
SUBSTITUTE SENATE BILL 5978

State of Washington

62nd Legislature

2012 Regular Session

By Senate Health & Long-Term Care (originally sponsored by Senators Pflug, Keiser, Frockt, Conway, and Kohl-Welles)

READ FIRST TIME 01/10/12.

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

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

7 **PART I**

8 **WASHINGTON MEDICAID FRAUD PROVISIONS**

9 NEW SECTION. **Sec. 101.** The legislature intends to enact a state
10 false claims act in order to provide this state with another tool to
11 combat medicaid fraud. The legislature finds that between 1996 and
12 2009 state-initiated false claims acts resulted in over five billion
13 dollars in total recoveries to those states. The highest recoveries in
14 those cases were from claims relating to billing fraud, off-label
15 marketing, and withholding safety information; these cases were
16 primarily related to the pharmaceuticals industry and hospital
17 networks, hospitals, and medical centers. By this act, the legislature
18 does not intend to target a certain industry, profession, or retailer

1 of medical equipment, or to place an undue burden on health care
2 professionals. This act is not intended to harass health care
3 professionals, nor is intended to be used as a tool to target actions
4 that are related to incidental errors or clerical errors, which should
5 not be considered fraud. The intent is to use the false claims act to
6 root out significant areas of fraud that result in higher health care
7 costs to this state and to use the false claims act to recover state
8 money that could and should be used to support the medicaid program.

9 **Sec. 102.** RCW 9A.04.080 and 2009 c 61 s 1 and 2009 c 53 s 1 are
10 each reenacted and amended to read as follows:

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

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

15 (i) Murder;

16 (ii) Homicide by abuse;

17 (iii) Arson if a death results;

18 (iv) Vehicular homicide;

19 (v) Vehicular assault if a death results;

20 (vi) Hit-and-run injury-accident if a death results (RCW
21 46.52.020(4)).

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

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

27 (ii) Arson if no death results; or

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

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

1 after the victim's eighteenth birthday or more than seven years after
2 the rape's commission, whichever is later, if the violation was
3 committed against a victim under fourteen years of age.

4 (c) Violations of the following statutes may be prosecuted up to
5 the victim's twenty-eighth birthday: RCW 9A.44.073, 9A.44.076,
6 9A.44.083, 9A.44.086, (~~9A.44.070, 9A.44.080,~~) 9A.44.100(1)(b),
7 9A.44.079, 9A.44.089, or 9A.64.020.

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

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

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

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

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

16 (e) The following offenses shall not be prosecuted more than five
17 years after their commission: Any class C felony under chapter
18 (~~74.09,~~) 82.36(~~(7)~~) or 82.38 RCW.

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

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

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

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

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

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

37 (2) The periods of limitation prescribed in subsection (1) of this

1 section do not run during any time when the person charged is not
2 usually and publicly resident within this state.

3 (3) In any prosecution for a sex offense as defined in RCW
4 9.94A.030, the periods of limitation prescribed in subsection (1) of
5 this section run from the date of commission or one year from the date
6 on which the identity of the suspect is conclusively established by
7 deoxyribonucleic acid testing, whichever is later.

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

14 **Sec. 103.** RCW 74.09.210 and 2011 1st sp.s. c 15 s 15 are each
15 amended to read as follows:

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

- 21 (a) A willful false statement;
- 22 (b) By willful misrepresentation, or by concealment of any material
23 facts; or
- 24 (c) By other fraudulent scheme or device, including, but not
25 limited to:
 - 26 (i) Billing for services, drugs, supplies, or equipment that were
27 unfurnished, of lower quality, or a substitution or misrepresentation
28 of items billed; or
 - 29 (ii) Repeated billing for purportedly covered items, which were not
30 in fact so covered.

31 (2) Any person or entity knowingly violating any of the provisions
32 of subsection (1) of this section shall be liable for repayment of any
33 excess benefits or payments received, plus interest at the rate and in
34 the manner provided in RCW 43.20B.695. Such person or other entity
35 shall further, in addition to any other penalties provided by law, be
36 subject to civil penalties. The (~~secretary or~~) director(~~, as~~
37 ~~appropriate,~~) or the attorney general may assess civil penalties in an

1 amount not to exceed three times the amount of such excess benefits or
2 payments: PROVIDED, That these civil penalties shall not apply to any
3 acts or omissions occurring prior to September 1, 1979. RCW 43.20A.215
4 governs notice of a civil fine assessed by the director and provides
5 the right to an adjudicative proceeding.

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

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

12 (5) Civil penalties shall be deposited (~~(in the general fund)~~) upon
13 their receipt into the medicaid fraud penalty account established in
14 section 104 of this act.

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

17 NEW SECTION. Sec. 104. A new section is added to chapter 74.09
18 RCW to read as follows:

19 The medicaid fraud penalty account is created in the state
20 treasury. All receipts from civil penalties collected under RCW
21 74.09.210, all receipts received under settlements that originated
22 under a filing under the federal false claims act, and all receipts
23 received under settlements that originated under the state medicaid
24 fraud false claims act, chapter 74.--- RCW (the new chapter created in
25 section 215 of this act) must be deposited into the account. Moneys in
26 the account may be spent only after appropriation and must be used only
27 for medicaid services, fraud detection and prevention activities,
28 recovery of improper payments, and for other medicaid fraud enforcement
29 activities.

30 NEW SECTION. Sec. 105. A new section is added to chapter 74.09
31 RCW to read as follows:

32 (1) For the purposes of this section:

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

35 (b) "Whistleblower" means an employee of an employer that obtains

1 or attempts to obtain benefits or payments under this chapter in
2 violation of RCW 74.09.210, who in good faith reports a violation of
3 RCW 74.09.210 to the authority.

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

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

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

36 (4) The authority shall adopt rules to implement procedures for
37 filing, investigation, and resolution of whistleblower complaints that

1 are integrated with complaint procedures under this chapter. The
2 authority shall adopt rules designed to discourage whistleblower
3 complaints made in bad faith or for retaliatory purposes.

4 NEW SECTION. Sec. 106. A new section is added to chapter 74.09
5 RCW to read as follows:

6 The following must be medicare providers in order to be paid under
7 the medicaid program: Providers of durable medical equipment and
8 related supplies and providers of medical supplies and related
9 services.

10 **Sec. 107.** RCW 74.09.230 and 1979 ex.s. c 152 s 4 are each amended
11 to read as follows:

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

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

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

25 (2) A person, including any corporation, ~~((that~~
26 ~~(1))~~ who

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

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

35 ~~((+3))~~ (c) having knowledge of the occurrence of any event
36 affecting ~~((a))~~ (i) the initial or continued right to any payment, or

1 ((b)) (ii) the initial or continued right to any such payment of any
2 other individual in whose behalf he or she has applied for or is
3 receiving such payment, conceals or fails to disclose such event with
4 an intent fraudulently to secure such payment either in a greater
5 amount or quantity than is due or when no such payment is authorized,
6 shall be guilty of a class C felony: PROVIDED, That the fine, if
7 imposed, shall not be in an amount more than twenty-five thousand
8 dollars, except as authorized by RCW 9A.20.030.

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

10 **Sec. 108.** RCW 43.43.830 and 2011 c 253 s 5 are each reenacted and
11 amended to read as follows:

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

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

19 (2) "Applicant" means:

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

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

32 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
33 or

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

36 (3) "Business or organization" means a person, business, or
37 organization licensed in this state, any agency of the state, or other

1 governmental entity, that educates, trains, treats, supervises, houses,
2 or provides recreation to developmentally disabled persons, vulnerable
3 adults, or children under sixteen years of age, or that provides child
4 day care, early learning, or early learning childhood education
5 services, including but not limited to public housing authorities,
6 school districts, and educational service districts.

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

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

29 (6) "Crime against children or other persons" means a conviction of
30 any of the following offenses: Aggravated murder; first or second
31 degree murder; first or second degree kidnapping; first, second, or
32 third degree assault; first, second, or third degree assault of a
33 child; first, second, or third degree rape; first, second, or third
34 degree rape of a child; first or second degree robbery; first degree
35 arson; first degree burglary; first or second degree manslaughter;
36 first or second degree extortion; indecent liberties; incest; vehicular
37 homicide; first degree promoting prostitution; communication with a
38 minor; unlawful imprisonment; simple assault; sexual exploitation of

1 minors; first or second degree criminal mistreatment; endangerment with
2 a controlled substance; child abuse or neglect as defined in RCW
3 26.44.020; first or second degree custodial interference; first or
4 second degree custodial sexual misconduct; malicious harassment; first,
5 second, or third degree child molestation; first or second degree
6 sexual misconduct with a minor; commercial sexual abuse of a minor;
7 child abandonment; promoting pornography; selling or distributing
8 erotic material to a minor; custodial assault; violation of child abuse
9 restraining order; child buying or selling; prostitution; felony
10 indecent exposure; criminal abandonment; or any of these crimes as they
11 may be renamed in the future.

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

15 (8) "Crimes relating to financial exploitation" means a conviction
16 for first, second, or third degree extortion; first, second, or third
17 degree theft; medicaid theft or medicaid false statement (RCW
18 74.09.230); first or second degree robbery; forgery; or any of these
19 crimes as they may be renamed in the future.

20 (9) "Financial exploitation" means "financial exploitation" as
21 defined in RCW 74.34.020.

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

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

29 (a) Another employee or volunteer from the same business or
30 organization as the applicant; or

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

35 With regard to peer counselors, "unsupervised" does not include
36 incidental contact with children under age sixteen at the location at
37 which the peer counseling is taking place. "Incidental contact" means
38 minor or casual contact with a child in an area accessible to and

1 within visual or auditory range of others. It could include passing a
2 child while walking down a hallway but would not include being alone
3 with a child for any period of time in a closed room or office.

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

9 **PART II**

10 **MEDICAID FRAUD FALSE CLAIMS ACT**

11 NEW SECTION. **Sec. 201.** Unless the context clearly requires
12 otherwise, the definitions in this section apply throughout this
13 chapter:

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

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

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

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

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

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

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

34 (3) "Documentary material" includes the original or any copy of any
35 book, record, report, memorandum, paper, communication, tabulation,
36 chart, or other document, or data compilations stored in or accessible

1 through computer or other information retrieval systems, together with
2 instructions and all other materials necessary to use or interpret the
3 data compilations, and any product of discovery.

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

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

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

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

18 (i) Has actual knowledge of the information;

19 (ii) Acts in deliberate ignorance of the truth or falsity of the
20 information; or

21 (iii) Acts in reckless disregard of the truth or falsity of the
22 information.

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

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

27 (9) "Obligation" means an established duty, whether or not fixed,
28 arising from an express or implied contractual, grantor-grantee, or
29 licensor-licensee relationship, from a fee-based or similar
30 relationship, from statute or rule, or from the retention of any
31 overpayment.

32 (10) "Official use" means any use that is consistent with the law,
33 and the rules and policies of the attorney general, including use in
34 connection with: Internal attorney general memoranda and reports;
35 communications between the attorney general and a federal, state, or
36 local government agency, or a contractor of a federal, state, or local
37 government agency, undertaken in furtherance of an investigation or
38 prosecution of a case; interviews of any qui tam relator or other

1 witness; oral examinations; depositions; preparation for and response
2 to civil discovery requests; introduction into the record of a case or
3 proceeding; applications, motions, memoranda, and briefs submitted to
4 a court or other tribunal; and communications with attorney general
5 investigators, auditors, consultants and experts, the counsel of other
6 parties, and arbitrators or mediators, concerning an investigation,
7 case, or proceeding.

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

11 (12) "Product of discovery" includes:

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

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

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

20 (13) "Qui tam action" is an action brought by a person under
21 section 205 of this act.

22 (14) "Qui tam relator" or "relator" is a person who brings an
23 action under section 205 of this act.

24 NEW SECTION. **Sec. 202.** (1) Subject to subsections (2) and (4) of
25 this section, a person is liable to the government entity for a civil
26 penalty of not less than five thousand five hundred dollars and not
27 more than eleven thousand dollars, plus three times the amount of
28 damages which the government entity sustains because of the act of that
29 person, if the person:

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

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

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

36 (d) Has possession, custody, or control of property or money used,

1 or to be used, by the government entity and knowingly delivers, or
2 causes to be delivered, less than all of that money or property;

3 (e) Is authorized to make or deliver a document certifying receipt
4 of property used, or to be used, by the government entity and,
5 intending to defraud the government entity, makes or delivers the
6 receipt without completely knowing that the information on the receipt
7 is true;

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

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

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

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

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

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

30 (3) A person violating this section is liable to the attorney
31 general for the costs of a civil action brought to recover any such
32 penalty or damages.

33 (4) For the purposes of determining whether an insurer has a duty
34 to provide a defense or indemnification for an insured and if coverage
35 may be denied if the terms of the policy exclude coverage for
36 intentional acts, a violation of subsection (1) of this section is an
37 intentional act.

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

6 NEW SECTION. **Sec. 203.** 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. 204.** The attorney general diligently shall
11 investigate a violation under section 202 of this act. If the attorney
12 general finds that a person has violated or is violating section 202 of
13 this act, the attorney general may bring a civil action under this
14 section against the person.

15 NEW SECTION. **Sec. 205.** (1) A person may bring a civil action for
16 a violation of section 202 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. The action may be
20 dismissed only if the court, and the attorney general give written
21 consent to the dismissal and their reason for consenting.

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

31 (3) The attorney general may, for good cause shown, move the court
32 for extensions of the time during which the complaint remains under
33 seal under subsection (2) of this section. The motions may be
34 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 (4) 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 (3) of this section, then the relator has the right to
7 conduct the action.

8 (5) 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. 206.** (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 attorney general's
11 expense. When the relator proceeds with the action, the court, without
12 limiting the status and rights of the relator, may nevertheless permit
13 the attorney general to intervene at a later date upon a showing of
14 good cause.

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

26 (5) Notwithstanding section 205 of this act, the attorney general
27 may elect to pursue its claim through any alternate remedy available to
28 the attorney general, including any administrative proceeding to
29 determine a civil money penalty. If any alternate remedy is pursued in
30 another proceeding, the relator has the same rights in the proceeding
31 as the relator would have had if the action had continued under this
32 section. Any finding of fact or conclusion of law made in the other
33 proceeding that has become final is conclusive on all parties to an
34 action under this section. For purposes of this subsection, a finding
35 or conclusion is final if it has been finally determined on appeal to
36 the appropriate court of the state of Washington, if all time for
37 filing the appeal with respect to the finding or conclusion has

1 expired, or if the finding or conclusion is not subject to judicial
2 review.

3 NEW SECTION. **Sec. 207.** (1)(a) Subject to (b) of this subsection,
4 if the attorney general proceeds with a qui tam action, the relator
5 must receive at least fifteen percent but not more than twenty-five
6 percent of the proceeds of the action or settlement of the claim,
7 depending upon the extent to which the relator substantially
8 contributed to the prosecution of the action.

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

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

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

33 (3) Whether or not the attorney general proceeds with the qui tam
34 action, if the court finds that the action was brought by a person who
35 planned and initiated the violation of section 202 of this act upon
36 which the action was brought, then the court may, to the extent the
37 court considers appropriate, reduce the share of the proceeds of the

1 action which the person would otherwise receive under subsection (1) or
2 (2) of this section, taking into account the role of that person in
3 advancing the case to litigation and any relevant circumstances
4 pertaining to the violation. If the person bringing the action is
5 convicted of criminal conduct arising from his or her role in the
6 violation of section 202 of this act, that person must be dismissed
7 from the civil action and may not receive any share of the proceeds of
8 the action. The dismissal may not prejudice the right of the attorney
9 general or the United States to continue the action, represented by the
10 department of justice.

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

17 (5) Any funds recovered that remain after calculation and
18 distribution under subsections (1) through (3) of this section must be
19 deposited into the medicaid fraud penalty account established in
20 section 104 of this act.

21 NEW SECTION. **Sec. 208.** (1) In no event may a person bring a qui
22 tam action which is based upon allegations or transactions which are
23 the subject of a civil suit or an administrative civil money penalty
24 proceeding in which the attorney general is already a party.

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

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

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

33 (iii) By the news media;

34 unless the action is brought by the attorney general or the relator is
35 an original source of the information.

36 (b) For purposes of this section, "original source" means an
37 individual who either (i) prior to a public disclosure under (a) of

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

7 NEW SECTION. **Sec. 209.** (1) Any employee, contractor, or agent is
8 entitled to all relief necessary to make that employee, contractor, or
9 agent whole, if that employee, contractor, or agent is discharged,
10 demoted, suspended, threatened, harassed, or in any other manner
11 discriminated against in the terms and conditions of employment because
12 of lawful acts done by the employee, contractor, or agent or associated
13 others in furtherance of an action under this section or other efforts
14 to stop one or more violations of this chapter.

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

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

26 NEW SECTION. **Sec. 210.** (1) A subpoena requiring the attendance of
27 a witness at a trial or hearing conducted under section 205 of this act
28 may be served at any place in the state of Washington.

29 (2) A civil action under section 205 of this act may be brought at
30 any time, without limitation after the date on which the violation of
31 section 202 of this act is committed.

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

1 claims with respect to which the attorney general contends it is
2 entitled to relief.

3 (4) In any qui tam action brought under section 205 of this act,
4 the attorney general is required to prove all essential elements of the
5 cause of action, including damages, by a preponderance of the evidence.

6 (5) Notwithstanding any other provision of law or the rules for
7 superior court, a final judgment rendered in favor of the government
8 entity in any criminal proceeding charging fraud or false statements,
9 whether upon a verdict after trial or upon a plea of guilty or nolo
10 contendere, estops the defendant from denying the essential elements of
11 the offense in any action which involves the same transaction as in the
12 criminal proceeding and which is brought under section 204 or 205(1) of
13 this act.

14 NEW SECTION. **Sec. 211.** (1) Any action under section 204 or 205 of
15 this act may be brought in the superior court in any county in which
16 the defendant or, in the case of multiple defendants, any one defendant
17 can be found, resides, transacts business, or in which any act
18 proscribed by section 202 of this act occurred. The appropriate court
19 must issue a summons as required by the superior court civil rules and
20 service must occur at any place within the state of Washington.

21 (2) The superior courts have jurisdiction over any action brought
22 under the laws of any city or county for the recovery of funds paid by
23 a government entity if the action arises from the same transaction or
24 occurrence as an action brought under section 204 or 205 of this act.

25 (3) With respect to any local government that is named as a
26 coplaintiff with the state in an action brought under section 205 of
27 this act, a seal on the action ordered by the court under section 205
28 of this act does not preclude the attorney general or the person
29 bringing the action from serving the complaint, any other pleadings, or
30 the written disclosure of substantially all material evidence and
31 information possessed by the person bringing the action on the law
32 enforcement authorities that are authorized under the law of the local
33 government to investigate and prosecute the action on behalf of the
34 local government, except that the seal applies to the law enforcement
35 authorities so served to the same extent as the seal applies to other
36 parties in the action.

1 NEW SECTION. **Sec. 212.** (1)(a) Whenever the attorney general, or
2 a designee, for purposes of this section, has reason to believe that
3 any person may be in possession, custody, or control of any documentary
4 material or information relevant to a false claims act investigation,
5 the attorney general, or a designee, may, before commencing a civil
6 proceeding under section 205(1) of this act or making an election under
7 section 205(2) of this act, issue in writing and serve upon the person,
8 a civil investigative demand requiring the person:

9 (i) To produce the documentary material for inspection and copying;

10 (ii) To answer in writing written interrogatories with respect to
11 the documentary material or information;

12 (iii) To give oral testimony concerning the documentary material or
13 information; or

14 (iv) To furnish any combination of such material, answers, or
15 testimony.

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

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

32 (b) If the demand is for the production of documentary material,
33 the demand must:

34 (i) Describe each class of documentary material to be produced with
35 such definiteness and certainty as to permit the material to be fairly
36 identified;

37 (ii) Prescribe a return date for each class which will provide a

1 reasonable period of time within which the material so demanded may be
2 assembled and made available for inspection and copying; and
3 (iii) Identify the false claims act investigator to whom such
4 material must be made available.
5 (c) If the demand is for answers to written interrogatories, the
6 demand must:
7 (i) Set forth with specificity the written interrogatories to be
8 answered;
9 (ii) Prescribe dates at which time answers to written
10 interrogatories must be submitted; and
11 (iii) Identify the false claims law investigator to whom such
12 answers must be submitted.
13 (d) If the demand is for the giving of oral testimony, the demand
14 must:
15 (i) Prescribe a date, time, and place at which oral testimony must
16 be commenced;
17 (ii) Identify a false claims act investigator who must conduct the
18 examination and the custodian to whom the transcript of the examination
19 must be submitted;
20 (iii) Specify that the attendance and testimony are necessary to
21 the conduct of the investigation;
22 (iv) Notify the person receiving the demand of the right to be
23 accompanied by an attorney and any other representative; and
24 (v) Describe the general purpose for which the demand is being
25 issued and the general nature of the testimony, including the primary
26 areas of inquiry, which will be taken pursuant to the demand.
27 (e) Any civil investigative demand issued under this section which
28 is an express demand for any product of discovery is not due until
29 thirty days after a copy of the demand has been served upon the person
30 from whom the discovery was obtained.
31 (f) The date prescribed for the commencement of oral testimony
32 pursuant to a civil investigative demand issued under this section may
33 not be sooner than six days after the date on which demand is received,
34 unless the attorney general or an assistant attorney general designated
35 by the attorney general determines that exceptional circumstances are
36 present which warrant the commencement of the testimony sooner.
37 (g) The attorney general may not authorize the issuance under this
38 section of more than one civil investigative demand for oral testimony

1 by the same person unless the person requests otherwise or unless the
2 attorney general, after investigation, notifies that person in writing
3 that an additional demand for oral testimony is necessary.

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

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

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

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

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

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

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

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

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

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

7 (a) Delivering an executed copy of the demand or petition to the
8 person; or

9 (b) 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 the person at the person's residence or
12 principal office or place of business.

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

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

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

25 (ii) In the case of a person other than a natural person, a person
26 having knowledge of the facts and circumstances relating to the
27 production and authorized to act on behalf of the person.

28 (b) The certificate must state that all of the documentary material
29 required by the demand and in the possession, custody, or control of
30 the person to whom the demand is directed has been produced and made
31 available to the false claims act investigator identified in the
32 demand.

33 (10) Any person upon whom any civil investigative demand for the
34 production of documentary material has been served under this section
35 shall make such material available for inspection and copying to the
36 false claims act investigator identified in the demand at the principal
37 place of business of the person, or at another place as the false
38 claims act investigator and the person thereafter may agree and

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

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

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

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

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

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

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

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

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

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

36 (17) Upon payment of reasonable charges therefor, the false claims
37 act investigator must furnish a copy of the transcript to the witness

1 only, except that the attorney general, the deputy attorney general, or
2 an assistant attorney general may, for good cause, limit the witness to
3 inspection of the official transcript of the witness' testimony.

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

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

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

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

35 (21)(a) A false claims act investigator who receives any
36 documentary material, answers to interrogatories, or transcripts of
37 oral testimony under this section must transmit them to the custodian.

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

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

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

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

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

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

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

37 (22) Whenever any official has been designated to appear before any
38 court, special inquiry judge, or state administrative judge in any case

1 or proceeding, the custodian of any documentary material, answers to
2 interrogatories, or transcripts of oral testimony received under this
3 section may deliver to the official the material, answers, or
4 transcripts for official use in connection with any case or proceeding
5 as the official determines to be required. Upon the completion of
6 such a case or proceeding, the official must return to the custodian
7 any material, answers, or transcripts so delivered which have not
8 passed into the control of any court, grand jury, or agency through
9 introduction into the record of such a case or proceeding.

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

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

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

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

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

34 (i) Designate another false claims act investigator to serve as
35 custodian of the material, answers, or transcripts; and

36 (ii) Transmit in writing to the person who produced the material,
37 answers, or testimony notice of the identity and address of the
38 successor so designated.

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

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

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

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

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

33 (b) The petition must specify each ground upon which the petitioner
34 relies in seeking relief under (a) of this subsection, and may be based
35 upon any failure of the demand to comply with the provisions of this
36 section or upon any constitutional or other legal right or privilege of
37 the person. During the pendency of the petition in the court, the
38 court may stay, as it deems proper, the running of the time allowed for

1 compliance with the demand, in whole or in part, except that the person
2 filing the petition shall comply with any portions of the demand not
3 sought to be modified or set aside.

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

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

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

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

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

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

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

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

15 NEW SECTION. **Sec. 213.** Beginning November 15, 2012, and annually
16 thereafter, the attorney general in consultation with the health care
17 authority must report results of implementing the medicaid false claims
18 act. This report must include:

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

29 NEW SECTION. **Sec. 214.** This chapter may be known and cited as the
30 medicaid fraud false claims act.

31 NEW SECTION. **Sec. 215.** Sections 201 through 214 of this act
32 constitute a new chapter in Title 74 RCW.

33 NEW SECTION. **Sec. 216.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the
2 state government and its existing public institutions, and takes effect
3 immediately.

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