

Appointing inspectors general to probe reports of wrongdoing is politically popular. And some IGs are becoming very powerful.

FRAUD SQUAD

By Jonathan Walters



Miami-Dade Inspector General Chris Mazzella

When the story broke last summer of the apparently routine and wholesale looting of New York State's \$44.5 billion Medicaid system by shady providers, the response of state officials was predictable: They expressed shock and anger. And they vowed to do something about it. What they vowed to do was predictable, too. They promised to

install an inspector general charged with ferreting out the public-sector corruption troika: waste, fraud and abuse.

That job now falls to Kimberly O'Connor, a former county assistant district attorney, named in August to be New York's Medicaid inspector general. If the track record of other inspectors general in state and local government around the country is any indication, New York's new Medicaid IG could prove to

be anything ranging from a powerful force for cleaner, more efficient government to a mere political fig leaf for rightly embarrassed New York state officials.

Which of these O'Connor ultimately becomes will depend on a host of factors related to her own character and ability and the terms and conditions of the new job. How aggressively will she push her mandate, and what kind of talent will she gather

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around her to do that? What powers and resources will she be given to pursue cases? And, finally, how much political backing or cover will she be provided as she pursues what promises to be a huge and messy job? For even in a state as large as New York with billions of dollars in contracts, the place can get very small and very incestuous very quickly.

In looking at states and localities, there is no monolithic model for what an IG is or does. As czars of clean government, there are IGs who have fearsome reputations as no-nonsense and politically bulletproof bulwarks of government integrity, and there are IGs with reputations as lapdogs who may nip at the occasional low-level public employee but who would never bite the real hands that feed them. According to Roland Malan, executive director of the Association of Inspectors General, "Inspectors general can be created by almost anyone at any level of government." There are hundreds of inspectors general currently operating at the state and local levels, and more are being added every year, he says.

In fact, creating an office of inspector general seems to be a highly popular act these days, especially among new chief executives promising to crack down on cor-

rupt government. Rookie governors from New Jersey to Indiana have recently pushed for IG offices to prove to voters that there's a new sheriff in town. The push for inspectors general has an aura of toughness about it because unlike auditors or comptrollers—whose main job is to verify that what others in government are telling them is factual—IGs are specifically charged with the job of investigating reports of wrongdoing. They typically have the power to subpoena and in some places are tightly spliced into the criminal justice system.

ISSUES OF INDEPENDENCE

What high-profile IGs tend to dig into are huge piles of public money, those devoted to big programs and big capital projects. Responding to complaints about chronic corruption in New Jersey, for example, Acting Governor Richard Codey last fall created a state office of inspector general specifically to oversee the billions the state lets in contracts each year. And he pointed his new IG in a very clear direction, at the famously bumbling New Jersey Schools Construction Corp., which oversees acquiring land for and building schools throughout the state.

Within just a few months of being appointed, the new IG, Mary Jane Cooper, re-

ported that the state's \$8.6 billion school construction program was a spending and management disaster, showing, for example, that the corporation had spent \$67 million in state money to acquire land that was already publicly owned. She came out with a list of fundamental changes that she felt were needed in the structure and operation of the corporation. Whether or not her investigations will lead to criminal cases remains to be seen. Like most IGs nationally, Cooper's office doesn't have the power to prosecute, only to investigate and then refer cases to prosecutors for possible follow-up if that seems appropriate. John F. Spencer, CEO of the corporation since 2003, did resign in the wake of the IG's findings.

Indiana's new inspector general got very busy very quickly, as well. Since the office was created by Governor Mitch Daniels' executive order at the beginning of the year, IG David Thomas says he's fielded more than 350 requests for investigations. Thomas' 20 investigators have developed cases ranging from Medicaid fraud to bribery of public officials. They have even looked into alleged abuses of the state's disability license plate and placard policy.

The IG position in Indiana proved to be so popular that legislation was enacted in May to make the post permanent. Under the law, the IG can investigate three general areas: criminal matters involving public

corruption, state ethics violations and more typical cases involving efficiency in state operations. Thomas notes that his office has considerable power in that it can actually pursue criminal cases, and so far, his office has made seven felony arrests. Critics of the law, though, argue that it does not offer the IG quite enough independence because the governor appoints the IG, and the IG's term is concurrent with the governor's.

The issue of independence is indeed tricky when it comes to executive-appointed inspectors general. Will IGs appointed by a mayor or governor prove reluctant to press a case with obvious negative political consequences for the person who put them in office? Indiana's Thomas got off to a pretty fast start in getting embroiled in just such a controversy.

Last July, Democrats in the Indiana legislature filed a formal complaint with the state IG demanding that his office investigate Republican Governor Daniels' use of a state-owned RV for campaigning. The dispute had the strong whiff of political pettiness to it, but the IG's office agreed to take a look. When Thomas' shop cleared Daniels

of wrongdoing in the RV caper, Democrats hooted about the IG's lack of independence.

STRUCTURAL PROBLEMS

There are jurisdictions, though, that have figured out ways to pretty well insulate inspectors general from charges of political waffling. Miami-Dade Inspector General Chris Mazzella, for example, insists that he has a free hand in how he operates, based on the structure and the funding of his office.

Unlike most places, where the IG is chosen by the same elected officials who could become targets of an investigation, Miami-Dade's is selected by an independent five-member panel that includes officials ranging from the president of the Miami-Dade Police Chiefs' Association to the public defender for the 11th Judicial Court for Miami-Dade County. The IG is confirmed by the county commission and can be removed only by a two-thirds vote of the commission. He is one of the few county officials with an actual contract, which runs for four years.

Moreover, Mazzella's nearly \$4 million budget and 31-member staff are not contin-

gent on the enthusiastic support of elected or high-level appointed officials. While his budget is subject to some county commission oversight, it is virtually guaranteed, as it comes from a percentage of all the contracts let by the county, from money recovered as a result of IG investigations and from fees for services.

In 2004, Mazzella's office identified more than \$6 million in questionable costs and lost revenues, and collected more than \$1 million in restitution. Mazzella says that the cases developed by his office are a result of everything from tips (which streamed in at better than one a day last year), to news stories, to staff work. Cases the office has helped crack range from schemes to illegally funnel campaign cash to candidates for the county commission, to attempts to defraud the county out of child assistance money, to schemes to steal jet fuel from Miami-Dade International Airport.

Mazzella's approach to the job isn't just to bag bad apples, though. He says he sees his mandate as much broader than that. "My philosophy is that we're trying to create an atmosphere of credibility within government. We work closely with public officials, whether commissioners or high-level administrators, and we try to include them in what we're doing when we can. We don't run around behind a cloak of secrecy. The whole idea is to make government more transparent, and most public officials want the same thing."

Clearly, Mazzella has the attitude, the staff, the structure and the resources to faithfully carry out the lofty expectations of an IG's office. In other places, the whole program is a lot messier, and there's probably no messier place these days than Chicago, where Mayor Richard M. Daley's administration has seen a running, steady diet of corruption-related headlines, in areas from contracting to city hiring.

If Mazzella's shop is a model of how to build integrity into the IG position, Chicago is one of the better models for how to wring it out. Last June, the city's long-serving inspector general Alexander Vroustouris submitted his resignation in the wake of criticism that he was too slow to jump on the latest of the city's unfolding corruption scandals, this one involving the hiring of politically well-connected—if not exactly well-qualified—people to work in certain city jobs.

In announcing Vroustouris' resignation, Ron Huberman, chief of staff to



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Mayor Daley, seemed to want to pin the blame for the scandal squarely on the departing IG. “We have recently discovered,” Huberman said, “that many of the problems in the inspector general’s office have resulted in delayed or incomplete investigations, making it much more difficult for us to carry out meaningful reforms.”

Blaming Vroustouris for ethical lapses in the Daley administration is sadly amusing, says Jay Stewart, executive director of the Chicago-based Better Government Association. Stewart notes that in Vroustouris’ 16-year tenure, he was famously squeamish about going after anyone with any real political power. “Rank-and-file employees and other small fish repeatedly suffered the wrath of the IG,” says Stewart. “But mysteriously, no one with clout ever got touched.”

But Stewart blames the structure of the IG system in the city for its failures to ferret out significant corruption as much as he does any individual serving in the position. In the first place, the IG is appointed by the mayor (he or she does have to be confirmed by the city council). Stewart believes that few mayors would ever be inclined to appoint a tough outsider to the post. Indeed, Daley brought Vroustouris along with him from the mayor’s previous job as state’s attorney for Cook County. Since then, Vroustouris had been Daley’s one and only IG. “And structurally you’ve got other big problems,” says Stewart.

One of those is the IG’s term of office. “It’s a four-year term congruent with the mayor’s,” he says. “The shorter the term, the less likely they are to be independent. If you had a decade-long appointment, the IG might be able to ride out a hostile mayor.” After being criticized for delays in replacing Vroustouris, Daley responded last month by appointing David Hoffman to the post. Hoffman, a former federal prosecutor and clerk to the late Chief Justice William Rehnquist, has a reputation for both toughness and independence.

But the problem of IGs who are too cozy with top officials is not at all uncommon, says Frank Anechiarico, professor of government and law at Hamilton College in upstate New York. Which is why some states and localities are trying a different way of structuring the IG function. It is a system of

ad hoc inspectors general who oversee specific projects and who aren’t part of the jurisdiction they’re serving. Called “independent private-sector inspectors general”—“IPSIGs” for short—they were used very effectively by New York City, for example, to monitor contracts related to 9/11 cleanup efforts, notes Anechiarico. “The city used pre-cleared law firms who had experts in forensic auditing and also engineering,” he says.

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The main advantage to IPSIGs, Anechiarico says, is that they aren’t hardwired into government, and because of their ad hoc status, don’t tend to establish relationships with public officials that could cloud due diligence when it comes to future jobs and investigations.

MORE TRANSPARENCY

As effective as IPSIGs might be, though, the typical setup in state and local government for the foreseeable future will be along the lines of the more traditional inspector general’s office—someone appointed to both be part of and oversee government operations and contracting. So all the issues of autonomy, aggressiveness, skill and resources will continue to influence how they perform.

And that will no doubt continue to be a problematic mix. In Illinois, lawmakers a few years ago created five inspector general positions partly in response to the scandal over the sale of commercial driver’s licenses that brought down Governor George H. Ryan. Each one is appointed by and oversees the offices and operations of separately elected state officials, from the secretary of state to the attorney general. How to explain the gaggle of five? David Morrison, of Illinois Campaign for Political Reform, a statewide political watchdog group, says, “None of the officials wanted an IG who didn’t report directly to them.”

If that doesn’t sound like the best way to build independence into governmental oversight, there are those who are trying gamely to confirm one way or the other

whether the IG system in Illinois is actually working. And that’s hard to do because inspectors general there operate in virtual secrecy. No one can really tell whether an IG is acting as little more than an ethical bedsheet for public officials who want to appear honest or actually aggressively battling corruption.

One person who is trying to figure that out is state Senator Susan Garrett. She chairs the Senate Committee on State Government, which has held hearings on the job IGs are doing and even invited the various state IGs in to report to the Senate on their activities. None have been willing to appear, however. To Garrett’s eye, IGs who are supposed to be dedicated to transparent, open and honest government are proving to be remarkably tight-lipped about their work. It’s not that there are documented problems with the IGs, she says: “We just don’t know. We’re looking for more transparency, but people like me are getting pushed away.”

A report released last spring by Governor Rod Blagojevich’s now-retired executive inspector general, Zaldwynaka Scott, typifies what comes out of Illinois IG’s offices, say critics of the current system. The report was a mere 10 pages long and was entitled “A Celebration of Integrity.” Upon reading the report, it was hard to get up much of a party mood, though, say good-government advocates in Illinois. The report included the number of complaints filed with the IG’s office, the types of allegations and how many Scott thought might be worth investigating. There was no discussion at all about actual investigations or what actions were being pursued. To many, the Scott report was more PR than IG.

Which is to say that things could go any which way in New York when it comes to new Medicaid Inspector General Kimberly O’Connor and her job of getting a handle on the state’s apparently booming business in Medicaid fraud. There is clearly a wide and potentially rewarding field on which a top-notch, well-equipped and nimble IG might begin to play. The beleaguered taxpayers of New York can only hope that O’Connor will be cut loose to play hard and play the entire field.

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