
SENATE BILL 5458

State of Washington 62nd Legislature 2011 Regular Session

By Senators Keiser, Pflug, Kline, Becker, Conway, Pridemore, Rockefeller, and Parlette

Read first time 01/26/11. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to medicaid fraud; amending RCW 74.09.210;
2 reenacting and amending RCW 9A.04.080; adding new sections to chapter
3 74.09 RCW; and adding a new chapter to Title 74 RCW.

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

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

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

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

11 (i) Murder;

12 (ii) Homicide by abuse;

13 (iii) Arson if a death results;

14 (iv) Vehicular homicide;

15 (v) Vehicular assault if a death results;

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

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

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

4 (ii) Arson if no death results; or

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

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

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

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

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

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

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

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

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

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

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

37 (~~(g)~~) (h) A violation of RCW 9A.56.030 must not be prosecuted

1 more than three years after the discovery of the offense when the
2 victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

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

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

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

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

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

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

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

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

35 (a) A willful false statement;

36 (b) By willful misrepresentation, or by concealment of any material
37 facts; or

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

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

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

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

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

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

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

27 (6) The secretary or the attorney general may contract out with
28 private attorneys and local governments in bringing actions under this
29 section as necessary.

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

32 The medicaid fraud penalty account is created in the state
33 treasury. All receipts from civil penalties collected under RCW
34 74.09.210 must be deposited into the account. Moneys in the account
35 may be spent only after appropriation and must be distributed as
36 follows: Fifty percent to the department of social and health
37 services; up to thirty-three percent to the office of the attorney

1 general; and the remainder to the general fund. Expenditures to the
2 department of social and health services and the office of the attorney
3 general may only be used for medicaid fraud enforcement activities.

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

6 (1) For the purposes of this section:

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

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

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

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

34 (3) This section does not prohibit an employer from exercising its
35 authority to terminate, suspend, or discipline an employee who engages
36 in workplace reprisal or retaliatory action against a whistleblower.
37 The protections provided to whistleblowers under this chapter do not

1 prevent an employer from: (a) Terminating, suspending, or disciplining
2 a whistleblower for other lawful purposes; or (b) reducing the hours of
3 employment or terminating employment as a result of the demonstrated
4 inability to meet payroll requirements. The department shall determine
5 if the employer cannot meet payroll in cases where a whistleblower has
6 been terminated or had hours of employment reduced due to the inability
7 of a facility to meet payroll.

8 (4) The department shall adopt rules to implement procedures for
9 filing, investigation, and resolution of whistleblower complaints that
10 are integrated with complaint procedures under this chapter. The
11 department shall adopt rules designed to discourage whistleblower
12 complaints made in bad faith or for retaliatory purposes.

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

15 (1) For the purposes of this section, "durable medical equipment"
16 means equipment that:

- 17 (a) Can withstand repeated use;
- 18 (b) Is primarily and customarily used to serve a medical purpose;
- 19 (c) Generally is not useful to a person in the absence of illness
20 or injury; and
- 21 (d) Is appropriate for use in the client's place of residence.

22 (2) The medical assistance administration may not pay a durable
23 medical equipment provider for medical supplies unless that provider is
24 a medicare provider.

25 NEW SECTION. **Sec. 6.** Unless the context clearly requires
26 otherwise, the definitions in this section apply throughout this
27 chapter:

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

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

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

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

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

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

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

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

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

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

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

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

31 (i) Has actual knowledge of the information;

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

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

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

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

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

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

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

25 (12) "Product of discovery" includes:

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

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

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

34 (13) "Qui tam action" is an action brought by a person under
35 section 10 of this act.

36 (14) "Qui tam relator" or "relator" is a person who brings an
37 action under section 10 of this act.

1 NEW SECTION. **Sec. 7.** (1) Subject to subsection (2) of this
2 section, a person is liable to the government entity for a civil
3 penalty of not less than five thousand dollars and not more than ten
4 thousand dollars, plus three times the amount of damages which the
5 government entity sustains because of the act of that person, if the
6 person:

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

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

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

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

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

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

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

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

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

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

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

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

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

16 NEW SECTION. **Sec. 10.** (1) A person may bring a civil action for
17 a violation of section 7 of this act for the person and for the
18 government entity. The action may be known as a qui tam action and the
19 person bringing the action as a qui tam relator. The action must be
20 brought in the name of the government entity.

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

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

33 (4) The attorney general may, for good cause shown, move the court
34 for extensions of the time during which the complaint remains under
35 seal under subsection (2) of this section. The motions may be

1 supported by affidavits or other submissions in camera. The defendant
2 may not be required to respond to any complaint filed under this
3 section until twenty days after the complaint is unsealed and served
4 upon the defendant.

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

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

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

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

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

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

- 34 (i) Limiting the number of witnesses the relator may call;
- 35 (ii) Limiting the length of the testimony of the witnesses;
- 36 (iii) Limiting the relator's cross-examination of witnesses; or

1 (iv) Otherwise limiting the participation by the relator in the
2 litigation.

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

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

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

29 (5) Notwithstanding section 10 of this act, the attorney general
30 may elect to pursue its claim through any alternate remedy available to
31 the attorney general, including any administrative proceeding to
32 determine a civil money penalty. If any alternate remedy is pursued in
33 another proceeding, the relator has the same rights in the proceeding
34 as the relator would have had if the action had continued under this
35 section. Any finding of fact or conclusion of law made in the other
36 proceeding that has become final is conclusive on all parties to an
37 action under this section. For purposes of this subsection, a finding
38 or conclusion is final if it has been finally determined on appeal to

1 the appropriate court of the United States, if all time for filing the
2 appeal with respect to the finding or conclusion has expired, or if the
3 finding or conclusion is not subject to judicial review.

4 NEW SECTION. **Sec. 12.** (1)(a) Subject to (b) of this subsection,
5 if the attorney general proceeds with a qui tam action, the relator
6 must receive at least fifteen percent but not more than twenty-five
7 percent of the proceeds of the action or settlement of the claim,
8 depending upon the extent to which the relator substantially
9 contributed to the prosecution of the action.

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

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

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

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

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

13 (4) If the attorney general does not proceed with the qui tam
14 action and the relator conducts the action, the court may award to the
15 defendant reasonable attorneys' fees and expenses if the defendant
16 prevails in the action and the court finds that the claim of the
17 relator was clearly frivolous, vexatious, or brought primarily for
18 purposes of harassment.

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

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

28 NEW SECTION. **Sec. 13.** (1) In no event may a person bring a qui
29 tam action which is based upon allegations or transactions which are
30 the subject of a civil suit or an administrative civil money penalty
31 proceeding in which the attorney general is already a party.

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

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

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

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

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

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

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

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

33 NEW SECTION. **Sec. 15.** (1) A subpoena requiring the attendance of
34 a witness at a trial or hearing conducted under section 10 of this act
35 may be served at any place in the state of Washington.

1 (2) A civil action under section 10 of this act may be brought at
2 any time, without limitation after the date on which the violation of
3 section 7 of this act is committed.

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

10 (4) In any qui tam action brought under section 10 of this act, the
11 attorney general is required to prove all essential elements of the
12 cause of action, including damages, by a preponderance of the evidence.

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

21 NEW SECTION. **Sec. 16.** (1) Any action under section 9 or 10 of
22 this act may be brought in the superior court in any county in which
23 the defendant or, in the case of multiple defendants, any one defendant
24 can be found, resides, transacts business, or in which any act
25 proscribed by section 7 of this act occurred. The appropriate court
26 must issue a summons as required by the superior court civil rules and
27 service must occur at any place within the state of Washington.

28 (2) The superior courts have jurisdiction over any action brought
29 under the laws of any city or county for the recovery of funds paid by
30 a government entity if the action arises from the same transaction or
31 occurrence as an action brought under section 9 or 10 of this act.

32 (3) With respect to any local government that is named as a
33 coplaintiff with the state in an action brought under section 10 of
34 this act, a seal on the action ordered by the court under section 10 of
35 this act does not preclude the attorney general or the person bringing
36 the action from serving the complaint, any other pleadings, or the
37 written disclosure of substantially all material evidence and

1 information possessed by the person bringing the action on the law
2 enforcement authorities that are authorized under the law of the local
3 government to investigate and prosecute the action on behalf of the
4 local government, except that the seal applies to the law enforcement
5 authorities so served to the same extent as the seal applies to other
6 parties in the action.

7 NEW SECTION. **Sec. 17.** (1) Whenever the attorney general, or a
8 designee, for purposes of this section, has reason to believe that any
9 person may be in possession, custody, or control of any documentary
10 material or information relevant to a false claims act investigation,
11 the attorney general, or a designee, may, before commencing a civil
12 proceeding under section 10(1) of this act or making an election under
13 section 10(2) of this act, issue in writing and serve upon the person,
14 a civil investigative demand requiring the person:

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

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

18 (c) To give oral testimony concerning the documentary material or
19 information; or

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

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

1 (b) If the demand is for the production of documentary material,
2 the demand must:

3 (i) Describe each class of documentary material to be produced with
4 such definiteness and certainty as to permit the material to be fairly
5 identified;

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

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

11 (c) If the demand is for answers to written interrogatories, the
12 demand must:

13 (i) Set forth with specificity the written interrogatories to be
14 answered;

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

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

19 (d) If the demand is for the giving of oral testimony, the demand
20 must:

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

23 (ii) Identify a false claims act investigator who must conduct the
24 examination and the custodian to whom the transcript of the examination
25 must be submitted;

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

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

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

33 (e) Any civil investigative demand issued under this section which
34 is an express demand for any product of discovery may not be returned
35 or is not returnable until twenty days after a copy of the demand has
36 been served upon the person from whom the discovery was obtained.

37 (f) The date prescribed for the commencement of oral testimony
38 pursuant to a civil investigative demand issued under this section may

1 not be sooner than seven days after the date on which demand is
2 received, unless the attorney general or an assistant attorney general
3 designated by the attorney general determines that exceptional
4 circumstances are present which warrant the commencement of the
5 testimony sooner.

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

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

16 (a) The standards applicable to subpoenas or subpoenas duces tecum
17 issued by a court of the United States to aid in a special inquiry
18 investigation; or

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

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

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

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

1 (a) Delivering an executed copy of the demand or petition to any
2 partner, executive officer, managing agent, or general agent of the
3 partnership, corporation, association, or entity, or to any agent
4 authorized by appointment or by law to receive service of process on
5 behalf of such partnership, corporation, association, or entity;

6 (b) Delivering an executed copy of the demand or petition to the
7 principal office or place of business of the partnership, corporation,
8 association, or entity; or

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

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

15 (a) Delivering an executed copy of the demand or petition to the
16 person; or

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

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

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

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

33 (b) In the case of a person other than a natural person, a person
34 having knowledge of the facts and circumstances relating to the
35 production and authorized to act on behalf of the person. The
36 certificate must state that all of the documentary material required by
37 the demand and in the possession, custody, or control of the person to

1 whom the demand is directed has been produced and made available to the
2 false claims act investigator identified in the demand.

3 (10) Any person upon whom any civil investigative demand for the
4 production of documentary material has been served under this section
5 shall make such material available for inspection and copying to the
6 false claims act investigator identified in the demand at the principal
7 place of business of the person, or at another place as the false
8 claims act investigator and the person thereafter may agree and
9 prescribe in writing, or as the court may direct under subsection (25)
10 of this section. The material must be made available on the return
11 date specified in the demand, or on a later date as the false claims
12 act investigator may prescribe in writing. The person may, upon
13 written agreement between the person and the false claims act
14 investigator, substitute copies for originals of all or any part of the
15 material.

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

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

22 (b) In the case of a person other than a natural person, the person
23 or persons responsible for answering each interrogatory. If any
24 interrogatory is objected to, the reasons for the objection must be
25 stated in the certificate instead of an answer. The certificate must
26 state that all information required by the demand and in the
27 possession, custody, control, or knowledge of the person to whom the
28 demand is directed has been submitted. To the extent that any
29 information is not furnished, the information must be identified and
30 reasons set forth with particularity regarding the reasons why the
31 information was not furnished.

32 (12) The examination of any person pursuant to a civil
33 investigative demand for oral testimony served under this section must
34 be taken before an officer authorized to administer oaths and
35 affirmations by the laws of the state of Washington or of the place
36 where the examination is held. The officer before whom the testimony
37 is to be taken must put the witness on oath or affirmation and must,
38 personally or by someone acting under the direction of the officer and

1 in the officer's presence, record the testimony of the witness. The
2 testimony must be taken stenographically and must be transcribed. When
3 the testimony is fully transcribed, the officer before whom the
4 testimony is taken shall promptly transmit a copy of the transcript of
5 the testimony to the custodian. This subsection does not preclude the
6 taking of testimony by any means authorized by, and in a manner
7 consistent with, the superior court civil rules.

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

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

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

37 (16) The officer before whom the testimony is taken must certify on
38 the transcript that the witness was sworn by the officer and that the

1 transcript is a true record of the testimony given by the witness, and
2 the officer or false claims act investigator must promptly deliver the
3 transcript, or send the transcript by registered or certified mail, to
4 the custodian.

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

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

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

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

35 (20) The attorney general must designate a false claims act
36 investigator to serve as custodian of documentary material, answers to
37 interrogatories, and transcripts of oral testimony received under this

1 section, and must designate such additional false claims act
2 investigators as the attorney general determines from time to time to
3 be necessary to serve as deputies to the custodian.

4 (21)(a) A false claims act investigator who receives any
5 documentary material, answers to interrogatories, or transcripts of
6 oral testimony under this section must transmit them to the custodian.
7 The custodian shall take physical possession of the material, answers,
8 or transcripts and is responsible for the use made of them and for the
9 return of documentary material under subsection (23) of this section.

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

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

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

32 (d) While in the possession of the custodian and under the
33 reasonable terms and conditions as the attorney general shall
34 prescribe:

35 (i) Documentary material and answers to interrogatories must be
36 available for examination by the person who produced the material or
37 answers, or by a representative of that person authorized by that
38 person to examine the material and answers; and

1 (ii) Transcripts of oral testimony must be available for
2 examination by the person who produced the testimony, or by a
3 representative of that person authorized by that person to examine the
4 transcripts.

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

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

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

22 (b) No case or proceeding in which the material may be used has
23 been commenced within a reasonable time after completion of the
24 examination and analysis of all documentary material and other
25 information assembled in the course of the investigation, the custodian
26 shall, upon written request of the person who produced the material,
27 return to the person the material, other than copies furnished to the
28 false claims act investigator under subsection (10) of this section or
29 made for the attorney general under subsection (21)(b) of this section
30 which has not passed into the control of any court, grand jury, or
31 agency through introduction into the record of the case or proceeding.

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

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

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

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

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

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

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

37 (b) The petition must specify each ground upon which the petitioner
38 relies in seeking relief under (a) of this subsection, and may be based

1 upon any failure of the demand to comply with the provisions of this
2 section or upon any constitutional or other legal right or privilege of
3 the person. During the pendency of the petition in the court, the
4 court may stay, as it deems proper, the running of the time allowed for
5 compliance with the demand, in whole or in part, except that the person
6 filing the petition shall comply with any portions of the demand not
7 sought to be modified or set aside.

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

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

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

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

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

1 situated, and serve upon the custodian, a petition for an order of the
2 court to require the performance by the custodian of any duty imposed
3 upon the custodian by this section.

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

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

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

18 NEW SECTION. **Sec. 18.** Sections 6 through 17 of this act may be
19 known and cited as the medicaid fraud false claims act.

20 NEW SECTION. **Sec. 19.** Sections 6 through 18 of this act
21 constitute a new chapter in Title 74 RCW.

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