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**SUBSTITUTE SENATE BILL 5458**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Health & Long-Term Care (originally sponsored by Senators Keiser, Pflug, Kline, Becker, Conway, Pridemore, Rockefeller, and Parlette)

READ FIRST TIME 02/11/11.

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; and prescribing penalties.

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 the attorney general may  
16 assess civil penalties in an amount not to exceed three times the  
17 amount of such excess benefits or payments: PROVIDED, That these civil  
18 penalties shall not apply to any acts or omissions occurring prior to  
19 September 1, 1979. RCW 43.20A.215 governs notice of a civil fine  
20 assessed by the secretary and provides the right to an adjudicative  
21 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 21 of this act) must be deposited into the account. Moneys in  
5 the account may be spent only after appropriation and must be  
6 distributed as follows: Fifty percent to the department of social and  
7 health services; up to thirty-three percent to the office of the  
8 attorney general; and the remainder to the general fund. Expenditures  
9 to the department of social and health services and the office of the  
10 attorney general may only be used for medicaid fraud enforcement  
11 activities.

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

14 (1) For the purposes of this section:

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

17 (b) "Whistleblower" means an employee of an employer that obtains  
18 or attempts to obtain benefits or payments under this chapter in  
19 violation of RCW 74.09.210, who in good faith reports a violation of  
20 RCW 74.09.210 to the department.

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

33 (2) A whistleblower who has been subjected to workplace reprisal or  
34 retaliatory action has the remedies provided under chapter 49.60 RCW.  
35 RCW 4.24.500 through 4.24.520, providing certain protection to persons  
36 who communicate to government agencies, apply to complaints made under  
37 this section. The identity of a whistleblower who complains, in good

1 faith, to the department about a suspected violation of RCW 74.09.210  
2 may remain confidential if requested. The identity of the  
3 whistleblower must subsequently remain confidential unless the  
4 department determines that the complaint was not made in good faith.

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

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

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

23 The following must be medicare providers in order to be paid by the  
24 medical assistance administration: Providers of durable medical  
25 equipment and related supplies, providers of prosthetics, providers of  
26 orthotics, and providers of medical supplies and related services.

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

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

34 (b) A person, including any corporation, who by color or aid of  
35 deception, obtains control over property or services from any program

1 authorized under this chapter, or the value thereof and intends to  
2 deprive the program of such property and services, which exceed or  
3 exceeds five thousand dollars in value is guilty of medicaid theft.

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

7 (2) A person, including any corporation, (~~that~~  
8 ~~(1))~~ who

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

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

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

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

28 **Sec. 7.** RCW 43.43.830 and 2007 c 387 s 9 are each amended to read  
29 as follows:

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

32 (1) "Applicant" means:

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

1 (b) Any prospective volunteer who will have regularly scheduled  
2 unsupervised access to children under sixteen years of age,  
3 developmentally disabled persons, or vulnerable adults during the  
4 course of his or her employment or involvement with the business or  
5 organization under circumstances where such access will or may involve  
6 groups of (i) five or fewer children under twelve years of age, (ii)  
7 three or fewer children between twelve and sixteen years of age, (iii)  
8 developmentally disabled persons, or (iv) vulnerable adults;

9 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;  
10 or

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

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

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

32 (4) "Conviction record" means "conviction record" information as  
33 defined in RCW 10.97.030 and 10.97.050 relating to a crime committed by  
34 either an adult or a juvenile. It does not include a conviction for an  
35 offense that has been the subject of an expungement, pardon, annulment,  
36 certificate of rehabilitation, or other equivalent procedure based on  
37 a finding of the rehabilitation of the person convicted, or a  
38 conviction that has been the subject of a pardon, annulment, or other

1 equivalent procedure based on a finding of innocence. It does include  
2 convictions for offenses for which the defendant received a deferred or  
3 suspended sentence, unless the record has been expunged according to  
4 law.

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

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

30 (7) "Crimes relating to financial exploitation" means a conviction  
31 for first, second, or third degree extortion; first, second, or third  
32 degree theft; medicaid theft or medicaid false statement (RCW  
33 74.09.230); first or second degree robbery; forgery; or any of these  
34 crimes as they may be renamed in the future.

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

36 (a) Another employee or volunteer from the same business or  
37 organization as the applicant; or

1 (b) Any relative or guardian of any of the children or  
2 developmentally disabled persons or vulnerable adults to which the  
3 applicant has access during the course of his or her employment or  
4 involvement with the business or organization.

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

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

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

17 NEW SECTION. **Sec. 8.** Unless the context clearly requires  
18 otherwise, the definitions in this section apply throughout this  
19 chapter:

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

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

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

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

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

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

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

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

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

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

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

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

23 (i) Has actual knowledge of the information;

24 (ii) Acts in deliberate ignorance of the truth or falsity of the  
25 information; or

26 (iii) Acts in reckless disregard of the truth or falsity of the  
27 information.

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

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

32 (9) "Obligation" means an established duty, whether or not fixed,  
33 arising from an express or implied contractual, grantor-grantee, or  
34 licensor-licensee relationship, from a fee-based or similar  
35 relationship, from statute or rule, or from the retention of any  
36 overpayment.

37 (10) "Official use" means any use that is consistent with the law,  
38 and the rules and policies of the attorney general, including use in

1 connection with: Internal attorney general memoranda and reports;  
2 communications between the attorney general and a federal, state, or  
3 local government agency, or a contractor of a federal, state, or local  
4 government agency, undertaken in furtherance of an investigation or  
5 prosecution of a case; interviews of any qui tam relator or other  
6 witness; oral examinations; depositions; preparation for and response  
7 to civil discovery requests; introduction into the record of a case or  
8 proceeding; applications, motions, memoranda, and briefs submitted to  
9 a court or other tribunal; and communications with attorney general  
10 investigators, auditors, consultants and experts, the counsel of other  
11 parties, and arbitrators or mediators, concerning an investigation,  
12 case, or proceeding.

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

16 (12) "Product of discovery" includes:

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

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

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

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

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

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

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

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

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

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

8 (e) Is authorized to make or deliver a document certifying receipt  
9 of property used, or to be used, by the government entity and,  
10 intending to defraud the government entity, makes or delivers the  
11 receipt without completely knowing that the information on the receipt  
12 is true;

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

16 (g) Knowingly makes, uses, or causes to be made or used, a false  
17 record or statement material to an obligation to pay or transmit money  
18 or property to the government entity, or knowingly conceals or  
19 knowingly and improperly avoids or decreases an obligation to pay or  
20 transmit money or property to the government entity.

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

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

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

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

35 NEW SECTION. **Sec. 10.** Any information furnished pursuant to this  
36 chapter is exempt from disclosure under the public records act, chapter

1 42.56 RCW, until final disposition and all court ordered seals are  
2 lifted.

3 NEW SECTION. **Sec. 11.** Subject to funds appropriated for this  
4 purpose, the attorney general must make a good faith effort to  
5 investigate a violation under section 9 of this act. If the attorney  
6 general finds that a person has violated or is violating section 9 of  
7 this act, the attorney general may bring a civil action under this  
8 section against the person.

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

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

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

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

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

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

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

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

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

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

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

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

36 (3) If the attorney general elects not to proceed with the qui tam  
37 action, the relator has the right to conduct the action. If the

1 attorney general so requests, the relator must serve on the attorney  
2 general copies of all pleadings filed in the action and shall supply  
3 copies of all deposition transcripts, at the relator's expense.  
4 Additionally, the relator shall provide the attorney general with  
5 notice and the details of all offers of settlement. When the relator  
6 proceeds with the action, the court, without limiting the status and  
7 rights of the relator, may nevertheless permit the attorney general to  
8 intervene at a later date upon a showing of good cause.

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

20 (5) Notwithstanding section 12 of this act, the attorney general  
21 may elect to pursue its claim through any alternate remedy available to  
22 the attorney general, including any administrative proceeding to  
23 determine a civil money penalty. If any alternate remedy is pursued in  
24 another proceeding, the relator has the same rights in the proceeding  
25 as the relator would have had if the action had continued under this  
26 section. Any finding of fact or conclusion of law made in the other  
27 proceeding that has become final is conclusive on all parties to an  
28 action under this section. For purposes of this subsection, a finding  
29 or conclusion is final if it has been finally determined on appeal to  
30 the appropriate court of the United States, if all time for filing the  
31 appeal with respect to the finding or conclusion has expired, or if the  
32 finding or conclusion is not subject to judicial review.

33 NEW SECTION. **Sec. 14.** (1)(a) Subject to (b) of this subsection,  
34 if the attorney general proceeds with a qui tam action, the relator  
35 must receive at least fifteen percent but not more than twenty-five  
36 percent of the proceeds of the action or settlement of the claim,

1 depending upon the extent to which the relator substantially  
2 contributed to the prosecution of the action.

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

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

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

29 (3) Whether or not the attorney general proceeds with the qui tam  
30 action, if the court finds that the action was brought by a person who  
31 planned and initiated the violation of section 9 of this act upon which  
32 the action was brought, then the court may, to the extent the court  
33 considers appropriate, reduce the share of the proceeds of the action  
34 which the person would otherwise receive under subsection (1) or (2) of  
35 this section, taking into account the role of that person in advancing  
36 the case to litigation and any relevant circumstances pertaining to the  
37 violation. If the person bringing the action is convicted of criminal  
38 conduct arising from his or her role in the violation of section 9 of

1 this act, that person must be dismissed from the civil action and may  
2 not receive any share of the proceeds of the action. The dismissal may  
3 not prejudice the right of the United States to continue the action,  
4 represented by the department of justice.

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

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

14 (6) Any funds recovered that remain after calculation and  
15 distribution under subsections (1) through (3) of this section must be  
16 distributed and deposited as follows: Actual damages must be returned  
17 to the government entity to which the false claim or claims were  
18 submitted and the remainder to the medicaid fraud penalty account  
19 established in section 3 of this act.

20 NEW SECTION. **Sec. 15.** (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, unless the action is brought by the  
33 attorney general or the relator is an original source of the  
34 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. 16.** (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. 17.** (1) A subpoena requiring the attendance of  
26 a witness at a trial or hearing conducted under section 12 of this act  
27 may be served at any place in the state of Washington.

28 (2) A civil action under section 12 of this act may be brought at  
29 any time, without limitation after the date on which the violation of  
30 section 9 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 12 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 11 or 12(1) of  
11 this act.

12 NEW SECTION. **Sec. 18.** (1) Any action under section 11 or 12 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 9 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 11 or 12 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 12 of  
25 this act, a seal on the action ordered by the court under section 12 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. 19.** (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 12(1) of this act or making an election under  
5 section 12(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 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 may not be returned  
25 or is not returnable until twenty days after a copy of the demand has  
26 been served upon the person 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 seven days after the date on which demand is  
30 received, unless the attorney general or an assistant attorney general  
31 designated by the attorney general determines that exceptional  
32 circumstances are present which warrant the commencement of the  
33 testimony sooner.

34 (g) The attorney general may not authorize the issuance under this  
35 section of more than one civil investigative demand for oral testimony  
36 by the same person unless the person requests otherwise or unless the  
37 attorney general, after investigation, notifies that person in writing  
38 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 of the United States to aid in a special inquiry  
8 investigation; or

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

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

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

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

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

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

36 (c) Depositing an executed copy of the demand or petition in the  
37 United States mail by registered or certified mail, with a return

1 receipt requested, addressed to such partnership, corporation,  
2 association, or entity at its principal office or place of business.

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

5 (a) Delivering an executed copy of the demand or petition to the  
6 person; or

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

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

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

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

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

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

1 act investigator may prescribe in writing. The person may, upon  
2 written agreement between the person and the false claims act  
3 investigator, substitute copies for originals of all or any part of the  
4 material.

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

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

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

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

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

1 general, any person who may be agreed upon by the attorney for the  
2 government and the person giving the testimony, the officer before whom  
3 the testimony is to be taken, and any stenographer taking the  
4 testimony.

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

10 (15) When the testimony is fully transcribed, the false claims act  
11 investigator or the officer before whom the testimony is taken must  
12 afford the witness, who may be accompanied by counsel, a reasonable  
13 opportunity to examine and read the transcript, unless the examination  
14 and reading are waived by the witness. Any changes in form or  
15 substance which the witness desires to make must be entered and  
16 identified upon the transcript by the officer or the false claims act  
17 investigator, with a statement of the reasons given by the witness for  
18 making the changes. The transcript must then be signed by the witness,  
19 unless the witness in writing waives the signing, is ill, cannot be  
20 found, or refuses to sign. If the transcript is not signed by the  
21 witness within thirty days after being afforded a reasonable  
22 opportunity to examine it, the officer or the false claims act  
23 investigator must sign it and state on the record the fact of the  
24 waiver, illness, absence of the witness, or the refusal to sign,  
25 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, the custodian  
14 shall, upon written request of the person who produced the material,  
15 return to the person the material, other than copies furnished to the  
16 false claims act investigator under subsection (10) of this section or  
17 made for the attorney general under subsection (21)(b) of this section  
18 which has not passed into the control of any court, grand jury, or  
19 agency through introduction into the record of the case or proceeding.

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

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

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

37 (25) Whenever any person fails to comply with any civil  
38 investigative demand issued under subsection (1) or (2) of this

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

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

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

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

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

34 (27)(a) In the case of any civil investigative demand issued under  
35 subsection (1) or (2) of this section which is an express demand for  
36 any product of discovery, the person from whom the discovery was  
37 obtained may file, in the superior court of the state of Washington for  
38 the county in which the proceeding in which the discovery was obtained

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

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

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

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

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

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

37 (30) The superior court civil rules apply to any petition under

1 this section, to the extent that the rules are not inconsistent with  
2 the provisions of this section.

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

7 NEW SECTION. **Sec. 20.** This chapter may be known and cited as the  
8 medicaid fraud false claims act.

9 NEW SECTION. **Sec. 21.** Sections 8 through 20 of this act  
10 constitute a new chapter in Title 74 RCW.

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