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**SUBSTITUTE SENATE BILL 5960**

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**State of Washington                      62nd Legislature                      2011 1st Special Session**

**By Senate Ways & Means** (originally sponsored by Senators Keiser, Pflug, and Kline)

READ FIRST TIME 05/19/11.

1            AN ACT Relating to medicaid fraud; amending RCW 74.09.210,  
2            74.09.230, and 43.43.830; reenacting and amending RCW 9A.04.080; adding  
3            new sections to chapter 74.09 RCW; adding a new chapter to Title 74  
4            RCW; prescribing penalties; and declaring an emergency.

5            BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            **Sec. 1.** RCW 9A.04.080 and 2009 c 61 s 1 and 2009 c 53 s 1 are each  
7            reenacted and amended to read as follows:

8            (1) Prosecutions for criminal offenses shall not be commenced after  
9            the periods prescribed in this section.

10           (a) The following offenses may be prosecuted at any time after  
11           their commission:

12           (i) Murder;

13           (ii) Homicide by abuse;

14           (iii) Arson if a death results;

15           (iv) Vehicular homicide;

16           (v) Vehicular assault if a death results;

17           (vi) Hit-and-run injury-accident if a death results (RCW  
18           46.52.020(4)).

1 (b) The following offenses shall not be prosecuted more than ten  
2 years after their commission:

3 (i) Any felony committed by a public officer if the commission is  
4 in connection with the duties of his or her office or constitutes a  
5 breach of his or her public duty or a violation of the oath of office;

6 (ii) Arson if no death results; or

7 (iii)(A) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is  
8 reported to a law enforcement agency within one year of its commission;  
9 except that if the victim is under fourteen years of age when the rape  
10 is committed and the rape is reported to a law enforcement agency  
11 within one year of its commission, the violation may be prosecuted up  
12 to the victim's twenty-eighth birthday.

13 (B) If a violation of RCW 9A.44.040 or 9A.44.050 is not reported  
14 within one year, the rape may not be prosecuted: (I) More than three  
15 years after its commission if the violation was committed against a  
16 victim fourteen years of age or older; or (II) more than three years  
17 after the victim's eighteenth birthday or more than seven years after  
18 the rape's commission, whichever is later, if the violation was  
19 committed against a victim under fourteen years of age.

20 (c) Violations of the following statutes may be prosecuted up to  
21 the victim's twenty-eighth birthday: RCW 9A.44.073, 9A.44.076,  
22 9A.44.083, 9A.44.086, (~~9A.44.070, 9A.44.080,~~) 9A.44.100(1)(b),  
23 9A.44.079, 9A.44.089, or 9A.64.020.

24 (d) The following offenses shall not be prosecuted more than six  
25 years after their commission or their discovery, whichever occurs  
26 later:

27 (i) Violations of RCW 9A.82.060 or 9A.82.080;

28 (ii) Any felony violation of chapter 9A.83 RCW;

29 (iii) Any felony violation of chapter 9.35 RCW; or

30 (iv) Theft in the first or second degree under chapter 9A.56 RCW  
31 when accomplished by color or aid of deception.

32 (e) The following offenses shall not be prosecuted more than five  
33 years after their commission: Any class C felony under chapter  
34 (~~74.09~~) 82.36(~~7~~) or 82.38 RCW.

35 (f) Any felony under chapter 74.09 RCW shall not be prosecuted more  
36 than ten years after their commission.

37 (g) Bigamy shall not be prosecuted more than three years after the  
38 time specified in RCW 9A.64.010.

1           ~~((g))~~ (h) A violation of RCW 9A.56.030 must not be prosecuted  
2 more than three years after the discovery of the offense when the  
3 victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

4           ~~((h))~~ (i) No other felony may be prosecuted more than three years  
5 after its commission; except that in a prosecution under RCW 9A.44.115,  
6 if the person who was viewed, photographed, or filmed did not realize  
7 at the time that he or she was being viewed, photographed, or filmed,  
8 the prosecution must be commenced within two years of the time the  
9 person who was viewed or in the photograph or film first learns that he  
10 or she was viewed, photographed, or filmed.

11           ~~((i))~~ (j) No gross misdemeanor may be prosecuted more than two  
12 years after its commission.

13           ~~((j))~~ (k) No misdemeanor may be prosecuted more than one year  
14 after its commission.

15           (2) The periods of limitation prescribed in subsection (1) of this  
16 section do not run during any time when the person charged is not  
17 usually and publicly resident within this state.

18           (3) In any prosecution for a sex offense as defined in RCW  
19 9.94A.030, the periods of limitation prescribed in subsection (1) of  
20 this section run from the date of commission or one year from the date  
21 on which the identity of the suspect is conclusively established by  
22 deoxyribonucleic acid testing, whichever is later.

23           (4) If, before the end of a period of limitation prescribed in  
24 subsection (1) of this section, an indictment has been found or a  
25 complaint or an information has been filed, and the indictment,  
26 complaint, or information is set aside, then the period of limitation  
27 is extended by a period equal to the length of time from the finding or  
28 filing to the setting aside.

29           **Sec. 2.** RCW 74.09.210 and 1989 c 175 s 146 are each amended to  
30 read as follows:

31           (1) No person, firm, corporation, partnership, association, agency,  
32 institution, or other legal entity, but not including an individual  
33 public assistance recipient of health care, shall, on behalf of himself  
34 or others, obtain or attempt to obtain benefits or payments under this  
35 chapter in a greater amount than that to which entitled by means of:

36           (a) A willful false statement;

1 (b) By willful misrepresentation, or by concealment of any material  
2 facts; or

3 (c) By other fraudulent scheme or device, including, but not  
4 limited to:

5 (i) Billing for services, drugs, supplies, or equipment that were  
6 unfurnished, of lower quality, or a substitution or misrepresentation  
7 of items billed; or

8 (ii) Repeated billing for purportedly covered items, which were not  
9 in fact so covered.

10 (2) Any person or entity knowingly violating any of the provisions  
11 of subsection (1) of this section shall be liable for repayment of any  
12 excess benefits or payments received, plus interest at the rate and in  
13 the manner provided in RCW 43.20B.695. Such person or other entity  
14 shall further, in addition to any other penalties provided by law, be  
15 subject to civil penalties. The secretary or director, as appropriate,  
16 or the attorney general may assess civil penalties in an amount not to  
17 exceed three times the amount of such excess benefits or payments:  
18 PROVIDED, That these civil penalties shall not apply to any acts or  
19 omissions occurring prior to September 1, 1979. RCW 43.20A.215 governs  
20 notice of a civil fine assessed by the secretary or director, as  
21 appropriate, and provides the right to an adjudicative proceeding.

22 (3) A criminal action need not be brought against a person for that  
23 person to be civilly liable under this section.

24 (4) In all administrative proceedings under this section, service,  
25 adjudicative proceedings, and judicial review of such determinations  
26 shall be in accordance with chapter 34.05 RCW, the administrative  
27 procedure act.

28 (5) Civil penalties shall be deposited (~~(in the general fund)~~) upon  
29 their receipt into the medicaid fraud penalty account established in  
30 section 3 of this act.

31 (6) The attorney general may contract with private attorneys and  
32 local governments in bringing actions under this section as necessary.

33 NEW SECTION. Sec. 3. A new section is added to chapter 74.09 RCW  
34 to read as follows:

35 The medicaid fraud penalty account is created in the state  
36 treasury. All receipts from civil penalties collected under RCW  
37 74.09.210, all receipts received under settlements that originated

1 under a filing under the federal false claims act, and all receipts  
2 received under settlements that originated under the state medicaid  
3 fraud false claims act, chapter 74.--- RCW (the new chapter created in  
4 section 22 of this act) must be deposited into the account. Moneys in  
5 the account may be spent only after appropriation and must be used only  
6 for medicaid services and for medicaid fraud enforcement activities.

7 NEW SECTION. **Sec. 4.** A new section is added to chapter 74.09 RCW  
8 to read as follows:

9 (1) For the purposes of this section:

10 (a) "Employer" means any person, firm, corporation, partnership,  
11 association, agency, institution, or other legal entity.

12 (b) "Whistleblower" means an employee of an employer that obtains  
13 or attempts to obtain benefits or payments under this chapter in  
14 violation of RCW 74.09.210, who in good faith reports a violation of  
15 RCW 74.09.210 to the department or the authority.

16 (c) "Workplace reprisal or retaliatory action" includes, but is not  
17 limited to: Denial of adequate staff to report duties; frequent staff  
18 changes; frequent and undesirable office changes; refusal to assign  
19 meaningful work; unwarranted and unsubstantiated report of misconduct  
20 under Title 18 RCW; unwarranted and unsubstantiated letters of  
21 reprimand or unsatisfactory performance evaluations; demotion;  
22 reduction in pay; denial of promotion; suspension; dismissal; denial of  
23 employment; or a supervisor or superior behaving in or encouraging  
24 coworkers to behave in a hostile manner toward the whistleblower; or a  
25 change in the physical location of the employee's workplace or a change  
26 in the basic nature of the employee's job, if either are in opposition  
27 to the employee's expressed wish.

28 (2) A whistleblower who has been subjected to workplace reprisal or  
29 retaliatory action has the remedies provided under chapter 49.60 RCW.  
30 RCW 4.24.500 through 4.24.520, providing certain protection to persons  
31 who communicate to government agencies, apply to complaints made under  
32 this section. The identity of a whistleblower who complains, in good  
33 faith, to the department or the authority about a suspected violation  
34 of RCW 74.09.210 may remain confidential if requested. The identity of  
35 the whistleblower must subsequently remain confidential unless the  
36 department or the authority, as appropriate, determines that the  
37 complaint was not made in good faith.

1 (3) This section does not prohibit an employer from exercising its  
2 authority to terminate, suspend, or discipline an employee who engages  
3 in workplace reprisal or retaliatory action against a whistleblower.  
4 The protections provided to whistleblowers under this chapter do not  
5 prevent an employer from: (a) Terminating, suspending, or disciplining  
6 a whistleblower for other lawful purposes; or (b) reducing the hours of  
7 employment or terminating employment as a result of the demonstrated  
8 inability to meet payroll requirements. The department or the  
9 authority, as appropriate, shall determine if the employer cannot meet  
10 payroll in cases where a whistleblower has been terminated or had hours  
11 of employment reduced due to the inability of a facility to meet  
12 payroll.

13 (4) The department or the authority, as appropriate, shall adopt  
14 rules to implement procedures for filing, investigation, and resolution  
15 of whistleblower complaints that are integrated with complaint  
16 procedures under this chapter. The department or the authority, as  
17 appropriate, shall adopt rules designed to discourage whistleblower  
18 complaints made in bad faith or for retaliatory purposes.

19 NEW SECTION. **Sec. 5.** A new section is added to chapter 74.09 RCW  
20 to read as follows:

21 The following must be medicare providers in order to be paid under  
22 the medicaid program: Providers of durable medical equipment and  
23 related supplies, providers of prosthetics, providers of orthotics, and  
24 providers of medical supplies and related services.

25 **Sec. 6.** RCW 74.09.230 and 1979 ex.s. c 152 s 4 are each amended to  
26 read as follows:

27 ~~((Any))~~ (1)(a) A person, including any corporation, who with intent  
28 to deprive wrongfully obtains, or exerts unauthorized control over,  
29 property or services, which exceed or exceeds five thousand dollars in  
30 value, from any program authorized by this chapter is guilty of  
31 medicaid theft.

32 (b) A person, including any corporation, who by color or aid of  
33 deception, obtains control over property or services from any program  
34 authorized under this chapter, or the value thereof and intends to  
35 deprive the program of such property and services, which exceed or  
36 exceeds five thousand dollars in value is guilty of medicaid theft.

1 (c) Medicaid theft is a class B felony: PROVIDED, That the fine,  
2 if imposed, shall not be in an amount more than fifty thousand dollars,  
3 except as authorized by RCW 9A.20.030.

4 (2) A person, including any corporation, (~~that~~  
5 ~~(1)~~) who

6 (a) knowingly makes or causes to be made any false statement or  
7 representation of a material fact in any application for any payment  
8 under any medical care program authorized under this chapter, or

9 (~~(2)~~) (b) at any time knowingly makes or causes to be made any  
10 false statement or representation of a material fact for use in  
11 determining rights to such payment, or knowingly falsifies, conceals,  
12 or covers up by any trick, scheme, or device a material fact in  
13 connection with such application or payment, or

14 (~~(3)~~) (c) having knowledge of the occurrence of any event  
15 affecting (~~(a)~~) (i) the initial or continued right to any payment, or  
16 (~~(b)~~) (ii) the initial or continued right to any such payment of any  
17 other individual in whose behalf he or she has applied for or is  
18 receiving such payment, conceals or fails to disclose such event with  
19 an intent fraudulently to secure such payment either in a greater  
20 amount or quantity than is due or when no such payment is authorized,  
21 shall be guilty of a class C felony: PROVIDED, That the fine, if  
22 imposed, shall not be in an amount more than twenty-five thousand  
23 dollars, except as authorized by RCW 9A.20.030.

24 (3) The definitions in RCW 9A.56.010 apply to this section.

25 **Sec. 7.** RCW 43.43.830 and 2011 c 253 s 5 are each amended to read  
26 as follows:

27 Unless the context clearly requires otherwise, the definitions in  
28 this section apply throughout RCW 43.43.830 through 43.43.845.

29 (1) "Applicant" means:

30 (a) Any prospective employee who will or may have unsupervised  
31 access to children under sixteen years of age or developmentally  
32 disabled persons or vulnerable adults during the course of his or her  
33 employment or involvement with the business or organization;

34 (b) Any prospective volunteer who will have regularly scheduled  
35 unsupervised access to children under sixteen years of age,  
36 developmentally disabled persons, or vulnerable adults during the  
37 course of his or her employment or involvement with the business or

1 organization under circumstances where such access will or may involve  
2 groups of (i) five or fewer children under twelve years of age, (ii)  
3 three or fewer children between twelve and sixteen years of age, (iii)  
4 developmentally disabled persons, or (iv) vulnerable adults;

5 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;  
6 or

7 (d) Any prospective custodian in a nonparental custody proceeding  
8 under chapter 26.10 RCW.

9 (2) "Business or organization" means a person, business, or  
10 organization licensed in this state, any agency of the state, or other  
11 governmental entity, that educates, trains, treats, supervises, houses,  
12 or provides recreation to developmentally disabled persons, vulnerable  
13 adults, or children under sixteen years of age, or that provides child  
14 day care, early learning, or early learning childhood education  
15 services, including but not limited to public housing authorities,  
16 school districts, and educational service districts.

17 (3) "Civil adjudication proceeding" is a judicial or administrative  
18 adjudicative proceeding that results in a finding of, or upholds an  
19 agency finding of, domestic violence, abuse, sexual abuse, neglect,  
20 abandonment, violation of a professional licensing standard regarding  
21 a child or vulnerable adult, or exploitation or financial exploitation  
22 of a child or vulnerable adult under any provision of law, including  
23 but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted  
24 under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding"  
25 also includes judicial or administrative findings that become final due  
26 to the failure of the alleged perpetrator to timely exercise a legal  
27 right to administratively challenge such findings.

28 (4) "Conviction record" means "conviction record" information as  
29 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by  
30 either an adult or a juvenile. It does not include a conviction for an  
31 offense that has been the subject of an expungement, pardon, annulment,  
32 certificate of rehabilitation, or other equivalent procedure based on  
33 a finding of the rehabilitation of the person convicted, or a  
34 conviction that has been the subject of a pardon, annulment, or other  
35 equivalent procedure based on a finding of innocence. It does include  
36 convictions for offenses for which the defendant received a deferred or  
37 suspended sentence, unless the record has been expunged according to  
38 law.



1 (5) "Crime against children or other persons" means a conviction of  
2 any of the following offenses: Aggravated murder; first or second  
3 degree murder; first or second degree kidnapping; first, second, or  
4 third degree assault; first, second, or third degree assault of a  
5 child; first, second, or third degree rape; first, second, or third  
6 degree rape of a child; first or second degree robbery; first degree  
7 arson; first degree burglary; first or second degree manslaughter;  
8 first or second degree extortion; indecent liberties; incest; vehicular  
9 homicide; first degree promoting prostitution; communication with a  
10 minor; unlawful imprisonment; simple assault; sexual exploitation of  
11 minors; first or second degree criminal mistreatment; endangerment with  
12 a controlled substance; child abuse or neglect as defined in RCW  
13 26.44.020; first or second degree custodial interference; first or  
14 second degree custodial sexual misconduct; malicious harassment; first,  
15 second, or third degree child molestation; first or second degree  
16 sexual misconduct with a minor; commercial sexual abuse of a minor;  
17 child abandonment; promoting pornography; selling or distributing  
18 erotic material to a minor; custodial assault; violation of child abuse  
19 restraining order; child buying or selling; prostitution; felony  
20 indecent exposure; criminal abandonment; or any of these crimes as they  
21 may be renamed in the future.

22 (6) "Crimes relating to drugs" means a conviction of a crime to  
23 manufacture, delivery, or possession with intent to manufacture or  
24 deliver a controlled substance.

25 (7) "Crimes relating to financial exploitation" means a conviction  
26 for first, second, or third degree extortion; first, second, or third  
27 degree theft; medicaid theft or medicaid false statement (RCW  
28 74.09.230); first or second degree robbery; forgery; or any of these  
29 crimes as they may be renamed in the future.

30 (8) "Unsupervised" means not in the presence of:

31 (a) Another employee or volunteer from the same business or  
32 organization as the applicant; or

33 (b) Any relative or guardian of any of the children or  
34 developmentally disabled persons or vulnerable adults to which the  
35 applicant has access during the course of his or her employment or  
36 involvement with the business or organization.

37 With regard to peer counselors, "unsupervised" does not include  
38 incidental contact with children under age sixteen at the location at

1 which the peer counseling is taking place. "Incidental contact" means  
2 minor or casual contact with a child in an area accessible to and  
3 within visual or auditory range of others. It could include passing a  
4 child while walking down a hallway but would not include being alone  
5 with a child for any period of time in a closed room or office.

6 (9) "Vulnerable adult" means "vulnerable adult" as defined in  
7 chapter 74.34 RCW, except that for the purposes of requesting and  
8 receiving background checks pursuant to RCW 43.43.832, it shall also  
9 include adults of any age who lack the functional, mental, or physical  
10 ability to care for themselves.

11 (10) "Financial exploitation" means "financial exploitation" as  
12 defined in RCW 74.34.020.

13 (11) "Agency" means any person, firm, partnership, association,  
14 corporation, or facility which receives, provides services to, houses  
15 or otherwise cares for vulnerable adults, juveniles, or children, or  
16 which provides child day care, early learning, or early childhood  
17 education services.

18 (12) "Peer counselor" means a nonprofessional person who has equal  
19 standing with another person, providing advice on a topic about which  
20 the nonprofessional person is more experienced or knowledgeable, and  
21 who is a counselor for a peer counseling program that contracts with or  
22 is otherwise approved by the department, another state or local agency,  
23 or the court.

24 NEW SECTION. **Sec. 8.** Unless the context clearly requires  
25 otherwise, the definitions in this section apply throughout this  
26 chapter:

27 (1)(a) "Claim" means any request or demand made for a medicaid  
28 payment under chapter 74.09 RCW, whether under a contract or otherwise,  
29 for money or property and whether or not a government entity has title  
30 to the money or property, that:

31 (i) Is presented to an officer, employee, or agent of a government  
32 entity; or

33 (ii) Is made to a contractor, grantee, or other recipient, if the  
34 money or property is to be spent or used on the government entity's  
35 behalf or to advance a government entity program or interest, and the  
36 government entity:

1 (A) Provides or has provided any portion of the money or property  
2 requested or demanded; or

3 (B) Will reimburse such contractor, grantee, or other recipient for  
4 any portion of the money or property which is requested or demanded.

5 (b) A "claim" does not include requests or demands for money or  
6 property that the government entity has paid to an individual as  
7 compensation for employment or as an income subsidy with no  
8 restrictions on that individual's use of the money or property.

9 (2) "Custodian" means the custodian, or any deputy custodian,  
10 designated by the attorney general.

11 (3) "Documentary material" includes the original or any copy of any  
12 book, record, report, memorandum, paper, communication, tabulation,  
13 chart, or other document, or data compilations stored in or accessible  
14 through computer or other information retrieval systems, together with  
15 instructions and all other materials necessary to use or interpret the  
16 data compilations, and any product of discovery.

17 (4) "False claims act investigation" means any inquiry conducted by  
18 any false claims act investigator for the purpose of ascertaining  
19 whether any person is or has been engaged in any violation of this  
20 chapter.

21 (5) "False claims act investigator" means any attorney or  
22 investigator employed by the state attorney general who is charged with  
23 the duty of enforcing or carrying into effect any provision of this  
24 chapter, or any officer or employee of the state of Washington acting  
25 under the direction and supervision of the attorney or investigator in  
26 connection with an investigation pursuant to this chapter.

27 (6) "Government entity" means all state agencies that administer  
28 medicaid funded programs under this title.

29 (7)(a) "Knowing" and "knowingly" mean that a person, with respect  
30 to information:

31 (i) Has actual knowledge of the information;

32 (ii) Acts in deliberate ignorance of the truth or falsity of the  
33 information; or

34 (iii) Acts in reckless disregard of the truth or falsity of the  
35 information.

36 (b) "Knowing" and "knowingly" do not require proof of specific  
37 intent to defraud.

1 (8) "Material" means having a natural tendency to influence, or be  
2 capable of influencing, the payment or receipt of money or property.

3 (9) "Obligation" means an established duty, whether or not fixed,  
4 arising from an express or implied contractual, grantor-grantee, or  
5 licensor-licensee relationship, from a fee-based or similar  
6 relationship, from statute or rule, or from the retention of any  
7 overpayment.

8 (10) "Official use" means any use that is consistent with the law,  
9 and the rules and policies of the attorney general, including use in  
10 connection with: Internal attorney general memoranda and reports;  
11 communications between the attorney general and a federal, state, or  
12 local government agency, or a contractor of a federal, state, or local  
13 government agency, undertaken in furtherance of an investigation or  
14 prosecution of a case; interviews of any qui tam relator or other  
15 witness; oral examinations; depositions; preparation for and response  
16 to civil discovery requests; introduction into the record of a case or  
17 proceeding; applications, motions, memoranda, and briefs submitted to  
18 a court or other tribunal; and communications with attorney general  
19 investigators, auditors, consultants and experts, the counsel of other  
20 parties, and arbitrators or mediators, concerning an investigation,  
21 case, or proceeding.

22 (11) "Person" means any natural person, partnership, corporation,  
23 association, or other legal entity, including any local or political  
24 subdivision of a state.

25 (12) "Product of discovery" includes:

26 (a) The original or duplicate of any deposition, interrogatory,  
27 document, thing, result of the inspection of land or other property,  
28 examination, or admission, which is obtained by any method of discovery  
29 in any judicial or administrative proceeding of an adversarial nature;

30 (b) Any digest, analysis, selection, compilation, or derivation of  
31 any item listed in (a) of this subsection; and

32 (c) Any index or other manner of access to any item listed in (a)  
33 of this subsection.

34 (13) "Qui tam action" is an action brought by a person under  
35 section 12 of this act.

36 (14) "Qui tam relator" or "relator" is a person who brings an  
37 action under section 12 of this act.

1        NEW SECTION.    **Sec. 9.**    (1) Subject to subsection (2) of this  
2 section, a person is liable to the government entity for a civil  
3 penalty of not less than five thousand dollars and not more than ten  
4 thousand dollars, plus three times the amount of damages which the  
5 government entity sustains because of the act of that person, if the  
6 person:

7        (a) Knowingly presents, or causes to be presented, a false or  
8 fraudulent claim for payment or approval;

9        (b) Knowingly makes, uses, or causes to be made or used, a false  
10 record or statement material to a false or fraudulent claim;

11        (c) Conspires to commit one or more of the violations in this  
12 subsection (1);

13        (d) Has possession, custody, or control of property or money used,  
14 or to be used, by the government entity and knowingly delivers, or  
15 causes to be delivered, less than all of that money or property;

16        (e) Is authorized to make or deliver a document certifying receipt  
17 of property used, or to be used, by the government entity and,  
18 intending to defraud the government entity, makes or delivers the  
19 receipt without completely knowing that the information on the receipt  
20 is true;

21        (f) Knowingly buys, or receives as a pledge of an obligation or  
22 debt, public property from an officer or employee of the government  
23 entity who lawfully may not sell or pledge property; or

24        (g) Knowingly makes, uses, or causes to be made or used, a false  
25 record or statement material to an obligation to pay or transmit money  
26 or property to the government entity, or knowingly conceals or  
27 knowingly and improperly avoids or decreases an obligation to pay or  
28 transmit money or property to the government entity.

29        (2) The court may assess not less than two times the amount of  
30 damages which the government entity sustains because of the act of a  
31 person, if the court finds that:

32        (a) The person committing the violation of subsection (1) of this  
33 section furnished the Washington state attorney general with all  
34 information known to him or her about the violation within thirty days  
35 after the date on which he or she first obtained the information;

36        (b) The person fully cooperated with any investigation by the  
37 attorney general of the violation; and

1 (c) At the time the person furnished the attorney general with the  
2 information about the violation, no criminal prosecution, civil action,  
3 or administrative action had commenced under this title with respect to  
4 the violation, and the person did not have actual knowledge of the  
5 existence of an investigation into the violation.

6 NEW SECTION. **Sec. 10.** Any information furnished pursuant to this  
7 chapter is exempt from disclosure under the public records act, chapter  
8 42.56 RCW, until final disposition and all court ordered seals are  
9 lifted.

10 NEW SECTION. **Sec. 11.** Subject to funds appropriated for this  
11 purpose, the attorney general must diligently investigate a violation  
12 under section 9 of this act. If the attorney general finds that a  
13 person has violated or is violating section 9 of this act, the attorney  
14 general may bring a civil action under this section against the person.

15 NEW SECTION. **Sec. 12.** (1) A person may bring a civil action for  
16 a violation of section 9 of this act for the person and for the  
17 government entity. The action may be known as a qui tam action and the  
18 person bringing the action as a qui tam relator. The action must be  
19 brought in the name of the government entity.

20 (2) A relator filing an action under this chapter must serve a copy  
21 of the complaint and written disclosure of substantially all material  
22 evidence and information the person possesses on the attorney general  
23 in electronic format. The relator must file the complaint in camera.  
24 The complaint must remain under seal for at least sixty days, and may  
25 not be served on the defendant until the court so orders. The attorney  
26 general may elect to intervene and proceed with the action within sixty  
27 days after it receives both the complaint and the material evidence and  
28 information.

29 (3) The qui tam action may be dismissed by the court, however the  
30 attorney general must be given notice and an opportunity to participate  
31 in the hearing on the motion to dismiss.

32 (4) The attorney general may, for good cause shown, move the court  
33 for extensions of the time during which the complaint remains under  
34 seal under subsection (2) of this section. The motions may be  
35 supported by affidavits or other submissions in camera. The defendant

1 may not be required to respond to any complaint filed under this  
2 section until twenty days after the complaint is unsealed and served  
3 upon the defendant.

4 (5) If the attorney general does not proceed with the action prior  
5 to the expiration of the sixty-day period or any extensions obtained  
6 under subsection (4) of this section, then the relator has the right to  
7 conduct the action.

8 (6) When a person brings an action under this section, no person  
9 other than the attorney general may intervene or bring a related action  
10 based on the facts underlying the pending action.

11 NEW SECTION. **Sec. 13.** (1) If the attorney general proceeds with  
12 the qui tam action, the attorney general shall have the primary  
13 responsibility for prosecuting the action, and is not bound by an act  
14 of the relator. The relator has the right to continue as a party to  
15 the action, subject to the limitations set forth in subsection (2) of  
16 this section.

17 (2)(a) The attorney general may move to dismiss the qui tam action  
18 notwithstanding the objections of the relator if the relator has been  
19 notified by the attorney general of the filing of the motion and the  
20 court has provided the relator with an opportunity for a hearing on the  
21 motion.

22 (b) The attorney general may settle the action with the defendant  
23 notwithstanding the objections of the relator if the court determines,  
24 after a hearing, that the proposed settlement is fair, adequate, and  
25 reasonable under all the circumstances. Upon a showing of good cause,  
26 the hearing may be held in camera.

27 (c) Upon a showing by the attorney general that unrestricted  
28 participation during the course of the litigation by the relator would  
29 interfere with or unduly delay the attorney general's prosecution of  
30 the case, or would be repetitious, irrelevant, or for purposes of  
31 harassment, the court may, in its discretion, impose limitations on the  
32 relator's participation, such as:

- 33 (i) Limiting the number of witnesses the relator may call;
- 34 (ii) Limiting the length of the testimony of the witnesses;
- 35 (iii) Limiting the relator's cross-examination of witnesses; or
- 36 (iv) Otherwise limiting the participation by the relator in the  
37 litigation.

1 (d) Upon a showing by the defendant that unrestricted participation  
2 during the course of the litigation by the relator would be for  
3 purposes of harassment or would cause the defendant undue burden or  
4 unnecessary expense, the court may limit the participation by the  
5 relator in the litigation.

6 (3) If the attorney general elects not to proceed with the qui tam  
7 action, the relator has the right to conduct the action. If the  
8 attorney general so requests, the relator must serve on the attorney  
9 general copies of all pleadings filed in the action and shall supply  
10 copies of all deposition transcripts, at the relator's expense.  
11 Additionally, the relator shall provide the attorney general with  
12 notice and the details of all offers of settlement. When the relator  
13 proceeds with the action, the court, without limiting the status and  
14 rights of the relator, may nevertheless permit the attorney general to  
15 intervene at a later date upon a showing of good cause.

16 (4) Whether or not the attorney general proceeds with the qui tam  
17 action, upon a showing by the attorney general that certain actions of  
18 discovery by the relator would interfere with the attorney general's  
19 investigation or prosecution of a criminal or civil matter arising out  
20 of the same facts, the court may stay such discovery for a period of  
21 not more than sixty days. The showing must be conducted in camera.  
22 The court may extend the sixty-day period upon a further showing in  
23 camera that the attorney general has pursued the criminal or civil  
24 investigation or proceedings with reasonable diligence and any proposed  
25 discovery in the civil action will interfere with the ongoing criminal  
26 or civil investigation or proceedings.

27 (5) Notwithstanding section 12 of this act, the attorney general  
28 may elect to pursue its claim through any alternate remedy available to  
29 the attorney general, including any administrative proceeding to  
30 determine a civil money penalty. If any alternate remedy is pursued in  
31 another proceeding, the relator has the same rights in the proceeding  
32 as the relator would have had if the action had continued under this  
33 section. Any finding of fact or conclusion of law made in the other  
34 proceeding that has become final is conclusive on all parties to an  
35 action under this section. For purposes of this subsection, a finding  
36 or conclusion is final if it has been finally determined on appeal to  
37 the appropriate court of the state of Washington, if all time for



1 filing the appeal with respect to the finding or conclusion has  
2 expired, or if the finding or conclusion is not subject to judicial  
3 review.

4 NEW SECTION. **Sec. 14.** (1)(a) Subject to (b) of this subsection,  
5 if the attorney general proceeds with a qui tam action, the relator  
6 must receive at least fifteen percent but not more than twenty-five  
7 percent of the proceeds of the action or settlement of the claim,  
8 depending upon the extent to which the relator substantially  
9 contributed to the prosecution of the action.

10 (b) Where the action is one which the court finds to be based  
11 primarily on disclosures of specific information, other than  
12 information provided by the relator, relating to allegations or  
13 transactions in a criminal, civil, or administrative hearing, in a  
14 congressional, administrative, or general accounting office report,  
15 hearing, audit, or investigation, or from the news media, the court may  
16 award an amount it considers appropriate, but in no case more than ten  
17 percent of the proceeds, taking into account the significance of the  
18 information and the role of the relator in advancing the case to  
19 litigation.

20 (c) Any payment to a relator under (a) or (b) of this subsection  
21 must be made from the proceeds. The relator must also receive an  
22 amount for reasonable expenses which the court finds to have been  
23 necessarily incurred, plus reasonable attorneys' fees and costs.  
24 Additionally, the attorney general must receive reasonable attorneys'  
25 fees and costs. All expenses, fees, and costs must be awarded against  
26 the defendant.

27 (2) If the attorney general does not proceed with a qui tam action,  
28 the relator shall receive an amount which the court decides is  
29 reasonable for collecting the civil penalty and damages. The amount  
30 may not be less than twenty-five percent and not more than thirty  
31 percent of the proceeds of the action or settlement and must be paid  
32 out of the proceeds. The relator must also receive an amount for  
33 reasonable expenses, which the court finds to have been necessarily  
34 incurred, plus reasonable attorneys' fees and costs. All expenses,  
35 fees, and costs must be awarded against the defendant.

36 (3) Whether or not the attorney general proceeds with the qui tam  
37 action, if the court finds that the action was brought by a person who

1 planned and initiated the violation of section 9 of this act upon which  
2 the action was brought, then the court may, to the extent the court  
3 considers appropriate, reduce the share of the proceeds of the action  
4 which the person would otherwise receive under subsection (1) or (2) of  
5 this section, taking into account the role of that person in advancing  
6 the case to litigation and any relevant circumstances pertaining to the  
7 violation. If the person bringing the action is convicted of criminal  
8 conduct arising from his or her role in the violation of section 9 of  
9 this act, that person must be dismissed from the civil action and may  
10 not receive any share of the proceeds of the action. The dismissal may  
11 not prejudice the right of the United States to continue the action,  
12 represented by the department of justice.

13 (4) If the attorney general does not proceed with the qui tam  
14 action and the relator conducts the action, the court may award to the  
15 defendant reasonable attorneys' fees, costs, and expenses if the  
16 defendant prevails in the action. Any fees, costs, and expenses  
17 awarded by the court under this subsection must be awarded against the  
18 relator.

19 (5) The attorney general and a government entity are not liable for  
20 expenses which a relator incurs in bringing an action under this  
21 chapter.

22 (6) Any funds recovered that remain after calculation and  
23 distribution under subsections (1) through (3) of this section must be  
24 deposited into the medicaid fraud penalty account established in  
25 section 3 of this act.

26 NEW SECTION. **Sec. 15.** (1) In no event may a person bring a qui  
27 tam action which is based upon allegations or transactions which are  
28 the subject of a civil suit or an administrative civil money penalty  
29 proceeding in which the attorney general is already a party.

30 (2)(a) The court must dismiss an action or claim under this  
31 section, unless opposed by the attorney general, if substantially the  
32 same allegations or transactions as alleged in the action or claim were  
33 publicly disclosed:

34 (i) In a federal criminal, civil, or administrative hearing in  
35 which the attorney general or other governmental entity is a party;

36 (ii) In a congressional, general accounting office report, or other  
37 federal report, hearing, audit, or investigation; or

1 (iii) By the news media, unless the action is brought by the  
2 attorney general or the relator is an original source of the  
3 information.

4 (b) For purposes of this section, "original source" means an  
5 individual who either (i) prior to a public disclosure under (a) of  
6 this subsection, has voluntarily disclosed to the attorney general the  
7 information on which allegations or transactions in a claim are based,  
8 or (ii) has knowledge that is independent of, and materially adds to,  
9 the publicly disclosed allegations or transactions, and who has  
10 voluntarily provided the information to the attorney general before  
11 filing an action under this section.

12 NEW SECTION. **Sec. 16.** (1) Any employee, contractor, or agent is  
13 entitled to all relief necessary to make that employee, contractor, or  
14 agent whole, if that employee, contractor, or agent is discharged,  
15 demoted, suspended, threatened, harassed, or in any other manner  
16 discriminated against in the terms and conditions of employment because  
17 of lawful acts done by the employee, contractor, or agent or associated  
18 others in furtherance of an action under this section or other efforts  
19 to stop one or more violations of this chapter.

20 (2) Relief under subsection (1) of this section must include  
21 reinstatement with the same seniority status that employee, contractor,  
22 or agent would have had but for the discrimination, two times the  
23 amount of back pay, interest on the back pay, and compensation for any  
24 special damages sustained as a result of the discrimination, including  
25 litigation costs and reasonable attorneys' fees, and any and all relief  
26 available under RCW 49.60.030(2). An action under this subsection may  
27 be brought in the appropriate superior court of the state of Washington  
28 for the relief provided in this subsection.

29 (3) A civil action under this section may not be brought more than  
30 three years after the date when the retaliation occurred.

31 NEW SECTION. **Sec. 17.** (1) A subpoena requiring the attendance of  
32 a witness at a trial or hearing conducted under section 12 of this act  
33 may be served at any place in the state of Washington.

34 (2) A civil action under section 12 of this act may be brought at  
35 any time, without limitation after the date on which the violation of  
36 section 9 of this act is committed.

1 (3) If the attorney general elects to intervene and proceed with a  
2 qui tam action, the attorney general may file its own complaint or  
3 amend the complaint of a relator to clarify or add detail to the claims  
4 in which the attorney general is intervening and to add any additional  
5 claims with respect to which the attorney general contends it is  
6 entitled to relief.

7 (4) In any qui tam action brought under section 12 of this act, the  
8 attorney general is required to prove all essential elements of the  
9 cause of action, including damages, by a preponderance of the evidence.

10 (5) Notwithstanding any other provision of law or the rules for  
11 superior court, a final judgment rendered in favor of the government  
12 entity in any criminal proceeding charging fraud or false statements,  
13 whether upon a verdict after trial or upon a plea of guilty or nolo  
14 contendere, estops the defendant from denying the essential elements of  
15 the offense in any action which involves the same transaction as in the  
16 criminal proceeding and which is brought under section 11 or 12(1) of  
17 this act.

18 NEW SECTION. **Sec. 18.** (1) Any action under section 11 or 12 of  
19 this act may be brought in the superior court in any county in which  
20 the defendant or, in the case of multiple defendants, any one defendant  
21 can be found, resides, transacts business, or in which any act  
22 proscribed by section 9 of this act occurred. The appropriate court  
23 must issue a summons as required by the superior court civil rules and  
24 service must occur at any place within the state of Washington.

25 (2) The superior courts have jurisdiction over any action brought  
26 under the laws of any city or county for the recovery of funds paid by  
27 a government entity if the action arises from the same transaction or  
28 occurrence as an action brought under section 11 or 12 of this act.

29 (3) With respect to any local government that is named as a  
30 coplaintiff with the state in an action brought under section 12 of  
31 this act, a seal on the action ordered by the court under section 12 of  
32 this act does not preclude the attorney general or the person bringing  
33 the action from serving the complaint, any other pleadings, or the  
34 written disclosure of substantially all material evidence and  
35 information possessed by the person bringing the action on the law  
36 enforcement authorities that are authorized under the law of the local  
37 government to investigate and prosecute the action on behalf of the

1 local government, except that the seal applies to the law enforcement  
2 authorities so served to the same extent as the seal applies to other  
3 parties in the action.

4 NEW SECTION. **Sec. 19.** (1) Whenever the attorney general, or a  
5 designee, for purposes of this section, has reason to believe that any  
6 person may be in possession, custody, or control of any documentary  
7 material or information relevant to a false claims act investigation,  
8 the attorney general, or a designee, may, before commencing a civil  
9 proceeding under section 12(1) of this act or making an election under  
10 section 12(2) of this act, issue in writing and serve upon the person,  
11 a civil investigative demand requiring the person:

12 (a) To produce the documentary material for inspection and copying;

13 (b) To answer in writing written interrogatories with respect to  
14 the documentary material or information;

15 (c) To give oral testimony concerning the documentary material or  
16 information; or

17 (d) To furnish any combination of such material, answers, or  
18 testimony. The attorney general may delegate the authority to issue  
19 civil investigative demands under this subsection (1). Whenever a  
20 civil investigative demand is an express demand for any product of  
21 discovery, the attorney general, the deputy attorney general, or an  
22 assistant attorney general must serve, in any manner authorized by this  
23 section, a copy of the demand upon the person from whom the discovery  
24 was obtained and must notify the person to whom the demand is issued of  
25 the date on which the copy was served. Any information obtained by the  
26 attorney general or a designee of the attorney general under this  
27 section may be shared with any qui tam relator if the attorney general  
28 or designee determine it is necessary as part of any false claims act  
29 investigation.

30 (2)(a) Each civil investigative demand issued under subsection (1)  
31 of this section must state the nature of the conduct constituting the  
32 alleged violation of this chapter which is under investigation, and the  
33 applicable provision of law alleged to be violated.

34 (b) If the demand is for the production of documentary material,  
35 the demand must:

36 (i) Describe each class of documentary material to be produced with

1 such definiteness and certainty as to permit the material to be fairly  
2 identified;

3 (ii) Prescribe a return date for each class which will provide a  
4 reasonable period of time within which the material so demanded may be  
5 assembled and made available for inspection and copying; and

6 (iii) Identify the false claims act investigator to whom such  
7 material must be made available.

8 (c) If the demand is for answers to written interrogatories, the  
9 demand must:

10 (i) Set forth with specificity the written interrogatories to be  
11 answered;

12 (ii) Prescribe dates at which time answers to written  
13 interrogatories must be submitted; and

14 (iii) Identify the false claims law investigator to whom such  
15 answers must be submitted.

16 (d) If the demand is for the giving of oral testimony, the demand  
17 must:

18 (i) Prescribe a date, time, and place at which oral testimony must  
19 be commenced;

20 (ii) Identify a false claims act investigator who must conduct the  
21 examination and the custodian to whom the transcript of the examination  
22 must be submitted;

23 (iii) Specify that the attendance and testimony are necessary to  
24 the conduct of the investigation;

25 (iv) Notify the person receiving the demand of the right to be  
26 accompanied by an attorney and any other representative; and

27 (v) Describe the general purpose for which the demand is being  
28 issued and the general nature of the testimony, including the primary  
29 areas of inquiry, which will be taken pursuant to the demand.

30 (e) Any civil investigative demand issued under this section which  
31 is an express demand for any product of discovery is not due until  
32 thirty days after a copy of the demand has been served upon the person  
33 from whom the discovery was obtained.

34 (f) The date prescribed for the commencement of oral testimony  
35 pursuant to a civil investigative demand issued under this section may  
36 not be sooner than six days after the date on which demand is received,  
37 unless the attorney general or an assistant attorney general designated

1 by the attorney general determines that exceptional circumstances are  
2 present which warrant the commencement of the testimony sooner.

3 (g) The attorney general may not authorize the issuance under this  
4 section of more than one civil investigative demand for oral testimony  
5 by the same person unless the person requests otherwise or unless the  
6 attorney general, after investigation, notifies that person in writing  
7 that an additional demand for oral testimony is necessary.

8 (3) A civil investigative demand issued under subsection (1) or (2)  
9 of this section may not require the production of any documentary  
10 material, the submission of any answers to written interrogatories, or  
11 the giving of any oral testimony if the material, answers, or testimony  
12 would be protected from disclosure under:

13 (a) The standards applicable to subpoenas or subpoenas duces tecum  
14 issued by a court to aid in a special inquiry investigation; or

15 (b) The standards applicable to discovery requests under the  
16 superior court civil rules, to the extent that the application of these  
17 standards to any demand is appropriate and consistent with the  
18 provisions and purposes of this section.

19 (4) Any demand which is an express demand for any product of  
20 discovery supersedes any inconsistent order, rule, or provision of law,  
21 other than this section, preventing or restraining disclosure of the  
22 product of discovery to any person. Disclosure of any product of  
23 discovery pursuant to any express demand does not constitute a waiver  
24 of any right or privilege which the person making such disclosure may  
25 be entitled to invoke to resist discovery of trial preparation  
26 materials.

27 (5) Any civil investigative demand issued under this section may be  
28 served by a false claims act investigator, or by a commissioned law  
29 enforcement official, at any place within the state of Washington.

30 (6) Service of any civil investigative demand issued under (a) of  
31 this subsection or of any petition filed under subsection (25) of this  
32 section may be made upon a partnership, corporation, association, or  
33 other legal entity by:

34 (a) Delivering an executed copy of the demand or petition to any  
35 partner, executive officer, managing agent, or general agent of the  
36 partnership, corporation, association, or entity, or to any agent  
37 authorized by appointment or by law to receive service of process on  
38 behalf of such partnership, corporation, association, or entity;

1 (b) Delivering an executed copy of the demand or petition to the  
2 principal office or place of business of the partnership, corporation,  
3 association, or entity; or

4 (c) Depositing an executed copy of the demand or petition in the  
5 United States mail by registered or certified mail, with a return  
6 receipt requested, addressed to such partnership, corporation,  
7 association, or entity at its principal office or place of business.

8 (7) Service of any demand or petition may be made upon any natural  
9 person by:

10 (a) Delivering an executed copy of the demand or petition to the  
11 person; or

12 (b) Depositing an executed copy of the demand or petition in the  
13 United States mail by registered or certified mail, with a return  
14 receipt requested, addressed to the person at the person's residence or  
15 principal office or place of business.

16 (8) A verified return by the individual serving any civil  
17 investigative demand issued under subsection (1) or (2) of this section  
18 or any petition filed under subsection (25) of this section setting  
19 forth the manner of the service constitutes proof of the service. In  
20 the case of service by registered or certified mail, the return must be  
21 accompanied by the return post office receipt of delivery of the  
22 demand.

23 (9) The production of documentary material in response to a civil  
24 investigative demand served under this section must be made under a  
25 sworn certificate, in the form as the demand designates, by:

26 (a) In the case of a natural person, the person to whom the demand  
27 is directed; or

28 (b) In the case of a person other than a natural person, a person  
29 having knowledge of the facts and circumstances relating to the  
30 production and authorized to act on behalf of the person. The  
31 certificate must state that all of the documentary material required by  
32 the demand and in the possession, custody, or control of the person to  
33 whom the demand is directed has been produced and made available to the  
34 false claims act investigator identified in the demand.

35 (10) Any person upon whom any civil investigative demand for the  
36 production of documentary material has been served under this section  
37 shall make such material available for inspection and copying to the  
38 false claims act investigator identified in the demand at the principal



1 place of business of the person, or at another place as the false  
2 claims act investigator and the person thereafter may agree and  
3 prescribe in writing, or as the court may direct under subsection (25)  
4 of this section. The material must be made available on the return  
5 date specified in the demand, or on a later date as the false claims  
6 act investigator may prescribe in writing. The person may, upon  
7 written agreement between the person and the false claims act  
8 investigator, substitute copies for originals of all or any part of the  
9 material.

10 (11)(a) Each interrogatory in a civil investigative demand served  
11 under this section must be answered separately and fully in writing  
12 under oath and must be submitted under a sworn certificate, in the form  
13 as the demand designates, by:

14 (i) In the case of a natural person, the person to whom the demand  
15 is directed; or

16 (ii) In the case of a person other than a natural person, the  
17 person or persons responsible for answering each interrogatory.

18 (b) If any interrogatory is objected to, the reasons for the  
19 objection must be stated in the certificate instead of an answer. The  
20 certificate must state that all information required by the demand and  
21 in the possession, custody, control, or knowledge of the person to whom  
22 the demand is directed has been submitted. To the extent that any  
23 information is not furnished, the information must be identified and  
24 reasons set forth with particularity regarding the reasons why the  
25 information was not furnished.

26 (12) The examination of any person pursuant to a civil  
27 investigative demand for oral testimony served under this section must  
28 be taken before an officer authorized to administer oaths and  
29 affirmations by the laws of the state of Washington or of the place  
30 where the examination is held. The officer before whom the testimony  
31 is to be taken must put the witness on oath or affirmation and must,  
32 personally or by someone acting under the direction of the officer and  
33 in the officer's presence, record the testimony of the witness. The  
34 testimony must be recorded and must be transcribed. When the testimony  
35 is fully transcribed, the officer before whom the testimony is taken  
36 shall promptly transmit a copy of the transcript of the testimony to  
37 the custodian. This subsection does not preclude the taking of

1 testimony by any means authorized by, and in a manner consistent with,  
2 the superior court civil rules.

3 (13) The false claims act investigator conducting the examination  
4 shall exclude from the place where the examination is held all persons  
5 except the person giving the testimony, the attorney for and any other  
6 representative of the person giving the testimony, the attorney  
7 general, any person who may be agreed upon by the attorney for the  
8 government and the person giving the testimony, the officer before whom  
9 the testimony is to be taken, and any stenographer taking the  
10 testimony.

11 (14) The oral testimony of any person taken pursuant to a civil  
12 investigative demand served under this section must be taken in the  
13 county within which such person resides, is found, or transacts  
14 business, or in another place as may be agreed upon by the false claims  
15 act investigator conducting the examination and the person.

16 (15) When the testimony is fully transcribed, the false claims act  
17 investigator or the officer before whom the testimony is taken must  
18 afford the witness, who may be accompanied by counsel, a reasonable  
19 opportunity to examine and read the transcript, unless the examination  
20 and reading are waived by the witness. Any changes in form or  
21 substance which the witness desires to make must be entered and  
22 identified upon the transcript by the officer or the false claims act  
23 investigator, with a statement of the reasons given by the witness for  
24 making the changes, and the original shall be retained within the  
25 transcript for purposes of comparison. The transcript must then be  
26 signed by the witness, unless the witness in writing waives the  
27 signing, is ill, cannot be found, or refuses to sign. If the  
28 transcript is not signed by the witness within thirty days after being  
29 afforded a reasonable opportunity to examine it, the officer or the  
30 false claims act investigator must sign it and state on the record the  
31 fact of the waiver, illness, absence of the witness, or the refusal to  
32 sign, together with the reasons given.

33 (16) The officer before whom the testimony is taken must certify on  
34 the transcript that the witness was sworn by the officer and that the  
35 transcript is a true record of the testimony given by the witness, and  
36 the officer or false claims act investigator must promptly deliver the  
37 transcript, or send the transcript by registered or certified mail, to  
38 the custodian.

1 (17) Upon payment of reasonable charges therefor, the false claims  
2 act investigator must furnish a copy of the transcript to the witness  
3 only, except that the attorney general, the deputy attorney general, or  
4 an assistant attorney general may, for good cause, limit the witness to  
5 inspection of the official transcript of the witness' testimony.

6 (18)(a) Any person compelled to appear for oral testimony under a  
7 civil investigative demand issued under subsection (1) or (2) of this  
8 section may be accompanied, represented, and advised by counsel.  
9 Counsel may advise the person, in confidence, with respect to any  
10 question asked of the person. The person or counsel may object on the  
11 record to any question, in whole or in part, and must briefly state for  
12 the record the reason for the objection. An objection may be made,  
13 received, and entered upon the record when it is claimed that the  
14 person is entitled to refuse to answer the question on the grounds of  
15 any constitutional or other legal right or privilege, including the  
16 privilege against self-incrimination. The person may not otherwise  
17 object to or refuse to answer any question, and may not directly or  
18 through counsel otherwise interrupt the oral examination. If the  
19 person refuses to answer any question, a special injury proceeding  
20 petition may be filed in the superior court under subsection (25) of  
21 this section for an order compelling the person to answer the  
22 question.

23 (b) If the person refuses to answer any question on the grounds of  
24 the privilege against self-incrimination, the testimony of the person  
25 may be compelled in accordance with the provisions of the superior  
26 court civil rules.

27 (19) Any person appearing for oral testimony under a civil  
28 investigative demand issued under subsection (1) or (2) of this section  
29 is entitled to the same fees and allowances which are paid to witnesses  
30 in the superior courts.

31 (20) The attorney general must designate a false claims act  
32 investigator to serve as custodian of documentary material, answers to  
33 interrogatories, and transcripts of oral testimony received under this  
34 section, and must designate such additional false claims act  
35 investigators as the attorney general determines from time to time to  
36 be necessary to serve as deputies to the custodian.

37 (21)(a) A false claims act investigator who receives any  
38 documentary material, answers to interrogatories, or transcripts of

1 oral testimony under this section must transmit them to the custodian.  
2 The custodian shall take physical possession of the material, answers,  
3 or transcripts and is responsible for the use made of them and for the  
4 return of documentary material under subsection (23) of this section.

5 (b) The custodian may cause the preparation of the copies of the  
6 documentary material, answers to interrogatories, or transcripts of  
7 oral testimony as may be required for official use by any false claims  
8 act investigator, or employee of the attorney general. The material,  
9 answers, and transcripts may be used by any authorized false claims act  
10 investigator or other officer or employee in connection with the taking  
11 of oral testimony under this section.

12 (c)(i) Except as otherwise provided in this subsection (21), no  
13 documentary material, answers to interrogatories, or transcripts of  
14 oral testimony, or copies thereof, while in the possession of the  
15 custodian, may be available for examination by any individual other  
16 than a false claims act investigator or other officer or employee of  
17 the attorney general authorized under (b) of this subsection.

18 (ii) The prohibition in (c)(i) of this subsection on the  
19 availability of material, answers, or transcripts does not apply if  
20 consent is given by the person who produced the material, answers, or  
21 transcripts, or, in the case of any product of discovery produced  
22 pursuant to an express demand for the material, consent is given by the  
23 person from whom the discovery was obtained. Nothing in this  
24 subsection (c)(ii) is intended to prevent disclosure to the  
25 legislature, including any committee or subcommittee for use by such an  
26 agency in furtherance of its statutory responsibilities.

27 (d) While in the possession of the custodian and under the  
28 reasonable terms and conditions as the attorney general shall  
29 prescribe:

30 (i) Documentary material and answers to interrogatories must be  
31 available for examination by the person who produced the material or  
32 answers, or by a representative of that person authorized by that  
33 person to examine the material and answers; and

34 (ii) Transcripts of oral testimony must be available for  
35 examination by the person who produced the testimony, or by a  
36 representative of that person authorized by that person to examine the  
37 transcripts.

1 (22) Whenever any official has been designated to appear before any  
2 court, special inquiry judge, or state administrative judge in any case  
3 or proceeding, the custodian of any documentary material, answers to  
4 interrogatories, or transcripts of oral testimony received under this  
5 section may deliver to the official the material, answers, or  
6 transcripts for official use in connection with any case or proceeding  
7 as the official determines to be required. Upon the completion of  
8 such a case or proceeding, the official must return to the custodian  
9 any material, answers, or transcripts so delivered which have not  
10 passed into the control of any court, grand jury, or agency through  
11 introduction into the record of such a case or proceeding.

12 (23) If any documentary material has been produced by any person in  
13 the course of any false claims act investigation pursuant to a civil  
14 investigative demand under this section, and:

15 (a) Any case or proceeding before the court or special inquiry  
16 judge arising out of the investigation, or any proceeding before any  
17 administrative judge involving the material, has been completed; or

18 (b) No case or proceeding in which the material may be used has  
19 been commenced within a reasonable time after completion of the  
20 examination and analysis of all documentary material and other  
21 information assembled in the course of the investigation:

22 Then, the custodian shall, upon written request of the person who  
23 produced the material, return to the person the material, other than  
24 copies furnished to the false claims act investigator under subsection  
25 (10) of this section or made for the attorney general under subsection  
26 (21)(b) of this section which has not passed into the control of any  
27 court, grand jury, or agency through introduction into the record of  
28 the case or proceeding.

29 (24) In the event of the death, disability, or separation from  
30 service of the attorney general of the custodian of any documentary  
31 material, answers to interrogatories, or transcripts of oral testimony  
32 produced pursuant to civil investigative demand under this section, or  
33 in the event of the official relief of the custodian from  
34 responsibility for the custody and control of the material, answers, or  
35 transcripts, the attorney general must promptly:

36 (a) Designate another false claims act investigator to serve as  
37 custodian of the material, answers, or transcripts; and

1 (b) Transmit in writing to the person who produced the material,  
2 answers, or testimony notice of the identity and address of the  
3 successor so designated. Any person who is designated to be a  
4 successor under this subsection (24) has, with regard to the material,  
5 answers, or transcripts, the same duties and responsibilities as were  
6 imposed by this section upon that person's predecessor in office,  
7 except that the successor may not be held responsible for any default  
8 or dereliction which occurred before that designation.

9 (25) Whenever any person fails to comply with any civil  
10 investigative demand issued under subsection (1) or (2) of this  
11 section, or whenever satisfactory copying or reproduction of any  
12 material requested in the demand cannot be done and the person refuses  
13 to surrender the material, the attorney general may file, in any  
14 superior court of the state of Washington for any county in which the  
15 person resides, is found, or transacts business, and serve upon the  
16 person a petition for an order of the court for the enforcement of the  
17 civil investigative demand.

18 (26)(a) Any person who has received a civil investigative demand  
19 issued under subsection (1) or (2) of this section may file, in the  
20 superior court of the state of Washington for the county within which  
21 the person resides, is found, or transacts business, and serve upon the  
22 false claims act investigator identified in the demand a petition for  
23 an order of the court to modify or set aside the demand. In the case  
24 of a petition addressed to an express demand for any product of  
25 discovery, a petition to modify or set aside the demand may be brought  
26 only in the district court of the United States for the judicial  
27 district in which the proceeding in which the discovery was obtained is  
28 or was last pending. Any petition filed under this subsection (26)(a)  
29 must be filed:

30 (i) Within thirty days after the date of service of the civil  
31 investigative demand, or at any time before the return date specified  
32 in the demand, whichever date is earlier; or

33 (ii) Within a longer period as may be prescribed in writing by any  
34 false claims act investigator identified in the demand.

35 (b) The petition must specify each ground upon which the petitioner  
36 relies in seeking relief under (a) of this subsection, and may be based  
37 upon any failure of the demand to comply with the provisions of this  
38 section or upon any constitutional or other legal right or privilege of

1 the person. During the pendency of the petition in the court, the  
2 court may stay, as it deems proper, the running of the time allowed for  
3 compliance with the demand, in whole or in part, except that the person  
4 filing the petition shall comply with any portions of the demand not  
5 sought to be modified or set aside.

6 (27)(a) In the case of any civil investigative demand issued under  
7 subsection (1) or (2) of this section which is an express demand for  
8 any product of discovery, the person from whom the discovery was  
9 obtained may file, in the superior court of the state of Washington for  
10 the county in which the proceeding in which the discovery was obtained  
11 is or was last pending, and serve upon any false claims act  
12 investigator identified in the demand and upon the recipient of the  
13 demand, a petition for an order of the court to modify or set aside  
14 those portions of the demand requiring production of any product of  
15 discovery. Any petition under this subsection (27)(a) must be filed:

16 (i) Within twenty days after the date of service of the civil  
17 investigative demand, or at any time before the return date specified  
18 in the demand, whichever date is earlier; or

19 (ii) Within a longer period as may be prescribed in writing by any  
20 false claims act investigator identified in the demand.

21 (b) The petition must specify each ground upon which the petitioner  
22 relies in seeking relief under (a) of this subsection, and may be based  
23 upon any failure of the portions of the demand from which relief is  
24 sought to comply with the provisions of this section, or upon any  
25 constitutional or other legal right or privilege of the petitioner.  
26 During the pendency of the petition, the court may stay, as it deems  
27 proper, compliance with the demand and the running of the time allowed  
28 for compliance with the demand.

29 (28) At any time during which any custodian is in custody or  
30 control of any documentary material or answers to interrogatories  
31 produced, or transcripts of oral testimony given, by any person in  
32 compliance with any civil investigative demand issued under subsection  
33 (1) or (2) of this section, the person, and in the case of an express  
34 demand for any product of discovery, the person from whom the discovery  
35 was obtained, may file, in the superior court of the state of  
36 Washington for the county within which the office of the custodian is  
37 situated, and serve upon the custodian, a petition for an order of the

1 court to require the performance by the custodian of any duty imposed  
2 upon the custodian by this section.

3 (29) Whenever any petition is filed in any superior court of the  
4 state of Washington under this section, the court has jurisdiction to  
5 hear and determine the matter so presented, and to enter an order or  
6 orders as may be required to carry out the provisions of this section.  
7 Any final order so entered is subject to appeal under the rules of  
8 appellate procedure. Any disobedience of any final order entered under  
9 this section by any court must be punished as a contempt of the court.

10 (30) The superior court civil rules apply to any petition under  
11 this section, to the extent that the rules are not inconsistent with  
12 the provisions of this section.

13 (31) Any documentary material, answers to written interrogatories,  
14 or oral testimony provided under any civil investigative demand issued  
15 under subsection (1) or (2) of this section are exempt from disclosure  
16 under the public records act, chapter 42.56 RCW.

17 NEW SECTION. **Sec. 20.** Beginning November 15, 2012, and annually  
18 thereafter, the attorney general in consultation with the department of  
19 social and health services and the health care authority must report  
20 results of implementing the medicaid false claims act. This report  
21 must include:

- 22 (1) The number of attorneys assigned to qui tam initiated actions;
- 23 (2) The number of cases brought by the qui tam actions and indicate  
24 how many cases are brought by the attorney general and how many by the  
25 qui tam relator without attorney general participation;
- 26 (3) The results of any actions brought under subsection (2) of this  
27 section, delineated by cases brought by the attorney general and cases  
28 brought by the qui tam relator without attorney general participation;  
29 and
- 30 (4) The amount of recoveries attributable to the medicaid false  
31 claims.

32 NEW SECTION. **Sec. 21.** This chapter may be known and cited as the  
33 medicaid fraud false claims act.

34 NEW SECTION. **Sec. 22.** Sections 8 through 21 of this act  
35 constitute a new chapter in Title 74 RCW.



1        NEW SECTION.    **Sec. 23.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of the  
3    state government and its existing public institutions, and takes effect  
4    immediately.

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