
SENATE BILL 5978

State of Washington 62nd Legislature 2011 2nd Special Session

By Senators Pflug, Keiser, Frockt, Conway, and Kohl-Welles

Read first time 12/07/11. Referred to Committee on Health & Long-Term Care.

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

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

7 NEW SECTION. **Sec. 1.** The legislature intends to enact a state
8 false claims act in order to provide this state with another tool to
9 combat medicaid fraud. The legislature finds that between 1996 and
10 state-initiated false claims acts resulted in over five billion
11 dollars in total recoveries to those states. The highest recoveries in
12 those cases were from claims relating to billing fraud, off-label
13 marketing, and withholding safety information; these cases were
14 primarily related to the pharmaceuticals industry and hospital
15 networks, hospitals, and medical centers. By this act, the legislature
16 does not intend to target a certain industry, profession, or retailer
17 of medical equipment, or to place an undue burden on health care
18 professionals. This act is not intended to harass health care
19 professionals, nor is intended to be used as a tool to target actions

1 that are related to incidental errors or clerical errors, which should
2 not be considered fraud. The intent is to use the false claims act to
3 root out significant areas of fraud that result in higher health care
4 costs to this state and to use the false claims act to recover state
5 money that could and should be used to support the medicaid program.

6 **Sec. 2.** 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)).

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

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

24 (ii) Arson if no death results; or

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

31 (B) If a violation of RCW 9A.44.040 or 9A.44.050 is not reported
32 within one year, the rape may not be prosecuted: (I) More than three
33 years after its commission if the violation was committed against a
34 victim fourteen years of age or older; or (II) more than three years
35 after the victim's eighteenth birthday or more than seven years after
36 the rape's commission, whichever is later, if the violation was
37 committed against a victim under fourteen years of age.

1 (c) Violations of the following statutes may be prosecuted up to
2 the victim's twenty-eighth birthday: RCW 9A.44.073, 9A.44.076,
3 9A.44.083, 9A.44.086, (~~9A.44.070, 9A.44.080,~~) 9A.44.100(1)(b),
4 9A.44.079, 9A.44.089, or 9A.64.020.

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

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

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

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

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

13 (e) The following offenses shall not be prosecuted more than five
14 years after their commission: Any class C felony under chapter
15 (~~74.09,~~) 82.36(~~(7)~~) or 82.38 RCW.

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

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

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

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

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

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

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

37 (3) In any prosecution for a sex offense as defined in RCW
38 9.94A.030, the periods of limitation prescribed in subsection (1) of

1 this section run from the date of commission or one year from the date
2 on which the identity of the suspect is conclusively established by
3 deoxyribonucleic acid testing, whichever is later.

4 (4) If, before the end of a period of limitation prescribed in
5 subsection (1) of this section, an indictment has been found or a
6 complaint or an information has been filed, and the indictment,
7 complaint, or information is set aside, then the period of limitation
8 is extended by a period equal to the length of time from the finding or
9 filing to the setting aside.

10 **Sec. 3.** RCW 74.09.210 and 2011 1st sp.s. c 15 s 15 are each
11 amended to read as follows:

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

17 (a) A willful false statement;

18 (b) By willful misrepresentation, or by concealment of any material
19 facts; or

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

22 (i) Billing for services, drugs, supplies, or equipment that were
23 unfurnished, of lower quality, or a substitution or misrepresentation
24 of items billed; or

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

27 (2) Any person or entity knowingly violating any of the provisions
28 of subsection (1) of this section shall be liable for repayment of any
29 excess benefits or payments received, plus interest at the rate and in
30 the manner provided in RCW 43.20B.695. Such person or other entity
31 shall further, in addition to any other penalties provided by law, be
32 subject to civil penalties. The (~~secretary or~~) director(~~, as~~
33 ~~appropriate,~~) or the attorney general may assess civil penalties in an
34 amount not to exceed three times the amount of such excess benefits or
35 payments: PROVIDED, That these civil penalties shall not apply to any
36 acts or omissions occurring prior to September 1, 1979. RCW 43.20A.215

1 governs notice of a civil fine assessed by the director and provides
2 the right to an adjudicative proceeding.

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

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

8 (5) (~~Civil penalties~~) All receipts received under this section
9 shall be deposited ((in the general fund upon their receipt)) into the
10 medicaid fraud penalty account created in section 4 of this act.

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

13 NEW SECTION. Sec. 4. A new section is added to chapter 74.09 RCW
14 to read as follows:

15 The medicaid fraud penalty account is created in the state
16 treasury. All receipts from civil penalties collected under RCW
17 74.09.210, all receipts received under settlements that originated
18 under a filing under the federal false claims act, and all receipts
19 received under settlements that originated under the state medicaid
20 fraud false claims act, chapter 74.--- RCW (the new chapter created in
21 section 23 of this act) must be deposited into the account. Moneys in
22 the account may be spent only after appropriation and must be used only
23 for medicaid provider fraud enforcement activities of the medicaid
24 fraud control unit and the single state agency responsible for
25 administering the medicaid program.

26 NEW SECTION. Sec. 5. A new section is added to chapter 74.09 RCW
27 to read as follows:

28 (1) For the purposes of this section:

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

31 (b) "Whistleblower" means an employee of an employer that obtains
32 or attempts to obtain benefits or payments under this chapter in
33 violation of RCW 74.09.210, who in good faith reports a violation of
34 RCW 74.09.210 to the authority.

35 (c) "Workplace reprisal or retaliatory action" includes, but is not
36 limited to: Denial of adequate staff to report duties; frequent staff

1 changes; frequent and undesirable office changes; refusal to assign
2 meaningful work; unwarranted and unsubstantiated report of misconduct
3 under Title 18 RCW; unwarranted and unsubstantiated letters of
4 reprimand or unsatisfactory performance evaluations; demotion;
5 reduction in pay; denial of promotion; suspension; dismissal; denial of
6 employment; or a supervisor or superior behaving in or encouraging
7 coworkers to behave in a hostile manner toward the whistleblower; or a
8 change in the physical location of the employee's workplace or a change
9 in the basic nature of the employee's job, if either are in opposition
10 to the employee's expressed wish.

11 (2) A whistleblower who has been subjected to workplace reprisal or
12 retaliatory action has the remedies provided under chapter 49.60 RCW.
13 RCW 4.24.500 through 4.24.520, providing certain protection to persons
14 who communicate to government agencies, apply to complaints made under
15 this section. The identity of a whistleblower who complains, in good
16 faith, to the authority about a suspected violation of RCW 74.09.210
17 may remain confidential if requested. The identity of the
18 whistleblower must subsequently remain confidential unless the
19 authority determines that the complaint was not made in good faith.

20 (3) This section does not prohibit an employer from exercising its
21 authority to terminate, suspend, or discipline an employee who engages
22 in workplace reprisal or retaliatory action against a whistleblower.
23 The protections provided to whistleblowers under this chapter do not
24 prevent an employer from: (a) Terminating, suspending, or disciplining
25 a whistleblower for other lawful purposes; or (b) reducing the hours of
26 employment or terminating employment as a result of the demonstrated
27 inability to meet payroll requirements. The authority shall determine
28 if the employer cannot meet payroll in cases where a whistleblower has
29 been terminated or had hours of employment reduced due to the inability
30 of a facility to meet payroll.

31 (4) The authority shall adopt rules to implement procedures for
32 filing, investigation, and resolution of whistleblower complaints that
33 are integrated with complaint procedures under this chapter. The
34 authority shall adopt rules designed to discourage whistleblower
35 complaints made in bad faith or for retaliatory purposes.

36 NEW SECTION. **Sec. 6.** A new section is added to chapter 74.09 RCW
37 to read as follows:

1 The following must be medicare providers in order to be paid under
2 the medicaid program: Providers of durable medical equipment and
3 related supplies, providers of prosthetics, providers of orthotics, and
4 providers of medical supplies and related services.

5 **Sec. 7.** RCW 74.09.230 and 1979 ex.s. c 152 s 4 are each amended to
6 read as follows:

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

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

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

20 (2) A person, including any corporation, ~~((that~~
21 ~~(1))~~ who

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

25 ~~((+2))~~ (b) at any time knowingly makes or causes to be made any
26 false statement or representation of a material fact for use in
27 determining rights to such payment, or knowingly falsifies, conceals,
28 or covers up by any trick, scheme, or device a material fact in
29 connection with such application or payment, or

30 ~~((+3))~~ (c) having knowledge of the occurrence of any event
31 affecting ~~((+a))~~ (i) the initial or continued right to any payment, or
32 ~~((+b))~~ (ii) the initial or continued right to any such payment of any
33 other individual in whose behalf he or she has applied for or is
34 receiving such payment, conceals or fails to disclose such event with
35 an intent fraudulently to secure such payment either in a greater
36 amount or quantity than is due or when no such payment is authorized,

1 shall be guilty of a class C felony: PROVIDED, That the fine, if
2 imposed, shall not be in an amount more than twenty-five thousand
3 dollars, except as authorized by RCW 9A.20.030.

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

5 **Sec. 8.** RCW 43.43.830 and 2011 c 253 s 5 are each reenacted and
6 amended to read as follows:

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

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

14 (2) "Applicant" means:

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

19 (b) Any prospective volunteer who will have regularly scheduled
20 unsupervised access to children under sixteen years of age,
21 developmentally disabled persons, or vulnerable adults during the
22 course of his or her employment or involvement with the business or
23 organization under circumstances where such access will or may involve
24 groups of (i) five or fewer children under twelve years of age, (ii)
25 three or fewer children between twelve and sixteen years of age, (iii)
26 developmentally disabled persons, or (iv) vulnerable adults;

27 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
28 or

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

31 (3) "Business or organization" means a person, business, or
32 organization licensed in this state, any agency of the state, or other
33 governmental entity, that educates, trains, treats, supervises, houses,
34 or provides recreation to developmentally disabled persons, vulnerable
35 adults, or children under sixteen years of age, or that provides child
36 day care, early learning, or early learning childhood education

1 services, including but not limited to public housing authorities,
2 school districts, and educational service districts.

3 (4) "Civil adjudication proceeding" is a judicial or administrative
4 adjudicative proceeding that results in a finding of, or upholds an
5 agency finding of, domestic violence, abuse, sexual abuse, neglect,
6 abandonment, violation of a professional licensing standard regarding
7 a child or vulnerable adult, or exploitation or financial exploitation
8 of a child or vulnerable adult under any provision of law, including
9 but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted
10 under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding"
11 also includes judicial or administrative findings that become final due
12 to the failure of the alleged perpetrator to timely exercise a legal
13 right to administratively challenge such findings.

14 (5) "Conviction record" means "conviction record" information as
15 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by
16 either an adult or a juvenile. It does not include a conviction for an
17 offense that has been the subject of an expungement, pardon, annulment,
18 certificate of rehabilitation, or other equivalent procedure based on
19 a finding of the rehabilitation of the person convicted, or a
20 conviction that has been the subject of a pardon, annulment, or other
21 equivalent procedure based on a finding of innocence. It does include
22 convictions for offenses for which the defendant received a deferred or
23 suspended sentence, unless the record has been expunged according to
24 law.

25 (6) "Crime against children or other persons" means a conviction of
26 any of the following offenses: Aggravated murder; first or second
27 degree murder; first or second degree kidnapping; first, second, or
28 third degree assault; first, second, or third degree assault of a
29 child; first, second, or third degree rape; first, second, or third
30 degree rape of a child; first or second degree robbery; first degree
31 arson; first degree burglary; first or second degree manslaughter;
32 first or second degree extortion; indecent liberties; incest; vehicular
33 homicide; first degree promoting prostitution; communication with a
34 minor; unlawful imprisonment; simple assault; sexual exploitation of
35 minors; first or second degree criminal mistreatment; endangerment with
36 a controlled substance; child abuse or neglect as defined in RCW
37 26.44.020; first or second degree custodial interference; first or
38 second degree custodial sexual misconduct; malicious harassment; first,

1 second, or third degree child molestation; first or second degree
2 sexual misconduct with a minor; commercial sexual abuse of a minor;
3 child abandonment; promoting pornography; selling or distributing
4 erotic material to a minor; custodial assault; violation of child abuse
5 restraining order; child buying or selling; prostitution; felony
6 indecent exposure; criminal abandonment; or any of these crimes as they
7 may be renamed in the future.

8 (7) "Crimes relating to drugs" means a conviction of a crime to
9 manufacture, delivery, or possession with intent to manufacture or
10 deliver a controlled substance.

11 (8) "Crimes relating to financial exploitation" means a conviction
12 for first, second, or third degree extortion; first, second, or third
13 degree theft; medicaid theft or medicaid false statement (RCW
14 74.09.230); first or second degree robbery; forgery; or any of these
15 crimes as they may be renamed in the future.

16 (9) "Financial exploitation" means "financial exploitation" as
17 defined in RCW 74.34.020.

18 (10) "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 (11) "Unsupervised" means not in the presence of:

25 (a) Another employee or volunteer from the same business or
26 organization as the applicant; or

27 (b) Any relative or guardian of any of the children or
28 developmentally disabled persons or vulnerable adults to which the
29 applicant has access during the course of his or her employment or
30 involvement with the business or organization.

31 With regard to peer counselors, "unsupervised" does not include
32 incidental contact with children under age sixteen at the location at
33 which the peer counseling is taking place. "Incidental contact" means
34 minor or casual contact with a child in an area accessible to and
35 within visual or auditory range of others. It could include passing a
36 child while walking down a hallway but would not include being alone
37 with a child for any period of time in a closed room or office.

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

6 NEW SECTION. **Sec. 9.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout this
8 chapter:

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

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

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

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

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

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

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

29 (3) "Documentary material" includes the original or any copy of any
30 book, record, report, memorandum, paper, communication, tabulation,
31 chart, or other document, or data compilations stored in or accessible
32 through computer or other information retrieval systems, together with
33 instructions and all other materials necessary to use or interpret the
34 data compilations, and any product of discovery.

35 (4) "False claims act investigation" means any inquiry conducted by
36 any false claims act investigator for the purpose of ascertaining

1 whether any person is or has been engaged in any violation of this
2 chapter.

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

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

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

13 (i) Has actual knowledge of the information;

14 (ii) Acts in deliberate ignorance of the truth or falsity of the
15 information; or

16 (iii) Acts in reckless disregard of the truth or falsity of the
17 information.

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

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

22 (9) "Obligation" means an established duty, whether or not fixed,
23 arising from an express or implied contractual, grantor-grantee, or
24 licensor-licensee relationship, from a fee-based or similar
25 relationship, from statute or rule, or from the retention of any
26 overpayment.

27 (10) "Official use" means any use that is consistent with the law,
28 and the rules and policies of the attorney general, including use in
29 connection with: Internal attorney general memoranda and reports;
30 communications between the attorney general and a federal, state, or
31 local government agency, or a contractor of a federal, state, or local
32 government agency, undertaken in furtherance of an investigation or
33 prosecution of a case; interviews of any qui tam relator or other
34 witness; oral examinations; depositions; preparation for and response
35 to civil discovery requests; introduction into the record of a case or
36 proceeding; applications, motions, memoranda, and briefs submitted to
37 a court or other tribunal; and communications with attorney general

1 investigators, auditors, consultants and experts, the counsel of other
2 parties, and arbitrators or mediators, concerning an investigation,
3 case, or proceeding.

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

7 (12) "Product of discovery" includes:

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

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

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

16 (13) "Qui tam action" is an action brought by a person under
17 section 13 of this act.

18 (14) "Qui tam relator" or "relator" is a person who brings an
19 action under section 13 of this act.

20 NEW SECTION. **Sec. 10.** (1) Subject to subsections (2) and (4) of
21 this section, a person is liable to the government entity for a civil
22 penalty of not less than five thousand five hundred dollars and not
23 more than eleven thousand dollars, plus three times the amount of
24 damages which the government entity sustains because of the act of that
25 person, if the person:

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

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

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

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

35 (e) Is authorized to make or deliver a document certifying receipt
36 of property used, or to be used, by the government entity and,

1 intending to defraud the government entity, makes or delivers the
2 receipt without completely knowing that the information on the receipt
3 is true;

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

7 (g) Knowingly makes, uses, or causes to be made or used, a false
8 record or statement material to an obligation to pay or transmit money
9 or property to the government entity, or knowingly conceals or
10 knowingly and improperly avoids or decreases an obligation to pay or
11 transmit money or property to the government entity.

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

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

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

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

26 (3) For the purposes of determining whether an insurer has a duty
27 to provide a defense or indemnification for an insured and if coverage
28 may be denied if the terms of the policy exclude coverage for
29 intentional acts, a violation of subsection (1) of this section is an
30 intentional act.

31 (4) The office of the attorney general must, by rule, annually
32 adjust the civil penalties established in subsection (1) of this
33 section so that they are equivalent to the civil penalties provided
34 under the federal false claims act and in accordance with the federal
35 civil penalties inflation adjustment act of 1990.

36 NEW SECTION. **Sec. 11.** Any information furnished pursuant to this

1 chapter is exempt from disclosure under the public records act, chapter
2 42.56 RCW, until final disposition and all court ordered seals are
3 lifted.

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

10 NEW SECTION. **Sec. 13.** (1) A person may bring a civil action for
11 a violation of section 10 of this act for the person and for the
12 government entity. The action may be known as a qui tam action and the
13 person bringing the action as a qui tam relator. The action must be
14 brought in the name of the government entity.

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

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

27 (4) The attorney general may, for good cause shown, move the court
28 for extensions of the time during which the complaint remains under
29 seal under subsection (2) of this section. The motions may be
30 supported by affidavits or other submissions in camera. The defendant
31 may not be required to respond to any complaint filed under this
32 section until twenty days after the complaint is unsealed and served
33 upon the defendant.

34 (5) If the attorney general does not proceed with the action prior
35 to the expiration of the sixty-day period or any extensions obtained

1 under subsection (4) of this section, then the relator has the right to
2 conduct the action.

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

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

12 (2)(a) The attorney general may move to dismiss the qui tam action
13 notwithstanding the objections of the relator if the relator has been
14 notified by the attorney general of the filing of the motion and the
15 court has provided the relator with an opportunity for a hearing on the
16 motion.

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

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

- 28 (i) Limiting the number of witnesses the relator may call;
29 (ii) Limiting the length of the testimony of the witnesses;
30 (iii) Limiting the relator's cross-examination of witnesses; or
31 (iv) Otherwise limiting the participation by the relator in the
32 litigation.

33 (d) Upon a showing by the defendant that unrestricted participation
34 during the course of the litigation by the relator would be for
35 purposes of harassment or would cause the defendant undue burden or
36 unnecessary expense, the court may limit the participation by the
37 relator in the litigation.

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

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

22 (5) Notwithstanding section 13 of this act, the attorney general
23 may elect to pursue its claim through any alternate remedy available to
24 the attorney general, including any administrative proceeding to
25 determine a civil money penalty. If any alternate remedy is pursued in
26 another proceeding, the relator has the same rights in the proceeding
27 as the relator would have had if the action had continued under this
28 section. Any finding of fact or conclusion of law made in the other
29 proceeding that has become final is conclusive on all parties to an
30 action under this section. For purposes of this subsection, a finding
31 or conclusion is final if it has been finally determined on appeal to
32 the appropriate court of the state of Washington, if all time for
33 filing the appeal with respect to the finding or conclusion has
34 expired, or if the finding or conclusion is not subject to judicial
35 review.

36 NEW SECTION. **Sec. 15.** (1)(a) Subject to (b) of this subsection,
37 if the attorney general proceeds with a qui tam action, the relator

1 must receive at least fifteen percent but not more than twenty-five
2 percent of the proceeds of the action or settlement of the claim,
3 depending upon the extent to which the relator substantially
4 contributed to the prosecution of the action.

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

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

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

31 (3) Whether or not the attorney general proceeds with the qui tam
32 action, if the court finds that the action was brought by a person who
33 planned and initiated the violation of section 10 of this act upon
34 which the action was brought, then the court may, to the extent the
35 court considers appropriate, reduce the share of the proceeds of the
36 action which the person would otherwise receive under subsection (1) or
37 (2) of this section, taking into account the role of that person in
38 advancing the case to litigation and any relevant circumstances

1 pertaining to the violation. If the person bringing the action is
2 convicted of criminal conduct arising from his or her role in the
3 violation of section 10 of this act, that person must be dismissed from
4 the civil action and may not receive any share of the proceeds of the
5 action. The dismissal may not prejudice the right of the United States
6 to continue the action, represented by the department of justice.

7 (4) If the attorney general does not proceed with the qui tam
8 action and the relator conducts the action, the court may award to the
9 defendant reasonable attorneys' fees and expenses if the defendant
10 prevails in the action and the court finds that the claim of the
11 relator was clearly frivolous, clearly vexatious, or brought primarily
12 for purposes of harassment.

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

16 (6) Any funds recovered that remain after calculation and
17 distribution under subsections (1) through (3) of this section must be
18 deposited into the medicaid fraud penalty account established in
19 section 4 of this act.

20 NEW SECTION. **Sec. 16.** (1) In no event may a person bring a qui
21 tam action which is based upon allegations or transactions which are
22 the subject of a civil suit or an administrative civil money penalty
23 proceeding in which the attorney general is already a party.

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

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

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

32 (iii) By the news media;
33 unless the action is brought by the attorney general or the relator is
34 an original source of the information.

35 (b) For purposes of this section, "original source" means an
36 individual who either (i) prior to a public disclosure under (a) of
37 this subsection, has voluntarily disclosed to the attorney general the

1 information on which allegations or transactions in a claim are based,
2 or (ii) has knowledge that is independent of, and materially adds to,
3 the publicly disclosed allegations or transactions, and who has
4 voluntarily provided the information to the attorney general before
5 filing an action under this section.

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

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

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

25 NEW SECTION. **Sec. 18.** (1) A subpoena requiring the attendance of
26 a witness at a trial or hearing conducted under section 13 of this act
27 may be served at any place in the state of Washington.

28 (2) A civil action under section 13 of this act may be brought at
29 any time, without limitation after the date on which the violation of
30 section 10 of this act is committed.

31 (3) If the attorney general elects to intervene and proceed with a
32 qui tam action, the attorney general may file its own complaint or
33 amend the complaint of a relator to clarify or add detail to the claims
34 in which the attorney general is intervening and to add any additional
35 claims with respect to which the attorney general contends it is
36 entitled to relief.

1 (4) In any qui tam action brought under section 13 of this act, the
2 attorney general is required to prove all essential elements of the
3 cause of action, including damages, by a preponderance of the evidence.

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

12 NEW SECTION. **Sec. 19.** (1) Any action under section 12 or 13 of
13 this act may be brought in the superior court in any county in which
14 the defendant or, in the case of multiple defendants, any one defendant
15 can be found, resides, transacts business, or in which any act
16 proscribed by section 10 of this act occurred. The appropriate court
17 must issue a summons as required by the superior court civil rules and
18 service must occur at any place within the state of Washington.

19 (2) The superior courts have jurisdiction over any action brought
20 under the laws of any city or county for the recovery of funds paid by
21 a government entity if the action arises from the same transaction or
22 occurrence as an action brought under section 12 or 13 of this act.

23 (3) With respect to any local government that is named as a
24 coplaintiff with the state in an action brought under section 13 of
25 this act, a seal on the action ordered by the court under section 13 of
26 this act does not preclude the attorney general or the person bringing
27 the action from serving the complaint, any other pleadings, or the
28 written disclosure of substantially all material evidence and
29 information possessed by the person bringing the action on the law
30 enforcement authorities that are authorized under the law of the local
31 government to investigate and prosecute the action on behalf of the
32 local government, except that the seal applies to the law enforcement
33 authorities so served to the same extent as the seal applies to other
34 parties in the action.

35 NEW SECTION. **Sec. 20.** (1) Whenever the attorney general, or a
36 designee, for purposes of this section, has reason to believe that any

1 person may be in possession, custody, or control of any documentary
2 material or information relevant to a false claims act investigation,
3 the attorney general, or a designee, may, before commencing a civil
4 proceeding under section 13(1) of this act or making an election under
5 section 13(2) of this act, issue in writing and serve upon the person,
6 a civil investigative demand requiring the person:

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

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

10 (c) To give oral testimony concerning the documentary material or
11 information; or

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

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

29 (b) If the demand is for the production of documentary material,
30 the demand must:

31 (i) Describe each class of documentary material to be produced with
32 such definiteness and certainty as to permit the material to be fairly
33 identified;

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

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

1 (c) If the demand is for answers to written interrogatories, the
2 demand must:

3 (i) Set forth with specificity the written interrogatories to be
4 answered;

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

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

9 (d) If the demand is for the giving of oral testimony, the demand
10 must:

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

13 (ii) Identify a false claims act investigator who must conduct the
14 examination and the custodian to whom the transcript of the examination
15 must be submitted;

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

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

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

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

27 (f) The date prescribed for the commencement of oral testimony
28 pursuant to a civil investigative demand issued under this section may
29 not be sooner than six days after the date on which demand is received,
30 unless the attorney general or an assistant attorney general designated
31 by the attorney general determines that exceptional circumstances are
32 present which warrant the commencement of the testimony sooner.

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

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

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

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

12 (4) Any demand which is an express demand for any product of
13 discovery supersedes any inconsistent order, rule, or provision of law,
14 other than this section, preventing or restraining disclosure of the
15 product of discovery to any person. Disclosure of any product of
16 discovery pursuant to any express demand does not constitute a waiver
17 of any right or privilege which the person making such disclosure may
18 be entitled to invoke to resist discovery of trial preparation
19 materials.

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

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

27 (a) Delivering an executed copy of the demand or petition to any
28 partner, executive officer, managing agent, or general agent of the
29 partnership, corporation, association, or entity, or to any agent
30 authorized by appointment or by law to receive service of process on
31 behalf of such partnership, corporation, association, or entity;

32 (b) Delivering an executed copy of the demand or petition to the
33 principal office or place of business of the partnership, corporation,
34 association, or entity; or

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

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

3 (a) Delivering an executed copy of the demand or petition to the
4 person; or

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

9 (8) A verified return by the individual serving any civil
10 investigative demand issued under subsection (1) or (2) of this section
11 or any petition filed under subsection (25) of this section setting
12 forth the manner of the service constitutes proof of the service. In
13 the case of service by registered or certified mail, the return must be
14 accompanied by the return post office receipt of delivery of the
15 demand.

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

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

21 (b) In the case of a person other than a natural person, a person
22 having knowledge of the facts and circumstances relating to the
23 production and authorized to act on behalf of the person. The
24 certificate must state that all of the documentary material required by
25 the demand and in the possession, custody, or control of the person to
26 whom the demand is directed has been produced and made available to the
27 false claims act investigator identified in the demand.

28 (10) Any person upon whom any civil investigative demand for the
29 production of documentary material has been served under this section
30 shall make such material available for inspection and copying to the
31 false claims act investigator identified in the demand at the principal
32 place of business of the person, or at another place as the false
33 claims act investigator and the person thereafter may agree and
34 prescribe in writing, or as the court may direct under subsection (25)
35 of this section. The material must be made available on the return
36 date specified in the demand, or on a later date as the false claims
37 act investigator may prescribe in writing. The person may, upon

1 written agreement between the person and the false claims act
2 investigator, substitute copies for originals of all or any part of the
3 material.

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

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

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

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

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

34 (13) The false claims act investigator conducting the examination
35 shall exclude from the place where the examination is held all persons
36 except the person giving the testimony, the attorney for and any other
37 representative of the person giving the testimony, the attorney
38 general, any person who may be agreed upon by the attorney for the

1 government and the person giving the testimony, the officer before whom
2 the testimony is to be taken, and any stenographer taking the
3 testimony.

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

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

26 (16) The officer before whom the testimony is taken must certify on
27 the transcript that the witness was sworn by the officer and that the
28 transcript is a true record of the testimony given by the witness, and
29 the officer or false claims act investigator must promptly deliver the
30 transcript, or send the transcript by registered or certified mail, to
31 the custodian.

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

37 (18)(a) Any person compelled to appear for oral testimony under a
38 civil investigative demand issued under subsection (1) or (2) of this

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

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

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

24 (20) The attorney general must designate a false claims act
25 investigator to serve as custodian of documentary material, answers to
26 interrogatories, and transcripts of oral testimony received under this
27 section, and must designate such additional false claims act
28 investigators as the attorney general determines from time to time to
29 be necessary to serve as deputies to the custodian.

30 (21)(a) A false claims act investigator who receives any
31 documentary material, answers to interrogatories, or transcripts of
32 oral testimony under this section must transmit them to the custodian.
33 The custodian shall take physical possession of the material, answers,
34 or transcripts and is responsible for the use made of them and for the
35 return of documentary material under subsection (23) of this section.

36 (b) The custodian may cause the preparation of the copies of the
37 documentary material, answers to interrogatories, or transcripts of
38 oral testimony as may be required for official use by any false claims

1 act investigator, or employee of the attorney general. The material,
2 answers, and transcripts may be used by any authorized false claims act
3 investigator or other officer or employee in connection with the taking
4 of oral testimony under this section.

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

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

20 (d) While in the possession of the custodian and under the
21 reasonable terms and conditions as the attorney general shall
22 prescribe:

23 (i) Documentary material and answers to interrogatories must be
24 available for examination by the person who produced the material or
25 answers, or by a representative of that person authorized by that
26 person to examine the material and answers; and

27 (ii) Transcripts of oral testimony must be available for
28 examination by the person who produced the testimony, or by a
29 representative of that person authorized by that person to examine the
30 transcripts.

31 (22) Whenever any official has been designated to appear before any
32 court, special inquiry judge, or state administrative judge in any case
33 or proceeding, the custodian of any documentary material, answers to
34 interrogatories, or transcripts of oral testimony received under this
35 section may deliver to the official the material, answers, or
36 transcripts for official use in connection with any case or proceeding
37 as the official determines to be required. Upon the completion of
38 such a case or proceeding, the official must return to the custodian

1 any material, answers, or transcripts so delivered which have not
2 passed into the control of any court, grand jury, or agency through
3 introduction into the record of such a case or proceeding.

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

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

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

14 Then, the custodian shall, upon written request of the person who
15 produced the material, return to the person the material, other than
16 copies furnished to the false claims act investigator under subsection
17 (10) of this section or made for the attorney general under subsection
18 (21)(b) of this section which has not passed into the control of any
19 court, grand jury, or agency through introduction into the record of
20 the case or proceeding.

21 (24) In the event of the death, disability, or separation from
22 service of the attorney general of the custodian of any documentary
23 material, answers to interrogatories, or transcripts of oral testimony
24 produced pursuant to civil investigative demand under this section, or
25 in the event of the official relief of the custodian from
26 responsibility for the custody and control of the material, answers, or
27 transcripts, the attorney general must promptly:

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

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

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

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

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

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

27 (b) The petition must specify each ground upon which the petitioner
28 relies in seeking relief under (a) of this subsection, and may be based
29 upon any failure of the demand to comply with the provisions of this
30 section or upon any constitutional or other legal right or privilege of
31 the person. During the pendency of the petition in the court, the
32 court may stay, as it deems proper, the running of the time allowed for
33 compliance with the demand, in whole or in part, except that the person
34 filing the petition shall comply with any portions of the demand not
35 sought to be modified or set aside.

36 (27)(a) In the case of any civil investigative demand issued under
37 subsection (1) or (2) of this section which is an express demand for
38 any product of discovery, the person from whom the discovery was

1 obtained may file, in the superior court of the state of Washington for
2 the county in which the proceeding in which the discovery was obtained
3 is or was last pending, and serve upon any false claims act
4 investigator identified in the demand and upon the recipient of the
5 demand, a petition for an order of the court to modify or set aside
6 those portions of the demand requiring production of any product of
7 discovery. Any petition under this subsection (27)(a) must be filed:

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

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

13 (b) The petition must specify each ground upon which the petitioner
14 relies in seeking relief under (a) of this subsection, and may be based
15 upon any failure of the portions of the demand from which relief is
16 sought to comply with the provisions of this section, or upon any
17 constitutional or other legal right or privilege of the petitioner.
18 During the pendency of the petition, the court may stay, as it deems
19 proper, compliance with the demand and the running of the time allowed
20 for compliance with the demand.

21 (28) At any time during which any custodian is in custody or
22 control of any documentary material or answers to interrogatories
23 produced, or transcripts of oral testimony given, by any person in
24 compliance with any civil investigative demand issued under subsection
25 (1) or (2) of this section, the person, and in the case of an express
26 demand for any product of discovery, the person from whom the discovery
27 was obtained, may file, in the superior court of the state of
28 Washington for the county within which the office of the custodian is
29 situated, and serve upon the custodian, a petition for an order of the
30 court to require the performance by the custodian of any duty imposed
31 upon the custodian by this section.

32 (29) Whenever any petition is filed in any superior court of the
33 state of Washington under this section, the court has jurisdiction to
34 hear and determine the matter so presented, and to enter an order or
35 orders as may be required to carry out the provisions of this section.
36 Any final order so entered is subject to appeal under the rules of
37 appellate procedure. Any disobedience of any final order entered under
38 this section by any court must be punished as a contempt of the court.

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

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

8 NEW SECTION. **Sec. 21.** Beginning November 15, 2012, and annually
9 thereafter, the attorney general in consultation with the health care
10 authority must report results of implementing the medicaid false claims
11 act. This report must include:

12 (1) The number of attorneys assigned to qui tam initiated actions;
13 (2) The number of cases brought by the qui tam actions and indicate
14 how many cases are brought by the attorney general and how many by the
15 qui tam relator without attorney general participation;

16 (3) The results of any actions brought under subsection (2) of this
17 section, delineated by cases brought by the attorney general and cases
18 brought by the qui tam relator without attorney general participation;
19 and

20 (4) The amount of recoveries attributable to the medicaid false
21 claims.

22 NEW SECTION. **Sec. 22.** This chapter may be known and cited as the
23 medicaid fraud false claims act.

24 NEW SECTION. **Sec. 23.** Sections 9 through 22 of this act
25 constitute a new chapter in Title 74 RCW.

26 NEW SECTION. **Sec. 24.** This act is necessary for the immediate
27 preservation of the public peace, health, or safety, or support of the
28 state government and its existing public institutions, and takes effect
29 immediately.

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