

Colorado False Claims Act

(Colo. Rev. Stat. §§ 24-31-1201–1211)ⁱ

§ 24-31-1201. Short title

The short title of this part 12 is the “Colorado False Claims Act”.

§ 24-31-1202. Definitions

As used in this part 12, unless the context otherwise requires:

(1)

(a) “Claim” means a request or demand, whether under a contract or otherwise, for money or property and whether or not the state or a political subdivision has title to the money or property, that is:

(I) Presented to an officer, employee, or agent of the state or political subdivision;
or

(II) Made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state’s or political subdivision’s behalf or to advance a government program or interest, and if the state or political subdivision:

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

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

(b) “Claim” includes the failure to pay or the underpayment of an obligation owed to the state.

(c) “Claim” does not include a request or demand for money or property that the state or a political subdivision has paid:

(I) To an individual as compensation for employment by the state or political subdivision;

(II) As an income subsidy with no restrictions on that individual’s use of the money or property;

(III) To an individual as part of a government assistance program in an amount less than ten thousand dollars in a calendar year; or

(IV) To a person under the “Colorado Medical Assistance Act”, articles 4, 5, and 6 of title 25.5.

(2) “Department” means the department of law.

(3) “Fund” means the false claims recovery cash fund created in section 24-31-1209.

(4)

(a) “Knowing” or “knowingly” mean that a person, with respect to information about a claim:

(I) Has actual knowledge of the falsity of the information;

(II) Acts in deliberate ignorance of the truth or falsity of the information; or

(III) Acts in reckless disregard of the truth or falsity of the information.

(b) “Knowing” or “knowingly” does not require proof of specific intent to defraud. A person who acts merely negligently with respect to information is not deemed to have acted knowingly, unless the person acts with reckless disregard of the truth or falsity of the information.

(5) “Material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(6) “Obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship; from a fee-based or similar relationship; from statute or regulation; or from the retention of any overpayment.

(7) “Person” means any individual, corporation, business trust, estate, trust, limited liability company, partnership, association, or other nongovernmental legal entity.

(8) “Political subdivision” has the same meaning as set forth in section 24-72-202.

(9) “Proceeds” means all money, property, damages, double damages, treble damages, civil penalties, and payments for costs of compliance, including reasonable costs and attorney fees, realized by the state whether as a result of any settlement of or judgment entered in any action brought pursuant to this part 12.

§ 24-31-1203. False claims—civil liability for certain acts—penalty—exception

(1) Subject to subsection (2) of this section and except as otherwise provided in subsection (5) of this section, a person is liable to the state for a civil penalty of not less than eleven thousand eight hundred dollars and not more than twenty-three thousand six hundred dollars per violation, plus

three times the amount of damages that the state sustains because of the act of that person, if that person:

- (a) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- (b) Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;
- (c) Has possession, custody, or control of property or money used, or to be used, by the state or political subdivision and knowingly delivers, or causes to be delivered, less than all of the money or property;
- (d) Authorizes the making or delivery of a document certifying receipt of property used, or to be used, by the state or political subdivision and, with the intent to defraud the state or political subdivision, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- (e) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state or political subdivision who lawfully may not sell or pledge the property;
- (f) Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the state or political subdivision, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state or political subdivision;
- (g) Knowingly makes, uses, or causes to be made or used, a false record or statement resulting in the underpayment of premiums owed to the unemployment compensation fund established in section 8-77-101 or in the payment of unemployment insurance benefits of more than fifteen thousand dollars in a calendar year; or
- (h) Conspires to commit a violation of subsections (1)(a) to (1)(g) of this section.

(2)

(a) Notwithstanding the amount of damages authorized in subsection (1) of this section, for a person who violates subsection (1) of this section, the court may assess reduced damages and penalties as described in subsection (2)(b) or (2)(c) of this section if the court finds that:

- (I) The person who committed the violation furnished to the officials of the state or political subdivision responsible for investigating false claims violations all information about the violation known to the person and furnished said information within thirty days after the date on which the person first learned of a potential violation;

(II) At the time the person furnished the information about the violation to the officials of the state or political subdivision, the person did not have actual or constructive knowledge of the existence of an investigation into the violation; and

(III) The person fully cooperated with any investigation of the violation by the state.

(b) If a person described in subsection (2)(a) of this section furnished information about the violation to the officials of the state or political subdivision before a criminal prosecution, civil action, or administrative action was commenced with respect to the violation, the court shall assess one and one-half the amount of actual damages resulting from the false claim, including interest from the date of the fraud to the date of full repayment of all damages, that the state or political subdivision sustains because of the violation and a civil penalty of not less than five thousand nine hundred dollars and not more than eleven thousand eight hundred dollars per violation.

(c) If a person described in subsection (2)(a) of this section furnished information about the violation to the officials of the state while a criminal prosecution, civil action, or administrative action concerning the violation was under seal pursuant to section 24-31-1204(3)(b), the court shall assess double the amount of actual damages resulting from the false claim, including interest from the date of the fraud to the date of full repayment of all damages, that the state or political subdivision sustains because of the violation and a civil penalty of not less than seven thousand eight hundred dollars and not more than fifteen thousand seven hundred dollars per violation.

(d) The attorney general may determine whether a person meets the criteria described in subsection (2)(a) of this section and submit the determination and reasoning to the court, which the court may consider when making a finding as to whether the person satisfies the criteria described in subsection (2)(a) of this section.

(3) Any information furnished pursuant to subsection (2) of this section is exempt from disclosure pursuant to the “Colorado Open Records Act”, part 2 of article 72 of this title 24.

(4) A person who violates this section is also liable to the state for reasonable attorney fees and the costs incurred during the enforcement of this part 12.

(5) This section does not apply to claims, records, or statements made pursuant to title 39.

(6)

(a) The maximum and minimum amounts for the civil penalties described in this section must be adjusted for inflation on July 1, 2023, and each July 1 thereafter. The adjustment made pursuant to this subsection (6) must be rounded upward or downward to the nearest ten-dollar increment. The secretary of state shall certify the adjusted maximum and minimum amounts for civil penalties within fourteen days after the appropriate information is available.

(b) For each action brought pursuant to this part 12, the applicable minimum and maximum amounts for a civil penalty are the amounts in effect on the date the cause of action accrues.

(c) As used in this section, “inflation” means the annual percentage change in the Denver-Aurora-Lakewood consumer price index, or its applicable successor index, published by the United States department of labor bureau of labor statistics.

(7) For accounting purposes, a fine or penalty received by the state pursuant to this part 12 is a damage award.

(8)

(a) Subject to section 24-31-1204(4)(e), if the attorney general has authority to bring or intervene in a civil action pursuant to this part 12, the attorney general may accept from a person alleged to have violated subsection (1) of this section, in lieu of or as a part of a civil action, an assurance of discontinuance or a consent order approved by a court of competent jurisdiction of the alleged violation of this part 12. The assurance or consent order may include a stipulation for the voluntary payment by the alleged violator of any relief authorized by this part 12, including payment for investigation and litigation costs incurred by the attorney general or private person who brought an action pursuant to section 24-31-1204(3), and actual damages resulting from the false claim plus any authorized multiplier, interest, and civil money penalty.

(b) An assurance of discontinuance or consent order accepted by the attorney general precludes a separate action pursuant to section 24-31-1204(3) by any person based on the same factual circumstances, except for an action based on a violation of the assurance of discontinuance or consent order.

(c) An assurance of discontinuance accepted by the attorney general and any consent order filed with the court as a part of an action is a matter of public record unless the attorney general determines, at the attorney general’s discretion, that it is confidential to the parties to the action or proceeding and to the court and its employees. Upon the filing of a civil action or a motion or petition in a pending civil action by the attorney general alleging that a person has violated a confidential assurance of discontinuance or consent order accepted pursuant to this subsection (8), the assurance of discontinuance or consent order is a public record and open to inspection by any person.

(d) Proof by a preponderance of the evidence of a violation of an assurance or stipulation or consent order is prima facie evidence of a violation for the purposes of any civil action or proceeding brought by the attorney general after the alleged violation of the assurance or stipulation or consent order, whether a new action or a motion or petition in a pending action or proceeding.

§ 24-31-1204. Civil actions for false claims—claims for retaliation—definitions

(1) Responsibility of attorney general.

(a) The attorney general shall diligently investigate a violation of section 24-31-1203. If the attorney general finds that a person has violated or is violating section 24-31-1203, the attorney general may bring a civil action against the person pursuant to this section.

(b) In any action brought pursuant to this part 12 in which the attorney general is a party, either as the plaintiff or as an intervenor, the court may dismiss the action upon motion of the attorney general following the notice and opportunity for a hearing pursuant to subsection (4)(b)(I) of this section. In determining whether to file a motion to dismiss, the attorney general shall consider the severity of the false claim, program or population impacted by the false claim, duration of the fraud, weight and materiality of the evidence, other means to make the program whole, and other factors the attorney general deems relevant. The attorney general's decision-making process concerning a motion to dismiss and any records related to the decision-making process are not discoverable in any action.

(2) Role of the office of the state auditor.

(a) Notwithstanding any other state law requiring the state auditor to keep information confidential, if in the course of its audit authority, the office of the state auditor identifies information of potential false claims submitted to the state or a political subdivision, the state auditor may share any information with the attorney general or the political subdivision. The state auditor may participate, with the consent of the attorney general, in any subsequent investigation or prosecution of that false claim.

(b) If the state auditor elects to participate in any investigation and prosecution of a false claim, the state auditor's interests will be represented by the attorney general.

(3) Actions by private persons.

(a) A person may bring a civil action for a violation of section 24-31-1203 for the person and for the state. The action must be brought in the name of the state. The court shall not dismiss an action upon motion of the private person who brought the action unless the attorney general gives written consent to the dismissal and reasons for consenting.

(b)

(I) A person who brings an action shall serve on the state, pursuant to rule 4 of the Colorado rules of civil procedure, a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses; except that the person shall not disclose any evidence or information that the person reasonably believes is protected by the defendant's attorney-client privilege unless the privilege was waived, inadvertently or otherwise, by the person who holds the privilege; an exception to the privilege applies; or disclosure of the

information is permitted by an attorney pursuant to 17 CFR 205.3(d)(2), the applicable Colorado rules of professional conduct, or otherwise. The complaint must be filed in camera, must remain under seal for at least sixty-three days, and must not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty-three days after it receives both the complaint and the material evidence and information.

(II) In determining whether to intervene and proceed with an action pursuant to this subsection (3)(b), the attorney general shall consider the factors described in subsection (1)(d) of this section. The attorney general's decision-making process concerning whether to intervene and any records related to the decision-making process are not discoverable in any action.

(c) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal pursuant to subsection (3)(b) of this section. The motion may be supported by affidavits or other submissions in camera. The defendant is not required to respond to any complaint filed pursuant to this section until twenty-one days after the complaint is unsealed and served upon the defendant pursuant to rule 4 of the Colorado rules of civil procedure.

(d) Before the expiration of the sixty-three-day period pursuant to subsection (3)(b) of this section and any extensions obtained pursuant to subsection (3)(c) of this section, the state shall:

(I) Proceed with the action, in which case the state shall conduct the action; or

(II) Notify the court that it declines to take over the action, in which case the person who brought the action has the right to continue the action.

(e) When a person brings an action pursuant to this subsection (3), only the state may intervene or bring a related action based on the facts underlying the pending action.

(f) Any information provided by a person to the state pursuant to this subsection (3) is exempt from disclosure pursuant to the "Colorado Open Records Act", part 2 of article 72 of this title 24.

(4) Rights of parties to private actions.

(a) If the state proceeds with an action brought pursuant to subsection (3) of this section, it has the primary responsibility for prosecuting the action and is not bound by an act of the person who brought the action. The person has the right to continue as a party to the action, subject to the limitations set forth in subsection (3)(b) of this section.

(b)

(I) The state may, at any time, dismiss the action, in whole or in part, notwithstanding the objections of the person who brought the action if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(II) The state may settle the action with the defendant notwithstanding the objections of the person who brought the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the court may hold the hearing in camera.

(III) Upon a showing by the state that unrestricted participation during the course of the litigation by the person who brought the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including but not limited to:

(A) Limiting the number of witnesses the person may call;

(B) Limiting the length of the testimony of the witnesses called by the person;

(C) Limiting the person's cross-examination of witnesses; and

(D) Otherwise limiting the participation by the person in the litigation.

(IV) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person who brought the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation as described in subsection (4)(b)(III) of this section.

(c) The fact that the state has elected not to proceed with an action is not a basis for a motion to dismiss, motion for determination of a question of law, or motion for summary judgment, nor is it a basis to deny the court jurisdiction over the action, but if the attorney general submits to the court the attorney general's reasons for not proceeding with the action, the court may consider the reasons when deciding a motion or whether the court has jurisdiction. If the state so requests, it must be served with copies of all pleadings filed in the action and, at the state's expense, be supplied with copies of all deposition transcripts. When the person proceeds with the action, the court, without limiting the status and rights of the person, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

(d) Regardless of whether the state proceeds with the action, upon a showing by the state or political subdivision that certain actions of discovery by the person who brought the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty-three days. The showing by the state must be conducted in camera. The court may extend the sixty-three-day period upon a further showing that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and that any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(e) Notwithstanding subsection (3) of this section, the state may elect to pursue its claim through any alternate remedy available to the state. If an alternate remedy is pursued in another proceeding, the person who brought the action pursuant to subsection (3) of this section has the same rights in that proceeding as the person would have had if the action had continued pursuant to this section. Any finding of fact or conclusion of law made in the other proceeding that has become final is binding on all parties to an action brought pursuant to this section. For purposes of this subsection (4)(e), a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the state, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(5) Award to a person who brings an action.

(a)

(I) Subject to subsection (5)(a)(II) of this section, if the state proceeds with an action brought by a person pursuant to subsection (3) of this section, the court shall award the person at least fifteen percent but not more than twenty-five percent of the proceeds received from the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the investigation and prosecution of the action.

(II) If the court finds the action to be based primarily on disclosures of specific information, other than information provided by the person who brought the action, relating to allegations or transactions in a criminal, civil, or administrative hearing; in a legislative, administrative, or formal audit report, hearing, or investigation; or from the news media, the court may award to the person such sums as it considers appropriate but in no case more than ten percent of the proceeds. In making its determination, the court shall consider the significance of the information provided by the person and the role of the person in advancing the case to litigation.

(III) Any payment to a person made pursuant to this subsection (5)(a) must be made from the proceeds. In addition to an award made pursuant to subsection (5)(a)(I) or (5)(a)(II) of this section, the court shall award the person an amount for reasonable expenses that the court finds to have been necessarily incurred,

plus reasonable attorney fees and costs. The court shall award all of the expenses, fees, and costs against the defendant.

(IV) If the person who brought the action is a government employee who, in the course of the person's work for the state gains knowledge of any information that forms, in whole or in part, the basis of the person's claim, the court shall award to the state that employs the person the amount that would otherwise be awarded to the person pursuant to this subsection (5).

(b) If the state does not intervene in and proceed with an action pursuant to subsection (3)(b) of this section, the person prevailing in the action or settling the claim must receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount must be at least twenty-five percent but not more than thirty percent of the proceeds received from the action or settlement and must be paid out of the proceeds. The court shall award the person an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. The court shall award all of the expenses, fees, and costs against the defendant.

(c) Regardless of whether the state intervenes in and proceeds with an action pursuant to subsection (3)(b) of this section, if the court finds that the action was brought by a person who planned and initiated the violation of section 24-31-1203 upon which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive pursuant to this subsection (5), taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person is convicted of criminal conduct arising from his or her role in the violation of section 24-31-1203, the court shall dismiss the person from the civil action and the person must not receive any share of the proceeds of the action. Such dismissal does not prejudice the right of the state to continue the action.

(d) If the state does not intervene in and proceed with an action pursuant to subsection (3)(b) of this section and the person who brought the action pursues the action, the court may award to the defendant reasonable attorney fees and expenses if the defendant prevails in the action and the court finds that the claim of the person was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(6) Certain actions barred.

(a) A court does not have jurisdiction over an action brought pursuant to this section:

(I) Against a serving member of the general assembly, a member of the state judiciary, an executive director of a state agency, or an elected official in the executive branch of the state of Colorado acting in the member's, executive director's, or official's official capacity;

(II) Against a serving elected official of a political subdivision, a member of a political subdivision's judiciary, or an appointed official of a political subdivision acting in the member's or official's official capacity; or

(III) If the action is brought by a person pursuant to subsection (3) of this section and is based on evidence or information known to the state when the action was brought.

(b) A person may not bring an action pursuant to subsection (3) of this section that is based upon allegations or transactions that are the subject of a civil suit in a court of this state or an administrative civil money penalty proceeding in which the state is already a party.

(c)

(I) A court shall dismiss an action or claim brought pursuant to subsection (3) of this section if the action pursued by the person is based upon substantially the same allegations or transactions publicly disclosed in a criminal, civil, or administrative hearing; in a legislative, administrative, or formal audit report, hearing, or investigation; or from the news media, unless:

(A) The state intervenes and prosecutes the action pursuant to subsection (3)(b) of this section;

(B) The state opposes dismissal; or

(C) The person who brought the action is an original source of the information that is the basis for the action.

(II) As used in this subsection (6)(c), "original source" means an individual who:

(A) Prior to public disclosure pursuant to subsection (6)(c)(I) of this section, has voluntarily disclosed to the state the information on which the allegations or transactions in a claim are based; or

(B) Has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions and has voluntarily provided the information to the state before filing an action pursuant to subsection (3) of this section.

(7) State not liable for certain expenses. The state is not liable for expenses that a person incurs in bringing an action pursuant to subsection (3) of this section.

(8) Private action for retaliation.

(a) As used in this subsection (8), unless the context otherwise requires:

(I) “Confidential information” includes documents; e-mails and other electronic data; medical records; financial records; trade secret information; intellectual property; or information that is subject to an employment agreement, confidentiality agreement, or nondisclosure agreement or for which the person who brought the action pursuant to subsection (3) of this section has a fiduciary obligation to maintain as confidential. Confidential information does not include information that is protected by the defendant’s attorney-client privilege unless the privilege was waived, inadvertently or otherwise, by the person who holds the privilege; an exception to the privilege applies; or disclosure of the information is permitted by an attorney pursuant to 17 CFR 205.3 (d)(2), the applicable Colorado rules of professional conduct, or otherwise.

(II) “Lawful acts” includes, but is not limited to, the following:

(A) Conducting or assisting with an investigation for, initiation of, testimony for, or assistance in an action filed or to be filed pursuant to this section, or conducting or assisting with an investigation when there is a reasonable belief of a potential violation of this section;

(B) Meeting with potential or retained counsel or agents or representatives of the state about the matter that is the subject of an action filed or to be filed pursuant to this section;

(C) Providing the individual’s counsel or agents or representatives of the state with confidential information; or

(D) Filing an action pursuant to this section.

(b) An employee, contractor, or agent is entitled to all relief necessary to make that individual whole if the individual is discharged, demoted, suspended, threatened, harassed, intimidated, sued, defamed, blacklisted, or in any other manner retaliated against or discriminated against in the terms and conditions of the individual’s employment, contract, business, or profession by the defendant or by any other person because of lawful acts done by the individual or associated others in furtherance of an action brought pursuant to this section or in furtherance of an effort to stop any violation, or what the individual reasonably believes to be a violation, of section 24-31-1203.

(c)

(I) If the disclosure of confidential information is in furtherance of an action brought pursuant to this section or in furtherance of an effort to stop any violation, or what the individual reasonably believes to be a violation, of section 24-31-1203, an individual has a privilege to disclose the confidential information to:

(A) The individual’s counsel;

(B) A person with whom the individual has a statutory or common law privilege; or

(C) An agent or authorized representative of the state.

(II) The individual's disclosure of confidential information to the individual's counsel or to an agent or authorized representative of the state does not constitute a waiver by a defendant of any right or privilege that the defendant may be entitled to invoke.

(d)

(I) An individual seeking relief pursuant to this subsection (8) may seek relief by:

(A) Filing a motion in the action brought pursuant to subsection (3) of this section; or

(B) Bringing a separate action in an appropriate court of the state for the relief provided pursuant to this subsection (8).

(II) An individual who seeks relief pursuant to this subsection (8) is entitled to all relief necessary to make the individual whole. The relief must include, but is not limited to:

(A) If the individual is an employee, reinstatement with the same seniority status the individual would have had but for the discrimination, twice the amount of back pay, and interest on the back pay;

(B) If the individual is a contractor, subcontractor, or independent contractor, reinstatement of a contract or subcontract that was canceled, nonrenewed, or modified because of retaliation, with all compensation or contractual consideration that the individual would have received had the contract or subcontract not been canceled, nonrenewed, or modified; and

(C) Compensation for any special damages sustained as a result of the discrimination or retaliation, including litigation costs and reasonable attorney fees.

(e)

(I) The court shall award the individual not less than the damages described in subsection (8)(d)(II) of this section if a defendant, employer, or other person retaliates against an individual by bringing another action against the individual for:

(A) Acts later determined to be lawful acts;

(B) Disclosure of confidential information to counsel or an agent or representative of the state pursuant to this subsection (8);

(C) Violating an employment contract, confidentiality agreement, nondisclosure agreement, or other agreement; or

(D) Committing any other tort or breach of duty and the court hearing the action determines by a preponderance of the evidence that the defendant, employer, or other person brought the lawsuit against the individual for the purpose of retaliating against the individual.

(II) In addition to any other remedy or share of the proceeds of the action to which the individual is entitled pursuant to this subsection (8) and regardless of whether the individual is determined to be entitled to share in the proceeds of the action or claim filed pursuant to subsection (3) of this section, in addition to any other consequential damages permitted by law, the damages for a violation of this subsection (8)(e) must be not less than:

(A) Twice the individual's actual attorney fees and costs if the defendant, employer, or other person brought the lawsuit against the individual in a court in the state of Colorado; or

(B) Three times the individual's actual attorney fees and costs if the defendant, employer, or other person brought the lawsuit in a jurisdiction outside of Colorado.

(f)

(I) The court hearing the action brought pursuant to subsection (3) of this section has jurisdiction to hear a private action or motion for retaliation brought pursuant to this subsection (8).

(II) Upon motion by the individual, the venue of an action filed in another court of the state of Colorado against the individual by the defendant, the employer of the person who brought the action pursuant to subsection (3) of this section, or other person arising out of the subject matter of the action brought pursuant to subsection (3) of this section must be changed to the court hearing the action brought pursuant to subsection (3) of this section.

(9) Discovery in other actions.

(a) If a person who brings an action pursuant to subsection (3) of this section is a party to or witness in an action other than an action brought pursuant to subsection (3) of this section, referred to in this subsection (9) as an "other action", and a party in the other action seeks discovery from the person of information about other lawsuits, which

discovery would require the person to disclose information about an action filed pursuant to subsection (3) of this section while that action is still under seal, the person shall:

(I) Within a reasonable time, notify the state investigating the action brought pursuant to subsection (3) of this section of the pending discovery request; and

(II) Respond to the discovery request by stating only that the matter is confidential, without further elaboration, and shall maintain that response until the state elects to proceed or not proceed with the action brought pursuant to subsection (3) of this section or until the court lifts the seal.

(b) If necessary, in any other action, a person who brought the action pursuant to subsection (3) of this section or the attorney general may file an ex parte motion, in camera and under seal, seeking a protective order or an extension of time for the person to respond to a discovery request. If a party in the other action moves to compel an answer to the discovery, the person who brought the action pursuant to subsection (3) of this section shall file, ex parte and in camera, a response to the motion to compel, in which the attorney general may join. The response to the motion to compel must remain under seal until such time as the state elects to proceed or not proceed with the action or until such time as the court lifts the seal.

(c) Notwithstanding any provision of this subsection (9) to the contrary, information about an action filed pursuant to subsection (3) of this section that is protected by the defendant's attorney-client privilege is not discoverable in any other action unless the privilege was waived, inadvertently or otherwise, by the person who holds the privilege; an exception to the privilege applies; or disclosure of the information is permitted by an attorney pursuant to 17 CFR 205.3(d)(2), the applicable Colorado rules of professional conduct, or otherwise.

§ 24-31-1205. False claims action procedures—limitation on action—standard of proof

(1) A civil action pursuant to section 24-31-1204 may not be brought after the later of:

(a) More than six years after the date on which the violation of section 24-31-1203 is committed or the date on which the last in a series of such acts or practices occurred, whichever is later; or

(b) More than three years after the date on which facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation of section 24-31-1203 was committed.

(2)

(a) If the state elects to intervene and proceed with an action brought pursuant to section 24-31-1204, the state may file its own complaint or amend the original complaint to:

(I) Clarify and add detail, and add additional defendants, to the claims in which the state is intervening; and

(II) Add any additional claims and defendants with respect to which the state contends it is entitled to relief.

(b) For statute of limitations purposes, any pleadings by the state relate back to the filing date of the original complaint filed by a person pursuant to section 24-31-1204(3), to the extent that the state's claim arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the original complaint.

(3) In an action brought pursuant to section 24-31-1204, the state or person who brought the action pursuant to section 24-31-1204(3) must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(4) Notwithstanding any other provision of law, the Colorado rules of criminal procedure, or the Colorado rules of evidence, a final judgment rendered in favor of the state in a criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought pursuant to section 24-31-1204.

§ 24-31-1206. Jurisdiction

An action described in this part 12 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, or transacts business, or in which an act proscribed by section 24-31-1203 occurred. A person bringing an action pursuant to this part 12 shall file the complaint in a district court or a federal court with jurisdiction over the action and shall not file the complaint in any other court. The appropriate district court shall issue a summons as required by the Colorado rules of civil procedure and serve the summons at any place.

§ 24-31-1207. False claims civil investigation demands

(1) When the attorney general has reasonable cause to believe that any person, whether in this state or elsewhere, has engaged in or is engaging in any violation of section 24-31-1203, the attorney general may:

(a) Request the person file a statement or report in writing under oath or otherwise, on forms prescribed by the attorney general, as to all facts and circumstances concerning the alleged violations by the person and any other data and information the attorney general deems necessary; except that the person is not required to disclose any information that is protected by the person's attorney-client privilege unless the privilege was waived, inadvertently or otherwise, by the person who holds the privilege; an exception to the privilege applies; or disclosure of the information is permitted by an attorney pursuant to 17 CFR 205.3(d)(2), the applicable Colorado rules of professional conduct, or otherwise.

- (b) Examine under oath any person in connection with the alleged violations;
- (c) Examine any property or sample thereof, or any nonprivileged record, book, document, account, or paper the attorney general deems necessary;
- (d) Make true copies, at the expense of the attorney general, of any nonprivileged record, book, document, account, or paper examined pursuant to subsection (1)(c) of this section, which copies may be offered into evidence in lieu of the originals thereof in an action brought pursuant to this part 12; and
- (e) Pursuant to any order of any district court, impound any sample of property that is material to any alleged violation of this part 12 and retain the same in the attorney general's possession until completion of all proceedings undertaken pursuant to this part 12. A district court shall not issue an order described in this subsection (1)(e) without giving full opportunity to the accused to be heard and unless the attorney general has proven by clear and convincing evidence that the order will not impair the business activities of the person to whom the order is directed.

(2) When the attorney general has reasonable cause to believe that a person, whether in this state or elsewhere, has engaged in or is engaging in a violation of section 24-31-1203, the attorney general may issue subpoenas to require the attendance of witnesses or the production of documents, administer oaths, conduct hearings in aid of any investigation or inquiry, and prescribe such forms as may be necessary to administer this part 12.

(3) The attorney general may issue subpoenas to any public or private corporation or partnership or association or governmental entity to produce witnesses to appear and give oral testimony at investigative hearings. The subpoenas may designate with reasonable particularity the matters on which examination is requested. In response to the subpoena, the entity shall designate one or more officers, directors, or managing agents, or designate other persons, to testify on its behalf.

(4) A notice or subpoena may be served in the manner prescribed by law or as provided in rule 4 of the Colorado rules of civil procedure.

(5)

(a) If the records of a person who has been issued a subpoena are located outside this state, the person shall either:

(I) Make them available to the attorney general either electronically or at a convenient location within this state; or

(II) Pay the reasonable and necessary expenses for the attorney general, or the attorney general's designee, to examine the records at the place where they are maintained.

(b) The attorney general may designate representatives, including comparable officials of the state in which the records are located, to inspect the records on behalf of the attorney general.

(6) If any person fails to cooperate with any investigation pursuant to this section or fails to obey any subpoena issued pursuant to this section, the attorney general may apply to the appropriate district court for an appropriate order to effectuate the purposes of this part 12. At the request of the attorney general, the application may be filed in camera and kept confidential to maintain the confidentiality of the attorney general's investigation. The application must state that there are reasonable grounds to believe that the order applied for is necessary to investigate a violation of this part 12. If the court is satisfied that reasonable grounds exist, the court in its order may:

(a) Grant appropriate injunctive relief;

(b) Require attendance of or the production of documents by the person, or both;

(c) Grant other or further relief as may be necessary to obtain compliance by the person.

§ 24-31-1208. Rule-making

The attorney general may promulgate rules necessary to implement this part 12.

§ 24-31-1209. Use of recoveries—false claims recovery cash fund—creation

(1) The state treasurer shall transfer all proceeds retained by the state from a false claims action brought pursuant to this part 12 to the false claims recovery cash fund, which is hereby created.

(2) Any money in the fund not expended for the purpose of this section may be invested by the state treasurer as provided by law. All interest and income derived from investment and deposit of money in the fund shall be credited to the fund.

(3)

(a) Subject to annual appropriation by the general assembly, the department may expend money from the fund for necessary actual costs of carrying out its duties pursuant to this part 12.

(b)

(I) When proceeds retained by the state from a false claims action are deposited into the fund, the attorney general shall determine the amount of the proceeds that should remain in the fund for use by the department for the costs of carrying out its duties pursuant to this part 12 and the amount of any proceeds deposited into the fund that are attributable to a political subdivision.

(II) If the amount of the proceeds is equal to or exceeds the amount of the false claim plus the department's costs, the attorney general shall direct the state treasurer to transfer to the original fund from which the false claim was paid an amount equal to the false claim. If all or part of the proceeds are attributable to a political subdivision, the attorney general shall direct the treasurer to pay to the political subdivision, as described in subsection (3)(c) of this section, an amount equal to the false claim.

(III) If the amount of the proceeds is less than the amount of the false claim plus the department's costs, the attorney general shall direct the state treasurer to transfer to the original fund from which the false claim was paid a pro-rated amount based on the actual recovery. If all or part of the proceeds are attributable to a political subdivision, the attorney general shall direct the treasurer to pay to the political subdivision, as described in subsection (3)(c) of this section, a pro-rated amount based on the actual recovery.

(IV) For the purposes of a false claims action involving a violation of section 24-31-1203(1)(g), the relevant fund is the unemployment compensation fund established in section 8-77-101.

(c) No later than seven days after the attorney general directs the state treasurer to make a payment to a political subdivision pursuant to subsection (3)(b) of this section, the state treasurer shall issue a warrant to be paid upon demand from the fund to the political subdivision in the amount specified by the attorney general.

(4) Any unexpended and unencumbered money remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to another fund.

§ 24-31-1210. No limitations on common law authority—medicaid fraud control

Nothing in this part 12 affects, limits, or supplants the common law authority of the attorney general or the department to investigate and prosecute medicaid fraud pursuant to part 8 of this article 31.

§ 24-31-1211. False claims act report

(1) On or before January 15, 2024, and on or before each January 15 thereafter, the attorney general shall submit a written report to the house of representatives business affairs and labor committee, the house of representatives judiciary committee, the senate business, labor, and technology committee, and the senate judiciary committee, or their successor committees, concerning claims brought pursuant to this part 12 during the previous fiscal year. The report must include, but is not limited to:

(a) The number of actions brought by the attorney general and the disposition of the actions;

(b) The amount of proceeds recovered by the state through settlement or judgment in an action brought pursuant to this part 12, including:

(I) The case number and parties for each action in which proceeds were recovered;

(II) The amount of proceeds recovered in each case, categorized by the amount recovered as damages, penalties, and litigation costs; and

(III) If applicable, the percentage of the proceeds recovered and the total amount awarded to a private person who brought the action.

(c) The number of actions brought by a person other than the attorney general in which the attorney general did not intervene, whether the actions were continued by the other person, and the disposition of the actions;

(d) The amount of proceeds, including any litigation costs and attorney fees, recovered through settlement or judgment in actions brought by a person other than the attorney general; and

(e) The amount expended by the state for investigation and litigation of false claims pursuant to this part 12 and all other costs related to this part 12.

(2) Notwithstanding section 24-1-136(11)(a)(I), the reporting requirement described in this section continues indefinitely.

Colorado Medicaid False Claims Act

(Colo. Rev. Stat. §§ 25.5-4-303.5–310)ⁱⁱ

§ 25.5-4-303.5. Short title

This section and sections 25.5-4-304 to 25.5-4-310 shall be known and may be cited as the “Colorado Medicaid False Claims Act”.

§ 25.5-4-304. Definitions

As used in sections 25.5-4-303.5 to 25.5-4-309, unless the context otherwise requires:

(1)

(a) “Claim” means a request or demand for money or property, whether under a contract or otherwise, and regardless of whether the state has title to the money or property, under the “Colorado Medical Assistance Act” that is:

(I) Presented to an officer, employee, or agent of the state; or

(II) Made to a contractor, grantee, or other recipient if the money or property is to be spent or used on the state’s behalf or to advance a program or interest of the state and if the state:

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

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

(b) “Claim” does not include a request or demand for money or property that the state has paid to an individual as compensation for employment by the state or as an income subsidy with no restriction on that individual’s use of the money or property.

(2) “Colorado Medical Assistance Act” means this article and articles 5 and 6 of this title.

(3)

(a) “Knowing” or “knowingly” means that a person, with respect to information:

(I) Has actual knowledge of the information;

(II) Acts in deliberate ignorance of the truth or falsity of the information; or

(III) Acts in reckless disregard of the truth or falsity of the information.

(b) “Knowing” or “knowingly” does not require proof of specific intent to defraud.

(4) “Material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(5) “Obligation” means a fixed or contingent duty arising from an express or implied contractual, quasi-contractual, grantor-grantee, licensor-licensee, statutory, fee-based, or similar relationship, or the retention of overpayment.

§ 25.5-4-305. False medicaid claims—liability for certain acts

(1) Except as otherwise provided in subsection (2) of this section, a person is liable to the state for a civil penalty of not less than five thousand five hundred dollars and not more than eleven thousand dollars; except that these upper and lower limits on liability shall automatically increase to equal the civil penalty allowed under the federal “False Claims Act”, 31 U.S.C. sec. 3729, et seq., if and as the penalties in such federal act may be adjusted for inflation as described in said act in accordance with the federal “Civil Penalties Inflation Adjustment Act of 1990”, Pub. L. No. 101-410, plus three times the amount of damages that the state sustains because of the act of that person, if the person:

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

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

(c) Has possession, custody, or control of property or money used, or to be used, by the state in connection with the “Colorado Medical Assistance Act” and knowingly delivers, or causes to be delivered, less than all of the money or property;

(d) Authorizes the making or delivery of a document certifying receipt of property used, or to be used, by the state in connection with the “Colorado Medical Assistance Act” and, intending to defraud the state, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(e) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state in connection with the “Colorado Medical Assistance Act” who lawfully may not sell or pledge the property;

(f) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state in connection with the “Colorado Medical Assistance Act”, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state in connection with the “Colorado Medical Assistance Act”;

(g) Conspires to commit a violation of paragraphs (a) to (f) of this subsection (1).

(2) Notwithstanding the amount of damages authorized in subsection (1) of this section, for a person who violates subsection (1) of this section, the court may assess not less than twice the amount of damages that the state sustains because of the act of the person if the court finds that:

(a) The person who committed the violation of subsection (1) of this section furnished to the officials of the state responsible for investigating false claims violations all information about the violation known to the person and furnished said information within thirty days after the date on which the person first obtained the information;

(b) At the time the person furnished the information about the violation to the state, a criminal prosecution, civil action, or administrative action had not commenced with respect to the violation and the person did not have actual knowledge of the existence of an investigation into the violation; and

(c) The person fully cooperated with any investigation of the violation by the state.

(3) A person violating this section shall also be liable to the state for the costs of a civil action brought to recover any penalty or damages.

(4) Any information furnished pursuant to subsection (2) of this section shall be exempt from disclosure under part 2 of article 72 of this title.

§ 25.5-4-306. Civil actions for false Medicaid claims

(1) Responsibility of attorney general. The attorney general shall diligently investigate a violation under section 25.5-4-305. If the attorney general finds that a person has violated or is violating section 25.5-4-305, the attorney general may bring a civil action under this section against the person.

(2) Actions by private persons.

(a) A relator may bring a civil action for a violation of section 25.5-4-305 on behalf of the relator and the state. The action shall be brought in the name of the state. The action may be dismissed only if the court and the attorney general give written consent to the dismissal and their reasons for consenting.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the relator possesses shall be served on the state pursuant to rule 4 of the Colorado rules of civil procedure. The complaint shall be filed in camera, shall remain under seal for at least sixty days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.

(c) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (b) of this subsection (2). Any such motion may be supported by affidavits or other submissions in camera. The

defendant shall not be required to respond to a complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant pursuant to rule 4 of the Colorado rules of civil procedure.

(d) Before the expiration of the sixty-day period pursuant to paragraph (b) of this subsection (2) or any extensions obtained under paragraph (c) of this subsection (2), the state shall:

(I) Proceed with the action, in which case the state shall conduct the action; or

(II) Notify the court that it declines to take over the action, in which case the relator shall have the right to conduct the action.

(e) When a relator brings an action under this subsection (2), no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(3) Rights of parties to private actions.

(a) If the state proceeds with an action brought under subsection (2) of this section, it shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the relator. The relator shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (b) of this subsection (3).

(b)

(I) The state may dismiss the action notwithstanding the objections of the relator if the relator has been notified by the state of the filing of the motion and the court has provided the relator with an opportunity for a hearing on the motion.

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

(III) Upon a showing by the state that unrestricted participation during the course of the litigation by the relator would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the relator's participation, including but not limited to:

(A) Limiting the number of witnesses the relator may call;

(B) Limiting the length of the testimony of the witnesses;

(C) Limiting the relator's cross-examination of witnesses; or

(D) Otherwise limiting the participation by the relator in the litigation.

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

(c) If the state elects not to proceed with the action, the relator who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and, at the state's expense, shall be supplied with copies of all deposition transcripts. When a relator proceeds with the action, the court, without limiting the status and rights of the relator, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

(d) Regardless of whether the state proceeds with the action, upon a showing by the state that certain actions of discovery by the relator would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty days. The showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and that any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(e) Notwithstanding the provisions of subsection (2) of this section, the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil money penalty. If an alternate remedy is pursued in another proceeding, the relator shall have the same rights in the proceeding as the relator would have had if the action had continued under this section. Any finding of fact or conclusion of law made in another proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this paragraph (e), a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the state, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(4) Award to private persons.

(a)

(I) If the state proceeds with an action brought by a relator under subsection (2) of this section, the relator shall, subject to subparagraph (II) of this paragraph (a), receive at least fifteen percent but not more than twenty-five percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the relator substantially contributed to the prosecution of the action.

(II) If the court finds the action to be based primarily on disclosures of specific information, other than information provided by the relator, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or state auditor's report, hearing, audit, or investigation, or from the news media, the court may award to the relator such sums as it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the relator in advancing the case to litigation.

(III) Any payment to a relator under subparagraph (I) or (II) of this paragraph (a) shall be made from the proceeds. The relator shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(b) If the state does not proceed with an action brought under subsection (2) of this section, the relator bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent and not more than thirty percent of the proceeds of the action or settlement and shall be paid out of the proceeds. The relator shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorney fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(c) Regardless of whether the state proceeds with an action brought under subsection (2) of this section, if the court finds that the action was brought by a relator who planned and initiated the violation of section 25.5-4-305 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the relator would otherwise receive under paragraph (a) or (b) of this subsection (4), taking into account the role of the relator in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the relator is convicted of criminal conduct arising from his or her role in the violation of section 25.5-4-305, the relator shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

(d) If the state does not proceed with an action brought under subsection (2) of this section and the relator bringing the action conducts the action, the court may award to the defendant its reasonable attorney fees and expenses if the defendant prevails in the action and the court finds that the claim of the relator was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(5) Certain actions barred.

(a) A court shall not have jurisdiction over an action brought under this section against a member of the general assembly, a member of the state judiciary, or an elected official in

the executive branch of the state of Colorado if the action is based on evidence or information known to the state when the action was brought.

(b) A relator shall not bring an action under subsection (2) of this section that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the state is already a party.

(c)

(I) A court shall dismiss an action or claim brought under subsection (2) of this section unless opposed by the state, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a state criminal, civil, or administrative hearing in which the state or its agent is a party, in a legislative, administrative, or state auditor's report, hearing, audit, or investigation, or by the news media, unless the action is brought by the state or the relator is an original source of the information.

(II) For purposes of this paragraph (c), "original source" means an individual who, prior to a public disclosure under subparagraph (I) of this paragraph (c), has voluntarily disclosed to the state the information on which the allegations or transactions in a claim are based, or who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and has voluntarily provided the information to the state before filing an action under subsection (2) of this section.

(6) State not liable for certain expenses. The state is not liable for expenses that a relator incurs in bringing an action under this section.

(7) Private action for retaliation.

(a) An employee, contractor, or agent shall be entitled to all relief necessary to make the employee, contractor, or agent whole, if the employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by the defendant or by any other person because of lawful acts done by the employee, contractor, or agent, or associated others in furtherance of an action under this section or in furtherance of an effort to stop any violations of section 25.5-4-305.

(b)

(I) An employee, contractor, or agent who seeks relief pursuant to this subsection (7) shall be entitled to all relief necessary to make the employee, contractor, or agent whole. Such relief shall include:

(A) Reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, twice the amount of back pay, and interest on the back pay; and

(B) Compensation for any special damages sustained as a result of the discrimination or retaliation, including litigation costs and reasonable attorney fees.

(II) An employee, contractor, or agent may bring an action in the appropriate court of the state for the relief provided in this subsection (7).

§ 25.5-4-307. False Medicaid claims procedures—statute of limitations

(1) A civil action under section 25.5-4-306(1) or (2) may not be brought after the later of:

(a) More than six years after the date on which the violation of section 25.5-4-305 is committed; or

(b) More than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation of section 25.5-4-305 is committed.

(2) If the state elects to intervene and proceed with an action brought under section 25.5-4-306, the state may file its own complaint or amend the relator's complaint to clarify or add detail to the claims in which the state is intervening and to add any additional claims with respect to which the state contends it is entitled to relief. For statute of limitations purposes, any such pleadings by the state shall relate back to the filing date of the relator's complaint, to the extent that the state's claim arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of the relator.

(3) In an action brought under section 25.5-4-306, the state or relator must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(4) Notwithstanding any other provision of law, the Colorado rules of criminal procedure, or the Colorado rules of evidence, a final judgment rendered in favor of the state in a criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought under section 25.5-4-306.

(5) A private action for retaliation under section 25.5-4-306(7) may not be brought more than three years after the date when the retaliation occurred.

§ 25.5-4-308. False medicaid claims jurisdiction

An action under section 25.5-4-306 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, or transacts business or in which an act proscribed by section 25.5-4-305 occurred. A summons as required by the Colorado rules of civil procedure shall be issued by the appropriate district court and served at any place.

§ 25.5-4-309. False medicaid claims civil investigation demands

(1) General.

(a)

(I) Whenever the attorney general has reason to believe that a person may be in possession, custody, or control of documentary material or information relevant to a false medicaid claims law investigation, the attorney general may, before commencing a civil proceeding under section 25.5-4-306 or other false medicaid claims law or making an election under section 25.5-4-306(2)(d), issue in writing and cause to be served upon the person a civil investigative demand requiring the person to:

(A) Produce the documentary material for inspection and copying;

(B) Answer in writing written interrogatories with respect to the documentary material or information;

(C) Give oral testimony concerning the documentary material or information; or

(D) Furnish any combination of such material, answers, or testimony.

(II) The attorney general may not delegate the authority to issue civil investigative demands under this subsection (1). Whenever a civil investigative demand is an express demand for any product of discovery, the attorney general, the deputy attorney general, or an assistant attorney general shall cause to be served, in any manner authorized by this section, a copy of the demand upon the person from whom the discovery was obtained and shall notify the person to whom the demand is issued of the date on which the copy was served.

(b)

(I) Each civil investigative demand issued under this subsection (1) shall state the nature of the conduct constituting the alleged violation of a false medicaid claims law that is under investigation and the applicable provision of law alleged to be violated.

(II) If the demand is for the production of documentary material, the demand shall:

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

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

(C) Identify the false medicaid claims law investigator to whom the material shall be made available.

(III) If the demand is for answers to written interrogatories, the demand shall:

(A) Specify the written interrogatories to be answered;

(B) Prescribe dates on which answers to written interrogatories shall be submitted; and

(C) Identify the false medicaid claims law investigator to whom the answers shall be submitted.

(IV) If the demand is for the giving of oral testimony, the demand shall:

(A) Prescribe a date, time, and place at which oral testimony shall be commenced and notify the deponent if the oral testimony is to be video or audio recorded;

(B) Identify a false medicaid claims law investigator who shall conduct the examination and the custodian to whom the transcript of the examination shall be submitted;

(C) Specify that such attendance and testimony are necessary to the conduct of the investigation;

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

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

(V) A civil investigative demand issued under this section that is an express demand for any product of discovery shall not be returned or returnable until

twenty days after a copy of the demand has been served upon the person from whom the discovery was obtained.

(VI) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date that is not less than seven days after the date on which the demand is received, unless the attorney general or an assistant attorney general designated by the attorney general determines that exceptional circumstances are present that warrant the commencement of the testimony within a lesser period of time.

(VII) The attorney general shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the attorney general, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. Notwithstanding section 24-31-103, C.R.S., the attorney general shall not authorize the performance, by any other officer, employee, or agency, of any function vested in the attorney general under this subparagraph (VII).

(2) Protected material or information.

(a) A civil investigative demand issued under subsection (1) of this section shall not require the production of documentary material, the submission of answers to written interrogatories, or the giving of oral testimony if the material, answers, or testimony would be protected from disclosure under:

(I) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of this state to aid in a grand jury investigation; or

(II) The standards applicable to discovery requests under the Colorado rules of civil procedure, to the extent that the application of the standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(b) A demand that is an express demand for a product of discovery supersedes any inconsistent order, rule, or provision of law, other than this section, preventing or restraining disclosure of the product of discovery to a person. Disclosure of a product of discovery pursuant to an express demand does not constitute a waiver of any right or privilege that the person making the disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(3) Service and jurisdiction.

(a) A civil investigative demand issued under subsection (1) of this section or a petition brought pursuant to subsection (10) of this section may be served by a false medicaid claims law investigator, a sheriff, or a deputy sheriff at any place within the state.

(b) A civil investigative demand issued under subsection (1) of this section or a petition filed under subsection (10) of this section may be served upon a person who is not found within the state in the manner prescribed by the Colorado rules of civil procedure for service in another state or a foreign country. To the extent that the courts of this state can assert jurisdiction over any such person consistent with due process, the district court for the city and county of Denver shall have the same jurisdiction to take an action respecting compliance with this section by any such person that the court would have if the person were personally within the jurisdiction of the court.

(4) Service on legal entities and natural persons.

(a) Service of a civil investigative demand issued under subsection (1) of this section or of a petition filed under subsection (10) of this section may be made upon a partnership, corporation, association, or other legal entity by:

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

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

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

(b) Service of a civil investigative demand issued under subsection (1) of this section or of a petition filed under subsection (10) of this section may be made upon a natural person by:

(I) Delivering an executed copy of the demand or petition to the person; or

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

(5) Proof of service. A verified return by the individual serving a civil investigative demand issued under subsection (1) of this section or a petition filed under subsection (10) of this section setting forth the manner of the service shall be proof of the service. In the case of service by registered or certified mail, the return shall be accompanied by the return post office receipt of delivery of the demand.

(6) Documentary material.

(a)

(I) The production of documentary material in response to a civil investigative demand issued under subsection (1) of this section shall be made under a sworn certificate, in the form as the demand designates, by:

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

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

(II) The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false medicaid claims law investigator identified in the demand.

(b) A person upon whom a civil investigative demand for the production of documentary material has been served under this section shall make the material available for inspection and copying to the false medicaid claims law investigator identified in the demand at the principal place of business of the person, or at such other place as the false medicaid claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (10) of this section. The material shall be made so available on the return date specified in the demand, or on such later date as the false medicaid claims law investigator may prescribe in writing. The person may, upon written agreement between the person and the false medicaid claims law investigator, substitute copies for originals of all or any part of the material.

(7) Interrogatories.

(a) Each interrogatory in a civil investigative demand issued under subsection (1) of this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in the form the demand designates, by:

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

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

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

(8) Oral examinations.

(a) The examination of a person pursuant to a civil investigative demand for oral testimony issued under subsection (1) of this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States, the state of Colorado, or the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or with the assistance of someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection (8) shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Colorado rules of civil procedure.

(b) The false medicaid claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the state, any person who may be agreed upon by the attorney for the state and the person giving the testimony, the officer before whom the testimony is to be taken, and the stenographer who is recording the testimony.

(c) The oral testimony of a person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the state within which the person resides, is found, or transacts business, or in another place as may be agreed upon by the false medicaid claims law investigator conducting the examination and the person.

(d) When the testimony is fully transcribed, the false medicaid claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless the witness waives the examination and reading. Any changes in form or substance that the witness desires to make shall be entered and identified upon the transcript by the officer or the false medicaid claims law investigator, with a statement of the reasons given by the witness for making the changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the witness does not sign the transcript within thirty days after being afforded a reasonable opportunity to examine it, the officer or the false medicaid claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or refusal to sign, together with the reasons, if any, given therefor.

(e) The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false medicaid claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(f) Upon payment of reasonable charges therefor, the false medicaid claims law investigator shall furnish a copy of the transcript to the witness only; except that the attorney general, the deputy attorney general, or an assistant attorney general may, for good cause, limit the witness to inspection of the official transcript of the testimony of the witness.

(g)

(I) A person compelled to appear for oral testimony under a civil investigative demand issued under subsection (1) of this section may be accompanied, represented, and advised by counsel. Counsel may advise the person, in confidence, with respect to any question asked of the person. The person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that the person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. The person may not otherwise object to or refuse to answer any question and may not directly or through counsel otherwise interrupt the oral examination. If the person refuses to answer a question, the false medicaid claims law investigator may file a petition in a district court under paragraph (a) of subsection (10) of this section for an order compelling the person to answer the question.

(II) If the person refuses to answer a question on the grounds of the privilege against self-incrimination, the false medicaid claims law investigator may compel the testimony of the person in accordance with the provisions of section 13-90-118, C.R.S.

(III) A person appearing for oral testimony under a civil investigative demand issued under subsection (1) of this section shall be entitled to the same fees and allowances that are paid to witnesses in the district courts of this state.

(9) Custodian of documents, answers, and transcripts.

(a) The attorney general shall designate a false medicaid claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section and shall designate such additional false medicaid claims law investigators as the attorney general determines from time to time to be necessary to serve as deputies to the custodian.

(b)

(I) A false medicaid claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of the material, answers, or transcripts and shall be responsible for the

use made of them and for the return of documentary material under paragraph (d) of this subsection (9).

(II) The custodian may cause the preparation of copies of the documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by a false medicaid claims law investigator or other officer or employee of the department of law who is authorized for such use under regulations that the attorney general shall issue. The material, answers, and transcripts may be used by any such authorized false medicaid claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

(III)

(A) Except as otherwise provided in this subsection (9), documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall not be available for examination by an individual other than a false medicaid claims law investigator or other officer or employee of the department of law authorized under subparagraph (II) of this paragraph (b).

(B) Sub-subparagraph (A) of this subparagraph (III) shall not apply if consent is given by the person who produced the material, answers, or transcripts or, in the case of any product of discovery produced pursuant to an express demand for the material, if consent is given by the person from whom the discovery was obtained.

(C) Nothing in this subparagraph (III) is intended to prevent disclosure to the general assembly, including any committee of the general assembly, or to any other agency of the state for use by the agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the attorney general to a district court, showing substantial need for the use of the information by the agency in furtherance of its statutory responsibilities.

(IV) While in the possession of the custodian and under such reasonable terms and conditions as the attorney general shall prescribe:

(A) Documentary material and answers to interrogatories shall be available for examination by the person who produced the material or answers, or by a representative of that person authorized by that person to examine the material and answers; and

(B) Transcripts of oral testimony shall be available for examination by the person who produced the testimony or by a representative of that person authorized by that person to examine the transcripts.

(c) Whenever an attorney of the department of law has been designated to appear before a court, grand jury, or state agency in a case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to the attorney such material, answers, or transcripts for official use in connection with the case or proceeding as the attorney determines to be required. Upon the completion of the case or proceeding, the attorney shall return to the custodian the material, answers, or transcripts so delivered that are not in the control of the court, grand jury, or agency through introduction into the record of the case or proceeding.

(d) The custodian shall, upon written request of a person who produced any documentary material in the course of any false medicaid claims law investigation pursuant to a civil investigative demand under this section, return to the person any such material, other than copies furnished to the false medicaid claims law investigator under paragraph (b) of subsection (6) of this section or made for the department of law under subparagraph (II) of paragraph (b) of this subsection (9), that is not in the control of a court, grand jury, or agency through introduction into the record of the case or proceeding, if:

(I) A case or proceeding before a court or grand jury arising out of the investigation or any proceeding before a state agency involving the material has been completed; or

(II) A case or proceeding in which the material may be used has not been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of the investigation.

(e)

(I) In the event of the death, disability, or separation from service in the department of law of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of the custodian from responsibility for the custody and control of the material, answers, or transcripts, the attorney general shall promptly:

(A) Designate another false medicaid claims law investigator to serve as custodian of the material, answers, or transcripts; and

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

(II) A person who is designated to be a successor under this paragraph (e) shall have, with regard to the material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in

office; except that the successor shall not be held responsible for any default or dereliction that occurred before that designation.

(10) Judicial proceedings.

(a) Whenever a person fails to comply with a civil investigative demand issued under subsection (1) of this section, or whenever satisfactory copying or reproduction of the material requested in a demand cannot be done and the person refuses to surrender the material, the attorney general may file, in a district court for the judicial district in which the person resides, is found, or transacts business, and serve upon the person a petition for an order of the court for the enforcement of the civil investigative demand.

(b)

(I) A person who has received a civil investigative demand issued under subsection (1) of this section may file a petition for an order of the court to modify or set aside the demand. The person shall file the petition in a district court for the judicial district within which the person resides, is found, or transacts business and shall serve a copy of the petition upon the false medicaid claims law investigator identified in the demand. In the case of a petition addressed to an express demand for a product of discovery, the person may file a petition to modify or set aside the demand only in the district court for the judicial district in which the proceeding in which the discovery was obtained is or was last pending. The person shall file a petition under this subparagraph (I):

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

(B) Within such longer period as may be prescribed in writing by a false medicaid claims law investigator identified in the demand.

(II) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (I) of this paragraph (b) and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part; except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(c)

(I) In the case of a civil investigative demand issued under subsection (1) of this section that is an express demand for a product of discovery, the person from whom the discovery was obtained may file a petition for an order of the court to

modify or set aside those portions of the demand requiring production of any product of discovery. The person shall file the petition in the district court for the judicial district in which the proceeding in which the discovery was obtained is or was last pending and shall serve a copy of the petition upon the false medicaid claims law investigator identified in the demand and upon the recipient of the demand. The person shall file a petition under this subparagraph (I):

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

(B) Within such longer period as may be prescribed in writing by the false medicaid claims law investigator identified in the demand.

(II) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (I) of this paragraph (c), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(d) At any time during which a custodian is in custody or control of any +documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by a person in compliance with a civil investigative demand issued under subsection (1) of this section, the person, and in the case of an express demand for any product of discovery, the person from whom the discovery was obtained, may file a petition for an order of the court to require the performance by the custodian of any duty imposed upon the custodian by this section. The person shall file the petition in the district court for the judicial district within which the office of the custodian is situated and shall serve a copy of the petition upon the custodian.

(e) Whenever a petition is filed in a district court under this subsection (10), the court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry out the provisions of this section. A final order so entered shall be subject to appeal under section 13-4-102, C.R.S. Any disobedience of a final order entered by a court under this section shall be punished as a contempt of the court.

(f) The Colorado rules of civil procedure shall apply to a petition under this subsection (10) to the extent that the rules are consistent with the provisions of this section.

(11) Disclosure exemption. Any documentary material, answers to written interrogatories, or oral testimony provided under a civil investigative demand issued under subsection (1) of this section shall be exempt from disclosure under section 24-72-203, C.R.S.

(12) Definitions. As used in this section, unless the context otherwise requires:

(a) “Custodian” means the custodian, or any deputy custodian, designated by the attorney general under paragraph (a) of subsection (9) of this section.

(b) “Documentary material” means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret the data compilations, and any product of discovery.

(c) “False medicaid claims law” means:

(I) This section and sections 25.5-4-303.5 to 25.5-4-308; and

(II) Any law enacted before, on, or after May 26, 2010, that prohibits or makes available to the state in a court of the state a civil remedy with respect to a false medicaid claim against, bribery of, or corruption of an officer or employee of the state.

(d) “False medicaid claims law investigation” means an inquiry conducted by a false medicaid claims law investigator for the purpose of ascertaining whether a person is or has been engaged in a violation of a false medicaid claims law.

(e) “False medicaid claims law investigator” means an attorney or investigator employed by the department of law who is charged with the duty of enforcing or carrying into effect a false medicaid claims law or an officer or employee of the state acting under the direction and supervision of the attorney or investigator in connection with a false medicaid claims law investigation.

(f) “Person” means a natural person, partnership, corporation, association, or other legal entity.

(g) “Product of discovery” means:

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

(II) A digest, analysis, selection, compilation, or derivation of an item listed in subparagraph (I) of this paragraph (g); and

(III) An index or other manner of access to an item listed in subparagraph (I) of this paragraph (g).

§ 25.5-4-310. Medicaid false claims report

(1) Notwithstanding section 24-1-136(11)(a)(I), on or before January 15, 2012, and on or before each January 15 thereafter, the attorney general shall submit a written report to the health and human services committees of the senate and the house of representatives, or any successor committees, and to the joint budget committee of the general assembly concerning claims brought under the “Colorado Medicaid False Claims Act” during the previous fiscal year. The report shall include, but not be limited to:

- (a) The number of actions filed by the attorney general;
- (b) The number of actions filed by the attorney general that were completed;
- (c) The amount that was recovered in actions filed by the attorney general through settlement or through a judgment and, if known, the amount recovered for damages, penalties, and litigation costs;
- (d) The number of actions filed by a person other than the attorney general;
- (e) The number of actions filed by a person other than the attorney general that were completed;
- (f) The amount that was recovered in actions filed by a person other than the attorney general through settlement or through a judgment and, if known, the amount recovered for damages, penalties, and litigation costs, and the amount recovered by the state and the person; and
- (g) The amount expended by the state for investigation, litigation, and all other costs for claims related to the “Colorado Medicaid False Claims Act”.

ⁱ Last updated August 2023.

ⁱⁱ Last updated August 2023.