

ESSB 5960 - H COMM AMD

By Committee on Ways & Means

NOT CONSIDERED 03/25/2011

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 9A.04.080 and 2009 c 61 s 1 and 2009 c 53 s 1 are  
4 each reenacted and amended to read as follows:

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

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

9 (i) Murder;

10 (ii) Homicide by abuse;

11 (iii) Arson if a death results;

12 (iv) Vehicular homicide;

13 (v) Vehicular assault if a death results;

14 (vi) Hit-and-run injury-accident if a death results (RCW  
15 46.52.020(4)).

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

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

21 (ii) Arson if no death results; or

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

28 (B) If a violation of RCW 9A.44.040 or 9A.44.050 is not reported  
29 within one year, the rape may not be prosecuted: (I) More than three  
30 years after its commission if the violation was committed against a

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

5 (c) Violations of the following statutes may be prosecuted up to  
6 the victim's twenty-eighth birthday: RCW 9A.44.073, 9A.44.076,  
7 9A.44.083, 9A.44.086, (~~9A.44.070, 9A.44.080,~~) 9A.44.100(1)(b),  
8 9A.44.079, 9A.44.089, or 9A.64.020.

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

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

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

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

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

17 (e) The following offenses shall not be prosecuted more than five  
18 years after their commission: Any class C felony under chapter  
19 (~~74.09,~~) 82.36(~~(7)~~) or 82.38 RCW.

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

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

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

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

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

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

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

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

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

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

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

22 (a) A willful false statement;

23 (b) By willful misrepresentation, or by concealment of any material  
24 facts; or

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

27 (i) Billing for services, drugs, supplies, or equipment that were  
28 unfurnished, of lower quality, or a substitution or misrepresentation  
29 of items billed; or

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

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

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

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

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

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

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

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

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

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

- 31 (1) For the purposes of this section:
- 32 (a) "Employer" means any person, firm, corporation, partnership,  
33 association, agency, institution, or other legal entity.
- 34 (b) "Whistleblower" means an employee of an employer that obtains  
35 or attempts to obtain benefits or payments under this chapter in

1 violation of RCW 74.09.210, who in good faith reports a violation of  
2 RCW 74.09.210 to the department or the authority.

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

15 (2) A whistleblower who has been subjected to workplace reprisal or  
16 retaliatory action has the remedies provided under chapter 49.60 RCW.  
17 RCW 4.24.500 through 4.24.520, providing certain protection to persons  
18 who communicate to government agencies, apply to complaints made under  
19 this section. The identity of a whistleblower who complains, in good  
20 faith, to the department or the authority about a suspected violation  
21 of RCW 74.09.210 may remain confidential if requested. The identity of  
22 the whistleblower must subsequently remain confidential unless the  
23 department or the authority, as appropriate, determines that the  
24 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 department or the  
33 authority, as appropriate, shall determine if the employer cannot meet  
34 payroll in cases where a whistleblower has been terminated or had hours  
35 of employment reduced due to the inability of a facility to meet  
36 payroll.

37 (4) The department or the authority, as appropriate, shall adopt  
38 rules to implement procedures for filing, investigation, and resolution

1 of whistleblower complaints that are integrated with complaint  
2 procedures under this chapter. The department or the authority, as  
3 appropriate, shall adopt rules designed to discourage whistleblower  
4 complaints made in bad faith or for retaliatory purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

16        (1) "Applicant" means:

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

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

29        (c) Any prospective adoptive parent, as defined in RCW 26.33.020;  
30 or

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

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

1 day care, early learning, or early learning childhood education  
2 services, including but not limited to public housing authorities,  
3 school districts, and educational service districts.

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

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

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



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

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

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

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

18 (a) Another employee or volunteer from the same business or  
19 organization as the applicant; or

20 (b) Any relative or guardian of any of the children or  
21 developmentally disabled persons or vulnerable adults to which the  
22 applicant has access during the course of his or her employment or  
23 involvement with the business or organization.

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

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

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

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

6 (12) "Peer counselor" means a nonprofessional person who has equal  
7 standing with another person, providing advice on a topic about which  
8 the nonprofessional person is more experienced or knowledgeable, and  
9 who is a counselor for a peer counseling program that contracts with or  
10 is otherwise approved by the department, another state or local agency,  
11 or the court.

12 NEW SECTION. **Sec. 8.** Unless the context clearly requires  
13 otherwise, the definitions in this section apply throughout this  
14 chapter:

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

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

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

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

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

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

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

35 (3) "Documentary material" includes the original or any copy of any  
36 book, record, report, memorandum, paper, communication, tabulation,  
37 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 witness; oral examinations;

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

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

10 (12) "Product of discovery" includes:

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

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

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

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

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

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

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

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

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

1 receipt without completely knowing that the information on the receipt  
2 is true;

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

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

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

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

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

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

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

30 NEW SECTION. **Sec. 10.** Any information furnished pursuant to this  
31 chapter is exempt from disclosure under the public records act, chapter  
32 42.56 RCW, until final disposition and all court ordered seals are  
33 lifted.

34 NEW SECTION. **Sec. 11.** Subject to funds appropriated for this  
35 purpose, the attorney general must diligently investigate a violation

1 under section 9 of this act. If the attorney general finds that a  
2 person has violated or is violating section 9 of this act, the attorney  
3 general may bring a civil action under this section against the person.

4 NEW SECTION. **Sec. 12.** Any person who is the original source of  
5 the information used by the attorney general to bring an action under  
6 section 9 of this act shall receive at least fifteen percent but no  
7 more than twenty-five percent of any recovery by the attorney general,  
8 as determined by the court. As used in this section, "original source  
9 of information" means information no part of which has been previously  
10 disclosed to or known by the government or public. If the court finds  
11 that the person who was the original source of the information used by  
12 the attorney general to bring an action under section 9 of this act  
13 planned, initiated, or participated in the conduct upon which the  
14 action is brought, such person shall not be entitled to any percentage  
15 of the recovery obtained in such action.

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

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

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

1        NEW SECTION.    **Sec. 14.**    (1) Any action under section 11 of this act  
2 may be brought in the superior court in any county in which the  
3 defendant or, in the case of multiple defendants, any one defendant can  
4 be found, resides, transacts business, or in which any act proscribed  
5 by section 9 of this act occurred. The appropriate court must issue a  
6 summons as required by the superior court civil rules and service must  
7 occur at any place within the state of Washington.

8        (2) The superior courts have jurisdiction over any action brought  
9 under the laws of any city or county for the recovery of funds paid by  
10 a government entity if the action arises from the same transaction or  
11 occurrence as an action brought under section 11 of this act.

12        NEW SECTION.    **Sec. 15.**    Beginning November 15, 2012, and annually  
13 thereafter, the attorney general in consultation with the department of  
14 social and health services and the health care authority must report  
15 results of implementing the medicaid false claims act. This report  
16 must include:

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

27        NEW SECTION.    **Sec. 16.**    This chapter may be known and cited as the  
28 medicaid fraud false claims act.

29        NEW SECTION.    **Sec. 17.**    Sections 8 through 16 of this act  
30 constitute a new chapter in Title 74 RCW.

31        NEW SECTION.    **Sec. 18.**    This act is necessary for the immediate  
32 preservation of the public peace, health, or safety, or support of the  
33 state government and its existing public institutions, and takes effect  
34 immediately."

1 Correct the title.

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