

2SSB 5458 - S AMD 424
By Senator Keiser

NOT CONSIDERED 05/25/2011

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 the attorney general may

1 assess civil penalties in an amount not to exceed three times the
2 amount of such excess benefits or payments: PROVIDED, That these civil
3 penalties shall not apply to any acts or omissions occurring prior to
4 September 1, 1979. RCW 43.20A.215 governs notice of a civil fine
5 assessed by the secretary and provides the right to an adjudicative
6 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 23 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.

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 about a suspected violation of RCW 74.09.210
21 may remain confidential if requested. The identity of the
22 whistleblower must subsequently remain confidential unless the
23 department determines that the complaint was not made in good faith.

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

35 (4) The department shall adopt rules to implement procedures for
36 filing, investigation, and resolution of whistleblower complaints that
37 are integrated with complaint procedures under this chapter. The

1 department shall adopt rules designed to discourage whistleblower
2 complaints made in bad faith or for retaliatory purposes.

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

5 The following must be medicare providers in order to be paid by the
6 medical assistance administration: Providers of durable medical
7 equipment and related supplies, providers of prosthetics, providers of
8 orthotics, and providers of medical supplies and related services.

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

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

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

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

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

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

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

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

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

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

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

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

13 (1) "Applicant" means:

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

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

26 (c) Any prospective adoptive parent, as defined in RCW 26.33.020;
27 or

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

30 (2) "Business or organization" means a person, business, or
31 organization licensed in this state, any agency of the state, or other
32 governmental entity, that educates, trains, treats, supervises, houses,
33 or provides recreation to developmentally disabled persons, vulnerable
34 adults, or children under sixteen years of age, or that provides child
35 day care, early learning, or early learning childhood education
36 services, including but not limited to public housing authorities,
37 school districts, and educational service districts.

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

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

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

1 commercial sexual abuse of a minor; child abandonment; promoting
2 pornography; selling or distributing erotic material to a minor;
3 custodial assault; violation of child abuse restraining order; child
4 buying or selling; prostitution; felony indecent exposure; criminal
5 abandonment; or any of these crimes as they may be renamed in the
6 future.

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

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

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

16 (a) Another employee or volunteer from the same business or
17 organization as the applicant; or

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

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

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

29 (11) "Agency" means any person, firm, partnership, association,
30 corporation, or facility which receives, provides services to, houses
31 or otherwise cares for vulnerable adults, juveniles, or children, or
32 which provides child day care, early learning, or early childhood
33 education services.

34 NEW SECTION. **Sec. 8.** Unless the context clearly requires
35 otherwise, the definitions in this section apply throughout this
36 chapter:

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

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

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

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

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

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

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

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

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

31 (5) "False claims act investigator" means any attorney or
32 investigator employed by the state attorney general who is charged with
33 the duty of enforcing or carrying into effect any provision of this
34 chapter, or any officer or employee of the state of Washington acting
35 under the direction and supervision of the attorney or investigator in
36 connection with an investigation pursuant to this chapter.

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

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

3 (i) Has actual knowledge of the information;

4 (ii) Acts in deliberate ignorance of the truth or falsity of the
5 information; or

6 (iii) Acts in reckless disregard of the truth or falsity of the
7 information.

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

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

12 (9) "Obligation" means an established duty, whether or not fixed,
13 arising from an express or implied contractual, grantor-grantee, or
14 licensor-licensee relationship, from a fee-based or similar
15 relationship, from statute or rule, or from the retention of any
16 overpayment.

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

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

34 (12) "Product of discovery" includes:

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

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

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

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

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

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

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

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

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

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

24 (e) Is authorized to make or deliver a document certifying receipt
25 of property used, or to be used, by the government entity and,
26 intending to defraud the government entity, makes or delivers the
27 receipt without completely knowing that the information on the receipt
28 is true;

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

32 (g) Knowingly makes, uses, or causes to be made or used, a false
33 record or statement material to an obligation to pay or transmit money
34 or property to the government entity, or knowingly conceals or
35 knowingly and improperly avoids or decreases an obligation to pay or
36 transmit money or property to the government entity.

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

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

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

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

15 NEW SECTION. **Sec. 10.** Any information furnished pursuant to this
16 chapter is exempt from disclosure under the public records act, chapter
17 42.56 RCW, until final disposition and all court ordered seals are
18 lifted.

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

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

29 (2) A relator filing an action under this chapter must serve a copy
30 of the complaint and written disclosure of substantially all material
31 evidence and information the person possesses on the attorney general
32 in electronic format. The relator must file the complaint in camera.
33 The complaint must remain under seal for at least sixty days, and may
34 not be served on the defendant until the court so orders. The attorney

1 general may elect to intervene and proceed with the action within sixty
2 days after it receives both the complaint and the material evidence and
3 information.

4 (3) After the sixty-day period for review has passed, the court may
5 dismiss the qui tam action if it determines that it is more likely than
6 not that the action being brought is clearly frivolous or vexatious, or
7 is being brought primarily for the purposes of harassment or the
8 relator has failed to state with particularity circumstances
9 constituting fraud. If the court does not dismiss the claim
10 immediately after the sixty-day period, the court must forward the
11 complaint to the defendant and allow the defendant thirty days to
12 provide an answer. If the defendant provides an answer, the court has
13 an additional fifteen days from the date of receipt of the answer to
14 make its determination under this subsection. The attorney general
15 must be given notice and an opportunity to participate in the hearing
16 on the motion to dismiss.

17 (4) The attorney general may, for good cause shown, move the court
18 for extensions of the time during which the complaint remains under
19 seal under subsection (2) of this section. The motions may be
20 supported by affidavits or other submissions in camera. The defendant
21 may not be required to respond to any complaint filed under this
22 section until twenty days after the complaint is unsealed and served
23 upon the defendant.

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

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

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

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

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

11 (c) Upon a showing by the attorney general that unrestricted
12 participation during the course of the litigation by the relator would
13 interfere with or unduly delay the attorney general's prosecution of
14 the case, or would be repetitious, irrelevant, or for purposes of
15 harassment, the court may, in its discretion, impose limitations on the
16 relator's participation, such as:

- 17 (i) Limiting the number of witnesses the relator may call;
- 18 (ii) Limiting the length of the testimony of the witnesses;
- 19 (iii) Limiting the relator's cross-examination of witnesses; or
- 20 (iv) Otherwise limiting the participation by the relator in the
21 litigation.

22 (d) Upon a showing by the defendant that unrestricted participation
23 during the course of the litigation by the relator would be for
24 purposes of harassment or would cause the defendant undue burden or
25 unnecessary expense, the court may limit the participation by the
26 relator in the litigation.

27 (3) If the attorney general elects not to proceed with the qui tam
28 action, the relator has the right to conduct the action. If the
29 attorney general so requests, the relator must serve on the attorney
30 general copies of all pleadings filed in the action and shall supply
31 copies of all deposition transcripts, at the relator's expense.
32 Additionally, the relator shall provide the attorney general with
33 notice and the details of all offers of settlement. When the relator
34 proceeds with the action, the court, without limiting the status and
35 rights of the relator, may nevertheless permit the attorney general to
36 intervene at a later date upon a showing of good cause.

37 (4) Whether or not the attorney general proceeds with the qui tam
38 action, upon a showing by the attorney general that certain actions of

1 discovery by the relator would interfere with the attorney general's
2 investigation or prosecution of a criminal or civil matter arising out
3 of the same facts, the court may stay such discovery for a period of
4 not more than sixty days. The showing must be conducted in camera.
5 The court may extend the sixty-day period upon a further showing in
6 camera that the attorney general has pursued the criminal or civil
7 investigation or proceedings with reasonable diligence and any proposed
8 discovery in the civil action will interfere with the ongoing criminal
9 or civil investigation or proceedings.

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

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

30 (b) Where the action is one which the court finds to be based
31 primarily on disclosures of specific information, other than
32 information provided by the relator, relating to allegations or
33 transactions in a criminal, civil, or administrative hearing, in a
34 congressional, administrative, or general accounting office report,
35 hearing, audit, or investigation, or from the news media, the court may
36 award an amount it considers appropriate, but in no case more than ten

1 percent of the proceeds, taking into account the significance of the
2 information and the role of the relator in advancing the case to
3 litigation.

4 (c) Any payment to a relator under (a) or (b) of this subsection
5 must be made from the proceeds. The relator must also receive an
6 amount for reasonable expenses which the court finds to have been
7 necessarily incurred, plus reasonable attorneys' fees and costs.
8 Additionally, the attorney general must receive reasonable attorneys'
9 fees and costs. All expenses, fees, and costs must be awarded against
10 the defendant.

11 (2) If the attorney general does not proceed with a qui tam action,
12 the relator shall receive an amount which the court decides is
13 reasonable for collecting the civil penalty and damages. The amount
14 may not be less than twenty-five percent and not more than thirty
15 percent of the proceeds of the action or settlement and must be paid
16 out of the proceeds. The relator must also receive an amount for
17 reasonable expenses, which the court finds to have been necessarily
18 incurred, plus reasonable attorneys' fees and costs. All expenses,
19 fees, and costs must be awarded against the defendant.

20 (3) Whether or not the attorney general proceeds with the qui tam
21 action, if the court finds that the action was brought by a person who
22 planned and initiated the violation of section 9 of this act upon which
23 the action was brought, then the court may, to the extent the court
24 considers appropriate, reduce the share of the proceeds of the action
25 which the person would otherwise receive under subsection (1) or (2) of
26 this section, taking into account the role of that person in advancing
27 the case to litigation and any relevant circumstances pertaining to the
28 violation. If the person bringing the action is convicted of criminal
29 conduct arising from his or her role in the violation of section 9 of
30 this act, that person must be dismissed from the civil action and may
31 not receive any share of the proceeds of the action. The dismissal may
32 not prejudice the right of the United States to continue the action,
33 represented by the department of justice.

34 (4) If the attorney general does not proceed with the qui tam
35 action and the relator conducts the action, the court may award to the
36 defendant reasonable attorneys' fees, costs, and expenses if the
37 defendant prevails in the action. Any fees, costs, and expenses

1 awarded by the court under this subsection must be awarded against the
2 relator.

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

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

12 NEW SECTION. **Sec. 15.** (1)(a) Subject to (b) of this subsection,
13 if the attorney general proceeds with a qui tam action, the relator
14 must receive at least fifteen percent but not more than twenty-five
15 percent of the proceeds of the action or settlement of the claim,
16 depending upon the extent to which the relator substantially
17 contributed to the prosecution of the action.

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

28 (c) Any payment to a relator under (a) or (b) of this subsection
29 must be made from the proceeds. The relator must also receive an
30 amount for reasonable expenses which the court finds to have been
31 necessarily incurred, plus reasonable attorneys' fees and costs.
32 Additionally, the attorney general must receive reasonable attorneys'
33 fees and costs. All expenses, fees, and costs must be awarded against
34 the defendant.

35 (2) If the attorney general does not proceed with a qui tam action,
36 the relator shall receive an amount which the court decides is
37 reasonable for collecting the civil penalty and damages. The amount

1 may not be less than twenty-five percent and not more than thirty
2 percent of the proceeds of the action or settlement and must be paid
3 out of the proceeds. The relator must also receive an amount for
4 reasonable expenses, which the court finds to have been necessarily
5 incurred, plus reasonable attorneys' fees and costs. All expenses,
6 fees, and costs must be awarded against the defendant.

7 (3) Whether or not the attorney general proceeds with the qui tam
8 action, if the court finds that the action was brought by a person who
9 planned and initiated the violation of section 9 of this act upon which
10 the action was brought, then the court may, to the extent the court
11 considers appropriate, reduce the share of the proceeds of the action
12 which the person would otherwise receive under subsection (1) or (2) of
13 this section, taking into account the role of that person in advancing
14 the case to litigation and any relevant circumstances pertaining to the
15 violation. If the person bringing the action is convicted of criminal
16 conduct arising from his or her role in the violation of section 9 of
17 this act, that person must be dismissed from the civil action and may
18 not receive any share of the proceeds of the action. The dismissal may
19 not prejudice the right of the United States to continue the action,
20 represented by the department of justice.

21 (4) If the attorney general does not proceed with the qui tam
22 action and the relator conducts the action, the court may award to the
23 defendant reasonable attorneys' fees and expenses if the defendant
24 prevails in the action and the court finds that the claim of the
25 relator was clearly frivolous, vexatious, or brought primarily for
26 purposes of harassment.

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

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

36 NEW SECTION. **Sec. 16.** (1) In no event may a person bring a qui

1 tam action which is based upon allegations or transactions which are
2 the subject of a civil suit or an administrative civil money penalty
3 proceeding in which the attorney general is already a party.

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

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

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

12 (iii) By the news media, unless the action is brought by the
13 attorney general or the relator is an original source of the
14 information.

15 (b) For purposes of this section, "original source" means an
16 individual who either (i) prior to a public disclosure under (a) of
17 this subsection, has voluntarily disclosed to the attorney general the
18 information on which allegations or transactions in a claim are based,
19 or (ii) has knowledge that is independent of, and materially adds to,
20 the publicly disclosed allegations or transactions, and who has
21 voluntarily provided the information to the attorney general before
22 filing an action under this section.

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

31 (2) Relief under subsection (1) of this section must include
32 reinstatement with the same seniority status that employee, contractor,
33 or agent would have had but for the discrimination, two times the
34 amount of back pay, interest on the back pay, and compensation for any
35 special damages sustained as a result of the discrimination, including
36 litigation costs and reasonable attorneys' fees, and any and all relief

1 available under RCW 49.60.030(2). An action under this subsection may
2 be brought in the appropriate superior court of the state of Washington
3 for the relief provided in this subsection.

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

6 NEW SECTION. **Sec. 18.** (1) A subpoena requiring the attendance of
7 a witness at a trial or hearing conducted under section 12 of this act
8 may be served at any place in the state of Washington.

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

12 (3) If the attorney general elects to intervene and proceed with a
13 qui tam action, the attorney general may file its own complaint or
14 amend the complaint of a relator to clarify or add detail to the claims
15 in which the attorney general is intervening and to add any additional
16 claims with respect to which the attorney general contends it is
17 entitled to relief.

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

21 (5) Notwithstanding any other provision of law or the rules for
22 superior court, a final judgment rendered in favor of the government
23 entity in any criminal proceeding charging fraud or false statements,
24 whether upon a verdict after trial or upon a plea of guilty or nolo
25 contendere, estops the defendant from denying the essential elements of
26 the offense in any action which involves the same transaction as in the
27 criminal proceeding and which is brought under section 11 or 12(1) of
28 this act.

29 NEW SECTION. **Sec. 19.** (1) Any action under section 11 or 12 of
30 this act may be brought in the superior court in any county in which
31 the defendant or, in the case of multiple defendants, any one defendant
32 can be found, resides, transacts business, or in which any act
33 proscribed by section 9 of this act occurred. The appropriate court
34 must issue a summons as required by the superior court civil rules and
35 service must occur at any place within the state of Washington.

36 (2) The superior courts have jurisdiction over any action brought

1 under the laws of any city or county for the recovery of funds paid by
2 a government entity if the action arises from the same transaction or
3 occurrence as an action brought under section 11 or 12 of this act.

4 (3) With respect to any local government that is named as a
5 coplaintiff with the state in an action brought under section 12 of
6 this act, a seal on the action ordered by the court under section 12 of
7 this act does not preclude the attorney general or the person bringing
8 the action from serving the complaint, any other pleadings, or the
9 written disclosure of substantially all material evidence and
10 information possessed by the person bringing the action on the law
11 enforcement authorities that are authorized under the law of the local
12 government to investigate and prosecute the action on behalf of the
13 local government, except that the seal applies to the law enforcement
14 authorities so served to the same extent as the seal applies to other
15 parties in the action.

16 NEW SECTION. **Sec. 20.** (1) Whenever the attorney general, or a
17 designee, for purposes of this section, has reason to believe that any
18 person may be in possession, custody, or control of any documentary
19 material or information relevant to a false claims act investigation,
20 the attorney general, or a designee, may, before commencing a civil
21 proceeding under section 12(1) of this act or making an election under
22 section 12(2) of this act, issue in writing and serve upon the person,
23 a civil investigative demand requiring the person:

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

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

27 (c) To give oral testimony concerning the documentary material or
28 information; or

29 (d) To furnish any combination of such material, answers, or
30 testimony. The attorney general may delegate the authority to issue
31 civil investigative demands under this subsection (1). Whenever a
32 civil investigative demand is an express demand for any product of
33 discovery, the attorney general, the deputy attorney general, or an
34 assistant attorney general must serve, in any manner authorized by this
35 section, a copy of the demand upon the person from whom the discovery
36 was obtained and must notify the person to whom the demand is issued of
37 the date on which the copy was served. Any information obtained by the

1 attorney general or a designee of the attorney general under this
2 section may be shared with any qui tam relator if the attorney general
3 or designee determine it is necessary as part of any false claims act
4 investigation.

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

9 (b) If the demand is for the production of documentary material,
10 the demand must:

11 (i) Describe each class of documentary material to be produced with
12 such definiteness and certainty as to permit the material to be fairly
13 identified;

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

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

19 (c) If the demand is for answers to written interrogatories, the
20 demand must:

21 (i) Set forth with specificity the written interrogatories to be
22 answered;

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

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

27 (d) If the demand is for the giving of oral testimony, the demand
28 must:

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

31 (ii) Identify a false claims act investigator who must conduct the
32 examination and the custodian to whom the transcript of the examination
33 must be submitted;

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

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

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

4 (e) Any civil investigative demand issued under this section which
5 is an express demand for any product of discovery is not due until
6 thirty days after a copy of the demand has been served upon the person
7 from whom the discovery was obtained.

8 (f) The date prescribed for the commencement of oral testimony
9 pursuant to a civil investigative demand issued under this section may
10 not be sooner than six days after the date on which demand is received,
11 unless the attorney general or an assistant attorney general designated
12 by the attorney general determines that exceptional circumstances are
13 present which warrant the commencement of the testimony sooner.

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

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

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

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

30 (4) Any demand which is an express demand for any product of
31 discovery supersedes any inconsistent order, rule, or provision of law,
32 other than this section, preventing or restraining disclosure of the
33 product of discovery to any person. Disclosure of any product of
34 discovery pursuant to any express demand does not constitute a waiver
35 of any right or privilege which the person making such disclosure may
36 be entitled to invoke to resist discovery of trial preparation
37 materials.

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

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

8 (a) Delivering an executed copy of the demand or petition to any
9 partner, executive officer, managing agent, or general agent of the
10 partnership, corporation, association, or entity, or to any agent
11 authorized by appointment or by law to receive service of process on
12 behalf of such partnership, corporation, association, or entity;

13 (b) Delivering an executed copy of the demand or petition to the
14 principal office or place of business of the partnership, corporation,
15 association, or entity; or

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

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

22 (a) Delivering an executed copy of the demand or petition to the
23 person; or

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

28 (8) A verified return by the individual serving any civil
29 investigative demand issued under subsection (1) or (2) of this section
30 or any petition filed under subsection (25) of this section setting
31 forth the manner of the service constitutes proof of the service. In
32 the case of service by registered or certified mail, the return must be
33 accompanied by the return post office receipt of delivery of the
34 demand.

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

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

3 (b) In the case of a person other than a natural person, a person
4 having knowledge of the facts and circumstances relating to the
5 production and authorized to act on behalf of the person. The
6 certificate must state that all of the documentary material required by
7 the demand and in the possession, custody, or control of the person to
8 whom the demand is directed has been produced and made available to the
9 false claims act investigator identified in the demand.

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

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

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

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

31 (b) If any interrogatory is objected to, the reasons for the
32 objection must be stated in the certificate instead of an answer. The
33 certificate must state that all information required by the demand and
34 in the possession, custody, control, or knowledge of the person to whom
35 the demand is directed has been submitted. To the extent that any
36 information is not furnished, the information must be identified and
37 reasons set forth with particularity regarding the reasons why the
38 information was not furnished.

1 (12) The examination of any person pursuant to a civil
2 investigative demand for oral testimony served under this section must
3 be taken before an officer authorized to administer oaths and
4 affirmations by the laws of the state of Washington or of the place
5 where the examination is held. The officer before whom the testimony
6 is to be taken must put the witness on oath or affirmation and must,
7 personally or by someone acting under the direction of the officer and
8 in the officer's presence, record the testimony of the witness. The
9 testimony must be recorded and must be transcribed. When the testimony
10 is fully transcribed, the officer before whom the testimony is taken
11 shall promptly transmit a copy of the transcript of the testimony to
12 the custodian. This subsection does not preclude the taking of
13 testimony by any means authorized by, and in a manner consistent with,
14 the superior court civil rules.

15 (13) The false claims act investigator conducting the examination
16 shall exclude from the place where the examination is held all persons
17 except the person giving the testimony, the attorney for and any other
18 representative of the person giving the testimony, the attorney
19 general, any person who may be agreed upon by the attorney for the
20 government and the person giving the testimony, the officer before whom
21 the testimony is to be taken, and any stenographer taking the
22 testimony.

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

28 (15) When the testimony is fully transcribed, the false claims act
29 investigator or the officer before whom the testimony is taken must
30 afford the witness, who may be accompanied by counsel, a reasonable
31 opportunity to examine and read the transcript, unless the examination
32 and reading are waived by the witness. Any changes in form or
33 substance which the witness desires to make must be entered and
34 identified upon the transcript by the officer or the false claims act
35 investigator, with a statement of the reasons given by the witness for
36 making the changes, and the original shall be retained within the
37 transcript for purposes of comparison. The transcript must then be
38 signed by the witness, unless the witness in writing waives the

1 signing, is ill, cannot be found, or refuses to sign. If the
2 transcript is not signed by the witness within thirty days after being
3 afforded a reasonable opportunity to examine it, the officer or the
4 false claims act investigator must sign it and state on the record the
5 fact of the waiver, illness, absence of the witness, or the refusal to
6 sign, together with the reasons given.

7 (16) The officer before whom the testimony is taken must certify on
8 the transcript that the witness was sworn by the officer and that the
9 transcript is a true record of the testimony given by the witness, and
10 the officer or false claims act investigator must promptly deliver the
11 transcript, or send the transcript by registered or certified mail, to
12 the custodian.

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

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

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

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

5 (20) The attorney general must designate a false claims act
6 investigator to serve as custodian of documentary material, answers to
7 interrogatories, and transcripts of oral testimony received under this
8 section, and must designate such additional false claims act
9 investigators as the attorney general determines from time to time to
10 be necessary to serve as deputies to the custodian.

11 (21)(a) A false claims act investigator who receives any
12 documentary material, answers to interrogatories, or transcripts of
13 oral testimony under this section must transmit them to the custodian.
14 The custodian shall take physical possession of the material, answers,
15 or transcripts and is responsible for the use made of them and for the
16 return of documentary material under subsection (23) of this section.

17 (b) The custodian may cause the preparation of the copies of the
18 documentary material, answers to interrogatories, or transcripts of
19 oral testimony as may be required for official use by any false claims
20 act investigator, or employee of the attorney general. The material,
21 answers, and transcripts may be used by any authorized false claims act
22 investigator or other officer or employee in connection with the taking
23 of oral testimony under this section.

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

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

1 (d) While in the possession of the custodian and under the
2 reasonable terms and conditions as the attorney general shall
3 prescribe:

4 (i) Documentary material and answers to interrogatories must be
5 available for examination by the person who produced the material or
6 answers, or by a representative of that person authorized by that
7 person to examine the material and answers; and

8 (ii) Transcripts of oral testimony must be available for
9 examination by the person who produced the testimony, or by a
10 representative of that person authorized by that person to examine the
11 transcripts.

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

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

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

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

33 Then, the custodian shall, upon written request of the person who
34 produced the material, return to the person the material, other than
35 copies furnished to the false claims act investigator under subsection
36 (10) of this section or made for the attorney general under subsection
37 (21)(b) of this section which has not passed into the control of any

1 court, grand jury, or agency through introduction into the record of
2 the case or proceeding.

3 (24) In the event of the death, disability, or separation from
4 service of the attorney general or the custodian of any documentary
5 material, answers to interrogatories, or transcripts of oral testimony
6 produced pursuant to civil investigative demand under this section, or
7 in the event of the official relief of the custodian from
8 responsibility for the custody and control of the material, answers, or
9 transcripts, the attorney general must promptly:

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

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

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

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

1 district in which the proceeding in which the discovery was obtained is
2 or was last pending. Any petition filed under this subsection (26)(a)
3 must be filed:

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

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

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

18 (27)(a) In the case of any civil investigative demand issued under
19 subsection (1) or (2) of this section which is an express demand for
20 any product of discovery, the person from whom the discovery was
21 obtained may file, in the superior court of the state of Washington for
22 the county in which the proceeding in which the discovery was obtained
23 is or was last pending, and serve upon any false claims act
24 investigator identified in the demand and upon the recipient of the
25 demand, a petition for an order of the court to modify or set aside
26 those portions of the demand requiring production of any product of
27 discovery. Any petition under this subsection (27)(a) must be filed:

28 (i) Within twenty 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 portions of the demand from which relief is
36 sought to comply with the provisions of this section, or upon any
37 constitutional or other legal right or privilege of the petitioner.

1 During the pendency of the petition, the court may stay, as it deems
2 proper, compliance with the demand and the running of the time allowed
3 for compliance with the demand.

4 (28) At any time during which any custodian is in custody or
5 control of any documentary material or answers to interrogatories
6 produced, or transcripts of oral testimony given, by any person in
7 compliance with any civil investigative demand issued under subsection
8 (1) or (2) of this section, the person, and in the case of an express
9 demand for any product of discovery, the person from whom the discovery
10 was obtained, may file, in the superior court of the state of
11 Washington for the county within which the office of the custodian is
12 situated, and serve upon the custodian, a petition for an order of the
13 court to require the performance by the custodian of any duty imposed
14 upon the custodian by this section.

15 (29) Whenever any petition is filed in any superior court of the
16 state of Washington under this section, the court has jurisdiction to
17 hear and determine the matter so presented, and to enter an order or
18 orders as may be required to carry out the provisions of this section.
19 Any final order so entered is subject to appeal under the rules of
20 appellate procedure. Any disobedience of any final order entered under
21 this section by any court must be punished as a contempt of the court.

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

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

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

- 33 (1) The number of attorneys assigned to qui tam initiated actions;
- 34 (2) The number of cases brought by the qui tam actions and indicate
35 how many cases are brought by the attorney general and how many by the
36 qui tam relator without attorney general participation;

1 (3) The results of any actions brought under subsection (2) of this
2 section, delineated by cases brought by the attorney general and cases
3 brought by the qui tam relator without attorney general participation;
4 and

5 (4) The amount of recoveries attributable to the medicaid false
6 claims and how much of those recoveries were distributed to the general
7 fund.

8 NEW SECTION. **Sec. 22.** This chapter may be known and cited as the
9 medicaid fraud false claims act.

10 NEW SECTION. **Sec. 23.** Sections 8 through 22 of this act
11 constitute a new chapter in Title 74 RCW.

12 NEW SECTION. **Sec. 24.** Except for section 15 of this act, this act
13 is necessary for the immediate preservation of the public peace,
14 health, or safety, or support of the state government and its existing
15 public institutions, and takes effect immediately.

16 NEW SECTION. **Sec. 25.** (1) Section 14 of this act expires if the
17 office of the inspector general determines that the provisions of
18 section 14 of this act are not at least as effective in rewarding and
19 facilitating qui tam actions as the federal false claims act and does
20 not qualify for the financial incentive provided under section 6031 of
21 the deficit reduction act.

22 (2) Section 15 of this act takes effect if section 14 of this act
23 expires under subsection (1) of this section.

24 (3) If the office of the attorney general receives a letter from
25 the office of the inspector general stating that section 14 of this act
26 is not at least as effective in rewarding and facilitating qui tam
27 actions as the federal false claims act, it must immediately transmit
28 a copy of that letter to the office of the code reviser."

NOT CONSIDERED 05/25/2011

1 On page 1, line 1 of the title, after "fraud;" strike the remainder
2 of the title and insert "amending RCW 74.09.210, 74.09.230, and
3 43.43.830; reenacting and amending RCW 9A.04.080; adding new sections
4 to chapter 74.09 RCW; adding a new chapter to Title 74 RCW; prescribing
5 penalties; providing a contingent effective date; providing a
6 contingent expiration date; and declaring an emergency."

EFFECT: (1) Makes technical changes, including: (a) Requiring the attorney general to diligently investigate violations, rather than make a good faith effort to investigate; (b) requires appeals to be determined by a court in the State of Washington rather than federal court; and (c) testimony must be recorded, rather than be taken stenographically.

(2) Makes changes to the civil procedure provisions: (a) A civil demand for a product of discovery is not due until thirty days after a copy of the demand has been served, rather than requiring that it be not returned for twenty days; (b) oral testimony may not begin sooner than six days after the date on which the demand is received, rather than seven; and (c) requires that when changes are entered upon a transcript, the original must be retained for comparison purposes.

(3) Permits a court to dismiss a qui tam action after it is filed with the court if it determines the action brought is frivolous or vexatious or is being brought for the purposes of harassment.

(4) Provides that a relator who conducts an action without participation of the attorney general will be responsible for the defendant's reasonable attorneys' fees, costs, and expenses if the defendant prevails.

(5) An annual report on the Medicaid False Claims Act is required. The report must include the number of cases brought under qui tam actions, the results of such cases, and the amount of recoveries.

(6) Adds an emergency clause.

(7) Provides a contingent effective date and a contingent expiration date should the Office of the Inspector General find that the act does not qualify for the federal rebate.

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