
SENATE BILL 5960

State of Washington 62nd Legislature 2011 1st Special Session

By Senators Keiser, Pflug, and Kline

Read first time 05/18/11. Referred to Committee on Ways & Means.

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

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

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

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

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

12 (i) Murder;

13 (ii) Homicide by abuse;

14 (iii) Arson if a death results;

15 (iv) Vehicular homicide;

16 (v) Vehicular assault if a death results;

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

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

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

6 (ii) Arson if no death results; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (a) A willful false statement;

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

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

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

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

10 (2) Any person or entity knowingly violating any of the provisions
11 of subsection (1) of this section shall be liable for repayment of any
12 excess benefits or payments received, plus interest at the rate and in
13 the manner provided in RCW 43.20B.695. Such person or other entity
14 shall further, in addition to any other penalties provided by law, be
15 subject to civil penalties. The secretary or 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 22 of this act) must be deposited into the account. Moneys in
5 the account may be spent only after appropriation and must be used only
6 for medicaid services and for medicaid fraud enforcement activities.

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

9 (1) For the purposes of this section:

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

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

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

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

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

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

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

19 The following must be medicare providers in order to be paid by the
20 medical assistance administration: Providers of durable medical
21 equipment and related supplies, providers of prosthetics, providers of
22 orthotics, and providers of medical supplies and related services.

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

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

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

35 (c) Medicaid theft is a class B felony: PROVIDED, That the fine,

1 if imposed, shall not be in an amount more than fifty thousand dollars,
2 except as authorized by RCW 9A.20.030.

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

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

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

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

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

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

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

28 (1) "Applicant" means:

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

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

1 groups of (i) five or fewer children under twelve years of age, (ii)
2 three or fewer children between twelve and sixteen years of age, (iii)
3 developmentally disabled persons, or (iv) vulnerable adults;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (i) Has actual knowledge of the information;

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

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

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

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

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

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

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

25 (12) "Product of discovery" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (6) Any funds recovered that remain after calculation and
23 distribution under subsections (1) through (3) of this section must be
24 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. 15.** (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. 16.** (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. 17.** (1) A subpoena requiring the attendance of
34 a witness at a trial or hearing conducted under section 12 of this act
35 may be served at any place in the state of Washington.

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

21 NEW SECTION. **Sec. 18.** (1) Any action under section 11 or 12 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 9 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 11 or 12 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 12 of
34 this act, a seal on the action ordered by the court under section 12 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. 19.** (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 12(1) of this act or making an election under
13 section 12(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 must 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 is not due until
35 thirty days after a copy of the demand has been served upon the person
36 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 six days after the date on which demand is received,
2 unless the attorney general or an assistant attorney general designated
3 by the attorney general determines that exceptional circumstances are
4 present which warrant the commencement of the testimony sooner.

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

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

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

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

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

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

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

36 (a) Delivering an executed copy of the demand or petition to any
37 partner, executive officer, managing agent, or general agent of the

1 partnership, corporation, association, or entity, or to any agent
2 authorized by appointment or by law to receive service of process on
3 behalf of such partnership, corporation, association, or entity;

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

7 (c) 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 such partnership, corporation,
10 association, or entity at its principal office or place of business.

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

13 (a) Delivering an executed copy of the demand or petition to the
14 person; or

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

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

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

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

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

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

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

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

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

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

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

1 is fully transcribed, the officer before whom the testimony is taken
2 shall promptly transmit a copy of the transcript of the testimony to
3 the custodian. This subsection does not preclude the taking of
4 testimony by any means authorized by, and in a manner consistent with,
5 the superior court civil rules.

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

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

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

36 (16) The officer before whom the testimony is taken must certify on
37 the transcript that the witness was sworn by the officer and that the
38 transcript is a true record of the testimony given by the witness, and

1 the officer or false claims act investigator must promptly deliver the
2 transcript, or send the transcript by registered or certified mail, to
3 the custodian.

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

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

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

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

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

1 investigators as the attorney general determines from time to time to
2 be necessary to serve as deputies to the custodian.

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

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

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

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

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

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

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

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

1 responsibility for the custody and control of the material, answers, or
2 transcripts, the attorney general must promptly:

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

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

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

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

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

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

1 (b) The petition must specify each ground upon which the petitioner
2 relies in seeking relief under (a) of this subsection, and may be based
3 upon any failure of the demand to comply with the provisions of this
4 section or upon any constitutional or other legal right or privilege of
5 the person. During the pendency of the petition in the court, the
6 court may stay, as it deems proper, the running of the time allowed for
7 compliance with the demand, in whole or in part, except that the person
8 filing the petition shall comply with any portions of the demand not
9 sought to be modified or set aside.

10 (27)(a) In the case of any civil investigative demand issued under
11 subsection (1) or (2) of this section which is an express demand for
12 any product of discovery, the person from whom the discovery was
13 obtained may file, in the superior court of the state of Washington for
14 the county in which the proceeding in which the discovery was obtained
15 is or was last pending, and serve upon any false claims act
16 investigator identified in the demand and upon the recipient of the
17 demand, a petition for an order of the court to modify or set aside
18 those portions of the demand requiring production of any product of
19 discovery. Any petition under this subsection (27)(a) 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 portions of the demand from which relief is
28 sought to comply with the provisions of this section, or upon any
29 constitutional or other legal right or privilege of the petitioner.
30 During the pendency of the petition, the court may stay, as it deems
31 proper, compliance with the demand and the running of the time allowed
32 for compliance with the demand.

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

1 was obtained, may file, in the superior court of the state of
2 Washington for the county within which the office of the custodian is
3 situated, and serve upon the custodian, a petition for an order of the
4 court to require the performance by the custodian of any duty imposed
5 upon the custodian by this section.

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

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

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

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

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

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

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

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

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