district covered by the City’s Human Resources Administration).⁶³ Taken together, OWIG’s authority extends to the majority of the State’s social and human services programs that directly impact the lives of millions of New Yorkers.

A “small agency with a very large mission,”⁶⁴ OWIG currently operates with a staff of only 7 people and a budget of \$1.6 million, as proposed in the Governor’s 2011-12 Executive Budget. With a historically small amount of resources that has decreased even further in the last few years, OWIG concentrates its efforts “on substantial criminal cases that call for [their] special expertise, or that involve multi-county or multi-agency jurisdiction, or that cannot adequately be addressed by State or local social services agencies.”⁶⁵ Each year, “[OWIG] works on approximately 200 fraud investigations,” resulting in “substantial savings for all levels of government.”⁶⁶

⁶⁰ Office of the Welfare Inspector General (OWIG), “Mission and History: Jurisdiction of the Welfare Inspector General’s Office,” retrieved 1 March 2010 from OWIG website, available at: <http://www.owig.state.ny.us/owig/owigjuris.html>.

⁶¹ Ibid.

⁶² Executive Law §74(2)(a).

⁶³ Office of the Welfare Inspector General (OWIG), “Mission and History: Jurisdiction of the Welfare Inspector General’s Office,” retrieved 1 March 2010 from OWIG website, available at: <http://www.owig.state.ny.us/owig/owigjuris.html>.

⁶⁴ Office of the Welfare Inspector General (OWIG), “Staff,” retrieved 28 February 2011 from OWIG website, available at: <http://www.owig.state.ny.us/owig/staff.html>.

⁶⁵ Ibid.

⁶⁶ 2011-12 Executive Budget, Agency Presentations, “Office of the Welfare Inspector general,” p.333, retrieved 24 February 2011 from Division of Budget website, available at: <http://publications.budget.state.ny.us/eBudget1112/agencyPresentations/pdf/AgencyPresentations.pdf>.

Office of the State Comptroller (OSC)

In addition to the State IG and the four other independent IGs highlighted above, there exists another government agency tasked with a similar investigatory mission. Originally established in 1797 to examine the State Treasurer's books, the Office of the State Comptroller (OSC) was created as New York's chief fiscal officer. Over time, the "duties of the State Comptroller have steadily expanded, and [OSC now] has a scope of responsibility that is unparalleled in other state governments." In addition to administering the New York State and Local Retirement System for government employees, OSC is in charge of maintaining the State's accounting system, managing its \$12.6 billion payroll, overseeing the fiscal affairs of local governments, and issuing reports on the State's finances.⁶⁷

In order to accomplish this tremendous responsibility, OSC has to review State contracts and payments, and over the years it began to conduct audits of State agencies, public benefit corporations, and local governments, including New York City. These audits are meant to ensure "that programs achieve their established goals, funds are used efficiently, and assets are adequately protected against fraud, waste and abuse."⁶⁸ With a staff of over 2,600 people, OSC conducts all of these activities to guarantee "that the taxpayers' money is being used effectively and efficiently to promote the common good."⁶⁹

In 2010, the Comptroller's Office identified over \$1.2 billion in combined actual and potential savings in programs and agencies covered by the four statutory IGs alone. This figure includes \$616.8 million in actual savings and \$226.4 million in potential savings uncovered in the Medicaid system from payments for hospital readmissions, Medicare Part A beneficiaries, out-of-state non-emergency ambulatory surgery, and dental services, to name a few.

⁶⁷ Office of the State Comptroller (OSC), "What Are the Comptroller's Responsibilities?" retrieved 22 February 2011 from OSC website, available at: <http://www.osc.state.ny.us/about/response.htm>.

⁶⁸ Office of the State Comptroller (OSC), "Audits," retrieved 22 February 2011 from OSC website, available at: <http://www.osc.state.ny.us/audits/index.htm>.

⁶⁹ Office of the State Comptroller (OSC), "What Are the Comptroller's Responsibilities?" retrieved 22 February 2011 from OSC website, available at: <http://www.osc.state.ny.us/about/response.htm>.

Actual and Potential Savings from OSC Audits (2007-2010)

	2007	2008	2009	2010
Welfare				
DOH*	\$1,619,747	\$79,773	\$185,400	.
OTDA	.	.	.	\$15,236,709
OCFS	.	\$2,196,789	.	\$1,097,673
DOL	.	.	.	.
Sub-Total	\$1,619,747	\$2,276,562	\$185,400	\$16,334,382
Workers' Comp	.	.	.	\$60,000
MTA	.	.	\$176,000,000	\$382,387,039
Medicaid	\$27,634,518	\$34,511,845	\$182,642,470	\$843,214,341
Total	\$29,254,265	\$36,788,407	\$358,827,870	\$1,241,995,762

*Other than Medicaid

Source: State Comptroller's Office, Division of State Accountability

The IDC's Proposal

While the Offices of the Welfare IG, the Workers' Compensation Fraud IG, and the MTA IG and the Medicaid IG perform valuable services within their respective agencies or issue areas, they also carry out duplicative and overlapping functions which not only burdens taxpayers' pocketbooks but also hinders the State's ability to develop and implement a coherent policy against government waste and fraud. The IDC understands that the realms of welfare, workers' compensation, transportation, and Medicaid are very complex and, therefore, require extra special vigilance; however, both from a financial and an efficiency perspective, the system is simply not sustainable. In order to eliminate duplicative layers of government bureaucracy and ensure that New Yorkers have an effective system against government corruption, the IDC proposes the following:

1. Eliminate the exemption that currently bars the State IG from overseeing agencies, departments, and authorities with their own statutory IGs;
2. Maintain the position of MTA "Inspector General," reduce the Office's staffing and budget level, and use some of the remaining resources to establish an MTA Oversight Unit within the State IG's Office; and
3. Dissolve both OWIG and OMIG and transfer their functions to the Attorney General's MFCU.

By eliminating agencies with overlapping functions, namely OWIG and OFIG, and expanding the State IG's jurisdiction to currently exempted agencies, the proposal would effectively codify the State IG as the central government watchdog, streamline investigations of fraud, waste, and abuse, and save valuable taxpayer dollars.

I. The Workers' Compensation Fraud Inspector General (OFIG)

The one agency left untouched from consolidation, at least in the interim, would be OFIG. Because the Office receives its revenue stream from a special revenue fund through assessments on covered businesses and, therefore, operates entirely outside of the State budget, the IDC does not recommend consolidation because it is neither feasible, nor would it yield any savings.

In an effort to unify and streamline the State's inspector general system, however, the IDC recommends that OFIG's current statutory exemption be eliminated and that the State IG be given jurisdiction over the Workers' Compensation Board. OFIG has already demonstrated, and continues to demonstrate, a strong commitment to working with the State Inspector General's Office;⁷⁰ therefore, should future investigations conducted by OFIG reveal that workers' compensation fraud is on the rise, the State IG will have the authority to intervene and take charge, as necessary.

II. The MTA Inspector General (MTA OIG)

A similar proposal, albeit one expected to yield actual savings, is recommended for the MTA Inspector General's Office:

According to an MTA OIG spokesperson, the MTA OIG is "a creature of the legislature," established at the time to address "a problematic area." And yet, it seems that over the past three decades, not much has changed: the MTA is still widely recognized as the most dysfunctional public authority in the State. Less than three years ago, MTA Board Members called upon state legislators to help the agency deal with its financial troubles. Faced with a buoying deficit caused by the collapse of revenues from real estate and property taxes, which in the past had provided the authority with a series of healthy surpluses,⁷¹ the MTA pleaded with the Legislature to pass a rescue package in order to avoid the potential of devastating fare hikes and service cuts.

After injecting the MTA with \$2.3 billion in funding, the authority was able to reduce its budget deficit, but not without escaping new taxes and fees, including a 34-cent tax on every \$100 of payroll in New York City and seven other counties ("Metropolitan Commuter Transportation District"). The tax is expected to generate \$1.3 billion in

⁷⁰ In 2010, for example, OFIG became the whistleblower to one of its own investigators who had knowingly fabricated entries into reports he had filed with his Office. The case was initially reviewed within OFIG but was then referred to the State IG once it became clear that the investigator under consideration had manufactured information in at least 8 of the 41 reports examined. (Office of the State Inspector General, "Final Report, December 20, 2010," retrieved 1 March 2011 from State Inspector General's Office website, available at: <http://www.ig.state.ny.us/pdfs/Workers%20Comp%20Investigator%20Fired%20For%20Faked%20Findings.pdf>.)

⁷¹ Sewell Chan and William Neuman, "M.T.A. Faces \$1.2 Billion Deficit," New York Times City Room, published 10 November 2008, retrieved 1 March 2010 from New York Times website, available at: <http://cityroom.blogs.nytimes.com/2008/11/10/mta-faces-12-billion-deficit/>.

revenue for the agency's projected \$12 billion 2011 budget⁷² and continues to spark controversy among residents and businesses who are negatively impacted. According to news reports, the MTA has been slashing its overhead in recent months, resulting in an estimated \$525 million in annual savings starting next year; and still the Authority is considering a proposal to raise fares by 7.5%⁷³ and eliminate more than half of Long Island Bus lines.⁷⁴

When asked about the idea of consolidating the MTA OIG with the State Inspector General's Office, an MTA OIG spokesman responded that structure was really less important – “the key is who the people are.” This sentiment is echoed by former State Inspector General Joseph Fisch, who stated in a 2009 hearing by the Senate Investigations Committee that, “You can have the best system in the world, and the wrong people will find a way of beating it. And you can have a poor system, and the right people will find a way of work within it.”⁷⁵ Ultimately, however, it is the responsibility of the IG's Office to exercise oversight of its respective agency. When the agency does well, the OIG gets credit, and when there is failure, the OIG cannot escape responsibility for that failure either.

As a result, the IDC proposes expanding the State IG's jurisdiction over the MTA via the same elimination of the statutory exemption which OFIG currently enjoys. The MTA OIG would effectively cease to exist as an independent office, and the State IG would, from then on, have the power to investigate the MTA as he or she sees fit. This measure would be directly in line with the desire of former State Inspector General Fisch to expand the State IG's general powers and authorities. In his testimony before the Senate Investigations Committee, he stated:

“Right now I do not have, statutorily, the authority to investigate agencies that have their own inspector general. The perfect example is the MTA. The MTA has its own inspector general. If that impediment did not exist, I would very quickly undertake an investigation of the MTA.”⁷⁶

The MTA IG would continue to exist as an in-house investigator, pending the approval of the SAGE Commission after it reviews the duties and functions of all of the other agency IG offices as well. The MTA OIG would be reduced accordingly, and part of the remaining staff and resources would be used to create an MTA Oversight Unit within the State IG's

⁷² Wall Street Journal (WSJ), “Payroll Tax Stirs Revolt: Suburbs Riled Over Key to MTA Bailout,” published 18 August 2010, retrieved 4 March 2011 from WSJ website, available at: <http://online.wsj.com/article/SB10001424052748703824304575435923892192704.html>.

⁷³ Ibid.

⁷⁴ Tara Conry and Geoffrey Walter, “MTA Threatens More Cuts to Malverne and West Hempstead,” 3 March 2011, retrieved 4 March 2011 from Malverne-West Hempstead Patch, available at: <http://malverne-westhempstead.patch.com/articles/mta-threatens-more-cuts-to-malverne-and-west-hempstead>.

⁷⁵ Testimony by Former State Inspector General Joseph Fisch before the Senate Investigations Committee, May 19, 2009, retrieved from YouTube, available at: http://www.youtube.com/watch?v=PuE9_-h14-U&feature=player_embedded.

⁷⁶ Ibid.

Office. Given that OFIG currently oversees the entire State welfare system with a staff of 7 people and a budget of \$1.6 million, the IDC proposes a comparable staff and budget level for MTA OIG to continue carrying out its back-office functions and administrative responsibilities.

The IDC's proposal is as follows:

- Maintain MTA OIG's budget and staff at 10% of its authorized 2011 level, leaving it with approximately \$1.4 million and 9 staffers (assuming a budget and staff size of \$14 million and 86, respectively);
- Transfer 40% of the MTA OIG's budget equal to \$5.6 million to the State IG's Office to establish an MTA Oversight Unit, and authorize the State IG to hire additional staff as necessary.

As a result of these actions, the State IG's Office would have a \$11.2 million budget at its disposal, up from \$5.6 million as recommended by the 2011-12 Executive Budget. The remaining \$7 million of the MTA OIG's budget would be saved and returned to the State's General Fund.

While institutional knowledge of the MTA is without a doubt very valuable and the MTA OIG still performs an important function through its in-house investigations, the State has a vested interest in maintaining jurisdiction over the MTA system, especially given its economic and financial importance to New York State. Combined with the Comptroller, whose office identified over \$383 million in actual and potential savings in its 2010 audits alone, the IDC is confident that the State Inspector General, as the official government watchdog, will be able to provide the oversight necessary to keep the MTA corruption-free.

III. The Medicaid Inspector General

Given OMIG's functions which overlap with both MFCU and the Welfare IG, the IDC proposed merging OMIG with the Attorney General's Office, and this is why:

While OMIG's 2009 Annual Report paints a healthy picture of its activities and successes in combating Medicaid fraud, the reality is much more complex and necessitates immediate action. For years, OMIG has been chastised as an ineffective agency that is wasting taxpayer resources, and just recently, a startling article by the Wall Street Journal (WSJ) substantiated these claims with the following findings: According to the Journal, "the state agency in charge of recovering money stolen from the state's \$52 billion Medicaid program fell into negative territory in 2009."⁷⁷ Despite its \$90 million budget and a full-time staff of over 650 people, OMIG reported fraud recoveries of negative \$66,000 in its most recent annual report.⁷⁸

⁷⁷ Jacob Gershman, "Medicaid Fraud Unit Falls Short," Wall Street Journal (WSJ), 27 January 2011, retrieved 23 February 2011 from WSJ website, available at: <http://online.wsj.com/article/SB10001424052748703293204576106260159071844.html>.

⁷⁸ Ibid.

Because OMIG's audits do not specifically allege fraud, providers are often able to cheat the system over and over again without facing harsher consequences. In its investigation, WSJ points to Healthfirst as an example, a growing company on the Medicaid managed care scene, that has been audited numerous times for failing to keep proper records and billing Medicaid patients who were either incarcerated or deceased.⁷⁹ Some other health centers have alleged financial hardship; in 2008, three of them stopped repayment of \$3 million and ultimately paid less than 20% of the amount originally due.

The agency's inability to crack down on abuse indicates an alarming lack of vigilance of the nation's most expensive Medicaid program. Despite having the 4th largest population, New York is the leading spender on Medicaid with a state budget that is 38% larger than that of Texas and Florida combined.⁸⁰ Between 2010 and 2012, New York's Medicaid budget is projected to explode from \$52 billion to \$62 billion, a \$10 billion increase in just two years, and coincidentally the same amount as the State's estimated budget deficit for FY 2011-12.

As the healthcare monster continues to destroy our state's ability to compete in a global economy,⁸¹ the primary warrior charged with battling that monster has proven to be completely ineffective. "OMIG does not look for fraud, despite its statute clearly requiring it to do so."⁸² During his interview with WSJ, Paul Stavis, a former senior lawyer for the State Health Department who also worked under current Medicaid Inspector General James Sheehan, stated: "[f]raud litigation is very difficult and expensive and OMIG has not equipped itself to cope with such cases. They don't look for fraud as a matter of practice."⁸³

WSJ's findings confirm the longstanding position held by many professionals in the healthcare industry, that OMIG is simply not fulfilling its duties and responsibilities as required. At the time OMIG was first created, government agencies and healthcare providers across the board agreed: "The creation of [...] OMIG in statute will institutionalize and provide better focus to NYS' efforts to eliminate Medicaid fraud, waste and abuse."⁸⁴ Yet, in the past five years, OMIG has not focused on cracking down or curtailing fraud in the Medicaid system; instead, it has focused its attention on

⁷⁹ Ibid.

⁸⁰ Grindstone Financial, "Medicaid Data," published 17 February 2011, retrieved 23 February 2011 from Grindstone Financial website, available at: <http://www.grindstonefinancial.com/2011/02/medicaid-data.html>.

⁸¹ Ibid.

⁸² Jacob Gershman, "Medicaid Fraud Unit Falls Short," Wall Street Journal (WSJ), 27 January 2011, retrieved 23 February 2011 from WSJ website, available at: <http://online.wsj.com/article/SB10001424052748703293204576106260159071844.html>.

⁸³ Ibid.

⁸⁴ Letter submitted by Gail H. Gordon, Deputy Commissioner and General Counsel for the New York Office of Children and Family Services, Bill Jacket for Chapter 442 of the Laws of 2006.

provider “waste” and “abuse.” Discussions with representatives in the medical fraud litigation industry revealed that OMIG prefers going after hospitals for honest billing mistakes rather than investigating actual corruption. When asked to compare OMIG to MFCU, one litigator responded, “That’s a no-brainer: it’s Pinto versus Cadillac.”

Under the Federal-State Health Reform Partnership (F-SHRP), an agreement which the State entered into shortly after OMIG’s creation, New York is required to meet a number of “programmatically milestones and demonstrate Medicaid program savings”⁸⁵ in return for federal funding. In 2008, New York’s required Medicaid fraud recoveries were \$215 million; in 2011, the State is expected to collect \$644 million. To date, the yearly goals have been met, but none of that could have been possible without the help of the Attorney General’s MFCU, which recovered more than \$280 million in 2009⁸⁶ to satisfy the federally mandated collection target of \$322 million for that year. This is in addition to the \$843.2 million in actual and potential savings the State Comptroller’s office identified in its audits just last year.⁸⁷

In his 2010 testimony to the Senate Investigations Committee, John Foley, Deputy Medicaid Inspector General for Audit, confirmed the suspicion that OMIG is not nearly as successful in addressing Medicaid fraud as the Attorney General’s Office is: “I am not focusing on fraud. Our office is not charged with going out to audit fraud. That is MFCU’s responsibility.”⁸⁸ While the veracity of the statement is a matter of technicality, OMIG’s enacting legislation, its website, public statements of OMIG officials, and general belief throughout the state is that OMIG is a state entity that serves an anti-Medicaid fraud purpose. Accordingly, if this is not the case, then there is no noble purpose for OMIG’s existence.

In addition, research conducted by the Senate Investigations Committee in 2010 revealed that OMIG’s general audit process lacks consistency in which rules and regulations are implemented and enforced, and that audit staff are generally ignorant, insensitive, and unprofessional. According to Christine Johnston, Executive Vice President of the New York State Association of Health Care Providers, “the general lack of understanding of the Medicaid programs that are being audited by the auditors is an

⁸⁵ Centers for Medicare & Medicaid Services (CCMS), “Details for New York Federal-State Health Reform Partnership (F-SHRP),” retrieved 22 February 2011 from CCMS website, available at: <http://www.cms.gov/MedicaidStWaivProgDemoPGI/MWDL/itemdetail.asp?filterType=none&filterByDID=.99&sortByDID=2&sortOrder=ascending&itemID=CMS1187486>.

⁸⁶ Jacob Gershman, “Medicaid Fraud Unit Falls Short,” Wall Street Journal (WSJ), 27 January 2011, retrieved 23 February 2011 from WSJ website, available at: <http://online.wsj.com/article/SB10001424052748703293204576106260159071844.html>.

⁸⁷ State Comptroller’s Office, Division of State Accountability. Includes \$646.8 million in actual savings and \$226.4 million in potential savings in 2010.

⁸⁸ Testimony of John Foley, Deputy Medicaid Inspector General for Audit, before the Senate Committee on Investigations, March 17, 2010, p.139.

increasing concern for our members. We have had situations where the misinterpretation or misapplication of agency rules and regs have created quite stressful situations.”⁸⁹

Upon reviewing the audits OMIG had posted online and after taking testimony at two public hearings, the Senate Committee on Investigations concluded that OMIG has failed to fulfill virtually every aspect of its mission: in the past 5 years, it has not created a more efficient and accountable structure, it has not dramatically reorganized and streamlined the state’s process of detecting and combating Medicaid fraud and abuse, and it has not maximized the recoupment of improper Medicaid payments.

The IDC’s Proposal

In light of OMIG’s ineffectiveness and inability to carry out the mission for which it was created, the IDC recommends eliminating OMIG completely and merging the agency with the Attorney General’s MFCU:

Established in 1978 under federal legislation, New York’s MFCU’s mission is “to conduct a statewide program for the investigation and prosecution of healthcare providers and Medicaid administrators who defraud the Medicaid program.”⁹⁰ The largest unit within the criminal division of the Attorney General’s Office, MFCU also has jurisdiction over all facilities that provide nursing and/or personal care services. In addition to criminal prosecution and civil litigation, MFCU prevents fraud by submitting regulatory and legislative recommendations to the State Department of Health, the Medicaid Inspector General, and the State Legislature, respectively.⁹¹

MFCU’s budget is funded predominantly (75%) by the U.S. government, with the rest (25%) allocated by the State. MFCU’s own monetary recoveries comprise the state’s share of the Unit’s budget; the remainder is returned to the State Department of Health.⁹² For 2011-12, MFCU’s available budget is \$35.8 million in federal funds and \$12.1 million Other Funds. Notwithstanding the Governor’s Executive Budget recommendations, MFCU therefore has a total budget of \$47.9 million and a staff size of 296 full-time employees (FTEs).⁹³

⁸⁹ Testimony of Christine Johnston, Executive Vice President of the New York State Association of Health Care Providers, before the Senate Committee on Investigations, March 17, 2010, p.278.

⁹⁰ New York State Medicaid Fraud Control Unit (MFCU), 2009 Annual Report, p.3, retrieved 2 March 2011 from MFCU website, available at: http://www.ag.ny.gov/media_center/2010/apr/mfcu_2009.pdf.

⁹¹ Ibid, p.4.

⁹² Whistleblower Laws, “New York Medicaid Fraud Unit Recovers Over \$283 Million in 2009,” retrieved 2 March 2011 from Whistleblower Laws website, available at: <http://whistleblowerlaws.com/content/view/132/9/>.

⁹³ 2011-12 Executive Budget, Agency Presentations, “Department of Law,” p.206, retrieved 2 March 2011 from Division of Budget website, available at: <http://publications.budget.state.ny.us/eBudget1112/agencyPresentations/pdf/AgencyPresentations.pdf>.

Among MFCU's achievements in 2009 are 148 convictions, charges against 139 defendants and recoveries worth \$283.2 million, more than the amounts obtained throughout the previous three years.⁹⁴ The Unit was named Medicaid Fraud Control Unit of the Year in 2008 and some of its members were awarded with the 2009 Cooperative Achievement Award in recognition of their work on a civil settlement with Eli Lilly, which resulted in \$91 million worth of recoveries.⁹⁵

The IDC's proposed merger would model a previous recommendation put forth by Assemblyman Hoyt, Chair of the Committee on Local Governments, last year. In a letter dated January 14, 2010, Hoyt reinforces the IDC's findings: "[Instead of helping] save the state money by decreasing the amount of Medicaid fraud and waste," Hoyt writes, "[OMIG] has diluted federal funds dedicated to preventing waste, created an additional bureaucracy and created an additional expense for state government that it can ill afford today."⁹⁶

As a result, the IDC proposes that the \$47.1 million in federal dollars used to fund the OMIG's budget be allocated to MFCU. By doing so, and effectively eliminating OMIG in statute, the State could generate a net savings of \$33.3 million (including \$29.6 million General Funds and \$3.7 million Other Funds). MFCU's budget, in turn, would increase from \$47.9 million to \$95 million – nearly double the size of its available budget for 2011-12. With twice as many resources at its disposal, the Unit would be able to combat fraud even more effectively and aggressively as it has in the past.

At a time when the State is faced with skyrocketing Medicaid costs, an ineffective watchdog to combat Medicaid fraud, and a \$10 billion budget deficit that is in dire need of being balanced, the proposed merger is the best idea to reduce the buoying burden on taxpayers and improve the efficiency of our government's operations. While MFCU's success throughout the past few years by no means indicates that doubling the Unit's budget will result in twice as many recoveries, MFCU has proven that it takes its work and its mission very seriously, and that it will be an effective warrior in the fight against Medicaid fraud in the years to come.

IV. Office of the Welfare Inspector General (OWIG)

A similar consolidation proposal is recommended for OWIG. While the dissolution of the Social Services Department into four separate agencies (DOH, DOL, OTDA, and OCFS) arguably necessitated a "welfare watchdog" at that time, the current concept is no longer sustainable. Informal conversations with various IG Offices have revealed that OWIG,

⁹⁴ New York State Medicaid Fraud Control Unit (MFCU), 2009 Annual Report, p.1, retrieved 2 March 2011 from MFCU website, available at: http://www.ag.ny.gov/media_center/2010/apr/mfcu_2009.pdf.

⁹⁵ Whistleblower Laws, "New York Medicaid Fraud Unit Recovers Over \$283 Million in 2009," retrieved 2 March 2011 from Whistleblower Laws website, available at: <http://whistleblowerlaws.com/content/view/132/9/>.

⁹⁶ Assemblyman Sam Hoyt, Letter to Governor Paterson, p.3, submitted 14 January 2010, retrieved 28 February 2011 from New York State Assembly website, available at: http://assembly.state.ny.us/member_files/144/20100115/2010drp.pdf.

which has been historically underfunded, would profit more from a merger with the Medicaid Inspector General's Office or with MFCU, both of which have much greater resources and staff at their disposal than OFIG does to combat welfare fraud.

Since OWIG is already located within MFCU, the IDC recommends eliminating OWIG and transferring its functions and responsibilities to MFCU. Because OWIG is already a very small agency and is funded predominantly through monies from a special revenue fund (\$1.2 million), dissolving the agency would only yield \$378,000 in General Fund savings. However, MFCU already has a staff of 300 people, and with additional funding achieved through OMIG's proposed dissolution, the Unit would certainly be equipped with the resources and capabilities necessary to continue OWIG's responsibilities as well.

A related issue, which the IDC came across during the course of its research, is the existence of a second Welfare Inspector General, appointed by the State Comptroller. This particular agency was the source of much confusion and misunderstanding throughout the course of this report, since it carries the same name as OWIG, and yet is set up in an entirely separate section of the Executive Law (§46). Located within the Department of Audit & Control, this §46 Welfare IG is charged with the very similar mission of "[investigating] complaints from the public or any other source concerning alleged abuses, suspected frauds, and other violations of the welfare system, which shall be deemed to include medical assistance."⁹⁷]

The confusion created by the existence of this §46 Welfare IG is an area the IDC encourages SAGE Commission to further examine to determine the potential for additional efficiency savings. With three other entities (namely, the Comptroller's Office, OMIG, and MFCU) in charge of investigating welfare fraud, it also strengthens the case for a dissolution of OFIG whose existence can simply no longer be justified.

Efficiencies Generated Through IG Consolidation

A summary of the efficiencies generated through this consolidation proposal is outlined below. In addition to streamlining the State's Inspector General's system and offering an approach to combating government fraud that is coherent, comprehensive, and unified, a consolidation of IGs creates a win-win situation:

- It fixes our current patchwork system of IGs;
- It strengthens our central government watchdog, the State Inspector General's Office, by expanding its authority and jurisdiction;
- It enhances our State's effectiveness to combat Medicaid fraud; and
- It generates an estimated \$37 million in savings, which can be used to help plug the state's current budget deficit and save valuable social and human services from falling under the Executive's budget ax.

⁹⁷ Executive Law §48(1).

Summary of Recommended IG Consolidations

Inspector General's Offices	Pre-Consolidation	Post-Consolidation	
	2011-12 Budget	2011-12 Budget	Savings (General Fund)
State IG	\$5.6 million	\$11.2 million	N/A
Welfare (OWIG)	\$1.6 million	\$0	\$0.4 million
Workers' Comp (OFIG)	TBD	TBD	TBD
MTA IG	\$14 million	\$1.4 million	\$7 million*
Medicaid (OMIG)	\$80.4 million	\$0	\$29.6 million
MFCU	\$47.9 million	\$95 million	N/A
Total General Fund Savings			\$37 million

*Indicates savings from designated MTA fund

Finally, in addition to statutory IG consolidation, the IDC recommends examining the proliferation of non-statutory IGs, identifying redundancies with the functions of the State IG and, if deemed useful, changing their titles to something other than "Inspector General." The discovery of the Comptroller's Welfare Inspector General and the DOCS Inspector General, which were discussed in previous sections of the report, are only two examples of the many IG functions that exist in our State's government today.

Nearly every single agency currently has an IG, or some other variation thereof, responsible for conducting audits and other independent investigations into his or her assigned agency to uncover corruption and other incidences of wrongdoing. These include chiefs of investigation, investigators, investigative auditors, supervising investigative auditors, directors, deputy directors and assistant directors of internal audit, inspectors, supervising inspectors – the list goes on.⁹⁸ A search through the Department of Civil Service website revealed that at least 523 of the exempt class (2) positions available at the State's departments and agencies involve audits, inspections, or investigations (see Appendix). These do not include positions in the Department's other 7 jurisdictional classifications, such as "non-competitive" (1) and "unclassified" (4).

Part of creating government efficiency is to make government transparent and less confusing for the general public. The average New Yorker should easily be able to navigate and understand our government's structure, its agencies' missions, functions, responsibilities, and jurisdictions. And that inevitably includes getting a handle of the State IG system to uncover corruption and address fraud, waste, and abuse.

⁹⁸ For a complete list of state investigative positions, see Appendix.

Conclusion

At a time when Government is turning over every rock to prevent further cuts to public services, streamlining the State's inspector general system is one of the best ways to ensure that every taxpayer dollar is spent as efficiently as possible. As the Governor so pointedly noted, "a watchdog needs teeth." But it is better to have one big watchdog with adult teeth than many little watchdog puppies with baby teeth. By streamlining the existing patchwork of agency IGs, we create a win-win situation: not only do we reduce the burden on the taxpayer, but we also maximize the State's efficacy in investigating corruption and bringing accountability to our government. It is time to rightsize government, root out systemic corruption, and return the Empire State to the forefront of competency, integrity, and pride, once and for all.

Appendix

Investigative Positions at State Agencies & Departments – Class-Exempt (2)

Position	Departments/Agencies	Number
A		
Asst Chief of Investigations (2)	Correctional Services	1
	Taxation and Finance	1
Asst Director of Audit & Counseling (1)	Executive – Office of the Governor – IG	1
Asst Director of Insurance Frauds Bureau (1)	Insurance	1
Asst Director of Internal Audit (3)	Audit and Control	2
	Banking	1
Asst Medicaid Inspector General (5)	Health – Office of the Medicaid IG	5
C		
Chief of Investigations (7)	Audit and Control	1
	Banking	1
	Correctional Services	1
	Executive – Elections	1
	Family Assistance – C&FS	1
	Labor – SIF	1
	Mental Hygiene – OMRDD	1
Chief Investigator (2)	Executive – Office of the Governor – IG	2
Confidential Investigator (2)	Executive – Budget – Loc Gov Ethics	1
	State	1
D		
Deputy Chief Investigator (2)	Executive – Office of the Governor – IG	2
Deputy Director of Audits, Investigations & Licensing (1)	Executive – Racing & Wagering	1
Deputy Inspector General (4)	Executive – Human Rights	1
	Labor – Admin – General	1
	Tax & Finance	1
	Transportation	1
Deputy Medicaid Inspector General (3)	Health – Office of the Medicaid IG	3
Director of Audits (1)	Education – HESC	1
Director of Audit & Consulting (1)	Executive – Office of the Governor – IG	1
Director and Chief of Investigations (2)	Executive – Office of the Governor – IG	2
Director of Insurance Frauds Bureau (1)	Insurance	1

Director of Internal Audit (26)	Agriculture and Markets	1
	Audit and Control	1
	Banking	1
	Civil Service	1
	Economic Development	1
	Education	1
	Environmental Conservation	1
	Executive – Alcohol & Beverage Control	1
	Executive – Criminal Justice Services	1
	Executive – H&CR	1
	Executive – PR&HP	1
	Executive – Parole	1
	Executive – Office for Technology	1
	Family Assistance – C&FS	1
	Family Assistance – TDA	1
	Health	1
	Insurance	1
	Labor – Admin – General	1
	Labor – SIF	1
	Labor – Workers' Compensation Board	1
	Mental Hygiene – OASAS	1
	Mental Hygiene – OMRDD	1
	Misc – Thruway Authority	1
	Public Service	1
	State	1
	Taxation and Finance	1
Director of Investigations (5)	Executive – Consumer Protection Brd	1
	Labor – Admin – General	1
	Labor – SIF	1
	Taxation and Finance	2
Director, Office of Audit and Quality Control (1)	Health – Office of the Medicaid IG	1
Director of Quality Assurance (1)	Executive – Office of the Governor – IG	1
Director of Workers' Comp Inspectional Services (1)	Labor – Workers' Compensation Board	1
E		
Election Law Enforcement Investigator (1)	Executive – Board of Elections	1

F		
First Deputy Inspector General (1)	Executive – Office of the Governor – IG	1
First Deputy Medicaid Inspector General (1)	Health – Office of the Medicaid IG	1
I		
Investigative Aide (8)	Executive – Office of the Governor – IG	8
Investigative Assistant (15)	Executive – Office of the Governor – IG	15
Investigative Auditor (56)	Audit and Control	14
	Executive – Board of Elections	8
	Executive – Office of the Governor – IG	16
	Executive – Office of the Governor – Moreland Acct. Commission	6
	Executive – H&CR	2
	Family Assistance – C&FS	2
	Labor – Admin – General	3
	Misc – Thruway Authority	3
	Transportation	2
Investigative Counsel (14)	Executive – Office of the Governor – IG	14
Investigator (285)	Agriculture & Markets	1
	Banking	11
	Correctional Services	15
	Environmental Conservation	1
	Executive – Elections	2
	Executive – Quality of Care & Advocacy	2
	Executive – Racing & Wagering – Harness Racing	16
	Executive – Racing & Wagering – Quarter Horse Racing	2
	Executive – Racing & Wagering – Thoroughbred Racing	4
	Family Assistance – TDA	1
	Health	1
	Labor – Admin – General	2
	Labor – Workers' Compensation Board	2
	Law	175
	Law – MFCU	25
	Mental Hygiene – OASAS	1
	Mental Hygiene – OMRDD	7

	Misc – Labor Management Committee	1
	State – Public Integrity	5
	Tax and Finance	11
Investigator State Inspector General (28)	Executive – Office of the Governor – IG	28
M		
Medicaid Inspector General (1)	Health – Office of the Medicaid IG	1
R		
Racing Inspector (18)	Executive – Racing & Wagering – Quarter Horse Racing	18
Racing Investigator (7)	Executive – Racing & Wagering	7
Racing License Investigator (2)	Executive – Racing & Wagering – Thoroughbred Racing	2
S		
Special Audit Investigator (8)	Law	8
Special Deputy Inspector General (1)	Executive – Office of the Governor – IG	1
Supervising Inspector (2)	Executive – Racing & Wagering – Quarter Horse Racing	2
Supervising Investigative Auditor (2)	Executive – Board of Elections	2
W		
Workers' Comp Fraud Inspector General (1)	Labor – Workers' Compensation Board	1
Total		523