

Indiana False Claims and Whistleblower Protection Act

(Ind. Code §§ 5-11-5.5-1-18)ⁱ

§ 5-11-5.5-1 Definitions

Sec. 1. The following definitions apply throughout this chapter:

- (1) “Claim” means a request or demand for money or property that is made to a contractor, grantee, or other recipient if the state:
 - (A) provides any part of the money or property that is requested or demanded; or
 - (B) will reimburse the contractor, grantee, or other recipient for any part of the money or property that is requested or demanded.
- (2) “Documentary material” means:
 - (A) the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, chart, or other document;
 - (B) a data compilation 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
 - (C) a product of discovery.
- (3) “Investigation” means an inquiry conducted by an investigator to ascertain whether a person is or has been engaged in a violation of this chapter.
- (4) “Knowing”, “knowingly”, or “known” means that a person, regarding information:
 - (A) has actual knowledge of the information;
 - (B) acts in deliberate ignorance of the truth or falsity of the information; or
 - (C) acts in reckless disregard of the truth or falsity of the information.
- (5) “Person” includes a natural person, a corporation, a firm, an association, an organization, a partnership, a limited liability company, a business, or a trust.
- (6) “Product of discovery” means the original or duplicate of:
 - (A) a deposition;
 - (B) an interrogatory;
 - (C) a document;
 - (D) a thing;
 - (E) a result of the inspection of land or other property; or
 - (F) an examination or admission;that is obtained by any method of discovery in a judicial or an administrative proceeding of an adversarial nature. The term includes a digest, an analysis, a selection, a compilation, a derivation, an index, or another method of accessing an item listed in this subdivision.
- (7) “State” means Indiana or any agency of state government. The term does not include a political subdivision.

§ 5-11-5.5-2 Fraudulent actions against the state; civil penalty

Sec. 2.

- (a) This section does not apply to:
 - (1) a claim, record, or statement concerning income tax (IC 6-3); or

(2) a claim, request, demand, statement, record, act, or omission made or submitted after June 30, 2014, in relation to the Medicaid program described in IC 12-15.

(b) A person who knowingly or intentionally:

(1) presents a false claim to the state for payment or approval;

(2) makes or uses a false record or statement to obtain payment or approval of a false claim from the state;

(3) with intent to defraud the state, delivers less money or property to the state than the amount recorded on the certificate or receipt the person receives from the state;

(4) with intent to defraud the state, authorizes issuance of a receipt without knowing that the information on the receipt is true;

(5) receives public property as a pledge of an obligation on a debt from an employee who is not lawfully authorized to sell or pledge the property;

(6) makes or uses a false record or statement to avoid an obligation to pay or transmit property to the state;

(7) conspires with another person to perform an act described in subdivisions (1) through (6); or

(8) causes or induces another person to perform an act described in subdivisions (1) through (6);

is, except as provided in subsection (c), liable to the state for a civil penalty of at least five thousand dollars (\$5,000) and for up to three (3) times the amount of damages sustained by the state. In addition, a person who violates this section is liable to the state for the costs of a civil action brought to recover a penalty or damages.

(c) If the factfinder determines that the person who violated this section:

(1) furnished state officials with all information known to the person about the violation not later than thirty (30) days after the date on which the person obtained the information;

(2) fully cooperated with the investigation of the violation; and

(3) did not have knowledge of the existence of an investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials;

the person is liable for a penalty of not less than two (2) times the amount of damages that the state sustained because of the violation. A person who violates this section is also liable to the state for the costs of a civil action brought to recover a penalty or damages.

§ 5-11-5.5-3 Fraudulent actions against the state; investigation; rights of attorney general or inspector general to bring civil suit

Sec. 3.

(a) The:

(1) attorney general; and

(2) inspector general;

have concurrent jurisdiction to investigate a violation of section 2 of this chapter.

(b) If the attorney general discovers a violation of section 2 of this chapter, the attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(c) If the inspector general discovers a violation of section 2 of this chapter, the inspector general shall certify this finding to the attorney general. The attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(d) If the attorney general or the inspector general is served by a person who has filed a civil action under section 4 of this chapter, the attorney general has the authority to intervene in that action as set forth in section 4 of this chapter.

(e) If the attorney general:

- (1) is disqualified from investigating a possible violation of section 2 of this chapter;
- (2) is disqualified from bringing a civil action concerning a possible violation of section 2 of this chapter;
- (3) is disqualified from intervening in a civil action brought under section 4 of this chapter concerning a possible violation of section 2 of this chapter;
- (4) elects not to bring a civil action concerning a possible violation of section 2 of this chapter; or
- (5) elects not to intervene under section 4 of this chapter;

the attorney general shall certify the attorney general's disqualification or election to the inspector general.

(f) If the attorney general has certified the attorney general's disqualification or election not to bring a civil action or intervene in a case under subsection (e), the inspector general has authority to:

- (1) bring a civil action concerning a possible violation of section 2 of this chapter; or
- (2) intervene in a case under section 4 of this chapter.

(g) The attorney general shall certify to the inspector general the attorney general's disqualification or election under subsection (e) in a timely fashion, and in any event not later than:

- (1) sixty (60) days after being served, if the attorney general has been served by a person who has filed a civil action under section 4 of this chapter; or
- (2) one hundred eighty (180) days before the expiration of the statute of limitations, if the attorney general has not been served by a person who has filed a civil action under section 4 of this chapter.

(h) A civil action brought under section 4 of this chapter may be filed in:

- (1) a circuit or superior court in Marion county; or
- (2) a circuit or superior court in the county in which a defendant or plaintiff resides.

(i) The state is not required to file a bond under this chapter.

§ 5-11-5.5-4 Fraudulent actions against the state; civil action brought by individual; procedure; intervention by attorney general or inspector general

Sec. 4.

(a) A person may bring a civil action for a violation of section 2 of this chapter on behalf of the person and on behalf of the state. The action:

- (1) must be brought in the name of the state; and
- (2) may be filed in a circuit or superior court in:
 - (A) the county in which the person resides;
 - (B) the county in which a defendant resides; or
 - (C) Marion County.

(b) Except as provided in section 5 of this chapter, an action brought under this section may be dismissed only if:

(1) the attorney general or the inspector general, if applicable, files a written motion to dismiss explaining why dismissal is appropriate; and

(2) the court issues an order:

(A) granting the motion; and

(B) explaining the court's reasons for granting the motion.

(c) A person who brings an action under this section shall serve:

(1) a copy of the complaint; and

(2) a written disclosure that describes all relevant material evidence and information the person possesses;

on both the attorney general and the inspector general. The person shall file the complaint under seal, and the complaint shall remain under seal for at least one hundred twenty (120) days. The complaint shall not be served on the defendant until the court orders the complaint served on the defendant following the intervention or the election not to intervene of the attorney general or the inspector general. The state may elect to intervene and proceed with the action not later than one hundred twenty (120) days after it receives both the complaint and the written disclosure.

(d) For good cause shown, the attorney general or the inspector general may move the court to extend the time during which the complaint must remain under seal. A motion for extension may be supported by an affidavit or other evidence. The affidavit or other evidence may be submitted in camera.

(e) Before the expiration of the time during which the complaint is sealed, the attorney general or the inspector general may:

(1) intervene in the case and proceed with the action, in which case the attorney general or the inspector general shall conduct the action; or

(2) elect not to proceed with the action, in which case the person who initially filed the complaint may proceed with the action.

(f) The defendant in an action filed under this section is not required to answer the complaint until twenty-one (21) days after the complaint has been unsealed and served on the defendant.

(g) After a person has filed a complaint under this section, no person other than the attorney general or the inspector general may:

(1) intervene; or

(2) bring another action based on the same facts.

(h) If the person who initially filed the complaint:

(1) planned and initiated the violation of section 2 of this chapter; or

(2) has been convicted of a crime related to the person's violation of section 2 of this chapter;

upon motion of the attorney general or the inspector general, the court shall dismiss the person as a plaintiff.

§ 5-11-5.5-5 Fraudulent actions against the state; intervention by attorney general or inspector general in civil action brought by individual

Sec. 5.

(a) If the attorney general or the inspector general intervenes in an action under section 4 of this chapter, the attorney general or the inspector general is responsible for prosecuting the action and is not bound by an act of the person who initially filed the complaint. The attorney general or the inspector general may move for a change of venue to Marion County if the attorney general or

the inspector general files a motion for change of venue not later than ten (10) days after the attorney general or the inspector general intervenes. Except as provided in this section, the person who initially filed the complaint may continue as a party to the action.

(b) The attorney general or the inspector general may dismiss the action after:

- (1) notifying the person who initially filed the complaint; and
- (2) the court has conducted a hearing at which the person who initially filed the complaint was provided the opportunity to be heard on the motion.

(c) The attorney general or the inspector general may settle the action if a court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable in light of the circumstances. Upon a showing of good cause, the court may:

- (1) conduct the settlement hearing in camera; or
- (2) lift all or part of the seal to facilitate the investigative process or settlement.

The court may consider an objection to the settlement brought by the person who initially filed the complaint, but is not bound by this objection.

(d) Upon a showing by the attorney general, the inspector general, or the defendant that unrestricted participation by the person who initially filed the complaint:

- (1) will interfere with the prosecution of the case by the attorney general or the inspector general; or
- (2) will involve the presentation of repetitious or irrelevant evidence, or evidence introduced for purposes of harassment;

the court may impose reasonable limitations on the person's participation, including a limit on the number of witnesses that the person may call, a limit to the amount and type of evidence that the person may introduce, a limit to the length of testimony that the person's witness may present, and a limit to the person's cross-examination of a witness.

(e) If the attorney general or the inspector general elects not to intervene in the action, the person who initially filed the complaint has the right to prosecute the action. Upon request, the attorney general or the inspector general shall be served with copies of all documents filed in the action and may obtain a copy of depositions and other transcripts at the state's expense.

(f) If the attorney general and the inspector general have elected not to intervene in an action in accordance with section 4 of this chapter, upon a showing of good cause, a court may permit either the attorney general or the inspector general to intervene at a later time. The attorney general may move to intervene at any time. If the attorney general has not moved to intervene, the inspector general may move to intervene by providing written notice to the attorney general of the inspector general's intent to intervene. If the attorney general does not move to intervene earlier than fifteen (15) days after receipt of the notice of intent to intervene, the inspector general may move to intervene. If the attorney general or the inspector general intervenes under this subsection, the attorney general or the inspector general is responsible for prosecuting the action as if the attorney general or the inspector general had intervened in accordance with section 4 of this chapter.

(g) If the attorney general or inspector general shows that a specific discovery action by the person who initially filed the complaint will interfere with the investigation or prosecution of a civil or criminal matter arising out of the same facts, the court may, following a hearing in camera, stay discovery for not more than sixty (60) days. After the court has granted a sixty (60) day stay, the court may extend the stay, following a hearing in camera, if it determines that the state has pursued the civil or criminal investigation with reasonable diligence and that a specific

discovery action by the person who initially filed the complaint will interfere with the state's investigation or prosecution of the civil or criminal matter.

(h) A court may dismiss an action brought under this chapter to permit the attorney general or the inspector general to pursue its claim through an alternative proceeding, including an administrative proceeding or a proceeding brought in another jurisdiction. The person who initially filed the complaint has the same rights in the alternative proceedings as the person would have had in the original proceedings. A finding of fact or conclusion of law made in the alternative proceeding is binding on all parties to an action under this section once the determination made in the alternative proceeding is final under the rules, regulations, statutes, or law governing the alternative proceeding, or if the time for seeking an appeal or review of the determination made in the alternative proceeding has elapsed.

§ 5-11-5.5-6 Fraudulent actions against the state; entitlement of individual who brought civil action where state is successful

Sec. 6.

(a) The person who initially filed the complaint is entitled to the following amounts if the state prevails in the action:

(1) Except as provided in subdivision (2), if the attorney general or the inspector general intervened in the action, the person is entitled to receive at least fifteen percent (15%) and not more than twenty-five percent (25%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(2) If the attorney general or the inspector general intervened in the action and the court finds that the evidence used to prosecute the action consisted primarily of specific information contained in:

- (A) a transcript of a criminal, a civil, or an administrative hearing;
- (B) a legislative, an administrative, or another public report, hearing, audit, or investigation; or
- (C) a news media report;

the person is entitled to receive not more than ten percent (10%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(3) If the attorney general or the inspector general did not intervene in the action, the person is entitled to receive at least twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(4) If the person who initially filed the complaint:

- (A) planned and initiated the violation of section 2 of this chapter; or
- (B) has been convicted of a crime related to the person's violation of section 2 of this chapter;

the person is not entitled to an amount under this section.

After conducting a hearing at which the attorney general or the inspector general and the person who initially filed the complaint may be heard, the court shall determine the specific amount to be awarded under this section to the person who initially filed the complaint. The award of reasonable attorney's fees plus an amount to cover the expenses and costs of bringing the action

is an additional cost assessed against the defendant and may not be paid from the proceeds of the civil action.

(b) If:

- (1) the attorney general or the inspector general did not intervene in the action; and
- (2) the defendant prevails;

the court may award the defendant reasonable attorney's fees plus an amount to cover the expenses and costs of defending the action, if the court finds that the action is frivolous.

(c) The state is not liable for the expenses, costs, or attorney's fees of a party to an action brought under this chapter.

§ 5-11-5.5-7 Fraudulent actions against the state; jurisdiction for civil action brought by individual

Sec. 7.

(a) This section does not apply to an action brought by:

- (1) the attorney general;
- (2) the inspector general;
- (3) a prosecuting attorney; or
- (4) a state employee in the employee's official capacity.

(b) A court does not have jurisdiction over an action brought under section 4 of this chapter that is based on information discovered by a present or former state employee in the course of the employee's employment, unless:

- (1) the employee, acting in good faith, has exhausted existing internal procedures for reporting and recovering the amount owed the state; and
- (2) the state has failed to act on the information reported by the employee within a reasonable amount of time.

(c) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is brought by an incarcerated offender, including an offender incarcerated in another jurisdiction.

(d) A court does not have jurisdiction over an action brought under section 4 of this chapter against the state, a state officer, a judge (as defined in IC 33-23-11-7), a justice, a member of the general assembly, a state employee, or an employee of a political subdivision, if the action is based on information known to the state at the time the action was brought.

(e) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon an act that is the subject of a civil suit, a criminal prosecution, or an administrative proceeding in which the state is a party.

(f) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon information contained in:

- (1) a transcript of a criminal, a civil, or an administrative hearing;
- (2) a legislative, an administrative, or another public report, hearing, audit, or investigation; or
- (3) a news media report;

unless the person bringing the action has direct and independent knowledge of the information that is the basis of the action, and the person bringing the action has voluntarily provided this information to the state.

§ 5-11-5.5-8 Fraudulent actions against the state; relief for employee discriminated against for objecting to or assisting in investigation of action

Sec. 8.

(a) An employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of employment by the employee's employer because the employee:

- (1) objected to an act or omission described in section 2 of this chapter; or
- (2) initiated, testified, assisted, or participated in an investigation, an action, or a hearing under this chapter;

is entitled to all relief necessary to make the employee whole.

(b) Relief under this section may include:

- (1) reinstatement with the same seniority status the employee would have had but for the act described in subsection (a);
- (2) two (2) times the amount of back pay owed the employee;
- (3) interest on the back pay owed the employee; and
- (4) compensation for any special damages sustained as a result of the act described in subsection (a), including costs and expenses of litigation and reasonable attorney's fees.

(c) An employee may bring an action for the relief provided in this section in any court with jurisdiction.

§ 5-11-5.5-9 Service of process; limitations on actions; burden of proof; estoppel

Sec. 9.

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under this chapter may be served at any place in the state.

(b) A civil action under section 4 of this chapter is barred unless it is commenced:

- (1) not later than six (6) years after the date on which the violation is committed; or
- (2) not later than three (3) years after the date when facts material to the cause of action are discovered or reasonably should have been discovered by a state officer or employee who is responsible for addressing the false claim. However, an action is barred unless it is commenced not later than ten (10) years after the date on which the violation is committed.

(c) In a civil action brought under this chapter, the state is required to establish:

- (1) the essential elements of the offense; and
- (2) damages;

by a preponderance of the evidence.

(d) If a defendant has been convicted (including a plea of guilty or nolo contendere) of a crime involving fraud or a false statement, the defendant is estopped from denying the elements of the offense in a civil action brought under section 4 of this chapter that involves the same transaction as the criminal prosecution.

§ 5-11-5.5-10 Civil investigative demands

Sec. 10.

(a) If the attorney general or the inspector general has reason to believe that a person may be in possession, custody, or control of documentary material or information relevant to an investigation involving a false claim, the attorney general or the inspector general may, before commencing a civil proceeding under this chapter, issue and serve a civil investigative demand requiring the person to do one (1) or more of the following:

- (1) Produce the documentary material for inspection and copying.
- (2) Answer an interrogatory in writing concerning the documentary material or information.
- (3) Give oral testimony concerning the documentary material or information.

(b) If a civil investigative demand is a specific demand for a product of discovery, the official issuing the civil investigative demand shall:

- (1) serve a copy of the civil investigative demand on the person from whom the discovery was obtained; and
- (2) notify the person to whom the civil investigative demand is issued of the date of service.

§ 5-11-5.5-11 Civil investigative demands; requirements

Sec. 11.

(a) A civil investigative demand issued under this chapter must describe the conduct constituting a violation involving a false claim that is under investigation and the statute or rule that has been violated.

(b) If a civil investigative demand is for the production of documentary material, the civil investigative demand must:

- (1) describe each class of documentary material to be produced with sufficient specificity to permit the material to be fairly identified;
- (2) prescribe a return date for each class of documentary material that provides a reasonable period of time to assemble and make the material available for inspection and copying; and
- (3) identify the official to whom the material must be made available.

(c) If a civil investigative demand is for answers to written interrogatories, the civil investigative demand must:

- (1) set forth with specificity the written interrogatories to be answered;
- (2) prescribe the date by which answers to the written interrogatories must be submitted; and
- (3) identify the official to whom the answers must be submitted.

(d) If a civil investigative demand requires oral testimony, the civil investigative demand must:

- (1) prescribe a date, time, and place at which oral testimony will be given;
- (2) identify the official who will conduct the examination and the custodian to whom the transcript of the examination will be submitted;
- (3) specifically state that attendance and testimony are necessary to the conduct of the investigation;

- (4) notify the person receiving the demand that the person has the right to be accompanied by an attorney and any other representative; and
 - (5) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry.
- (e) A civil investigative demand that is a specific demand for a product of discovery may not be returned until at least twenty-one (21) days after a copy of the civil investigative demand has been served on the person from whom the discovery was obtained.
- (f) The date prescribed for the giving of oral testimony under a civil investigative demand issued under this chapter must be a date that is not less than seven (7) days after the date on which the demand is received, unless the official issuing the demand determines that exceptional circumstances are present that require an earlier date.
- (g) The official who issues a civil investigative demand may not issue more than one (1) civil investigative demand for oral testimony by the same person, unless:
- (1) the person requests otherwise; or
 - (2) the official who issues a civil investigative demand, after conducting an investigation, notifies the person in writing that an additional civil investigative demand for oral testimony is necessary.

§ 5-11-5.5-12 Civil investigative demands; materials protected from disclosure

Sec. 12.

(a) A civil investigative demand issued under this chapter may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if the material, answers, or testimony would be protected from disclosure under the standards applicable:

- (1) to a subpoena or subpoena duces tecum issued by a court to aid in a grand jury investigation; or
- (2) to a discovery request under the rules of trial procedure;

to the extent that the application of these standards to a civil investigative demand is consistent with the purposes of this chapter.

(b) A civil investigative demand that is a specific demand for a product of discovery supersedes any contrary order, rule, or statutory provision, other than this section, that prevents or restricts disclosure of the product of discovery. Disclosure of a product of discovery under a specific demand does not constitute a waiver of a right or privilege that the person making the disclosure may be otherwise entitled to invoke to object to discovery of trial preparation materials.

§ 5-11-5.5-13 Civil investigative demands; service

Sec. 13.

(a) A civil investigative demand issued under this chapter may be served by an investigator or by any other person authorized to serve process.

(b) A civil investigative demand shall be served in accordance with the rules of trial procedure. A court having jurisdiction over a person not located in the state has the same authority to enforce compliance with this chapter as the court has over a person located in the state.

§ 5-11-5.5-14 Civil investigative demands; application of trial rules

Sec. 14.

(a) The production of documentary material in response to a civil investigative demand served under this chapter shall be made in accordance with Trial Rule 34.

(b) Each interrogatory in a civil investigative demand served under this chapter shall be answered in accordance with Trial Rule 33.

(c) The examination of a person under a civil investigative demand for oral testimony served under this chapter shall be conducted in accordance with Trial Rule 30.

§ 5-11-5.5-15 Civil investigative demands; handling and availability of documentary material, answers to interrogatories, or transcripts of oral testimony

Sec. 15.

(a) The official who issued the civil investigative demand is the custodian of the documentary material, answers to interrogatories, and transcripts of oral testimony received under this chapter.

(b) An investigator who receives documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the official who issued the civil investigative demand. The official shall take physical possession of the material, answers, or transcripts and is responsible for the use made of them and for the return of documentary material.

(c) The official who issued the civil investigative demand may make copies of documentary material, answers to interrogatories, or transcripts of oral testimony as required for official use by the attorney general, the inspector general, or the state police. The material, answers, or transcripts may be used in connection with the taking of oral testimony under this chapter.

(d) Except as provided in subsection (e), documentary material, answers to interrogatories, or transcripts of oral testimony, while in the possession of the official who issued the civil investigative demand, may not be made available for examination to any person other than:

- (1) the attorney general or designated personnel of the attorney general's office;
- (2) the inspector general or designated personnel of the inspector general's office; or
- (3) an officer of the state police who has been authorized by the official who issued the civil investigative demand.

(e) The restricted availability of documentary material, answers to interrogatories, or transcripts of oral testimony does not apply:

- (1) if the person who provided:
 - (A) the documentary material, answers to interrogatories, or oral testimony; or
 - (B) a product of discovery that includes documentary material, answers to interrogatories, or oral testimony;consents to disclosure;
- (2) to the general assembly or a committee or subcommittee of the general assembly; or
- (3) to a state agency that requires the information to carry out its statutory responsibility.

Documentary material, answers to interrogatories, or transcripts of oral testimony requested by a state agency may be disclosed only under a court order finding that the state agency has a substantial need for the use of the information in carrying out its statutory responsibility.

(f) While in the possession of the official who issued the civil investigative demand, documentary material, answers to interrogatories, or transcripts of oral testimony shall be made

available to the person, or to the representative of the person who produced the material, answered the interrogatories, or gave oral testimony. The official who issued the civil investigative demand may impose reasonable conditions upon the examination or use of the documentary material, answers to interrogatories, or transcripts of oral testimony.

(g) The official who issued the civil investigative demand and any attorney employed in the same office as the official who issued the civil investigative demand may use the documentary material, answers to interrogatories, or transcripts of oral testimony in connection with a proceeding before a grand jury, a court, or an agency. Upon the completion of the proceeding, the attorney shall return to the official who issued the civil investigative demand any documentary material, answers to interrogatories, or transcripts of oral testimony that are not under the control of the grand jury, court, or agency.

(h) Upon written request of a person who produced documentary material in response to a civil investigative demand, the official who issued the civil investigative demand shall return any documentary material in the official's possession to the person who produced documentary material, if:

(1) a proceeding before a grand jury, a court, or an agency involving the documentary material has been completed; or

(2) a proceeding before a grand jury, a court, or an agency involving the documentary material has not been commenced within a reasonable time after the completion of the investigation.

The official who issued the civil investigative demand is not required to return documentary material that is in the custody of a grand jury, a court, or an agency.

§ 5-11-5.5-16 Civil investigative demands; sanctions for noncompliance; protective order

Sec. 16.

(a) A person who has failed to comply with a civil investigative demand is subject to sanctions under Trial Rule 37 to the same extent as a person who has failed to cooperate in discovery.

(b) A person who objects to a civil investigative demand issued under this chapter may seek a protective order in accordance with Trial Rule 26(C).

§ 5-11-5.5-17 Civil investigative demands; confidentiality of materials

Sec. 17.

Documentary material, answers to written interrogatories, or oral testimony provided in response to a civil investigative demand issued under this chapter are confidential.

§ 5-11-5.5-18 Application of Indiana Rules of Trial Procedure

Sec. 18.

Proceedings under this chapter are governed by the Indiana Rules of Trial Procedure, unless the Indiana Rules of Trial Procedure are inconsistent with this chapter.

The Indiana Medicaid False Claims and Whistleblower Protection Act

(Ind. Code §§ 5-11-5.7-1–18)ⁱⁱ

§ 5-11-5.7-1 Application of chapter and definitions

Sec. 1.

(a) This chapter applies only to claims, requests, demands, statements, records, acts, and omissions made or submitted in relation to the Medicaid program described in IC 12-15. Sections 3 through 18 of this chapter apply to claims, requests, demands, statements, records, acts, and omissions made or submitted in relation to the Medicaid program described in IC 12-15 in violation of IC 5-11-5.5-2 or IC 5-11-5.7-2.

(b) The following definitions apply throughout this chapter:

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

(A) is presented to an officer, employee, or agent of the state; or

(B) is 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 state program or interest, and if the state:

(i) provides or has provided any part of the money or property that is requested or demanded; or

(ii) will reimburse the contractor, grantee, or other recipient for any part of the money or property that is requested or demanded.

(2) “Document”, “electronically stored information”, or “tangible thing” includes:

(A) a writing, a drawing, a graph, a chart, a photograph, a sound recording, or an image;

(B) other data or a data compilation stored in any medium from which information can be obtained either directly or after translation by the responding party into a reasonably usable form;

(C) any tangible thing; and

(D) a product of discovery.

(3) “Investigation” means an inquiry conducted by an investigator to ascertain whether a person is or has been engaged in a violation of this chapter.

(4) “Knowing”, “knowingly”, or “known” means that a person, regarding information:

(A) has actual knowledge of the information;

(B) acts in deliberate ignorance of the truth or falsity of the information; or

(C) acts in reckless disregard of the truth or falsity of the information;

and requires no proof of specific intent to defraud.

(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 the duty is fixed, arising from:

(A) an express or implied contractual relationship;

(B) a grantor-grantee relationship;

(C) a licensor-licensee relationship;

(D) a fee-based or similar relationship;

- (E) a statute;
 - (F) a rule or regulation; or
 - (G) the retention of an overpayment.
- (7) "Person" includes a natural person, a corporation, a firm, an association, an organization, a partnership, a limited liability company, a business, or a trust.
- (8) "Product of discovery" means the original or duplicate of:
- (A) a deposition;
 - (B) an interrogatory;
 - (C) a document;
 - (D) a thing;
 - (E) a result of the inspection of land or other property; or
 - (F) an examination or admission;
- that is obtained by any method of discovery in a judicial or an administrative proceeding of an adversarial nature. The term includes a digest, an analysis, a selection, a compilation, a derivation, an index, or another method of accessing an item listed in this subdivision. The term also includes electronically stored information.
- (9) "State" means Indiana or any agency of state government. The term does not include a political subdivision.

§ 5-11-5.7-2 Application of section; presentation of false or fraudulent claim and related acts; penalties

Sec. 2.

(a) A person who:

- (1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- (2) knowingly makes, uses, or causes to be made or used, a false record or statement that is material to a false or fraudulent claim;
- (3) has possession, custody, or control of property or money used, or to be used, by the state, and knowingly delivers, or causes to be delivered, less than all of the money or property;
- (4) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, with intent to defraud the state, authorizes issuance of a receipt without knowing that the information on the receipt is true;
- (5) knowingly buys or receives, as a pledge of an obligation or debt, public property from an employee who is not lawfully authorized to sell or pledge the property;
- (6) knowingly:
 - (A) makes, uses, or causes to be made or used, a false record or statement concerning an obligation to pay or transmit money or property to the state; or
 - (B) conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state;
- (7) conspires with another person to perform an act described in subdivisions (1) through (6); or
- (8) causes or induces another person to perform an act described in subdivisions (1) through (6);

is, except as provided in subsection (b), liable to the state for a civil penalty of at least five thousand five hundred dollars (\$5,500) and not more than eleven thousand dollars (\$11,000), as adjusted by the federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note, Public Law 101-410), and for up to three (3) times the amount of damages sustained by the state. In addition, a person who violates this section is liable to the state for the costs of a civil action brought to recover a penalty or damages.

(b) If the factfinder determines that the person who violated this section:

- (1) furnished state officials with all information known to the person about the violation not later than thirty (30) days after the date on which the person obtained the information;
- (2) fully cooperated with the investigation of the violation; and
- (3) did not have knowledge of the existence of an investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials;

the person is liable for a penalty of not less than two (2) times the amount of damages that the state sustained because of the violation. A person who violates this section is also liable to the state for the costs of a civil action brought to recover a penalty or damages.

§ 5-11-5.7-3 Jurisdiction of attorney general and inspector general; investigations; civil actions

Sec. 3.

(a) The:

- (1) attorney general; and
- (2) inspector general;

have concurrent jurisdiction to investigate a violation of section 2 of this chapter.

(b) If the attorney general discovers a violation of section 2 of this chapter, the attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(c) If the inspector general discovers a violation of section 2 of this chapter, the inspector general shall certify this finding to the attorney general. The attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(d) If the attorney general or the inspector general is served by a person who has filed a civil action under section 4 of this chapter, the attorney general has the authority to intervene in that action as set forth in section 4 of this chapter.

(e) If the attorney general:

- (1) is disqualified from investigating a possible violation of section 2 of this chapter;
- (2) is disqualified from bringing a civil action concerning a possible violation of section 2 of this chapter;
- (3) is disqualified from intervening in a civil action brought under section 4 of this chapter concerning a possible violation of section 2 of this chapter;
- (4) elects not to bring a civil action concerning a possible violation of section 2 of this chapter; or
- (5) elects not to intervene under section 4 of this chapter;

the attorney general shall certify the attorney general's disqualification or election to the inspector general.

(f) If the attorney general has certified the attorney general's disqualification or election not to bring a civil action or intervene in a case under subsection (e), the inspector general has authority to:

- (1) bring a civil action concerning a possible violation of section 2 of this chapter; or
- (2) intervene in a case under section 4 of this chapter.

(g) The attorney general shall certify to the inspector general the attorney general's disqualification or election under subsection (e) in a timely fashion, and in any event not later than:

- (1) sixty (60) days after being served, if the attorney general has been served by a person who has filed a civil action under section 4 of this chapter; or
- (2) one hundred eighty (180) days before the expiration of the statute of limitations, if the attorney general has not been served by a person who has filed a civil action under section 4 of this chapter.

(h) The state is not required to file a bond under this chapter.

§ 5-11-5.7-4 Civil action by person

Sec. 4.

(a) A person may bring a civil action for a violation of section 2 of this chapter on behalf of the person and on behalf of the state. The action:

- (1) must be brought in the name of the state; and
- (2) may be filed in any court with jurisdiction.

(b) An action brought under this section may be dismissed voluntarily by the person bringing the action only if:

- (1) the person obtains the prior written consent of the attorney general or the inspector general, if applicable; and
- (2) the court issues an order:
 - (A) granting the motion; and
 - (B) explaining the court's reasons for granting the motion.

(c) A person who brings an action under this section shall serve:

- (1) a copy of the complaint; and
- (2) a written disclosure that describes all relevant material evidence and information the person possesses;

on both the attorney general and the inspector general. The person shall file the complaint under seal, and the complaint shall remain under seal for at least sixty (60) days. The complaint shall not be served on the defendant until the court orders the complaint served on the defendant following the intervention or the election not to intervene of the attorney general or the inspector general. The state may elect to intervene and proceed with the action not later than sixty (60) days after it receives both the complaint and the written disclosure.

(d) For good cause shown, the attorney general or the inspector general may move the court to extend the time during which the complaint must remain under seal. A motion for extension may be supported by an affidavit or other evidence. The affidavit or other evidence may be submitted in camera.

(e) Before the expiration of the time during which the complaint is sealed, the attorney general or the inspector general may:

- (1) intervene in the case and proceed with the action, in which case the attorney general or the inspector general shall conduct the action; or
- (2) elect not to proceed with the action, in which case the person who initially filed the complaint may proceed with the action.

(f) The defendant in an action filed under this section is not required to answer the complaint until twenty-one (21) days after the complaint has been unsealed and served on the defendant.

(g) After a person has filed a complaint under this section, no person other than the attorney general or the inspector general may:

- (1) intervene; or
- (2) bring another action based on the same facts.

(h) If the person who initially filed the complaint:

- (1) planned and initiated the violation of section 2 of this chapter; or
- (2) has been convicted of a crime related to the person's violation of section 2 of this chapter;

upon motion of the attorney general or the inspector general, the court shall dismiss the person as a plaintiff.

§ 5-11-5.7-5 Intervention by attorney general or inspector general; dismissal; settlement; participation by person; discovery

Sec. 5.

(a) If the attorney general or the inspector general intervenes in an action under section 4 of this chapter, the attorney general or the inspector general is responsible for prosecuting the action and is not bound by an act of the person who initially filed the complaint. The attorney general or the inspector general may do the following:

- (1) File a complaint.
- (2) Amend the complaint of a person who has brought an action under section 4 of this chapter, to:
 - (A) clarify or add detail to the claims in which the state is intervening; or
 - (B) add additional claims to which the state contends the state is entitled to relief.
- (3) Move for a change of venue to Marion County if the attorney general or the inspector general files a motion for change of venue not later than ten (10) days after the attorney general or the inspector general intervenes.

For statute of limitation purposes, a pleading filed by the attorney general or the inspector general relates back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the state arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the original filed complaint. Except as provided in this section, the person who initially filed the complaint may continue as a party to the action.

(b) With the approval of the court, the attorney general or the inspector general may dismiss the action after:

- (1) notifying the person who initially filed the complaint; and
- (2) the court has conducted a hearing at which the person who initially filed the complaint was provided the opportunity to be heard on the motion.

The court may consider a request by the attorney general or the inspector general to dismiss the action but is not bound by the request. Additionally, the court may permit the attorney general or

inspector general to withdraw his or her appearance in the case and may permit the person who initially filed the complaint to continue to prosecute the action in the name of the state.

(c) The attorney general or the inspector general may settle the action if a court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable in light of the circumstances. Upon a showing of good cause, the court may:

- (1) conduct the settlement hearing in camera; or
- (2) lift all or part of the seal to facilitate the investigative process or settlement.

The court may consider an objection to the settlement brought by the person who initially filed the complaint, but is not bound by this objection.

(d) Upon a showing by the attorney general, the inspector general, or the defendant that unrestricted participation by the person who initially filed the complaint:

- (1) will interfere with or unduly delay the prosecution of the case by the attorney general or the inspector general;
- (2) will involve the presentation of repetitious or irrelevant evidence, or evidence introduced for purposes of harassment; or
- (3) will cause the defendant to suffer undue burden or unnecessary expense;

the court may impose reasonable limitations on the person's participation, including a limit on the number of witnesses that the person may call, a limit to the length of testimony that the person's witness may present, a limit to the person's cross-examination of a witness, or otherwise limit the participation by the person in the litigation.

(e) If the attorney general or the inspector general elects not to intervene in the action, the person who initially filed the complaint has the right to prosecute the action. Upon request, the attorney general or the inspector general shall be served with copies of all documents filed in the action and may obtain a copy of depositions and other transcripts at the state's expense.

(f) If the attorney general and the inspector general have elected not to intervene in an action in accordance with section 4 of this chapter, upon a showing of good cause, a court may permit either the attorney general or the inspector general to intervene at a later time. The attorney general may move to intervene at any time. If the attorney general has not moved to intervene, the inspector general may move to intervene by providing written notice to the attorney general of the inspector general's intent to intervene. If the attorney general does not move to intervene earlier than fifteen (15) days after receipt of the notice of intent to intervene, the inspector general may move to intervene. If the attorney general or the inspector general intervenes under this subsection, the attorney general or the inspector general is responsible for prosecuting the action as if the attorney general or the inspector general had intervened in accordance with section 4 of this chapter.

(g) If the attorney general or inspector general shows that a specific discovery action by the person who initially filed the complaint will interfere with the investigation or prosecution of a civil or criminal matter arising out of the same facts, the court may, following a hearing in camera, stay discovery for not more than sixty (60) days. After the court has granted a sixty (60) day stay, the court may extend the stay, following a hearing in camera, if it determines that the state has pursued the civil or criminal investigation with reasonable diligence and that a specific discovery action by the person who initially filed the complaint will interfere with the state's investigation or prosecution of the civil or criminal matter.

(h) A court may dismiss an action brought under this chapter to permit the attorney general or the inspector general to pursue its claim through an alternative proceeding, including an administrative proceeding or a proceeding brought in another jurisdiction. The person who

initially filed the complaint has the same rights in the alternative proceedings as the person would have had in the original proceedings. A finding of fact or conclusion of law made in the alternative proceeding is binding on all parties to an action under this section once the determination made in the alternative proceeding is final under the rules, regulations, statutes, or law governing the alternative proceeding, or if the time for seeking an appeal or review of the determination made in the alternative proceeding has elapsed.

§ 5-11-5.7-6 Award to complainant; attorney fees

Sec. 6.

(a) The person who initially filed the complaint is entitled to the following amounts if the state prevails in the action:

(1) Except as provided in subdivision (2), if the attorney general or the inspector general intervened in the action, the person is entitled to receive at least fifteen percent (15%) and not more than twenty-five percent (25%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(2) If the attorney general or the inspector general intervened in the action and the court finds that the evidence used to prosecute the action consisted primarily of specific information, other than information provided by the person bringing the action, contained in:

- (A) a transcript of a criminal, a civil, or an administrative hearing;
- (B) a legislative, an administrative, or another public state report, hearing, audit, or investigation; or
- (C) a news media report;

the person is entitled to receive not more than ten percent (10%) of the proceeds of the action or settlement, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(3) If the attorney general or the inspector general did not intervene in the action, the person is entitled to receive at least twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(4) If the person who initially filed the complaint:

- (A) planned and initiated the violation of section 2 of this chapter; or
- (B) has been convicted of a crime related to the person's violation of section 2 of this chapter;

the person is not entitled to an amount under this section.

After conducting a hearing at which the attorney general or the inspector general and the person who initially filed the complaint may be heard, the court shall determine the specific amount to be awarded under this section to the person who initially filed the complaint. The award of reasonable attorney's fees plus an amount to cover the expenses and costs of bringing the action is an additional cost assessed against the defendant and may not be paid from the proceeds of the civil action.

(b) If:

(1) the attorney general or the inspector general did not intervene in the action; and

(2) the defendant prevails;
the court may award the defendant reasonable attorney's fees plus an amount to cover the expenses and costs of defending the action, if the court finds that the action is frivolous, vexatious, or brought primarily for purposes of harassment.
(c) The state is not liable for the expenses, costs, or attorney's fees of a party to an action brought under this chapter.

§ 5-11-5.7-7 Application of section; jurisdiction

Sec. 7.

(a) This section does not apply to an action brought by:

- (1) the attorney general;
- (2) the inspector general;
- (3) a prosecuting attorney; or
- (4) a state employee in the employee's official capacity.

(b) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is brought by an incarcerated offender, including an offender incarcerated in another jurisdiction.

(c) A court does not have jurisdiction over an action brought under section 4 of this chapter against the state, a state officer, a judge (as defined in IC 33-23-11-7), a justice, a member of the general assembly, a state employee, or an employee of a political subdivision, if the action is based on information known to the state at the time the action was brought.

(d) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon an act that is the subject of a civil suit, a criminal prosecution, or an administrative proceeding in which the state is a party.

(e) A court does not have jurisdiction over an action or claim brought under section 4 of this chapter if the action or claim is based upon information contained in:

- (1) a transcript of a criminal, a civil, or an administrative hearing in which the state or the state's agent is a party;
- (2) a legislative, an administrative, or another public state report, hearing, audit, or investigation; or
- (3) a news media report;

unless the person bringing the action either, before a public disclosure under this section voluntarily discloses to the state the information on which the allegations or transactions in a claim are based, or has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and the person bringing the action has voluntarily provided this information to the state before an action is filed under section 4 of this chapter.

(f) In determining whether a prior public disclosure bars a court from exercising jurisdiction over an action brought under section 4 of this chapter, the court shall consider, but is not bound by, any objection brought by the attorney general or the inspector general.

§ 5-11-5.7-8 Protection from retaliation; civil actions

Sec. 8.

(a) An employee, contractor, or agent who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others to:

- (1) object to or otherwise stop an act or omission described in section 2 of this chapter;
- (2) initiate, testify, assist, or participate in an investigation, an action, or a hearing; or
- (3) perform any other lawful act in furtherance of other efforts to stop one (1) or more violations under this chapter;

is entitled to all relief necessary to make the employee, contractor, or agent whole.

(b) Relief under this section must include:

- (1) reinstatement with the same seniority status the employee, contractor, or agent would have had but for the act described in subsection (a);
- (2) two (2) times the amount of back pay;
- (3) interest on the back pay; and
- (4) compensation for any special damages sustained as a result of the act described in subsection (a), including costs and expenses of litigation and reasonable attorney's fees.

(c) An employee, contractor, or agent may bring an action for the relief provided in this section in any court with jurisdiction.

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

§ 5-11-5.7-9 Subpoena; limitation of actions; burden of proof; estoppel

Sec. 9.

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under this chapter may be served at any place in Indiana.

(b) A civil action under section 4 of this chapter is barred unless it is commenced:

- (1) not later than six (6) years after the date on which the violation is committed; or
- (2) not later than three (3) years after the date when facts material to the cause of action are known or reasonably should have been known by a state officer or employee who is responsible for addressing the false claim, but in no event later than ten (10) years after the date on which the violation is committed, whichever occurs later.

(c) In a civil action brought under this chapter, the state is required to establish:

- (1) the essential elements of the offense; and
- (2) damages;

by a preponderance of the evidence.

(d) If a defendant has been convicted (including a plea of guilty or nolo contendere) of a crime involving fraud or a false statement, the defendant is estopped from denying the elements of the offense in a civil action brought under section 4 of this chapter that involves the same transaction as the criminal prosecution.

§ 5-11-5.7-10 Civil investigative demand: Issuance

Sec. 10.

(a) Whenever the attorney general, the inspector general, or the designee of the attorney general or the inspector general has reason to believe that a person may be in possession, custody, or control of documentary material, electronically stored information, a tangible thing, or information relevant to an investigation under this chapter involving a false claim, the attorney general, the inspector general, or the designee of the attorney general or inspector general may, before commencing a civil proceeding under this chapter, issue and serve a civil investigative demand requiring the person to do one (1) or more of the following:

(1) Produce the documentary material, electronically stored information, or tangible thing for inspection and copying.

(2) Answer an interrogatory in writing concerning the documentary material, electronically stored information, tangible thing, or information.

(3) Give oral testimony concerning the documentary material, electronically stored information, tangible thing, or information.

(4) Furnish any combination of material, other evidence, answers, or testimony.

(b) If a civil investigative demand is a specific demand for a product of discovery, the official issuing the civil investigative demand shall:

(1) serve a copy of the civil investigative demand on the person from whom the discovery was obtained; and

(2) notify the person to whom the civil investigative demand is issued of the date of service.

§ 5-11-5.7-11 Civil investigative demand: Contents

Sec. 11.

(a) A civil investigative demand issued under this chapter must describe the conduct constituting a violation involving a false claim that is under investigation and the statute or rule that has been violated.

(b) If a civil investigative demand is for the production of documentary material, the civil investigative demand must:

(1) describe each class of documentary material to be produced with sufficient specificity to permit the material to be fairly identified;

(2) prescribe a return date for each class of documentary material that provides a reasonable period of time to assemble and make the material available for inspection and copying; and

(3) identify the official to whom the material must be made available.

(c) If a civil investigative demand is for answers to written interrogatories, the civil investigative demand must:

(1) set forth with specificity the written interrogatories to be answered;

(2) prescribe the date by which answers to the written interrogatories must be submitted; and

(3) identify the official to whom the answers must be submitted.

(d) If a civil investigative demand requires oral testimony, the civil investigative demand must:

(1) prescribe a date, time, and place at which oral testimony will be given;

(2) identify the official who will conduct the examination and the custodian to whom the transcript of the examination will be submitted;

- (3) specifically state that attendance and testimony are necessary to the conduct of the investigation;
 - (4) notify the person receiving the demand that the person has the right to be accompanied by an attorney and any other representative; and
 - (5) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry.
- (e) A civil investigative demand that is a specific demand for a product of discovery may not be returned until at least twenty-one (21) days after a copy of the civil investigative demand has been served on the person from whom the discovery was obtained.
- (f) The date prescribed for the giving of oral testimony under a civil investigative demand issued under this chapter must be a date that is not less than seven (7) days after the date on which the demand is received, unless the official issuing the demand determines that exceptional circumstances are present that require an earlier date.
- (g) The official who issues a civil investigative demand may not issue more than one (1) civil investigative demand for oral testimony by the same person, unless:
- (1) the person requests otherwise; or
 - (2) the official who issues a civil investigative demand, after conducting an investigation, notifies the person in writing that an additional civil investigative demand for oral testimony is necessary.

§ 5-11-5.7-12 Civil investigative demand: Scope

Sec. 12.

(a) A civil investigative demand issued under this chapter may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if the material, answers, or testimony would be protected from disclosure under the standards applicable:

- (1) to a subpoena or subpoena duces tecum issued by a court to aid in a grand jury investigation; or
- (2) to a discovery request under the rules of trial procedure;

to the extent that the application of these standards to a civil investigative demand is consistent with the purposes of this chapter.

(b) A civil investigative demand that is a specific demand for a product of discovery supersedes any contrary order, rule, or statutory provision, other than this section, that prevents or restricts disclosure of the product of discovery. Disclosure of a product of discovery under a specific demand does not constitute a waiver of a right or privilege that the person making the disclosure may be otherwise entitled to invoke to object to discovery of trial preparation materials.

§ 5-11-5.7-13 Civil investigative demand: Service

Sec. 13.

(a) A civil investigative demand issued under this chapter may be served by an investigator or by any other person authorized to serve process.

(b) A civil investigative demand shall be served in accordance with the rules of trial procedure. A court having jurisdiction over a person not located in Indiana has the same authority to enforce compliance with this chapter as the court has over a person located in Indiana.

§ 5-11-5.7-14 Civil investigative demand: Responses

Sec. 14.

- (a) The production of documentary material in response to a civil investigative demand served under this chapter shall be made in accordance with the rules of civil procedure concerning the production of documents, electronically stored information, and tangible things.
- (b) Each interrogatory in a civil investigative demand served under this chapter shall be answered in accordance with the rules of civil procedure concerning interrogatories.
- (c) The examination of a person under a civil investigative demand for oral testimony served under this chapter shall be conducted in accordance with the rules of civil procedure concerning oral depositions.

§ 5-11-5.7-15 Civil investigative demand: Custody, transmission, copying, availability, use and return of matter

Sec. 15.

- (a) The official who issued the civil investigative demand is the custodian of the documentary material, answers to interrogatories, and transcripts of oral testimony received under this chapter.
- (b) An investigator who receives documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the official who issued the civil investigative demand. The official shall take physical possession of the material, answers, or transcripts and is responsible for the use made of them and for the return of documentary material.
- (c) The official who issued the civil investigative demand may make copies of documentary material, answers to interrogatories, or transcripts of oral testimony as required for official use by the attorney general, the inspector general, or the state police. The material, answers, or transcripts may be used in connection with the taking of oral testimony under this chapter.
- (d) Except as provided in subsection (e), documentary material, answers to interrogatories, or transcripts of oral testimony, while in the possession of the official who issued the civil investigative demand, may not be made available for examination to any person other than:
 - (1) the attorney general or designated personnel of the attorney general's office;
 - (2) the inspector general or designated personnel of the inspector general's office; or
 - (3) an officer of the state police who has been authorized by the official who issued the civil investigative demand.
- (e) The restricted availability of documentary material, answers to interrogatories, or transcripts of oral testimony does not apply:
 - (1) if the person who provided:
 - (A) the documentary material, answers to interrogatories, or oral testimony; or
 - (B) a product of discovery that includes documentary material, answers to interrogatories, or oral testimony;consents to disclosure;
 - (2) to the general assembly or a committee or subcommittee of the general assembly; or

(3) to a state agency that requires the information to carry out its statutory responsibility. Documentary material, answers to interrogatories, or transcripts of oral testimony requested by a state agency may be disclosed only under a court order finding that the state agency has a substantial need for the use of the information in carrying out its statutory responsibility.

(f) While in the possession of the official who issued the civil investigative demand, documentary material, answers to interrogatories, or transcripts of oral testimony shall be made available to the person, or to the representative of the person who produced the material, answered the interrogatories, or gave oral testimony. The official who issued the civil investigative demand may impose reasonable conditions upon the examination or use of the documentary material, answers to interrogatories, or transcripts of oral testimony.

(g) The official who issued the civil investigative demand and any attorney employed in the same office as the official who issued the civil investigative demand may use the documentary material, answers to interrogatories, or transcripts of oral testimony in connection with a proceeding before a grand jury, a court, or an agency. Upon the completion of the proceeding, the attorney shall return to the official who issued the civil investigative demand any documentary material, answers to interrogatories, or transcripts of oral testimony that are not under the control of the grand jury, court, or agency.

(h) Upon written request of a person who produced documentary material in response to a civil investigative demand, the official who issued the civil investigative demand shall return any documentary material in the official's possession to the person who produced documentary material, if:

- (1) a proceeding before a grand jury, a court, or an agency involving the documentary material has been completed; or
- (2) a proceeding before a grand jury, a court, or an agency involving the documentary material has not been commenced within a reasonable time after the completion of the investigation.

The official who issued the civil investigative demand is not required to return documentary material that is in the custody of a grand jury, a court, or an agency.

§5-11-5.7-16 Civil investigative demand: Compliance; protective orders

Sec. 16.

(a) A person who has failed to comply with a civil investigative demand is subject to sanctions under the rules of civil procedure to the same extent as a person who has failed to cooperate in discovery.

(b) A person who objects to a civil investigative demand issued under this chapter may seek a protective order in accordance with the rules of civil procedure.

§ 5-11-5.7-17 Civil investigative demand: Confidentiality

Sec. 17.

Documentary material, answers to written interrogatories, or oral testimony provided in response to a civil investigative demand issued under this chapter is confidential.

§ 5-11-5.7-18 Application of Indiana Rules of Trial Procedure

Sec. 18.

Proceedings under this chapter are governed by the Indiana Rules of Trial Procedure if the proceedings are held in state court, and by the Federal Rules of Civil Procedure if the proceedings are held in federal court.

i Last updated August 2023.

ii Last updated August 2023.