
SECOND SUBSTITUTE SENATE BILL 5458

State of Washington

62nd Legislature

2011 Regular Session

By Senate Ways & Means (originally sponsored by Senators Keiser, Pflug, Kline, Becker, Conway, Pridemore, Rockefeller, and Parlette)

READ FIRST TIME 02/25/11.

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

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

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

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

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

12 (i) Murder;

13 (ii) Homicide by abuse;

14 (iii) Arson if a death results;

15 (iv) Vehicular homicide;

16 (v) Vehicular assault if a death results;

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

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

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

6 (ii) Arson if no death results; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (a) A willful false statement;

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

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

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

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

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

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

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

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

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

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

35 The medicaid fraud penalty account is created in the state
36 treasury. All receipts from civil penalties collected under RCW
37 74.09.210, all receipts received under settlements that originated

1 under a filing under the federal false claims act, and all receipts
2 received under settlements that originated under the state medicaid
3 fraud false claims act, chapter 74.--- RCW (the new chapter created in
4 section 21 of this act) must be deposited into the account. Moneys in
5 the account may be spent only after appropriation and must be used only
6 for medicaid services and for medicaid fraud enforcement activities.

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

9 (1) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (1) "Applicant" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (10) "Financial exploitation" means "financial exploitation" as
7 defined in RCW 74.34.020.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (i) Has actual knowledge of the information;

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

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

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

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

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

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

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

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

12 (12) "Product of discovery" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 NEW SECTION. **Sec. 11.** Subject to funds appropriated for this
36 purpose, the attorney general must make a good faith effort to

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

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

10 (2) A relator filing an action under this chapter must serve a copy
11 of the complaint and written disclosure of substantially all material
12 evidence and information the person possesses on the attorney general
13 in electronic format. The relator must file the complaint in camera.
14 The complaint must remain under seal for at least sixty days, and may
15 not be served on the defendant until the court so orders. The attorney
16 general may elect to intervene and proceed with the action within sixty
17 days after it receives both the complaint and the material evidence and
18 information.

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

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

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

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

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

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

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

17 (c) Upon a showing by the attorney general that unrestricted
18 participation during the course of the litigation by the relator would
19 interfere with or unduly delay the attorney general's prosecution of
20 the case, or would be repetitious, irrelevant, or for purposes of
21 harassment, the court may, in its discretion, impose limitations on the
22 relator's participation, such as:

- 23 (i) Limiting the number of witnesses the relator may call;
24 (ii) Limiting the length of the testimony of the witnesses;
25 (iii) Limiting the relator's cross-examination of witnesses; or
26 (iv) Otherwise limiting the participation by the relator in the
27 litigation.

28 (d) Upon a showing by the defendant that unrestricted participation
29 during the course of the litigation by the relator would be for
30 purposes of harassment or would cause the defendant undue burden or
31 unnecessary expense, the court may limit the participation by the
32 relator in the litigation.

33 (3) If the attorney general elects not to proceed with the qui tam
34 action, the relator has the right to conduct the action. If the
35 attorney general so requests, the relator must serve on the attorney
36 general copies of all pleadings filed in the action and shall supply
37 copies of all deposition transcripts, at the relator's expense.
38 Additionally, the relator shall provide the attorney general with

1 notice and the details of all offers of settlement. When the relator
2 proceeds with the action, the court, without limiting the status and
3 rights of the relator, may nevertheless permit the attorney general to
4 intervene at a later date upon a showing of good cause.

5 (4) Whether or not the attorney general proceeds with the qui tam
6 action, upon a showing by the attorney general that certain actions of
7 discovery by the relator would interfere with the attorney general's
8 investigation or prosecution of a criminal or civil matter arising out
9 of the same facts, the court may stay such discovery for a period of
10 not more than sixty days. The showing must be conducted in camera.
11 The court may extend the sixty-day period upon a further showing in
12 camera that the attorney general has pursued the criminal or civil
13 investigation or proceedings with reasonable diligence and any proposed
14 discovery in the civil action will interfere with the ongoing criminal
15 or civil investigation or proceedings.

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

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

35 (b) Where the action is one which the court finds to be based
36 primarily on disclosures of specific information, other than
37 information provided by the relator, relating to allegations or

1 transactions in a criminal, civil, or administrative hearing, in a
2 congressional, administrative, or general accounting office report,
3 hearing, audit, or investigation, or from the news media, the court may
4 award an amount it considers appropriate, but in no case more than ten
5 percent of the proceeds, taking into account the significance of the
6 information and the role of the relator in advancing the case to
7 litigation.

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

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

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

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

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

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

16 NEW SECTION. **Sec. 15.** (1) In no event may a person bring a qui
17 tam action which is based upon allegations or transactions which are
18 the subject of a civil suit or an administrative civil money penalty
19 proceeding in which the attorney general is already a party.

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

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

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

28 (iii) By the news media, unless the action is brought by the
29 attorney general or the relator is an original source of the
30 information.

31 (b) For purposes of this section, "original source" means an
32 individual who either (i) prior to a public disclosure under (a) of
33 this subsection, has voluntarily disclosed to the attorney general the
34 information on which allegations or transactions in a claim are based,
35 or (ii) has knowledge that is independent of, and materially adds to,
36 the publicly disclosed allegations or transactions, and who has

1 voluntarily provided the information to the attorney general before
2 filing an action under this section.

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

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

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

22 NEW SECTION. **Sec. 17.** (1) A subpoena requiring the attendance of
23 a witness at a trial or hearing conducted under section 12 of this act
24 may be served at any place in the state of Washington.

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

28 (3) If the attorney general elects to intervene and proceed with a
29 qui tam action, the attorney general may file its own complaint or
30 amend the complaint of a relator to clarify or add detail to the claims
31 in which the attorney general is intervening and to add any additional
32 claims with respect to which the attorney general contends it is
33 entitled to relief.

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

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

9 NEW SECTION. **Sec. 18.** (1) Any action under section 11 or 12 of
10 this act may be brought in the superior court in any county in which
11 the defendant or, in the case of multiple defendants, any one defendant
12 can be found, resides, transacts business, or in which any act
13 proscribed by section 9 of this act occurred. The appropriate court
14 must issue a summons as required by the superior court civil rules and
15 service must occur at any place within the state of Washington.

16 (2) The superior courts have jurisdiction over any action brought
17 under the laws of any city or county for the recovery of funds paid by
18 a government entity if the action arises from the same transaction or
19 occurrence as an action brought under section 11 or 12 of this act.

20 (3) With respect to any local government that is named as a
21 coplaintiff with the state in an action brought under section 12 of
22 this act, a seal on the action ordered by the court under section 12 of
23 this act does not preclude the attorney general or the person bringing
24 the action from serving the complaint, any other pleadings, or the
25 written disclosure of substantially all material evidence and
26 information possessed by the person bringing the action on the law
27 enforcement authorities that are authorized under the law of the local
28 government to investigate and prosecute the action on behalf of the
29 local government, except that the seal applies to the law enforcement
30 authorities so served to the same extent as the seal applies to other
31 parties in the action.

32 NEW SECTION. **Sec. 19.** (1) Whenever the attorney general, or a
33 designee, for purposes of this section, has reason to believe that any
34 person may be in possession, custody, or control of any documentary
35 material or information relevant to a false claims act investigation,
36 the attorney general, or a designee, may, before commencing a civil

1 proceeding under section 12(1) of this act or making an election under
2 section 12(2) of this act, issue in writing and serve upon the person,
3 a civil investigative demand requiring the person:

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

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

7 (c) To give oral testimony concerning the documentary material or
8 information; or

9 (d) To furnish any combination of such material, answers, or
10 testimony. The attorney general may delegate the authority to issue
11 civil investigative demands under this subsection (1). Whenever a
12 civil investigative demand is an express demand for any product of
13 discovery, the attorney general, the deputy attorney general, or an
14 assistant attorney general must serve, in any manner authorized by this
15 section, a copy of the demand upon the person from whom the discovery
16 was obtained and must notify the person to whom the demand is issued of
17 the date on which the copy was served. Any information obtained by the
18 attorney general or a designee of the attorney general under this
19 section may be shared with any qui tam relator if the attorney general
20 or designee determine it is necessary as part of any false claims act
21 investigation.

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

26 (b) If the demand is for the production of documentary material,
27 the demand must:

28 (i) Describe each class of documentary material to be produced with
29 such definiteness and certainty as to permit the material to be fairly
30 identified;

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

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

36 (c) If the demand is for answers to written interrogatories, the
37 demand must:

1 (i) Set forth with specificity the written interrogatories to be
2 answered;

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

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

7 (d) If the demand is for the giving of oral testimony, the demand
8 must:

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

11 (ii) Identify a false claims act investigator who must conduct the
12 examination and the custodian to whom the transcript of the examination
13 must be submitted;

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

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

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

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

25 (f) The date prescribed for the commencement of oral testimony
26 pursuant to a civil investigative demand issued under this section may
27 not be sooner than seven days after the date on which demand is
28 received, unless the attorney general or an assistant attorney general
29 designated by the attorney general determines that exceptional
30 circumstances are present which warrant the commencement of the
31 testimony sooner.

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

37 (3) A civil investigative demand issued under subsection (1) or (2)
38 of this section may not require the production of any documentary

1 material, the submission of any answers to written interrogatories, or
2 the giving of any oral testimony if the material, answers, or testimony
3 would be protected from disclosure under:

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

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

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

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

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

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

31 (b) Delivering an executed copy of the demand or petition to the
32 principal office or place of business of the partnership, corporation,
33 association, or entity; or

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

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

3 (a) Delivering an executed copy of the demand or petition to the
4 person; or

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

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

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

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

21 (b) In the case of a person other than a natural person, a person
22 having knowledge of the facts and circumstances relating to the
23 production and authorized to act on behalf of the person. The
24 certificate must state that all of the documentary material required by
25 the demand and in the possession, custody, or control of the person to
26 whom the demand is directed has been produced and made available to the
27 false claims act investigator identified in the demand.

28 (10) Any person upon whom any civil investigative demand for the
29 production of documentary material has been served under this section
30 shall make such material available for inspection and copying to the
31 false claims act investigator identified in the demand at the principal
32 place of business of the person, or at another place as the false
33 claims act investigator and the person thereafter may agree and
34 prescribe in writing, or as the court may direct under subsection (25)
35 of this section. The material must be made available on the return
36 date specified in the demand, or on a later date as the false claims
37 act investigator may prescribe in writing. The person may, upon

1 written agreement between the person and the false claims act
2 investigator, substitute copies for originals of all or any part of the
3 material.

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

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

10 (b) In the case of a person other than a natural person, the person
11 or persons responsible for answering each interrogatory. If any
12 interrogatory is objected to, the reasons for the objection must be
13 stated in the certificate instead of an answer. The certificate must
14 state that all information required by the demand and in the
15 possession, custody, control, or knowledge of the person to whom the
16 demand is directed has been submitted. To the extent that any
17 information is not furnished, the information must be identified and
18 reasons set forth with particularity regarding the reasons why the
19 information was not furnished.

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

34 (13) The false claims act investigator conducting the examination
35 shall exclude from the place where the examination is held all persons
36 except the person giving the testimony, the attorney for and any other
37 representative of the person giving the testimony, the attorney
38 general, any person who may be agreed upon by the attorney for the

1 government and the person giving the testimony, the officer before whom
2 the testimony is to be taken, and any stenographer taking the
3 testimony.

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

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

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

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

36 (18)(a) Any person compelled to appear for oral testimony under a
37 civil investigative demand issued under subsection (1) or (2) of this
38 section may be accompanied, represented, and advised by counsel.

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

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

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

23 (20) The attorney general must designate a false claims act
24 investigator to serve as custodian of documentary material, answers to
25 interrogatories, and transcripts of oral testimony received under this
26 section, and must designate such additional false claims act
27 investigators as the attorney general determines from time to time to
28 be necessary to serve as deputies to the custodian.

29 (21)(a) A false claims act investigator who receives any
30 documentary material, answers to interrogatories, or transcripts of
31 oral testimony under this section must transmit them to the custodian.
32 The custodian shall take physical possession of the material, answers,
33 or transcripts and is responsible for the use made of them and for the
34 return of documentary material under subsection (23) of this section.

35 (b) The custodian may cause the preparation of the copies of the
36 documentary material, answers to interrogatories, or transcripts of
37 oral testimony as may be required for official use by any false claims
38 act investigator, or employee of the attorney general. The material,

1 answers, and transcripts may be used by any authorized false claims act
2 investigator or other officer or employee in connection with the taking
3 of oral testimony under this section.

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

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

19 (d) While in the possession of the custodian and under the
20 reasonable terms and conditions as the attorney general shall
21 prescribe:

22 (i) Documentary material and answers to interrogatories must be
23 available for examination by the person who produced the material or
24 answers, or by a representative of that person authorized by that
25 person to examine the material and answers; and

26 (ii) Transcripts of oral testimony must be available for
27 examination by the person who produced the testimony, or by a
28 representative of that person authorized by that person to examine the
29 transcripts.

30 (22) Whenever any official has been designated to appear before any
31 court, special inquiry judge, or state administrative judge in any case
32 or proceeding, the custodian of any documentary material, answers to
33 interrogatories, or transcripts of oral testimony received under this
34 section may deliver to the official the material, answers, or
35 transcripts for official use in connection with any case or proceeding
36 as the official determines to be required. Upon the completion of
37 such a case or proceeding, the official must return to the custodian

1 any material, answers, or transcripts so delivered which have not
2 passed into the control of any court, grand jury, or agency through
3 introduction into the record of such a case or proceeding.

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

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

10 (b) No case or proceeding in which the material may be used has
11 been commenced within a reasonable time after completion of the
12 examination and analysis of all documentary material and other
13 information assembled in the course of the investigation, the custodian
14 shall, upon written request of the person who produced the material,
15 return to the person the material, other than copies furnished to the
16 false claims act investigator under subsection (10) of this section or
17 made for the attorney general under subsection (21)(b) of this section
18 which has not passed into the control of any court, grand jury, or
19 agency through introduction into the record of the case or proceeding.

20 (24) In the event of the death, disability, or separation from
21 service of the attorney general of the custodian of any documentary
22 material, answers to interrogatories, or transcripts of oral testimony
23 produced pursuant to civil investigative demand under this section, or
24 in the event of the official relief of the custodian from
25 responsibility for the custody and control of the material, answers, or
26 transcripts, the attorney general must promptly:

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

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

37 (25) Whenever any person fails to comply with any civil
38 investigative demand issued under subsection (1) or (2) of this

1 section, or whenever satisfactory copying or reproduction of any
2 material requested in the demand cannot be done and the person refuses
3 to surrender the material, the attorney general may file, in any
4 superior court of the state of Washington for any county in which the
5 person resides, is found, or transacts business, and serve upon the
6 person a petition for an order of the court for the enforcement of the
7 civil investigative demand.

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

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

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

25 (b) The petition must specify each ground upon which the petitioner
26 relies in seeking relief under (a) of this subsection, and may be based
27 upon any failure of the demand to comply with the provisions of this
28 section or upon any constitutional or other legal right or privilege of
29 the person. During the pendency of the petition in the court, the
30 court may stay, as it deems proper, the running of the time allowed for
31 compliance with the demand, in whole or in part, except that the person
32 filing the petition shall comply with any portions of the demand not
33 sought to be modified or set aside.

34 (27)(a) In the case of any civil investigative demand issued under
35 subsection (1) or (2) of this section which is an express demand for
36 any product of discovery, the person from whom the discovery was
37 obtained may file, in the superior court of the state of Washington for
38 the county in which the proceeding in which the discovery was obtained

1 is or was last pending, and serve upon any false claims act
2 investigator identified in the demand and upon the recipient of the
3 demand, a petition for an order of the court to modify or set aside
4 those portions of the demand requiring production of any product of
5 discovery. Any petition under this subsection (27)(a) must be filed:

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

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

11 (b) The petition must specify each ground upon which the petitioner
12 relies in seeking relief under (a) of this subsection, and may be based
13 upon any failure of the portions of the demand from which relief is
14 sought to comply with the provisions of this section, or upon any
15 constitutional or other legal right or privilege of the petitioner.
16 During the pendency of the petition, the court may stay, as it deems
17 proper, compliance with the demand and the running of the time allowed
18 for compliance with the demand.

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

30 (29) Whenever any petition is filed in any superior court of the
31 state of Washington under this section, the court has jurisdiction to
32 hear and determine the matter so presented, and to enter an order or
33 orders as may be required to carry out the provisions of this section.
34 Any final order so entered is subject to appeal under the rules of
35 appellate procedure. Any disobedience of any final order entered under
36 this section by any court must be punished as a contempt of the court.

37 (30) The superior court civil rules apply to any petition under

1 this section, to the extent that the rules are not inconsistent with
2 the provisions of this section.

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

7 NEW SECTION. **Sec. 20.** This chapter may be known and cited as the
8 medicaid fraud false claims act.

9 NEW SECTION. **Sec. 21.** Sections 8 through 20 of this act
10 constitute a new chapter in Title 74 RCW.

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