

Washington Medicaid Fraud False Claims Act

(Wash. Rev. Code §§ 74.66.005–74.66.130)ⁱ

§ 74.66.005. Short title.

This chapter may be known and cited as the medicaid fraud false claims act.

§ 74.66.010. Definitions.

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

(1)

(a) “Claim” means any request or demand made for a medicaid payment under chapter 74.09 RCW or other applicable law, whether under a contract or otherwise, for money or property and whether or not a government entity has title to the money or property, that:

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

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

(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 which is requested or demanded.

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

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

(3) “Documentary material” includes the original or any copy of any 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.

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

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

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

(7)

(a) “Knowing” and “knowingly” mean 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” and “knowingly” do not require proof of specific intent to defraud.
- (8) “Material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.
- (9) “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 rule, or from the retention of any overpayment.
- (10) “Official use” means any use that is consistent with the law, and the rules and policies of the attorney general, including use in connection with: Internal attorney general memoranda and reports; communications between the attorney general and a federal, state, or local government agency, or a contractor of a federal, state, or local government agency, undertaken in furtherance of an investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda, and briefs submitted to a court or other tribunal; and communications with attorney general investigators, auditors, consultants and experts, the counsel of other parties, and arbitrators or mediators, concerning an investigation, case, or proceeding.
- (11) “Person” means any natural person, partnership, corporation, association, or other legal entity, including any local or political subdivision of a state.
- (12) “Product of discovery” includes:
- (a) The original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;
 - (b) Any digest, analysis, selection, compilation, or derivation of any item listed in (a) of this subsection; and
 - (c) Any index or other manner of access to any item listed in (a) of this subsection.
- (13) “Qui tam action” is an action brought by a person under RCW 74.66.050.
- (14) “Qui tam relator” or “relator” is a person who brings an action under RCW 74.66.050.

§ 74.66.020. Civil penalty–False or fraudulent claims.

- (1) Subject to subsections (2) and (4) of this section, a person is liable to the government entity for a civil penalty of not less than the greater of ten thousand nine hundred fifty-seven dollars or the minimum inflation adjusted penalty amount imposed as provided by 31 U.S.C. Sec. 3729(a) and not more than the greater of twenty-one thousand nine hundred sixteen dollars or the maximum inflation adjusted penalty amount imposed as provided by 31 U.S.C. Sec. 3729(a), plus three times the amount of damages which the government entity 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) Conspires to commit one or more of the violations in this subsection (1);

- (d) Has possession, custody, or control of property or money used, or to be used, by the government entity and knowingly delivers, or causes to be delivered, less than all of that money or property;
 - (e) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the government entity and, intending to defraud the government entity, makes or delivers the receipt without completely knowing that the information on the receipt is true;
 - (f) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the government entity who lawfully may not sell or pledge property; or
 - (g) 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 government entity, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the government entity.
- (2) The court may assess not less than two times the amount of damages which the government entity sustains because of the act of a person, if the court finds that:
- (a) The person committing the violation of subsection (1) of this section furnished the Washington state attorney general with all information known to him or her about the violation within thirty days after the date on which he or she first obtained the information;
 - (b) The person fully cooperated with any investigation by the attorney general of the violation; and
 - (c) At the time the person furnished the attorney general with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.
- (3) A person violating this section is liable to the attorney general for the costs of a civil action brought to recover any such penalty or damages.
- (4) For the purposes of determining whether an insurer has a duty to provide a defense or indemnification for an insured and if coverage may be denied if the terms of the policy exclude coverage for intentional acts, a violation of subsection (1) of this section is an intentional act.

§ 74.66.030. Public records exemption.

Any information furnished pursuant to this chapter is exempt from disclosure under the public records act, chapter 42.56 RCW, until final disposition and all court-ordered seals are lifted.

§ 74.66.040. Attorney general—Investigation—Civil action.

The attorney general must diligently investigate a violation under RCW 74.66.020. If the attorney general finds that a person has violated or is violating RCW 74.66.020, the attorney general may bring a civil action under this section against the person.

§ 74.66.050. Qui tam action—Relator rights and duties.

(1) A person may bring a civil action for a violation of RCW 74.66.020 for the person and for the government entity. The action may be known as a qui tam action and the person bringing the action as a qui tam relator. The action must be brought in the name of the government entity. The action may be dismissed only if the court, and the attorney general give written consent to the dismissal and their reason for consenting.

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

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

(4) If the attorney general does not proceed with the action prior to the expiration of the sixty-day period or any extensions obtained under subsection (3) of this section, then the relator has the right to conduct the action.

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

§ 74.66.060. Qui tam action—Attorney general authority.

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

(2)

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

(b) The attorney general 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.

(c) Upon a showing by the attorney general that unrestricted participation during the course of the litigation by the relator would interfere with or unduly delay the attorney general'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, such as:

- (i) Limiting the number of witnesses the relator may call;
- (ii) Limiting the length of the testimony of the witnesses;

- (iii) Limiting the relator's cross-examination of witnesses; or
 - (iv) Otherwise limiting the participation by the relator in the litigation.
- (d) 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.
- (3) If the attorney general elects not to proceed with the qui tam action, the relator has the right to conduct the action. If the attorney general so requests, the relator must serve on the attorney general copies of all pleadings filed in the action and shall supply copies of all deposition transcripts, at the attorney general's expense. When the relator proceeds with the action, the court, without limiting the status and rights of the relator, may nevertheless permit the attorney general to intervene at a later date upon a showing of good cause.
- (4) Whether or not the attorney general proceeds with the qui tam action, upon a showing by the attorney general that certain actions of discovery by the relator would interfere with the attorney general's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. The showing must be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the attorney general has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.
- (5) Notwithstanding RCW 74.66.050, the attorney general 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 any alternate remedy is pursued in another proceeding, the relator has 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 the other proceeding that has become final is conclusive on all parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the state of Washington, if all time for filing the appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

§ 74.66.070. Qui tam action—Award—Proceeds of action or settlement of claim.

- (1)
 - (a) Subject to (b) of this subsection, if the attorney general proceeds with a qui tam action, the relator must 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.
 - (b) Where the action is one which the court finds 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 or administrative report, hearing, audit, or investigation, or from the news media, the court may award an amount 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.
 - (c) Any payment to a relator under (a) or (b) of this subsection must be made from the proceeds. The relator must also receive an amount for reasonable expenses which the

court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs must be awarded against the defendant.

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

(3) Whether or not the attorney general proceeds with the qui tam action, if the court finds that the action was brought by a person who planned and initiated the violation of RCW 74.66.020 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 which the person would otherwise receive under subsection (1) or (2) of this section, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of RCW 74.66.020, that person must be dismissed from the civil action and may not receive any share of the proceeds of the action. The dismissal may not prejudice the right of the state to continue the action, represented by the attorney general.

(4) If the attorney general does not proceed with the qui tam action and the relator conducts the action, the court may award to the defendant reasonable attorneys' 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) Any funds recovered that remain after calculation and distribution under subsections (1) through (3) of this section must be deposited into the medicaid fraud penalty account established in RCW 74.09.215.

§ 74.66.080. Qui tam action—Restrictions—Dismissal.

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

(2)

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

- (i) In a state criminal, civil, or administrative hearing in which the attorney general or other governmental [government] entity is a party;
- (ii) In a legislative report, or other state report, hearing, audit, or investigation; or
- (iii) By the news media;

unless the action is brought by the attorney general or the relator is an original source of the information.

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

allegations or transactions, and who has voluntarily provided the information to the attorney general before filing an action under this section.

§ 74.66.090. Whistleblower relief.

(1) Any employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent, is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under this chapter or other efforts to stop one or more violations of this chapter.

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

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

§ 74.66.100. Procedure for civil actions.

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

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

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

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

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

§ 74.66.110. Jurisdiction—Seal on action.

(1) Any action under RCW 74.66.040 or 74.66.050 may be brought in the superior court in any county in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by RCW 74.66.020 occurred.

The appropriate court must issue a summons as required by the superior court civil rules and service must occur at any place within the state of Washington.

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

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

§ 74.66.130. Reporting.

Beginning November 15, 2012, and annually thereafter, the attorney general in consultation with the health care authority must report results of implementing the medicaid fraud false claims act. This report must include:

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

Washington Whistleblower Award and Protection Act

(Wash. Rev. Code §§ 21.001.001–21.001.011)ⁱⁱ

§ 21.001.001. Short title

This act may be known and cited as the whistleblower award and protection act.

§ 21.001.002. Definitions

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) “Monetary sanction” means any moneys, including penalties, disgorgement, and interest, ordered to be paid as a result of an administrative or judicial action.
- (2) “Original information” means information that is:
 - (a) Derived from the independent knowledge or analysis of a whistleblower;
 - (b) Not already known to the securities administrator or the securities division from any other source, unless the whistleblower is the original source of the information;
 - (c) Not exclusively derived from an allegation made in an administrative or judicial hearing, in a government report, hearing, audit, or investigation, or from the news media, unless the whistleblower is the source of the information; and
 - (d) Provided to the securities division for the first time after the effective date of this section.
- (3) “Securities administrator” means the administrator of the securities act of Washington, chapter 21.20 RCW, designated pursuant to RCW 21.20.460.
- (4) “Securities division” means the division of the department of financial institutions that administers the securities act of Washington, chapter 21.20 RCW.
- (5) “Whistleblower” means an individual who, alone or jointly with others, provides the state or other law enforcement agency with information pursuant to the provisions set forth in this chapter, and the information relates to a possible violation of state or federal securities laws, including any rules or regulations thereunder, that has occurred, is ongoing, or is about to occur.

§ 21.001.003. Authority to give award to whistleblower

Subject to the provisions of this chapter, the securities administrator may award an amount to one or more whistleblowers who voluntarily provide original information in writing, and in the form and manner required by the securities administrator, to the securities division that leads to the successful enforcement of an administrative or judicial action under chapter 21.20 RCW.

§ 21.001.004. Anonymous whistleblowers

Any individual who anonymously makes a claim must be represented by counsel. Prior to the payment of an award, a whistleblower shall disclose their identity and provide such other information as the securities division may require, directly or through counsel, for the whistleblower.

§ 21.001.005. Limits on award amount

If the securities administrator determines to make one or more awards under RCW 21.001.003, the aggregate amount of awards that may be awarded in connection with an administrative or judicial action may not be less than 10 percent nor more than 30 percent of the monetary sanctions imposed and collected in the related administrative or judicial action.

§ 21.001.006. Discretion to determine amount of award

The determination of the amount of an award made under this chapter shall be in the discretion of the securities administrator consistent with RCW 21.001.005 and 21.001.007.

§ 21.001.007. Source for whistleblower awards

Any whistleblower awards paid under this chapter shall be paid from the securities prosecution fund established in RCW 43.320.115.

§ 21.001.008. Factors to consider to determine amount of award

In determining the amount of an award under this chapter, the securities administrator shall consider:

- (1) The significance of the original information provided by the whistleblower to the success of the administrative or judicial action;
- (2) The degree of assistance provided by the whistleblower in connection with the administrative or judicial action;
- (3) The programmatic interest of the securities administrator in deterring violations of the securities laws by making awards to whistleblowers who provide original information that leads to the successful enforcement of such laws; and
- (4) Any other factors the securities administrator considers relevant.

§ 21.001.009. Grounds for denying whistleblower award

The securities administrator shall not provide an award to a whistleblower under this section if the whistleblower:

- (1) Is convicted of a felony in connection with the administrative or judicial action for which the whistleblower otherwise could receive an award;
- (2) Acquires the original information through the performance of an audit of financial statements required under the securities laws and for whom providing the original information violates 15 U.S.C. 78j-1;
- (3) Fails to submit information to the securities division in such form as the securities administrator may prescribe;
- (4) Knowingly or recklessly makes a false, fictitious, or fraudulent statement or misrepresentation as part of, or in connection with, the original information provided or the administrative or judicial proceeding for which the original information was provided;
- (5) In the whistleblower's submission, the whistleblower's other dealings with the securities administrator, or in the whistleblower's dealings with another authority in connection with a

related action, knowingly and willfully makes any false, fictitious, or fraudulent statement or representation, or uses any false writing or document knowing that it contains any false, fictitious, or fraudulent statement or entry with intent to mislead or otherwise hinder the securities administrator or another authority;

(6) Knows that, or has a reckless disregard as to whether, the original information provided is false, fictitious, or fraudulent;

(7) Has a legal duty to report the original information to the securities administrator or securities division;

(8) Is, or was at the time the whistleblower acquired the original information submitted to the securities division, a member, officer, or employee of the department of financial institutions, the securities and exchange commission, any other state securities regulatory authority, a self-regulatory organization, the public company accounting oversight board, or any law enforcement organization;

(9) Is, or was at the time the whistleblower acquired the original information submitted to the securities division, a member, officer, or employee of a foreign government, any political subdivision, department, agency, or instrumentality of a foreign government, or any other foreign financial regulatory authority as that term is defined in 15 U.S.C. 78c(a)(52);

(10) Is the spouse, parent, child, or sibling of the securities administrator or an employee of the department of financial institutions, or resides in the same household as the securities administrator or an employee of the department of financial institutions; or

(11) Directly or indirectly acquires the original information provided to the securities division from a person:

(a) Who is subject to subsection (2) of this section, unless the information is not excluded from that person's use, or provides the securities division with information about possible violations involving that person;

(b) Who is a person described in subsection (8), (9), or (10) of this section; or

(c) With the intent to evade any provision of this chapter.

§ 21.001.010. Retaliation against whistleblower

(1) No employer may directly or indirectly terminate, discharge, demote, suspend, threaten, harass, or in any other manner retaliate against, an individual because of any lawful act done by the individual:

(a) In providing information to the state or other law enforcement agency concerning a possible violation of state or federal securities laws, including any rules or regulations thereunder, that has occurred, is ongoing, or is about to occur;

(b) In initiating, testifying in, or assisting in any investigation or administrative or judicial action of the securities administrator, securities division, or other law enforcement agency based upon or related to such information;

(c) In making disclosures that are required or protected under the Sarbanes-Oxley act of 2002, 15 U.S.C. 7201 et seq.; the securities act of 1933, 15 U.S.C. 77a et seq.; the securities exchange act of 1934, 15 U.S.C. 78a et seq.; 18 U.S.C. 1513(e); any other law, rule, or regulation subject to the jurisdiction of the securities and exchange commission; or chapter 21.20 RCW or a rule adopted thereunder; or

(d) In making disclosures to a person with supervisory authority over the employee, or such other person working for the employer who has the authority to investigate, discover, or terminate

misconduct, regarding matters subject to the jurisdiction of the securities administrator, securities division, or the securities and exchange commission.

(2) Notwithstanding subsection (1) of this section, an individual is not protected under this section if:

(a) The individual knowingly or recklessly makes a false, fictitious, or fraudulent statement or misrepresentation;

(b) The individual uses a false writing or document knowing that, or with reckless disregard as to whether, the writing or document contains false, fictitious, or fraudulent information; or

(c) The individual knows that, or has a reckless disregard as to whether, the disclosure is of original information that is false or frivolous.

(3) An individual who alleges any act of retaliation in violation of subsection (1) of this section may bring an action for the relief provided in subsection (6) of this section in the court of original jurisdiction for the county or state where the alleged violation occurs, the individual resides, or the person against whom the action is filed resides or has a principal place of business.

(4) A subpoena requiring the attendance of a witness at a trial or hearing conducted under subsection (3) of this section may be served at any place in the United States, in compliance with applicable court rules and the law of the other jurisdiction.

(5) An action under subsection (3) of this section may not be brought:

(a) More than six years after the date on which the violation of subsection (1) of this section occurred; 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 employee alleging a violation of subsection (1) of this section. Notwithstanding the above limitations, an action under subsection (3) of this section may not in any circumstance be brought more than 10 years after the date on which the violation occurs.

(6) A court may award as relief for an individual prevailing in an action brought under this section:

(a) Reinstatement with the same compensation, fringe benefits, and seniority status that the individual would have had, but for the retaliation;

(b) Two times the amount of back pay otherwise owed to the individual, with interest;

(c) Compensation for litigation costs, expert witness fees, and reasonable attorneys' fees;

(d) Actual damages;

(e) An injunction to restrain a violation; or

(f) Any combination of these remedies.

(7) Information that could reasonably be expected to reveal the identity of a whistleblower is exempt from public disclosure under chapter 42.56 RCW. This subsection does not limit the ability of any person to present evidence to a grand jury or to share evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(8) No person may take any action to impede an individual from communicating directly with the securities division staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement with respect to such communications, except with respect to:

(a) Agreements concerning communications covered by the attorney-client privilege, unless disclosure of that information would otherwise be permitted by an attorney under applicable state attorney conduct rules or otherwise; and

(b) Information obtained in connection with legal representation of a client on whose behalf an individual or the individual's employer or firm are providing services, and the individual is seeking to use the information to make a whistleblower submission for the individual's own benefit, unless disclosure would otherwise be permitted by an attorney pursuant to applicable state attorney conduct rules or otherwise.

(9) The rights and remedies provided for in this chapter may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

(10) Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any individual under any federal or state law, or under any collective bargaining agreement.

§ 21.001.011. Securities administrator authority

The securities administrator may adopt such rules and regulations as may be necessary or appropriate to implement the provisions of this chapter consistent with its purpose.

ⁱ Last updated August 2023.

ⁱⁱ Last updated August 2023.