

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Health Care Finance



Office of the Senior Deputy Director



Transmittal No. 13-13

To: All Providers

From: Linda Elam, PhD, MPH 
Senior Deputy Director – State Medicaid Director

Date: **AUG 6 , 2013**

Subject: False Claims Compliance and Oversight

Attachments: (1) District of Columbia False Claims Act, (2) Federal False Claims Act, (3) Section 4.42 and Attachment 4.42-A of the State Plan for Medical Assistance, and (4) 42 U.S.C. §1396a (a) (68).

This Transmittal replaces previous transmittals discussing the above-referenced subject. All Medicaid providers must comply with the District of Columbia False Claims Act, (D.C. Official Code §2-381.01 *et seq.*, as amended), and the Federal False Claims Act (31 U.S.C. §§ 3729 – 3733). Copies of these Acts are included as attachments.

All entities that meet the definition in Section 4.42(a)(1)(A) of the District of Columbia's State Plan for Medical Assistance must comply with additional requirements found in Section 4, Attachment 4.42-A of the State Plan as well as the requirements listed in 42 U.S.C. §1396a (a) (68). Copies of 42 U.S.C. §1396a (a) (68) and the above-referenced Section and Attachment of the Medicaid State Plan are included as attachments. Any reference to "entity" in this Transmittal refers only to those entities that receive or make annual payments under the State Plan of at least Five Million Dollars (\$5,000,000.00).

Each entity must submit to the Division of Program Integrity, Health Care Operations Administration, a letter that certifies compliance with all relevant requirements under the Medicaid State Plan. Specifically, this letter must state that the entity is in compliance with 42 U.S.C. §1396a (a) (68) and that the entity has provided continuing education for false claims education during the prior twelve (12) month period. It should also state that the entity is in compliance with the District and Federal False Claims Acts. This letter of compliance must be submitted annually, beginning calendar year 2013, on or before the last business day of each calendar year for which the entity is certifying compliance. It must be signed by the Chief Executive or Chief Operating Officer of the entity.

Beginning this calendar year, the Department of Health Care Finance (DHCF) will randomly select at least five (5) entities for on-site audits and assessments of compliance with the requirements set forth in Attachment 4.42.A of the District of Columbia Medicaid State Plan and 42 U.S.C. §1396a (a) (68). Each entity shall be audited at least once and no more than five times within a ten-year period.

If you have questions or require additional information about false claims, please contact Ms. Karen Shaw, J.D., M.P.H., Program Manager, Division of Program Integrity, at (202) 698-1718 or via email at Karen.Shaw3@dc.gov.

Enclosures



West's District of Columbia Code Annotated 2001 Edition Currentness

Division I. Government of District.

Title 2. Government Administration. (Refs & Annos)

Chapter 3B. Other Procurement Matters.

→ Subchapter I. Procurement Related Claims.

→ **§ 2-381.01. Definitions.**

For the purposes of this subchapter, and unless otherwise defined, the term:

(1) "Claim" means:

(A) Any request or demand, whether under a contract or otherwise, for money or property, and whether or not the District has title to the money or property, that:

(i) Is presented to an officer, employee, or agent of the District; or

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

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

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

(B) The term "claim" does not include requests or demands for money or property that the District has paid to an individual as compensation for District 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 for the District of Columbia pursuant to § 2-381.07(j)(1).

(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 such data compilations, and any product of discovery.

- (4) "False claims law" means this subchapter.
- (5) "False claims law investigation" means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law.
- (6) "False claims law investigator" means any attorney or investigator employed by the Office of the Attorney General for the District of Columbia who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the District government acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation.
- (7) "Knowing" or "knowingly" means:
- (A) That a person, with respect to information, does any of the following:
 - (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) The terms "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 regulation, or from the retention of any overpayment
- (10) "Original source" means an individual who:
- (A) Has voluntarily disclosed to the District, before a public disclosure under § 2-381.03(c-1)(1), the information on which allegations or transactions in a claim are based; or
 - (B) Has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the District before filing an action under this section.
- (11) "Person" includes any natural person, corporation, firm, association, organization, partnership, business, or trust.

(12) "Proceeds" means civil penalties as well as double or treble damages as provided in § 2-381.02, and criminal fines as provided in § 2-381.09.

→ **§ 2-381.02. False claims liability, treble damages, costs, and civil penalties; exceptions.**

(a) Any person who commits any of the following acts shall be liable to the District for 3 times the amount of damages which the District sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the District for the costs of a civil action brought to recover penalties or damages, and shall be liable to the District for a civil penalty of not less than \$5,500, and not more than \$11,000, for each false or fraudulent claim for which the person:

(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 material to a false or fraudulent claim;

(3) Has possession, custody, or control of property or money used, or to be used, by the District and knowingly delivers, or causes to be delivered, less than all of that money or property;

(4) Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the District and, intending to defraud the District, makes or delivers the receipt without completely 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 officer or employee of the District who lawfully may not sell or pledge property;

(6) 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 District, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the District;

(7) Conspires to commit a violation of paragraph (1), (2), (3), (4), (5), or (6) of this subsection;

(8) Is a beneficiary of an inadvertent submission of a false or fraudulent claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false or fraudulent claim to the District; or

(9) Is the beneficiary of an inadvertent payment or overpayment by the District of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the District.

(b) Notwithstanding subsection (a) of this section, the court may assess not more than two times the amount of damages which the District sustains because of the act of the person, and there shall be no civil penalty, if the court finds all of the following:

(1) The person committing the violation furnished officials of the District responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information;

(2) The person fully cooperated with any investigation by the District; and

(3) At the time the person furnished the District with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Liability pursuant to this section shall be joint and several for any act committed by 2 or more persons.

(d) This section shall not apply to claims, records, or statements made pursuant to those portions of Title 47 that refer or relate to taxation.

→ **§ 2-381.03. Attorney General for the District of Columbia investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as qui tam plaintiffs; jurisdiction of courts.**

(a) The Attorney General for the District of Columbia shall investigate, with such assistance from other District agencies as may be required, violations pursuant to § 2-381.02 involving District funds. If the Attorney General for the District of Columbia finds that a person has violated or is violating the provisions of § 2-381.02, the Attorney General for the District of Columbia may bring a civil action against that person in the Superior Court of the District of Columbia.

(b)(1) A person may bring a civil action for a violation of § 2-381.02 for the person and for the District. The action shall be brought in the name of the District. The person bringing the action shall be referred to as the qui tam plaintiff. The action may be dismissed only if the court and the Attorney General for the District of Columbia give written consent to the dismissal and their reasons for consenting.

(2) A complaint filed by a qui tam plaintiff pursuant to this subsection shall be filed in the Superior Court in camera and may remain under seal for up to 180 days, unless the seal is extended by the court. No service shall be made on the defendant until after the complaint is unsealed.

(3) On the same day as the complaint is filed pursuant to paragraph (2) of this subsection, the qui tam plaintiff shall serve the Attorney General for the District of Columbia by mail, return receipt requested, with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(4) Within 180 days after receiving a complaint alleging violations involving District funds, the Attorney General for the District of Columbia shall do either of the following:

- (A) Notify the court that he or she intends to proceed with the action, in which case the seal may be lifted unless, for good cause shown, the court continues the seal; or
 - (B) Notify the court that he or she declines to take over the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.
- (5) Upon a showing of good cause, the Attorney General for the District of Columbia may move the court for extensions of the time during which the complaint remains under seal.
- (6) When a qui tam plaintiff brings an action pursuant to this subsection, no person other than the District may intervene or bring a related action based on the facts underlying the pending action.
- (7) The District is not liable for expenses which a qui tam plaintiff incurs in bringing an action under this section.
- (c)(1) No person may bring an action pursuant to subsection (b) of this section against a member of the Council of the District of Columbia, a member of the District judiciary, or an elected official in the executive branch of the District, if the action is based on evidence or information known to the District when the action was brought.
- (2) No person may bring an action under subsection (b) of this section 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 District is already a party.
- (c-1)(1) Except as provided in paragraph (2) of this subsection, a court shall dismiss an action or claim under this section if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:
- (A) In a criminal, civil, or administrative hearing in which the District or its agent is a party;
 - (B) In a report, hearing, audit, or investigation by the Council of the District of Columbia, the Auditor of the District of Columbia, the Inspector General of the District of Columbia, or other District agency; or
 - (C) By the news media.
- (2) A court shall not dismiss an action or claim as provided in paragraph (1) of this subsection if:
- (A) The action is brought by the Attorney General for the District of Columbia;
 - (B) The District is opposed to the dismissal; or
 - (C) The action is brought by a qui tam plaintiff and the qui tam plaintiff is an original source of the information.

(d)(1) If the District proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the qui tam plaintiff. The qui tam plaintiff shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2) of this subsection.

(2)(A) The District may dismiss the action notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the District of the filing of the motion to dismiss and the court has provided the qui tam plaintiff with an opportunity for a hearing on the motion.

(B) The District may settle the action with the defendant, notwithstanding the objections of the qui tam plaintiff, if the court determines, after a hearing providing the qui tam plaintiff an opportunity to be heard, 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 District that unrestricted participation during the course of the litigation by the qui tam plaintiff would interfere with or unduly delay the District'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 qui tam plaintiff's participation, such as:

- (i) Limiting the number of witnesses the qui tam plaintiff may call;
- (ii) Limiting the length of the testimony of such witnesses;
- (iii) Limiting the qui tam plaintiff's cross-examination of witnesses; or
- (iv) Otherwise limiting the participation by the qui tam plaintiff in the litigation.

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

(e)(1) If the District elects not to proceed and the qui tam action was proper pursuant to subsection (c) of this section, the qui tam plaintiff shall have the same right to conduct the action as the Attorney General for the District of Columbia would have had if he or she had chosen to proceed pursuant to subsection (b) of this section. If the District so requests, the District shall be served with copies of all pleadings filed in the action.

(2) When the qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may nevertheless permit the District to intervene at a later date upon a showing of good cause.

(f)(1)(A) If the District proceeds with an action brought by a qui tam plaintiff pursuant to subsection (b) of this section, the qui tam plaintiff, subject to subparagraph (B) of this paragraph, shall receive at least 15%, but not more than 25%, of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam

plaintiff 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 qui tam plaintiff, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a report, hearing, audit, or investigation conducted by a District agency, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10% of the proceeds, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation.

(C) Any payment to a qui tam plaintiff under this paragraph shall be made from the proceeds of the judgment or the settlement of the claim. Any qui tam plaintiff receiving a payment under this paragraph shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2)(A) If the District does not proceed with an action brought by a qui tam plaintiff pursuant to subsection (b) of this section, the qui tam plaintiff shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages; provided, that the amount shall be not less than 25%, and not more than 30%, of the proceeds of the action or settlement of the claim.

(B) Any payment to a qui tam plaintiff under this paragraph shall be made from the proceeds of the judgment or the settlement of the claim. Any qui tam plaintiff receiving a payment under this paragraph shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) The portion of the recovery not distributed pursuant to paragraphs (1) and (2) of this subsection shall be paid to the District treasury.

(4)(A) Whether or not the District proceeds with the action, if the court finds that the action was brought by a qui tam plaintiff who planned and initiated the violation of § 2-381.02 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 qui tam plaintiff would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of the qui tam plaintiff in advancing the case to litigation and any relevant circumstances pertaining to the violation.

(B) If the qui tam plaintiff is convicted of criminal conduct arising from his or her role in the violation of § 2-381.02, the qui tam plaintiff shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the District to continue the action, represented by the Attorney General for the District of Columbia.

(5) If the District does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant reasonable attorneys fees and expenses necessarily incurred if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was frivolous, vexatious, or brought solely for purposes of harassment.

(6)(A) Notwithstanding subsection (b) of this section, the District may elect to pursue a violation of § 2-381.02 through any alternate remedy available to the District, including an administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the qui tam plaintiff shall have the same rights in such proceeding as such person would have had if the qui tam action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section.

(B) For the purposes of this paragraph, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(g)(1) Whether or not the District proceeds with the action, upon a showing by the District that certain actions of discovery by the qui tam plaintiff would interfere with the investigation or prosecution of a criminal or civil matter by the District or a criminal matter in the District of Columbia arising out of the same facts, the court may stay such discovery for a period of not more than 60 days.

(2) Upon a further showing that the District or the United States Attorney's Office for the District of Columbia has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the qui tam action will interfere with the ongoing criminal or civil investigation or proceedings, the court may extend the stay of discovery provided for in paragraph (1) of this subsection.

(3) Any showing provided for under this subsection shall be conducted in camera.

→ **§ 2-381.04. Relief from retaliatory actions.**

(a) Any employee, contractor, or agent shall be 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 subchapter or other efforts to stop one or more violations of this subchapter.

(b) The relief authorized under subsection (a) of this section shall include:

(1) Reinstatement with the same seniority status that the employee, contractor, or agent would have had but for the discrimination;

(2) Two 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 discrimination, including litigation costs and reasonable attorneys' fees.

(c) An action seeking relief under this section may be brought in the Superior Court of the District of Columbia; provided, that a civil action seeking relief under this section may not be brought more than 3 years after the date when the retaliation occurred.

→ **§ 2-381.05. Limitation of actions; burden of proof.**

(a) A civil action brought pursuant to § 2-381.03 may not be brought:

(1) More than 6 years after the date on which the violation of § 2-381.02 is committed; or

(2) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the District charged with the responsibility to act in those circumstances, but in no event more than 10 years after the date on which the violation of § 2-381.02 is committed, whichever occurs last.

(b) A civil action brought pursuant to § 2-381.03 may not be brought for activity prior to April 12, 1997.

(c) In any action brought pursuant to § 2-381.03, the District or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a judgment of guilt in a criminal proceeding charging false statements or fraud, upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action brought pursuant to § 2-308.15 which involves the same transaction as in the criminal proceeding.

(e)(1) If the District elects to intervene and proceed with an action brought under § 2-381.03, the District may file its own complaint or amend the complaint of a qui tam plaintiff who has brought an action under § 2-381.03(b) to clarify or add detail to the claims in which the District is intervening and to add any additional claims with respect to which the District contends it is entitled to relief.

(2) Any District pleading as provided for in this subsection shall relate back to the filing date of the complaint of the qui tam plaintiff who originally brought the action, and thereby comply with the statute of limitations as provided for in this subchapter, to the extent that the claim of the District arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of the qui tam plaintiff.

→ **§ 2-381.06. Remedies pursuant to other laws; severability of provisions; liberality of article construction.**

The provisions of this chapter are not exclusive, and the remedies provided for shall be in addition to any other remedies provided for in any other law or available pursuant to common law.

→ **§ 2-381.07. Civil investigative demands.**

(a)(1) Whenever the Attorney General for the District of Columbia has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General for the District of Columbia may, in order to determine whether to commence a civil proceeding pursuant to this chapter, issue in writing and cause to be served upon such person a civil investigative demand requiring that such person do the following:

(A) Produce documentary material relevant to the false claims law investigation for inspection and copying;

(B) Answer in writing written interrogatories with respect to any documentary material or information relevant to the false claims law investigation;

(C) Provide oral testimony concerning any documentary material or information relevant to the false claims law investigation; or

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

(2) The Attorney General for the District of Columbia may delegate to the Principal Deputy Attorney General for the District of Columbia the authority, in his or her absence, to issue civil investigative demands pursuant to paragraph (1) of this subsection. The Attorney General for the District of Columbia may not issue a civil investigative demand in order to conduct, or assist in the conducting of, a criminal investigation.

(b)(1) Each civil investigative demand issued pursuant to subsection (a)(1) of this section shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to have been violated.

(2) If such demand is for the production of documentary material, the demand shall do the following:

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

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

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

(3) If such demand is for answers to written interrogatories, the demand shall do the following:

- (A) Set forth with specificity the written interrogatories to be answered;
 - (B) Prescribe dates at which time answers to written interrogatories shall be submitted; and
 - (C) Identify the false claims law investigator to whom such answers shall be submitted.
- (4) If such demand is for the giving of oral testimony, the demand shall do the following:
- (A) Prescribe the date, time, and place at which oral testimony shall commence;
 - (B) Identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;
 - (C) Specify that such attendance and testimony are necessary to conduct the investigation;
 - (D) Notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and
 - (E) Describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.
- (5) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand shall be a date that is not less than 7 days after the date on which the demand is received, unless the Attorney General for the District of Columbia determines that exceptional circumstances are present that warrant the commencement of such testimony within a shorter period of time.
- (6) The Attorney General for the District of Columbia shall not authorize, pursuant to subsection (a)(1) of this section, issuance of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General for the District of Columbia, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.
- (c) A civil investigative demand 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 such material, answers, or testimony would be protected from disclosure under:
- (1) The standards applicable to subpoenas or subpoenas duces tecum issued by a court of the District of Columbia to aid in a grand jury investigation; or
 - (2) The standards applicable to discovery requests pursuant to the Superior Court Civil Rules to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(d)(1) Any civil investigative demand issued pursuant to subsection (a) of this section may be served by a false claims law investigator or his or her agent, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States; provided, that the Superior Court of the District of Columbia could exercise jurisdiction over the recipient of the demand consistent with the due process clause of the Constitution of the United States.

(2) Any such demand or any petition filed pursuant to subsection (a) of this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Superior Court Civil Rules prescribe for service in a foreign country; provided, that the Superior Court of the District of Columbia could exercise jurisdiction over the recipient of the demand consistent with the due process clause of the Constitution of the United States.

(e)(1) Service of any civil investigative demand issued pursuant to subsection (a) of this section, or of any petition filed pursuant to subsection (a) of this section, may be made upon a partnership, corporation, association, or other legal entity by the following methods:

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

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

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

(2) Service of any such demand or petition may be made upon any natural person by the following methods:

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

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

(f) A verified return by the individual serving any civil investigative demand or any petition filed pursuant to subsection (a) of this section setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(g)(1) The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the following:

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

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

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

(3) Any person upon whom any civil investigative demand for the production of documentary material has been served shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct pursuant to subsection (j)(1) of this section. Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(h)(1) Each interrogatory in a civil investigative demand shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, as follows:

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

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

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

(i)(1) The examination of any person, pursuant to a civil investigative demand for oral testimony, shall be conducted before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is taken shall put the witness under oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken by any means authorized by, and in a manner consistent with, the Superior Court Civil Rules, and shall be transcribed.

- (2) The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney or other representative of the person giving the testimony, the attorney for the District government, any person who may be agreed upon by the attorney for the District government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.
- (3) The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.
- (4) When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by an attorney, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance that the witness desires shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.
- (5) The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness. The officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.
- (6) Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General for the District of Columbia may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.
- (7) Any person compelled to appear for oral testimony pursuant to a civil investigative demand may be accompanied, represented, and advised by an attorney. The attorney may advise such person, in confidence, with respect to any question asked of such person. Such person or attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record only when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not, directly or through the person's attorney, otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the Superior Court of the District of Columbia pursuant to subsection (d)(1) of this section for an order compelling such person to answer the question.

(8) Any person appearing for oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and allowances that are paid to witnesses in the Superior Court of the District of Columbia.

(j)(1) The Attorney General for the District of Columbia shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received pursuant to this section, and shall designate such additional false claims law investigators as the Attorney General for the District of Columbia determines from time to time to be necessary to serve as deputies to the custodian.

(2)(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony pursuant to this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material pursuant to paragraph (4) of this subsection.

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or any other officer or employee of the Office of the Attorney General for the District of Columbia who is authorized for such use by the Attorney General for the District of Columbia. Such material, answers, and transcripts may be used by any authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony pursuant to this section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or officer or employee of the Office of the Attorney General for the District of Columbia authorized pursuant to subparagraph (B) of this paragraph; provided that nothing in this subparagraph is intended to prevent:

(i) The availability of material, answers, or transcripts if consent is given by the person who produced such material, answers, or transcripts;

(ii) Disclosure to the Council, including any committee of the Council;

(iii) Disclosure to the United States Attorney's Office;

(iv) Disclosure to any other federal or state agency for use by such agency in furtherance of its statutory responsibilities; provided, that disclosure of information to any agency other than the Council or the United States Attorney's Office shall be allowed only upon application, made by the Attorney General for the District of Columbia to the Superior Court of the District of Columbia, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities and after giving the individuals who provided the information an opportunity to be heard on the release of the information; or

(v) Disclosure to any federal or state agency in connection with a joint case or investigation with the Office of

the Attorney General for the District of Columbia provided that before disclosure, an official of the receiving agency agrees in writing to abide by the disclosure restrictions of this paragraph.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General for the District of Columbia shall prescribe, the following shall apply:

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

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

(3) Whenever any attorney of the Attorney General for the District of Columbia is conducting any official investigation or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received pursuant to this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such investigation or proceeding as such attorney determines to be required. Upon the completion of any such investigation or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered that have not passed into the control of any court or agency through introduction into the record of any case or proceeding.

(4) If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand, and any case or proceeding before a court arising out of such investigation, or any proceeding before any District government agency involving such material, has been completed, or no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator pursuant to subsection (g)(2) of this section or made for the Attorney General for the District of Columbia pursuant to paragraph (2)(B) of this subsection), which has not passed into the control of any court or agency through introduction into the record of such case or proceeding.

(5)(A) In the event of the death, disability, or separation from service in the Attorney General for the District of Columbia of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand issued pursuant to this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General for the District of Columbia shall promptly do the following:

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

(ii) Transmit in writing to the person who produced such material, answers, or testimony notice of the identity

and address of the successor so designated.

(B) Any person who is designated to be a successor pursuant to this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction that occurred before that designation.

(k)(1) Whenever any person fails to comply with any civil investigative demand, or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General for the District of Columbia may file in the Superior Court of the District of Columbia and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2)(A) Any person who receives a civil investigative demand may file in the Superior Court of the District of Columbia and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. Any petition issued pursuant to this subparagraph must be filed:

(i) Within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier; or

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

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

(3) At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand, such person may file in the Superior Court of the District of Columbia and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(4) Whenever any petition is filed in the Superior Court of the District of Columbia, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal. Any disobedience of any final order entered pursuant to this section by any court shall be punished as contempt of court.

(5) The Superior Court Civil Rules shall apply to any petition issued pursuant to this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(l) Any documentary material, answers to written interrogatories, or oral testimony provided pursuant to any civil investigative demand issued pursuant to subsection (a) of this section shall be exempt from disclosure pursuant to subchapter II of Chapter 5 of this title.

(m) For the purposes of this section, the term "person" means any natural person, partnership, corporation, association, or other legal entity, including any state or political subdivision of a state.

→ **§ 2-381.08. Antifraud fund. [Repealed]**

→ **§ 2-381.09. Penalties for false representations.**

Whoever makes or presents to any officer or employee of the District of Columbia government, or to any department or agency thereof, any claim upon or against the District of Columbia, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than one year and assessed a fine of not more than \$100,000 for each violation of this chapter. The Attorney General for the District of Columbia shall prosecute violations of this section.

→ **§ 2-381.10. Civil penalty inflation adjustment.**

The Attorney General for the District of Columbia is granted the authority to, at least once every 4 years, promulgate rules to adjust the amounts of the civil penalties listed in § 2-381.02 by the same amount that the Attorney General of the United States shall, from time to time, adjust the civil monetary penalties found in 31 U.S.C. § 3729 pursuant to the procedures described in the Federal Civil Penalties Inflation Adjustment Act of 1990, approved October 5, 1990 (104 Stat. 890; 28 U.S.C. § 2461, note). Any increase to a civil penalty as provided in this section shall only apply to violations which occur after the date the increase takes effect.

END OF DOCUMENT

§ 3729. False claims

(a) **LIABILITY FOR CERTAIN ACTS.—**

- (1) **IN GENERAL.—**Subject to paragraph (2), any person who—
- (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;
 - (C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);
 - (D) has possession, custody, or control of property or money used, or to be used, by the Government 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 and, intending to defraud the Government, 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, or a member of the Armed Forces, 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, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410), plus 3 times the amount of damages which the Government sustains because of the act of that person.

- (2) **REDUCED DAMAGES.**—If the court finds that—
- (A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;
 - (B) such person fully cooperated with any Government investigation of such violation; and
 - (C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

- (3) **COSTS OF CIVIL ACTIONS.**—A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

- (b) **DEFINITIONS.**—For purposes of this section—

- (1) the terms “knowing” and “knowingly”—
 - (A) 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; and
 - (B) require no proof of specific intent to defraud;
- (2) the term “claim”—

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—

(i) is presented to an officer, employee, or agent of the United States; 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's behalf or to advance a Government program or interest, and if the United States Government —

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

§ 3730. Civil actions for false claims

- (a) **RESPONSIBILITIES OF THE ATTORNEY GENERAL.**—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.
- (b) **ACTIONS BY PRIVATE PERSONS.**—
- (1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.
 - (2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.
 - (3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.
 - (4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—
 - (A) proceed with the action, in which case the action shall be conducted by the Government; or
 - (B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

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

(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.—

- (1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).
- (2)
 - (A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.
 - (B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.
 - (C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—
 - (i) limiting the number of witnesses the person may call;
 - (ii) limiting the length of the testimony of such witnesses;
 - (iii) limiting the person's cross-examination of witnesses; or
 - (iv) otherwise limiting the participation by the person in the litigation.

- (D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.
- (3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.
- (4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government'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 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government 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 subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) AWARD TO QUI TAM PLAINTIFF.—

- (1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.
- (2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.
- (3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 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 paragraph (1) or (2) of this subsection, 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 section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

- (4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) CERTAIN ACTIONS BARRED.—

- (1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

- (2) (A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

- (B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

- (3) In no event may a person bring an action under subsection (b) 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 Government is already a party.

- (4) (A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed--

(i) in a Federal criminal, civil, or administrative hearing; in which the Government or its agent is a party;

(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation: or

(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, “original source” means an individual who either (1) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who 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 Government before filing an action under this section.

- (f) **GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.**—The Government is not liable for expenses which a person incurs in bringing an action under this section.
- (g) **FEES AND EXPENSES TO PREVAILING DEFENDANT.**—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.
- (h) **RELIEF FROM RETALIATORY ACTIONS.**—
- (1) **IN GENERAL.**—Any employee, contractor, or agent shall be 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, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter.
 - (2) **RELIEF.**—Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 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. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

§ 3731. False claims procedure

(a) A subpoena [subpoena] requiring the attendance of a witness at a trial or hearing conducted under section 3730 of this title may be served at any place in the United States.

(b) A civil action under section 3730 may not be brought—

- (1) more than 6 years after the date on which the violation of section 3729 is committed, or
- (2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(c) If the Government elects to intervene and proceed with an action brought under 3730(b), the Government may file its own complaint or amend the complaint of a person who has brought an action under section 3730(b) to clarify or add detail to the claims in which the Government is intervening and to add any additional claims with respect to which the Government contends it is entitled to relief. For statute of limitations purposes, any such Government pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(d) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(e) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.

§ 3732. False claims jurisdiction

(a) **ACTIONS UNDER SECTION 3730.**—Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

(b) **CLAIMS UNDER STATE LAW.**—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local

government if the action arises from the same transaction or occurrence as an action brought under section 3730.

(c) **SERVICE ON STATE OF LOCAL AUTHORITIES.**—With respect to any State or local government that is named as a co-plaintiff with the United States in an action brought under subsection (b), a seal on the action ordered by the court under section 3730(b) shall not preclude the Government 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 that State or local government to investigate and prosecute such actions on behalf of such governments, except that such seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

§ 3733. Civil investigative demands

(a) **IN GENERAL.**—

- (1) **ISSUANCE AND SERVICE.**—Whenever the Attorney General, or a designee (for purposes of this section), has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or making an election under section 3730(b), issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—
- (A) to produce such documentary material for inspection and copying,
 - (B) to answer in writing written interrogatories with respect to such documentary material or information,
 - (C) to give oral testimony concerning such documentary material or information, or
 - (D) to furnish any combination of such material, answers, or testimony.

The Attorney General may delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney

General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act investigation.

(2) CONTENTS AND DEADLINES.—

- (A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.
- (B) If such demand is for the production of documentary material, the demand shall—
 - (i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;
 - (ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and
 - (iii) identify the false claims law investigator to whom such material shall be made available.
- (C) If such demand is for answers to written interrogatories, the demand shall—
 - (i) set forth with specificity the written interrogatories to be answered;
 - (ii) prescribe dates at which time answers to written interrogatories shall be submitted; and
 - (iii) identify the false claims law investigator to whom such answers shall be submitted.
- (D) If such demand is for the giving of oral testimony, the demand shall—
 - (i) prescribe a date, time, and place at which oral testimony shall be commenced;
 - (ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom

the transcript of such examination shall be submitted;

- (iii) specify that such attendance and testimony are necessary to the conduct of the investigation;
 - (iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and
 - (v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.
- (E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.
- (F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.
- (G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(b) **PROTECTED MATERIAL OR INFORMATION.—**

- (1) **IN GENERAL.—**A civil investigative demand issued under subsection (a) 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 such material, answers, or testimony would be protected from disclosure under—

- (A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or
 - (B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.
 - (2) EFFECT ON OTHER ORDERS, RULES, AND LAWS.—Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.
- (c) SERVICE; JURISDICTION.—
- (1) BY WHOM SERVED.—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.
 - (2) SERVICE IN FOREIGN COUNTRIES.—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.
- (d) SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.—
- (1) LEGAL ENTITIES.—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—
 - (A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general

agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

- (B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or
 - (C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.
- (2) NATURAL PERSONS.—Service of any such demand or petition may be made upon any natural person by—
- (A) delivering an executed copy of such demand or petition to the person; or
 - (B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) PROOF OF SERVICE.—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) DOCUMENTARY MATERIAL.—

- (1) SWORN CERTIFICATES.—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—
 - (A) in the case of a natural person, the person to whom the demand is directed, or
 - (B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

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

- (2) **PRODUCTION OF MATERIALS.**—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(g) **INTERROGATORIES.**—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

- (1) in the case of a natural person, the person to whom the demand is directed, or
- (2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

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

(h) **ORAL EXAMINATIONS.**—

- (1) **PROCEDURES.**—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer

and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

- (2) **PERSONS PRESENT.**—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.
- (3) **WHERE TESTIMONY TAKEN.**—The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.
- (4) **TRANSCRIPT OF TESTIMONY.**—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.
- (5) **CERTIFICATION AND DELIVERY TO CUSTODIAN.**—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true

record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

- (6) **FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.**—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.
- (7) **CONDUCT OF ORAL TESTIMONY.**—
 - (A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.
 - (B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18 [18 USCS §§ 6001 et seq.].
- (8) **WITNESS FEES AND ALLOWANCES.**—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

- (1) DESIGNATION.—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.
- (2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—
 - (A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).
 - (B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.
 - (C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any

other agency of the United States for use by such agency in furtherance of its statutory responsibilities.

- (D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—
- (i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and
 - (ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

(3) **USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.**—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

- (4) **CONDITIONS FOR RETURN OF MATERIAL.**—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—
- (A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or
 - (B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all

documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

- (5) **APPOINTMENT OF SUCCESSOR CUSTODIANS.**—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—
- (A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and
 - (B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

(j) **JUDICIAL PROCEEDINGS.**—

- (1) **PETITION FOR ENFORCEMENT.**—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.
- (2) **PETITION TO MODIFY OR SET ASIDE DEMAND.**—

(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

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

(3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—

(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside

those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

- (i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or
- (ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

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

(4) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under

this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(k) **DISCLOSURE EXEMPTION.**—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

(l) **DEFINITIONS.**—For purposes of this section—

(1) the term “false claims law” means—

(A) this section and sections 3729 through 3732; and

(B) any Act of Congress enacted after the date of the enactment of this section [enacted Oct. 27, 1986] which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

(2) the term “false claims law investigation” means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

(3) the term “false claims law investigator” means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(4) the term “person” means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

(5) the term “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 such data compilations, and any product of discovery;

(6) the term “custodian” means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1);

(7) the term “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 subparagraph (A); and
 - (C) any index or other manner of access to any item listed in subparagraph (A); and
- (8) the term “official use” means any use that is consistent with the law, and the regulations and policies of the Department of Justice, including use in connection with internal Department of Justice memoranda and reports; communications between the Department of Justice and a Federal, State, or local government agency, or a contractor of a Federal, State, or local government agency, undertaken in furtherance of a Department of Justice 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 Government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
State/Territory: District of Columbia

Citation 4.42 Employee Education About False Claims Recoveries.

1902(a)(68) of

The Act, P.L.109-171
(Section 6032)

(a) The Medicaid agency meets the requirements regarding establishment of policies and procedures for the education of employees of entities covered by section 1902(a)(68) of the Social Security Act (the Act) regarding false claims recoveries and methodologies for oversight of entities' compliance with these requirements.

(1) Definitions.

(A) An "entity" includes a governmental agency, organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists), whether for-profit or not-for-profit, which receives or makes payments, under a State Plan approved under title XIX or under any waiver of such plan, totaling at least \$5,000,000 annually.

If an entity furnishes items or services at more than a single location or under more than one contractual or other payment arrangement, the provisions of section 1902(a)(68) apply if the aggregate payments to that entity meet the \$5,000,000 annual threshold. This applies whether the entity submits claims for payments using one or more provider identification or tax identification numbers.

A governmental component providing Medicaid health care items or services for which Medicaid payments are made would qualify as an "entity" (e.g., a state mental health facility or school district providing school-based health services). A government agency which merely administers the Medicaid program, in whole or part

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(e.g., managing the claims processing system or determining beneficiary eligibility), is not, for these purposes, considered to be an entity.

An entity will have met the \$5,000,000 annual threshold as of January 1, 2007, if it received or made payments in that amount in Federal fiscal year 2006. Future determinations regarding an entity's responsibility stemming from the requirements of section 1902(a)(68) will be made by January 1 of each subsequent year, based upon the amount of payments an entity either received or made under the State Plan during the preceding Federal fiscal year.

- (B) An "employee" includes any officer or employee of the entity.
- (C) A "contractor" or "agent" includes any contractor, subcontractor, agent, or other person which or who, on behalf of the entity, furnishes, or otherwise authorizes the furnishing of, Medicaid health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by the entity.
- (2) The entity must establish and disseminate written policies which must also be adopted by its contractors or agents. Written policies may be on paper or in electronic form, but must be readily available to all employees, contractors, or agents. The entity need not create an employee handbook if none already exists.
- (3) An entity shall establish written policies for all employees (including management), and of any contractor or agent of the entity, that include detailed information about the False Claims Act and the other provisions named in section 1902(a)(68)(A). The entity shall include in those written policies detailed information about the entity's policies and procedures for detecting and preventing waste, fraud, and abuse. The entity shall also include in any employee

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handbook a specific discussion of the laws described in the written policies, the rights of employees to be protected as whistleblowers and a specific discussion of the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

- (4) The requirements of this law should be incorporated into each State's provider enrollment agreements.
- (5) The State will implement this State Plan amendment on January 1, 2007.
- (b) ATTACHMENT 4.42-A describes, in accordance with section 1902(a)(68) of the Act, the methodology of compliance oversight and the frequency with which the State will re-assess compliance on an ongoing basis.

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Methodology of Compliance Oversight, and Frequency

1. Method of Compliance Oversight.
 - a. The initial implementation of Section 1902(a)(68) of the Act shall include the annual dissemination to all entities a copy of the District of Columbia False Claims Act, (D.C. Official Code §2-308.14, as amended), and other relevant laws, rules or regulations along with a Medical Assistance Administration false claims education policy letter indicating mandatory compliance pursuant to Section 1902(a)(68) and an enclosed explanation of the requirements.
 - b. Each entity shall submit to the Medical Assistance Administration a letter of compliance calendar years 2007 and 2008, on or before January 1, 2009, and thereafter, on or before the first day of each succeeding calendar year for the period covering the prior calendar year. The letter of compliance shall be signed by the Chief Executive or Chief Operating Officer of the entity, certifying that all of the requirements of the Medicaid State Plan have been met.
2. Frequency of State Assessment of Ongoing Compliance by Entities.
 - a. On an annual basis to commence on the second anniversary following the Medical Assistance Administration's initial implementation date of Section 1902(a)(68), each entity will be required to submit an annual false claims education certification letter to the Medical Assistance Administration, stating that the entity has provided continuing education for false claims education during the prior twelve (12) months.
 - b. The annual false claims education certification letters will be maintained by the Medicaid agency for review by CMS upon request.
 - c. Those parts of District of Columbia government that are entities will be provided with an annual update of the false claims education policy notice under the requirements of Section 1902(a)(68) including any changes or amendments in the requirements, the District of Columbia False Claims Act, other relevant laws, rules, and regulations.
 - d. Annually beginning in calendar year 2008, the Medical Assistance Administration will randomly select a minimum of five (5) entities for focused audit and compliance with Section 4.42. The selected entities will be required to provide written documentation of their compliance with Section 4.42 and 1902(a)(68) of the Act. Such documentation will be used as the basis for a desk and/or on-site audit of each selected entity to verify annual compliance with Section 4.42.
 - e. Over a ten year period beginning with implementation of Section 4.42 each entity shall be audited at least once but not more than five (5) times within the ten year period.

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see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-233 effective with respect to payments under section 1396b of this title for calendar quarters commencing after Dec. 31, 1973, see section 13(d) of Pub. L. 93-233, set out as a note under section 1396a of this title.

§ 1396a. State plans for medical assistance

(a) Contents

A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State equal to not less than 40 per centum of the non-Federal share of the expenditures under the plan with respect to which payments under section 1396b of this title are authorized by this subchapter; and, effective July 1, 1969, provide for financial participation by the State equal to all of such non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;

(3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness;

(4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency, (C) that each State or local officer, employee, or independent contractor who is responsible for the expenditure of substantial amounts of funds under the State plan, each individual who formerly was such an officer, employee, or contractor, and each partner of such an officer, employee, or contractor shall be prohibited from committing any act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an

officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, and (D) that each State or local officer, employee, or independent contractor who is responsible for selecting, awarding, or otherwise obtaining items and services under the State plan shall be subject to safeguards against conflicts of interest that are at least as stringent as the safeguards that apply under chapter 21 of title 41 to persons described in section 2102(a)(3) of title 41;

(5) either provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan; or provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan approved under subchapter I or XVI of this chapter (insofar as it relates to the aged) if the State is eligible to participate in the State plan program established under subchapter XVI of this chapter, or by the agency or agencies administering the supplemental security income program established under subchapter XVI or the State plan approved under part A of subchapter IV of this chapter if the State is not eligible to participate in the State plan program established under subchapter XVI of this chapter;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide—

(A) safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with—

(i) the administration of the plan; and

(ii) the exchange of information necessary to certify or verify the certification of eligibility of children for free or reduced price breakfasts under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] and free or reduced price lunches under the Richard B. Russell National School Lunch Act [42 U.S.C. 1751 et seq.], in accordance with section 9(b) of that Act [42 U.S.C. 1758(b)], using data standards and formats established by the State agency; and

(B) that, notwithstanding the Express Lane option under subsection (e)(13), the State may enter into an agreement with the State agency administering the school lunch program established under the Richard B. Russell National School Lunch Act under which the State shall establish procedures to ensure that—

(i) a child receiving medical assistance under the State plan under this subchapter whose family income does not exceed 133 percent of the poverty line (as defined in section 9902(2) of this title, including any

and Federally-qualified health centers described in section 1396d(1)(2)(B)⁹ of this title, and

(B) using applications which are other than those used for applications for aid under such part;

(56) provide, in accordance with subsection (e) of this section, for adjusted payments for certain inpatient hospital services;

(57) provide that each hospital, nursing facility, provider of home health care or personal care services, hospice program, or medicaid managed care organization (as defined in section 1396b(m)(1)(A) of this title) receiving funds under the plan shall comply with the requirements of subsection (w) of this section;

(58) provide that the State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives that would be distributed by providers or organizations under the requirements of subsection (w) of this section;

(59) maintain a list (updated not less often than monthly, and containing each physician's unique identifier provided under the system established under subsection (x) of this section) of all physicians who are certified to participate under the State plan;

(60) provide that the State agency shall provide assurances satisfactory to the Secretary that the State has in effect the laws relating to medical child support required under section 1396g-1 of this title;

(61) provide that the State must demonstrate that it operates a medicaid fraud and abuse control unit described in section 1396b(q) of this title that effectively carries out the functions and requirements described in such section, as determined in accordance with standards established by the Secretary, unless the State demonstrates to the satisfaction of the Secretary that the effective operation of such a unit in the State would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the State plan, and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a unit;

(62) provide for a program for the distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children in accordance with section 1396s of this title;

(63) provide for administration and determinations of eligibility with respect to individuals who are (or seek to be) eligible for medical assistance based on the application of section 1396u-1 of this title;

(64) provide, not later than 1 year after August 5, 1997, a mechanism to receive reports from beneficiaries and others and compile data concerning alleged instances of waste, fraud,

and abuse relating to the operation of this subchapter;

(65) provide that the State shall issue provider numbers for all suppliers of medical assistance consisting of durable medical equipment, as defined in section 1395x(n) of this title, and the State shall not issue or renew such a supplier number for any such supplier unless—

(A)(i) full and complete information as to the identity of each person with an ownership or control interest (as defined in section 1320a-3(a)(3) of this title) in the supplier or in any subcontractor (as defined by the Secretary in regulations) in which the supplier directly or indirectly has a 5 percent or more ownership interest; and

(ii) to the extent determined to be feasible under regulations of the Secretary, the name of any disclosing entity (as defined in section 1320a-3(a)(2) of this title) with respect to which a person with such an ownership or control interest in the supplier is a person with such an ownership or control interest in the disclosing entity; and

(B) a surety bond in a form specified by the Secretary under section 1395m(a)(16)(B) of this title and in an amount that is not less than \$50,000 or such comparable surety bond as the Secretary may permit under the second sentence of such section;

(66) provide for making eligibility determinations under section 1396u-5(a) of this title;

(67) provide, with respect to services covered under the State plan (but not under subchapter XVIII of this chapter) that are furnished to a PACE program eligible individual enrolled with a PACE provider by a provider participating under the State plan that does not have a contract or other agreement with the PACE provider that establishes payment amounts for such services, that such participating provider may not require the PACE provider to pay the participating provider an amount greater than the amount that would otherwise be payable for the service to the participating provider under the State plan for the State where the PACE provider is located (in accordance with regulations issued by the Secretary);

(68) provide that any entity that receives or makes annual payments under the State plan of at least \$5,000,000, as a condition of receiving such payments, shall—

(A) establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, administrative remedies for false claims and statements established under chapter 38 of title 31, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1320a-7b(f) of this title);

⁹So in original. Probably should be section "1396d(1)(2)(B)".

(B) include as part of such written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and

(C) include in any employee handbook for the entity, a specific discussion of the laws described in subparagraph (A), the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse;

(69) provide that the State must comply with any requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity Program established under section 1396u-6 of this title;

(70) at the option of the State and notwithstanding paragraphs (1), (10)(B), and (23), provide for the establishment of a non-emergency medical transportation brokerage program in order to more cost-effectively provide transportation for individuals eligible for medical assistance under the State plan who need access to medical care or services and have no other means of transportation which—

(A) may include a wheelchair van, taxi, stretcher car, bus passes and tickets, secured transportation, and such other transportation as the Secretary determines appropriate; and

(B) may be conducted under contract with a broker who—

(i) is selected through a competitive bidding process based on the State's evaluation of the broker's experience, performance, references, resources, qualifications, and costs;

(ii) has oversight procedures to monitor beneficiary access and complaints and ensure that transport personnel are licensed, qualified, competent, and courteous;

(iii) is subject to regular auditing and oversight by the State in order to ensure the quality of the transportation services provided and the adequacy of beneficiary access to medical care and services; and

(iv) complies with such requirements related to prohibitions on referrals and conflict of interest as the Secretary shall establish (based on the prohibitions on physician referrals under section 1395nn of this title and such other prohibitions and requirements as the Secretary determines to be appropriate);

(71) provide that the State will implement an asset verification program as required under section 1396w of this title;

(72) provide that the State will not prevent a Federally-qualified health center from entering into contractual relationships with private practice dental providers in the provision of Federally-qualified health center services;

(73) in the case of any State in which 1 or more Indian Health Programs or Urban Indian Organizations furnishes health care services, provide for a process under which the State seeks advice on a regular, ongoing basis from designees of such Indian Health Programs and Urban Indian Organizations on matters relating to the application of this subchapter that

are likely to have a direct effect on such Indian Health Programs and Urban Indian Organizations and that—

(A) shall include solicitation of advice prior to submission of any plan amendments, waiver requests, and proposals for demonstration projects likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations; and

(B) may include appointment of an advisory committee and of a designee of such Indian Health Programs and Urban Indian Organizations to the medical care advisory committee advising the State on its State plan under this subchapter;

(74) provide for maintenance of effort under the State plan or under any waiver of the plan in accordance with subsection (gg);

(75) provide that, beginning January 2015, and annually thereafter, the State shall submit a report to the Secretary that contains—

(A) the total number of enrolled and newly enrolled individuals in the State plan or under a waiver of the plan for the fiscal year ending on September 30 of the preceding calendar year, disaggregated by population, including children, parents, nonpregnant childless adults, disabled individuals, elderly individuals, and such other categories or sub-categories of individuals eligible for medical assistance under the State plan or under a waiver of the plan as the Secretary may require;

(B) a description, which may be specified by population, of the outreach and enrollment processes used by the State during such fiscal year; and

(C) any other data reporting determined necessary by the Secretary to monitor enrollment and retention of individuals eligible for medical assistance under the State plan or under a waiver of the plan;

(76) provide that any data collected under the State plan meets the requirements of section 3101 of the Public Health Service Act [42 U.S.C. 300kk];

(77) provide that the State shall comply with provider and supplier screening, oversight, and reporting requirements in accordance with subsection (kk);

(79)¹⁰ provide that any agent, clearinghouse, or other alternate payee (as defined by the Secretary) that submits claims on behalf of a health care provider must register with the State and the Secretary in a form and manner specified by the Secretary;

(80) provide that the State shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside of the United States;

(81) provide that the State will comply with such regulations regarding the application of primary and secondary payor rules with respect to individuals who are eligible for medical assistance under this subchapter and are eligible beneficiaries under the CLASS program established under title XXXII of the

¹⁰ So in original. There is no par. (78).

