

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5978

Chapter 241, Laws of 2012

(partial veto)

62nd Legislature
2012 Regular Session

MEDICAID FRAUD

EFFECTIVE DATE: 06/07/12

Passed by the Senate March 8, 2012
YEAS 40 NAYS 9

BRAD OWEN

President of the Senate

Passed by the House March 8, 2012
YEAS 56 NAYS 42

FRANK CHOPP

Speaker of the House of Representatives

Approved March 30, 2012, 1:17 p.m., with
the exception of Section 218, which is
vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of
the Senate of the State of
Washington, do hereby certify that
the attached is **ENGROSSED
SUBSTITUTE SENATE BILL 5978** as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

THOMAS HOEMANN

Secretary

FILED

March 30, 2012

**Secretary of State
State of Washington**

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

8 **Sec. 102.** RCW 74.09.210 and 2011 1st sp.s. c 15 s 15 are each
9 amended to read as follows:

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

15 (a) A willful false statement;

16 (b) By willful misrepresentation, or by concealment of any material
17 facts; or

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

20 (i) Billing for services, drugs, supplies, or equipment that were
21 unfurnished, of lower quality, or a substitution or misrepresentation
22 of items billed; or

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

25 (2) Any person or entity knowingly violating any of the provisions
26 of subsection (1) of this section shall be liable for repayment of any
27 excess benefits or payments received, plus interest at the rate and in
28 the manner provided in RCW 43.20B.695. Such person or other entity
29 shall further, in addition to any other penalties provided by law, be
30 subject to civil penalties. The (~~secretary or~~) director(~~(as~~
31 ~~appropriate,~~) or the attorney general may assess civil penalties in an
32 amount not to exceed three times the amount of such excess benefits or
33 payments: PROVIDED, That these civil penalties shall not apply to any
34 acts or omissions occurring prior to September 1, 1979. RCW 43.20A.215
35 governs notice of a civil fine assessed by the director and provides
36 the right to an adjudicative proceeding.

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

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

7 (5) Civil penalties shall be deposited (~~(in the general fund)~~) upon
8 their receipt into the medicaid fraud penalty account established in
9 section 103 of this act.

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

12 NEW SECTION. Sec. 103. A new section is added to chapter 74.09
13 RCW to read as follows:

14 The medicaid fraud penalty account is created in the state
15 treasury. All receipts from civil penalties collected under RCW
16 74.09.210, all receipts received under judgments or settlements that
17 originated under a filing under the federal false claims act, and all
18 receipts received under judgments or settlements that originated under
19 the state medicaid fraud false claims act, chapter 74.--- RCW (the new
20 chapter created in section 215 of this act) must be deposited into the
21 account. Moneys in the account may be spent only after appropriation
22 and must be used only for medicaid services, fraud detection and
23 prevention activities, recovery of improper payments, and for other
24 medicaid fraud enforcement activities.

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

27 (1) For the purposes of this section:

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

30 (b) "Whistleblower" means an employee of an employer that obtains
31 or attempts to obtain benefits or payments under this chapter in
32 violation of RCW 74.09.210, who in good faith reports a violation of
33 RCW 74.09.210 to the authority.

34 (c) "Workplace reprisal or retaliatory action" includes, but is not
35 limited to: Denial of adequate staff to fulfill duties; frequent staff
36 changes; frequent and undesirable office changes; refusal to assign

1 meaningful work; unwarranted and unsubstantiated report of misconduct
2 under Title 18 RCW; unwarranted and unsubstantiated letters of
3 reprimand or unsatisfactory performance evaluations; demotion;
4 reduction in pay; denial of promotion; suspension; dismissal; denial of
5 employment; or a supervisor or superior behaving in or encouraging
6 coworkers to behave in a hostile manner toward the whistleblower; or a
7 change in the physical location of the employee's workplace or a change
8 in the basic nature of the employee's job, if either are in opposition
9 to the employee's expressed wish.

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

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

30 (4) The authority shall adopt rules to implement procedures for
31 filing, investigation, and resolution of whistleblower complaints that
32 are integrated with complaint procedures under this chapter. The
33 authority shall adopt rules designed to discourage whistleblower
34 complaints made in bad faith or for retaliatory purposes.

35 NEW SECTION. **Sec. 105.** A new section is added to chapter 74.09
36 RCW to read as follows:

37 The following must be medicare providers in order to be paid under

1 the medicaid program: Providers of durable medical equipment and
2 related supplies and providers of medical supplies and related
3 services.

4 **PART II**

5 **MEDICAID FRAUD FALSE CLAIMS ACT**

6 NEW SECTION. **Sec. 201.** Unless the context clearly requires
7 otherwise, the definitions in this section apply throughout this
8 chapter:

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

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

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

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

21 (B) Will reimburse such contractor, grantee, or other recipient for
22 any portion of the money or property which is requested or 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 (2) "Custodian" means the custodian, or any deputy custodian,
28 designated by the attorney general.

29 (3) "Documentary material" includes the original or any copy of any
30 book, record, report, memorandum, paper, communication, tabulation,
31 chart, or other document, or data compilations stored in or accessible
32 through computer or other information retrieval systems, together with
33 instructions and all other materials necessary to use or interpret the
34 data compilations, and any product of discovery.

35 (4) "False claims act investigation" means any inquiry conducted by

1 any false claims act investigator for the purpose of ascertaining
2 whether any person is or has been engaged in any violation of this
3 chapter.

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

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

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

14 (i) Has actual knowledge of the information;

15 (ii) Acts in deliberate ignorance of the truth or falsity of the
16 information; or

17 (iii) Acts in reckless disregard of the truth or falsity of the
18 information.

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

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

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

28 (10) "Official use" means any use that is consistent with the law,
29 and the rules and policies of the attorney general, including use in
30 connection with: Internal attorney general memoranda and reports;
31 communications between the attorney general and a federal, state, or
32 local government agency, or a contractor of a federal, state, or local
33 government agency, undertaken in furtherance of an investigation or
34 prosecution of a case; interviews of any qui tam relator or other
35 witness; oral examinations; depositions; preparation for and response
36 to civil discovery requests; introduction into the record of a case or
37 proceeding; applications, motions, memoranda, and briefs submitted to
38 a court or other tribunal; and communications with attorney general

1 investigators, auditors, consultants and experts, the counsel of other
2 parties, and arbitrators or mediators, concerning an investigation,
3 case, or proceeding.

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

7 (12) "Product of discovery" includes:

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

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

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

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

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

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

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

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

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

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

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

1 intending to defraud the government entity, makes or delivers the
2 receipt without completely knowing that the information on the receipt
3 is true;

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

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

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

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

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

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

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

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

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

1 (5) When a person brings an action under this section, no person
2 other than the attorney general may intervene or bring a related action
3 based on the facts underlying the pending action.

4 NEW SECTION. **Sec. 206.** (1) If the attorney general proceeds with
5 the qui tam action, the attorney general shall have the primary
6 responsibility for prosecuting the action, and is not bound by an act
7 of the relator. The relator has the right to continue as a party to
8 the action, subject to the limitations set forth in subsection (2) of
9 this section.

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

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

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

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

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

36 (3) If the attorney general elects not to proceed with the qui tam
37 action, the relator has the right to conduct the action. If the

1 attorney general so requests, the relator must serve on the attorney
2 general copies of all pleadings filed in the action and shall supply
3 copies of all deposition transcripts, at the attorney general's
4 expense. When the relator proceeds with the action, the court, without
5 limiting the status and rights of the relator, may nevertheless permit
6 the attorney general to intervene at a later date upon a showing of
7 good cause.

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

19 (5) Notwithstanding section 205 of this act, the attorney general
20 may elect to pursue its claim through any alternate remedy available to
21 the state, including any administrative proceeding to determine a civil
22 money penalty. If any alternate remedy is pursued in another
23 proceeding, the relator has the same rights in the proceeding as the
24 relator would have had if the action had continued under this section.
25 Any finding of fact or conclusion of law made in the other proceeding
26 that has become final is conclusive on all parties to an action under
27 this section. For purposes of this subsection, a finding or conclusion
28 is final if it has been finally determined on appeal to the appropriate
29 court of the state of Washington, if all time for filing the appeal
30 with respect to the finding or conclusion has expired, or if the
31 finding or conclusion is not subject to judicial review.

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

1 (b) Where the action is one which the court finds to be based
2 primarily on disclosures of specific information, other than
3 information provided by the relator, relating to allegations or
4 transactions in a criminal, civil, or administrative hearing, in a
5 legislative or administrative report, hearing, audit, or investigation,
6 or from the news media, the court may award an amount it considers
7 appropriate, but in no case more than ten percent of the proceeds,
8 taking into account the significance of the information and the role of
9 the relator in advancing the case to litigation.

10 (c) Any payment to a relator under (a) or (b) of this subsection
11 must be made from the proceeds. The relator must also receive an
12 amount for reasonable expenses which the court finds to have been
13 necessarily incurred, plus reasonable attorneys' fees and costs. All
14 expenses, fees, and costs must be awarded against 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 202 of this act upon
27 which the action was brought, then the court may, to the extent the
28 court considers appropriate, reduce the share of the proceeds of the
29 action which the person would otherwise receive under subsection (1) or
30 (2) of this section, taking into account the role of that person in
31 advancing the case to litigation and any relevant circumstances
32 pertaining to the violation. If the person bringing the action is
33 convicted of criminal conduct arising from his or her role in the
34 violation of section 202 of this act, that person must be dismissed
35 from the civil action and may not receive any share of the proceeds of
36 the action. The dismissal may not prejudice the right of the state to
37 continue the action, represented by the attorney general.

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, clearly vexatious, or brought primarily
6 for purposes of harassment.

7 (5) Any funds recovered that remain after calculation and
8 distribution under subsections (1) through (3) of this section must be
9 deposited into the medicaid fraud penalty account established in
10 section 103 of this act.

11 NEW SECTION. **Sec. 208.** (1) In no event may a person bring a qui
12 tam action which is based upon allegations or transactions which are
13 the subject of a civil suit or an administrative civil money penalty
14 proceeding in which the state is already a party.

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

19 (i) In a state criminal, civil, or administrative hearing in which
20 the attorney general or other governmental entity is a party;

21 (ii) In a legislative report, or other state report, hearing,
22 audit, or investigation; or

23 (iii) By the news media;
24 unless the action is brought by the attorney general or the relator is
25 an original source of the information.

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

34 NEW SECTION. **Sec. 209.** (1) Any employee, contractor, or agent is
35 entitled to all relief necessary to make that employee, contractor, or
36 agent whole, if that employee, contractor, or agent, is discharged,

1 demoted, suspended, threatened, harassed, or in any other manner
2 discriminated against in the terms and conditions of employment because
3 of lawful acts done by the employee, contractor, agent, or associated
4 others in furtherance of an action under this chapter or other efforts
5 to stop one or more violations of this chapter.

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

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

17 NEW SECTION. **Sec. 210.** (1) A subpoena requiring the attendance of
18 a witness at a trial or hearing conducted under section 204 or 205 of
19 this act may be served at any place in the state of Washington.

20 (2) A civil action under section 204 or 205 of this act may be
21 brought at any time, without limitation after the date on which the
22 violation of section 202 of this act is committed.

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

29 (4) In any action brought under section 204 or 205 of this act, the
30 attorney general is required to prove all essential elements of the
31 cause of action, including damages, by a preponderance of the evidence.

32 (5) Notwithstanding any other provision of law or the rules for
33 superior court, a final judgment rendered in favor of the government
34 entity in any criminal proceeding charging fraud or false statements,
35 whether upon a verdict after trial or upon a plea of guilty or nolo
36 contendere, estops the defendant from denying the essential elements of

1 the offense in any action which involves the same transaction as in the
2 criminal proceeding and which is brought under section 204 or 205 of
3 this act.

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

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

15 (3) With respect to any local government that is named as a
16 coplaintiff with the state in an action brought under section 205 of
17 this act, a seal on the action ordered by the court under section 205
18 of this act does not preclude the attorney general or the person
19 bringing the action from serving the complaint, any other pleadings, or
20 the written disclosure of substantially all material evidence and
21 information possessed by the person bringing the action on the law
22 enforcement authorities that are authorized under the law of the local
23 government to investigate and prosecute the action on behalf of the
24 local government, except that the seal applies to the law enforcement
25 authorities so served to the same extent as the seal applies to other
26 parties in the action.

27 NEW SECTION. **Sec. 212.** (1)(a) Whenever the attorney general, or
28 a designee, for purposes of this section, has reason to believe that
29 any person may be in possession, custody, or control of any documentary
30 material or information relevant to a false claims act investigation,
31 the attorney general, or a designee, may, before commencing a civil
32 proceeding under section 204 of this act or making an election under
33 section 205 of this act, issue in writing and serve upon the person, a
34 civil investigative demand requiring the person:

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

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

3 (iii) To give oral testimony concerning the documentary material or
4 information; or

5 (iv) To furnish any combination of such material, answers, or
6 testimony.

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

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

23 (b) If the demand is for the production of documentary material,
24 the demand must:

25 (i) Describe each class of documentary material to be produced with
26 such definiteness and certainty as to permit the material to be fairly
27 identified;

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

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

33 (c) If the demand is for answers to written interrogatories, the
34 demand must:

35 (i) Set forth with specificity the written interrogatories to be
36 answered;

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

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

3 (d) If the demand is for the giving of oral testimony, the demand
4 must:

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

7 (ii) Identify a false claims act investigator who must conduct the
8 examination and the custodian to whom the transcript of the examination
9 must be submitted;

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

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

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

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

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

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

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

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

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

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

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

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

20 (a) Delivering an executed copy of the demand or petition to any
21 partner, executive officer, managing agent, or general agent of the
22 partnership, corporation, association, or entity, or to any agent
23 authorized by appointment or by law to receive service of process on
24 behalf of such partnership, corporation, association, or entity;

25 (b) Delivering an executed copy of the demand or petition to the
26 principal office or place of business of the partnership, corporation,
27 association, or entity; or

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

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

34 (a) Delivering an executed copy of the demand or petition to the
35 person; or

36 (b) Depositing an executed copy of the demand or petition in the
37 United States mail by registered or certified mail, with a return

1 receipt requested, addressed to the person at the person's residence or
2 principal office or place of business.

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

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

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

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

18 (b) The certificate must state that all of the documentary material
19 required by the demand and in the possession, custody, or control of
20 the person to whom the demand is directed has been produced and made
21 available to the false claims act investigator identified in the
22 demand.

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

36 (11)(a) Each interrogatory in a civil investigative demand served
37 under this section must be answered separately and fully in writing

1 under oath and must be submitted under a sworn certificate, in the form
2 as the demand designates, by:

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

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

7 (b) If any interrogatory is objected to, the reasons for the
8 objection must be stated in the certificate instead of an answer. The
9 certificate must state that all information required by the demand and
10 in the possession, custody, control, or knowledge of the person to whom
11 the demand is directed has been submitted. To the extent that any
12 information is not furnished, the information must be identified and
13 reasons set forth with particularity regarding the reasons why the
14 information was not furnished.

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

29 (13) The false claims act investigator conducting the examination
30 shall exclude from the place where the examination is held all persons
31 except the person giving the testimony, the attorney for and any other
32 representative of the person giving the testimony, the attorney
33 general, any person who may be agreed upon by the attorney for the
34 government and the person giving the testimony, the officer before whom
35 the testimony is to be taken, and any stenographer taking the
36 testimony.

37 (14) The oral testimony of any person taken pursuant to a civil
38 investigative demand served under this section must be taken in the

1 county within which such person resides, is found, or transacts
2 business, or in another place as may be agreed upon by the false claims
3 act investigator conducting the examination and the person.

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

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

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

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

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

10 (b) If the person refuses to answer any question on the grounds of
11 the privilege against self-incrimination, the testimony of the person
12 may be compelled in accordance with the provisions of the superior
13 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 section
16 is entitled to the same fees and allowances which are paid to witnesses
17 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 to
20 interrogatories, and transcripts of oral testimony received under this
21 section, and must designate such additional false claims act
22 investigators as the attorney general determines from time to time to
23 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 custodian.
27 The custodian shall take physical possession of the material, answers,
28 or transcripts and is responsible for the use made of them and for the
29 return of documentary material under subsection (23) of this section.

30 (b) The custodian may cause the preparation of the copies of the
31 documentary material, answers to interrogatories, or transcripts of
32 oral testimony as may be required for official use by any false claims
33 act investigator, or employee of the attorney general. The material,
34 answers, and transcripts may be used by any authorized false claims act
35 investigator or other officer or employee in connection with the taking
36 of oral testimony under this section.

37 (c)(i) Except as otherwise provided in this subsection (21), no
38 documentary material, answers to interrogatories, or transcripts of

1 oral testimony, or copies thereof, while in the possession of the
2 custodian, may be available for examination by any individual other
3 than a false claims act investigator or other officer or employee of
4 the attorney general authorized under (b) of this subsection.

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

14 (d) While in the possession of the custodian and under the
15 reasonable terms and conditions as the attorney general shall
16 prescribe:

17 (i) Documentary material and answers to interrogatories must be
18 available for examination by the person who produced the material or
19 answers, or by a representative of that person authorized by that
20 person to examine the material and answers; and

21 (ii) Transcripts of oral testimony must be available for
22 examination by the person who produced the testimony, or by a
23 representative of that person authorized by that person to examine the
24 transcripts.

25 (22) Whenever any official has been designated to appear before any
26 court, special inquiry judge, or state administrative judge in any case
27 or proceeding, the custodian of any documentary material, answers to
28 interrogatories, or transcripts of oral testimony received under this
29 section may deliver to the official the material, answers, or
30 transcripts for official use in connection with any case or proceeding
31 as the official determines to be required. Upon the completion of
32 such a case or proceeding, the official must return to the custodian
33 any material, answers, or transcripts so delivered which have not
34 passed into the control of any court, grand jury, or agency through
35 introduction into the record of such a case or proceeding.

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

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

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

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

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

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

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

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

33 (25) Whenever any person fails to comply with any civil
34 investigative demand issued under subsection (1) or (2) of this
35 section, or whenever satisfactory copying or reproduction of any
36 material requested in the demand cannot be done and the person refuses
37 to surrender the material, the attorney general may file, in any
38 superior court of the state of Washington for any county in which the

1 person resides, is found, or transacts business, and serve upon the
2 person a petition for an order of the court for the enforcement of the
3 civil investigative demand.

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

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

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

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

30 (27)(a) In the case of any civil investigative demand issued under
31 subsection (1) or (2) of this section which is an express demand for
32 any product of discovery, the person from whom the discovery was
33 obtained may file, in the superior court of the state of Washington for
34 the county in which the proceeding in which the discovery was obtained
35 is or was last pending, and serve upon any false claims act
36 investigator identified in the demand and upon the recipient of the
37 demand, a petition for an order of the court to modify or set aside

1 those portions of the demand requiring production of any product of
2 discovery. Any petition under this subsection (27)(a) must be filed:

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

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

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

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

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

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

37 (31) Any documentary material, answers to written interrogatories,

1 or oral testimony provided under any civil investigative demand issued
2 under subsection (1) or (2) of this section are exempt from disclosure
3 under the public records act, chapter 42.56 RCW.

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

- 8 (1) The number of attorneys assigned to qui tam initiated actions;
- 9 (2) The number of cases brought by qui tam actions and indicate how
10 many cases are brought by the attorney general and how many by the qui
11 tam relator without attorney general participation;
- 12 (3) The results of any actions brought under subsection (2) of this
13 section, delineated by cases brought by the attorney general and cases
14 brought by the qui tam relator without attorney general participation;
- 15 (4) The amount of recoveries attributable to the medicaid false
16 claims; and
- 17 (5) Information on the costs, attorneys' fees, and any other
18 expenses incurred by defendants in investigating and defending against
19 qui tam actions, to the extent this information is provided to the
20 attorney general or health care authority.

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

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

25 NEW SECTION. **Sec. 216.** A new section is added to chapter 43.131
26 RCW to read as follows:

27 The medicaid fraud false claims act as established under chapter
28 74.-- RCW (the new chapter created in sections 201 through 214 of this
29 act) shall be terminated on June 30, 2016, as provided in section 217
30 of this act.

31 NEW SECTION. **Sec. 217.** A new section is added to chapter 43.131
32 RCW to read as follows:

1 The following acts or parts of acts, as now existing or hereafter
2 amended, are each repealed, effective June 30, 2017:

- 3 (1) Section 201 of this act;
- 4 (2) Section 202 of this act;
- 5 (3) Section 203 of this act;
- 6 (4) Section 204 of this act;
- 7 (5) Section 205 of this act;
- 8 (6) Section 206 of this act;
- 9 (7) Section 207 of this act;
- 10 (8) Section 208 of this act;
- 11 (9) Section 209 of this act;
- 12 (10) Section 210 of this act;
- 13 (11) Section 211 of this act;
- 14 (12) Section 212 of this act;
- 15 (13) Section 213 of this act; and
- 16 (14) Section 214 of this act.

17 ****NEW SECTION. Sec. 218. This act is necessary for the immediate***
18 ***preservation of the public peace, health, or safety, or support of the***
19 ***state government and its existing public institutions, and takes effect***
20 ***immediately.***

**Sec. 218 was vetoed. See message at end of chapter.*

Passed by the Senate March 8, 2012.

Passed by the House March 8, 2012.

Approved by the Governor March 30, 2012, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 30, 2012.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Section 218,
Engrossed Substitute Senate Bill 5978 entitled:

"AN ACT Relating to medicaid fraud."

Engrossed Substitute Senate Bill 5978 creates a new State Medicaid
Fraud False Claims Act. The federal Deficit Reduction Act of 2005
provides that the federal government will give to the state ten
percent of any funds recovered as part of Medicaid enforcement actions
brought under a state law comparable to the federal False Claims Act.

The emergency clause in Section 218 providing for Engrossed Substitute
Senate Bill 5978 to take effect immediately is not necessary. The
bill will be effective ninety days after the adjournment of the
session at which it was enacted, which will be June 7, 2012. There is
no need to provide an earlier effective date. The Legislature has not
yet provided funding to implement the provisions of this bill; the
Health Care Authority and the Attorney General's Office will need time
to prepare for implementation; and the State can request federal
approval under the Deficit Reduction Act of 2005 in a timely manner
without the emergency clause.

For these reasons, I have vetoed Section 218 of Engrossed Substitute Senate Bill 5978.

With the exception of Section 218, Engrossed Substitute Senate Bill 5978 is approved."