

SHB 1067 - H AMD 80

By Representative Haler

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

3

4 "Sec. 1. RCW 74.66.010 and 2012 c 241 s 201 are each amended
5 to read as follows:

6 Unless the context clearly requires otherwise, the definitions
7 in this section apply throughout this chapter:

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

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

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

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

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

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

27

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

3 (3) "Documentary material" includes the original or any copy of
4 any book, record, report, memorandum, paper, communication,
5 tabulation, chart, or other document, or data compilations stored in
6 or accessible through computer or other information retrieval
7 systems, together with instructions and all other materials
8 necessary to use or interpret the data compilations, and any product
9 of discovery.

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

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

21 (6) "Government entity" means all Washington state agencies that
22 administer medicaid-funded programs under this title.

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

25 (i) Has actual knowledge of the information;

26 (ii) Acts in deliberate ignorance of the truth or falsity of the
27 information; or

28 (iii) Acts in reckless disregard of the truth or falsity of the
29 information.

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

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

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

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

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

24 (12) "Product of discovery" includes:

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

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

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

34

1 (~~(13)~~) "~~Qui tam action~~" is an action brought by a person under
2 RCW ~~74.66.050~~.

3 ~~(14)~~ "~~Qui tam relator~~" or "~~relator~~" is a person who brings an
4 action under RCW ~~74.66.050~~.)

5

6 **Sec. 2.** RCW 74.66.100 and 2012 c 241 s 210 are each amended to
7 read as follows:

8 (1) A subpoena requiring the attendance of a witness at a trial
9 or hearing conducted under RCW 74.66.040 (~~or 74.66.050~~) may be
10 served at any place in the state of Washington.

11 (2) A civil action under RCW 74.66.040 (~~or 74.66.050~~) may be
12 brought at any time, without limitation after the date on which the
13 violation of RCW 74.66.020 is committed.

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

20 ~~(4)~~) In any action brought under RCW 74.66.040 (~~or
21 74.66.050~~), the attorney general is required to prove all essential
22 elements of the cause of action, including damages, by a
23 preponderance of the evidence.

24 (~~(5)~~) (4) Notwithstanding any other provision of law or the
25 rules for superior court, a final judgment rendered in favor of the
26 government entity in any criminal proceeding charging fraud or false
27 statements, whether upon a verdict after trial or upon a plea of
28 guilty or nolo contendere, estops the defendant from denying the
29 essential elements of the offense in any action which involves the
30 same transaction as in the criminal proceeding and which is brought
31 under RCW 74.66.040 (~~or 74.66.050~~)).

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33 **Sec. 3.** RCW 74.66.110 and 2012 c 241 s 211 are each amended to
34 read as follows:

1 (1) Any action under RCW 74.66.040 (~~(or 74.66.050)~~) may be
2 brought in the superior court in any county in which the defendant
3 or, in the case of multiple defendants, any one defendant can be
4 found, resides, transacts business, or in which any act proscribed
5 by RCW 74.66.020 occurred. The appropriate court must issue a
6 summons as required by the superior court civil rules and service
7 must occur at any place within the state of Washington.

8 (2) The superior courts have jurisdiction over any action
9 brought under the laws of any city or county for the recovery of
10 funds paid by a government entity if the action arises from the same
11 transaction or occurrence as an action brought under RCW 74.66.040
12 (~~(or 74.66.050)~~).

13 (~~((3) With respect to any local government that is named as a
14 complainant with the state in an action brought under RCW 74.66.050, a
15 seal on the action ordered by the court under RCW 74.66.050 does not
16 preclude the attorney general or the person bringing the action from
17 serving the complaint, any other pleadings, or the written disclosure
18 of substantially all material evidence and information possessed by
19 the person bringing the action on the law enforcement authorities that
20 are authorized under the law of the local government to investigate
21 and prosecute the action on behalf of the local government, except
22 that the seal applies to the law enforcement authorities so served to
23 the same extent as the seal applies to other parties in the action)~~).

24
25 **Sec. 4.** RCW 74.66.120 and 2012 c 241 s 212 are each amended to
26 read as follows:

27 (1)(a) Whenever the attorney general, or a designee, for
28 purposes of this section, has reason to believe that any person may
29 be in possession, custody, or control of any documentary material or
30 information relevant to a false claims act investigation, the
31 attorney general, or a designee, may, before commencing a civil
32 proceeding under RCW 74.66.040 (~~(or making an election under RCW
33 74.66.050)~~), issue in writing and serve upon the person, a civil
34 investigative demand requiring the person:

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

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

5 (iii) To give oral testimony concerning the documentary material
6 or information; or

7 (iv) To furnish any combination of such material, answers, or
8 testimony.

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

21 (2)(a) Each civil investigative demand issued under subsection
22 (1) of this section must state the nature of the conduct
23 constituting the alleged violation of this chapter which is under
24 investigation, and the applicable provision of law alleged to be
25 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
29 with such definiteness and certainty as to permit the material to be
30 fairly 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
33 be assembled and made available for inspection and copying; and

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

3 (c) If the demand is for answers to written interrogatories, the
4 demand must:

5 (i) Set forth with specificity the written interrogatories to be
6 answered;

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

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

11 (d) If the demand is for the giving of oral testimony, the
12 demand must:

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

15 (ii) Identify a false claims act investigator who must conduct
16 the examination and the custodian to whom the transcript of the
17 examination must be submitted;

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

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

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

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

30 (f) The date prescribed for the commencement of oral testimony
31 pursuant to a civil investigative demand issued under this section
32 may not be sooner than six days after the date on which demand is
33 received, unless the attorney general or an assistant attorney
34 general designated by the attorney general determines that

1 exceptional circumstances are present which warrant the commencement
2 of the testimony sooner.

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

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

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

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

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

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

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

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

10 (b) Delivering an executed copy of the demand or petition to the
11 principal office or place of business of the partnership,
12 corporation, association, or entity; or

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

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

19 (a) Delivering an executed copy of the demand or petition to the
20 person; or

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

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

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

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

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

6 (b) The certificate must state that all of the documentary
7 material required by the demand and in the possession, custody, or
8 control of the person to whom the demand is directed has been
9 produced and made available to the false claims act investigator
10 identified in the demand.

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

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

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

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

32 (b) If any interrogatory is objected to, the reasons for the
33 objection must be stated in the certificate instead of an answer.
34 The certificate must state that all information required by the

1 demand and in the possession, custody, control, or knowledge of the
2 person to whom the demand is directed has been submitted. To the
3 extent that any information is not furnished, the information must
4 be identified and reasons set forth with particularity regarding the
5 reasons why the information was not furnished.

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

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

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

33 (15) When the testimony is fully transcribed, the false claims
34 act investigator or the officer before whom the testimony is taken

1 must afford the witness, who may be accompanied by counsel, a
2 reasonable opportunity to examine and read the transcript, unless
3 the examination and reading are waived by the witness. Any changes
4 in form or substance which the witness desires to make must be
5 entered and identified upon the transcript by the officer or the
6 false claims act investigator, with a statement of the reasons given
7 by the witness for making the changes. The transcript must then be
8 signed by the witness, unless the witness in writing waives the
9 signing, is ill, cannot be found, or refuses to sign. If the
10 transcript is not signed by the witness within thirty days after
11 being afforded a reasonable opportunity to examine it, the officer
12 or the false claims act investigator must sign it and state on the
13 record the fact of the waiver, illness, absence of the witness, or
14 the refusal to sign, together with the reasons given.

15 (16) The officer before whom the testimony is taken must certify
16 on the transcript that the witness was sworn by the officer and that
17 the transcript is a true record of the testimony given by the
18 witness, and the officer or false claims act investigator must
19 promptly deliver the transcript, or send the transcript by
20 registered or certified mail, to the custodian.

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

27 (18)(a) Any person compelled to appear for oral testimony under
28 a civil investigative demand issued under subsection (1) or (2) of
29 this section may be accompanied, represented, and advised by
30 counsel. Counsel may advise the person, in confidence, with respect
31 to any question asked of the person. The person or counsel may
32 object on the record to any question, in whole or in part, and must
33 briefly state for the record the reason for the objection. An
34 objection may be made, received, and entered upon the record when it

1 is claimed that the person is entitled to refuse to answer the
2 question on the grounds of any constitutional or other legal right
3 or privilege, including the privilege against self-incrimination.
4 The person may not otherwise object to or refuse to answer any
5 question, and may not directly or through counsel otherwise
6 interrupt the oral examination. If the person refuses to answer any
7 question, a special injury proceeding petition may be filed in the
8 superior court under subsection (25) of this section for an order
9 compelling the person to answer the question.

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

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

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

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

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

1 material, answers, and transcripts may be used by any authorized
2 false claims act investigator or other officer or employee in
3 connection with the taking 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,
13 or transcripts, or, in the case of any product of discovery produced
14 pursuant to an express demand for the material, consent is given by
15 the person from whom the discovery was obtained. Nothing in this
16 subsection [(21)](c)(ii) is intended to prevent disclosure to the
17 legislature, including any committee or subcommittee for use by such
18 an 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
29 the transcripts.

30 (22) Whenever any official has been designated to appear before
31 any court, special inquiry judge, or state administrative judge in
32 any case or proceeding, the custodian of any documentary material,
33 answers to interrogatories, or transcripts of oral testimony
34 received under this section may deliver to the official the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (b) The petition must specify each ground upon which the
30 petitioner relies in seeking relief under (a) of this subsection,
31 and may be based upon any failure of the portions of the demand from
32 which relief is sought to comply with the provisions of this
33 section, or upon any constitutional or other legal right or
34 privilege of the petitioner. During the pendency of the petition,

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

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

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

30 NEW SECTION. Sec. 5. The following acts or parts of acts are each
31 repealed:

32 (1) RCW 43.131.419 (Medicaid fraud false claims act—
33 Termination) and 2012 c 241 s 216;

34

1 (2) RCW 43.131.420 (Medicaid fraud false claims act—Repeal) and
2 2012 c 241 s 217;

3 (3) RCW 74.66.050 (Qui tam action—Relator rights and duties) and
4 2012 c 241 s 205;

5 (4) RCW 74.66.060 (Qui tam action—Attorney general authority) and
6 2012 c 241 s 206;

7 (5) RCW 74.66.070 (Qui tam action—Award—Proceeds of action or
8 settlement of claim) and 2012 c 241 s 207;

9 (6) RCW 74.66.080 (Qui tam action—Restrictions—Dismissal) and
10 2012 c 241 s 208; and

11 (7) RCW 74.66.130 (Reporting) and 2012 c 241 s 213."

12

13 Correct the title.

14

EFFECT: Repeals (rather than sunsets) the provisions of the
Medicaid Fraud False Claims Act that authorize qui tam actions to be
brought by private individuals on behalf of the state.

--- END ---