

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

DRAFT
12.23.09

DRAFT

LLS NO. 10-0287.01 Brita Darling

SENATE BILL

SENATE SPONSORSHIP

Boyd,

HOUSE SPONSORSHIP

Riesberg,

SHORT TITLE: "Medicaid Efficiency False Claims"

A BILL FOR AN ACT

101 CONCERNING INCREASED EFFICIENCY IN THE ADMINISTRATION OF THE
102 "COLORADO MEDICAL ASSISTANCE ACT", AND, IN CONNECTION
103 THEREWITH, CREATING A PRIVATE RIGHT OF ACTION FOR FALSE
104 CLAIMS RELATING TO THE "COLORADO MEDICAL ASSISTANCE
105 ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

The bill summary for this measure has been intentionally omitted and will appear on future redrafts of this measure.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 25.5-4-304, Colorado Revised Statutes, is
3 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

4 **25.5-4-304. False claims for medical assistance - actions by or**
5 **on behalf of state - definitions.** (1) AS USED IN THIS SECTION AND IN
6 SECTION 25.5-4-305, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 (a) "BENEFIT" MEANS ANY MEDICAL ASSISTANCE REIMBURSED OR
8 REIMBURSABLE UNDER THIS ARTICLE AND ARTICLES 5 AND 6 OF THIS TITLE.

9 (b) "CLAIM" MEANS ANY COMMUNICATION, WHETHER ORAL,
10 WRITTEN, ELECTRONIC, OR MAGNETIC, THAT INCLUDES A REQUEST OR
11 DEMAND FOR MONEY OR PROPERTY AS REIMBURSEMENT FOR A BENEFIT.
12 EACH ITEM LISTED WITHIN A COMMUNICATION THAT IDENTIFIES MULTIPLE
13 ITEMS AS SEPARATELY REIMBURSABLE IS DEEMED A SEPARATE CLAIM.
14 "CLAIM" ALSO INCLUDES A COST REPORT OR DOCUMENT THAT STATES
15 INCOME OR EXPENSES AND IS OR MAY BE USED TO DETERMINE A RATE OF
16 PAYMENT FOR A PROVIDER UNDER THIS ARTICLE AND ARTICLES 5 AND 6 OF
17 THIS TITLE. <current Colo. definition of "claim" with def of "cost
18 document" included - not Wisconsin def. Also added "benefit" because
19 term appears in Colo. def of "claim">

20 (c) "EMPLOYER" INCLUDES ALL AGENCIES AND AUTHORITIES. <Is
21 this the right definition for Colorado? Is it intended to exclude private
22 employers?>

23 (d) (I) "KNOWINGLY" MEANS, WITH RESPECT TO INFORMATION,
24 HAVING ACTUAL KNOWLEDGE OF THE INFORMATION, ACTING IN

1 DELIBERATE IGNORANCE OF THE TRUTH OR FALSITY OF THE INFORMATION,
2 OR ACTING IN RECKLESS DISREGARD OF THE TRUTH OR FALSITY OF THE
3 INFORMATION.

4 (II) "KNOWINGLY" DOES NOT MEAN SPECIFICALLY INTENDING TO
5 DEFRAUD <{"specifically mean" or "specifically intend"? Current
6 language is ambiguous. Does it mean "... does not require a specific
7 intent to defraud"?}> .

8 (e) "MEDICAL ASSISTANCE" SHALL HAVE THE SAME MEANING AS
9 PROVIDED IN SECTION 25.5-4-103 (13). <{As this is a defined term for all
10 of this article, this definition may not be necessary.}>

11 (f) "PERSON" MEANS AN INDIVIDUAL OR ENTITY HOLDING OR
12 CAPABLE OF HOLDING A LEGAL OR BENEFICIAL INTEREST IN PROPERTY.
13 <{Added this def}>

14 (g) "PROCEEDS" INCLUDES DAMAGES, CIVIL PENALTIES,
15 SURCHARGES, PAYMENTS FOR COSTS OF COMPLIANCE, AND ANY OTHER
16 ECONOMIC BENEFIT REALIZED BY THE STATE AS A RESULT OF AN ACTION
17 OR SETTLEMENT OF A CLAIM.

18 (h) "STATE PUBLIC OFFICIAL" SHALL HAVE THE SAME MEANING AS
19 "PUBLIC OFFICER" AS DEFINED IN SECTION 24-18-102 (8), C.R.S. <{The
20 Wisconsin Act cross referenced the definition of public in its code of
21 ethics. Is this the definition you want to use for this term?}>

22 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS
23 SECTION, A PERSON WHO COMMITS ANY OF THE FOLLOWING ACTS IS LIABLE
24 TO THE STATE FOR THREE TIMES THE AMOUNT OF THE DAMAGES
25 SUSTAINED BY THE STATE BECAUSE OF THE ACTIONS OF THE PERSON AND
26 SHALL PAY A CIVIL PENALTY OF NOT LESS THAN FIVE THOUSAND DOLLARS
27 NOR MORE THAN TEN THOUSAND DOLLARS FOR EACH VIOLATION:

1 (a) KNOWINGLY PRESENTS OR CAUSES TO BE PRESENTED TO ANY
2 OFFICER, EMPLOYEE, OR AGENT OF THE STATE A FALSE CLAIM FOR
3 MEDICAL ASSISTANCE;

4 (b) KNOWINGLY MAKES, USES, OR CAUSES TO BE MADE OR USED A
5 FALSE RECORD OR STATEMENT TO OBTAIN APPROVAL OR PAYMENT OF A
6 FALSE CLAIM FOR MEDICAL ASSISTANCE;

7 (c) CONSPIRES TO DEFRAUD THE STATE BY OBTAINING ALLOWANCE
8 OR PAYMENT OF A FALSE CLAIM FOR MEDICAL ASSISTANCE, OR BY
9 KNOWINGLY MAKING OR USING, OR CAUSING TO BE MADE OR USED, A
10 FALSE RECORD OR STATEMENT TO CONCEAL, AVOID, OR DECREASE AN
11 OBLIGATION TO PAY OR TRANSMIT MONEY OR PROPERTY TO THE MEDICAL
12 ASSISTANCE PROGRAM;

13 (d) KNOWINGLY MAKES, USES, OR CAUSES TO BE MADE OR USED A
14 FALSE RECORD OR STATEMENT TO CONCEAL, AVOID, OR DECREASE ANY
15 OBLIGATION TO PAY OR TRANSMIT MONEY OR PROPERTY TO THE MEDICAL
16 ASSISTANCE PROGRAM;

17 (e) IS A BENEFICIARY OF THE SUBMISSION OF A FALSE CLAIM FOR
18 MEDICAL ASSISTANCE TO AN OFFICER, EMPLOYEE, OR AGENT OF THE
19 STATE, KNOWS THAT THE CLAIM IS FALSE, AND FAILS TO DISCLOSE THE
20 FALSE CLAIM TO THE STATE WITHIN A REASONABLE TIME AFTER THE
21 PERSON BECOMES AWARE THAT THE CLAIM IS FALSE; OR

22 (f) AS TO SERVICES FOR WHICH A LICENSE IS REQUIRED,
23 KNOWINGLY MAKES OR CAUSES TO BE MADE A CLAIM WITH KNOWLEDGE
24 THAT THE INDIVIDUAL WHO FURNISHED THE SERVICES WAS NOT LICENSED
25 TO PROVIDE THE SERVICES. <{*This provision is from CO's current*
26 *statute. It is not in Wisconsin act.*>

27 <{*Note: 07-1144 includes violations (1)(d), (e), & (f) that are not*>

1 *included in Wisconsin act. Do you want them included?*>

2 (3) THE COURT MAY <{"shall"?}> ASSESS AGAINST A PERSON
3 WHO VIOLATES A PROVISION OF SUBSECTION (2) OF THIS SECTION NOT LESS
4 THAN TWO NOR MORE THAN THREE TIMES THE AMOUNT OF THE DAMAGES
5 SUSTAINED BY THE STATE BECAUSE OF THE ACTS OF THE PERSON AND
6 SHALL NOT ASSESS A CIVIL PENALTY AGAINST THE PERSON IF THE COURT
7 FINDS ALL OF THE FOLLOWING:

8 (a) THE PERSON WHO COMMITS THE VIOLATION FURNISHED THE
9 ATTORNEY GENERAL WITH ALL INFORMATION KNOWN TO THE PERSON
10 ABOUT THE VIOLATION WITHIN THIRTY DAYS AFTER THE DATE ON WHICH
11 THE PERSON OBTAINED THE INFORMATION;

12 (b) THE PERSON FULLY COOPERATED IN THE STATE'S
13 INVESTIGATION OF THE VIOLATION; AND

14 (c) AT THE TIME THAT THE PERSON FURNISHED THE ATTORNEY
15 GENERAL WITH INFORMATION CONCERNING THE VIOLATION, A CRIMINAL
16 PROSECUTION OR CIVIL OR ADMINISTRATIVE ENFORCEMENT ACTION WITH
17 RESPECT TO THE VIOLATION HAD NOT BEEN COMMENCED, AND THE PERSON
18 DID NOT HAVE ACTUAL KNOWLEDGE OF THE EXISTENCE OF AN
19 INVESTIGATION INTO THE VIOLATION.

20 (4) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS (9) AND
21 (11) OF THIS SECTION, A PERSON MAY BRING A CIVIL ACTION AS A QUI TAM
22 PLAINTIFF AGAINST ANOTHER PERSON WHO HAS COMMITTED A VIOLATION
23 OF SUBSECTION (2) OF THIS SECTION.

24 (b) THE PLAINTIFF SHALL SERVE THE ATTORNEY GENERAL WITH A
25 COPY OF THE QUI TAM COMPLAINT AND DOCUMENTS DISCLOSING
26 SUBSTANTIALLY ALL MATERIAL EVIDENCE AND INFORMATION THAT THE
27 PERSON POSSESSES WITH RESPECT TO THE ALLEGED VIOLATION. THE

1 PLAINTIFF SHALL FILE A COPY OF THE COMPLAINT WITH THE COURT FOR
2 INSPECTION IN CAMERA. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH
3 (c) OF THIS SUBSECTION (4), THE COMPLAINT SHALL REMAIN UNDER SEAL
4 FOR A PERIOD OF SIXTY DAYS AFTER THE DATE OF FILING AND SHALL NOT
5 BE SERVED UPON THE DEFENDANT UNTIL THE COURT SO ORDERS. WITHIN
6 SIXTY DAYS AFTER THE DATE THE ATTORNEY GENERAL RECEIVES SERVICE
7 OF THE COMPLAINT, EVIDENCE, AND INFORMATION UNDER THIS
8 PARAGRAPH (b), THE ATTORNEY GENERAL MAY INTERVENE IN THE ACTION.

9 (c) THE ATTORNEY GENERAL, FOR GOOD CAUSE SHOWN, MAY
10 MOVE THE COURT FOR ONE OR MORE EXTENSIONS OF THE PERIOD DURING
11 WHICH A COMPLAINT IN AN ACTION UNDER THIS SUBSECTION (4) REMAINS
12 UNDER SEAL.

13 (d) BEFORE THE EXPIRATION OF THE PERIOD DURING WHICH THE
14 COMPLAINT REMAINS UNDER SEAL, THE ATTORNEY GENERAL SHALL DO
15 ONE OF THE FOLLOWING:

16 (I) PROCEED WITH THE ACTION FILED UNDER THIS SUBSECTION (4)
17 OR PROCEED WITH AN ALTERNATE REMEDY UNDER SUBSECTION (9) OF THIS
18 SECTION, IN WHICH CASE THE ACTION FILED UNDER THIS SUBSECTION (4)
19 OR THE PROCEEDING UNDER SUBSECTION (9) OF THIS SECTION SHALL BE
20 PROSECUTED <{is "prosecuted" the right word to apply to the alternate
21 remedy in (9)?}> BY THE STATE; OR

22 (II) NOTIFY THE COURT THAT HE OR SHE DECLINES TO PROCEED
23 WITH THE ACTION FILED UNDER THIS SUBSECTION (4), IN WHICH CASE THE
24 PERSON BRINGING THE ACTION MAY PROCEED WITH THE ACTION.

25 (e) IF A PERSON BRINGS A VALID ACTION UNDER THIS SUBSECTION
26 (4), NO PERSON OTHER THAN THE STATE MAY INTERVENE OR BRING A
27 RELATED ACTION WHILE THE ORIGINAL ACTION IS PENDING BASED UPON

1 THE SAME FACTS UNDERLYING THE ORIGINAL ACTION.

2 (f) IN AN ACTION FILED PURSUANT TO THIS SECTION OR OTHER
3 PROCEEDING UNDER SUBSECTION (9) OF THIS SECTION, THE PLAINTIFF
4 SHALL PROVE ALL ESSENTIAL ELEMENTS OF THE CAUSE OF ACTION OR
5 COMPLAINT, INCLUDING DAMAGES, BY A PREPONDERANCE OF THE
6 EVIDENCE.

7 (5) IF THE STATE PROCEEDS WITH AN ACTION UNDER SUBSECTION
8 (4) OF THIS SECTION OR AN ALTERNATE REMEDY UNDER SUBSECTION (9)
9 OF THIS SECTION, THE STATE HAS PRIMARY RESPONSIBILITY FOR
10 PROSECUTING THE ACTION UNDER SUBSECTION (4) OF THIS SECTION OR
11 PROCEEDING UNDER SUBSECTION (9) OF THIS SECTION. THE STATE IS NOT
12 BOUND BY ANY ACT OF THE PERSON BRINGING THE ACTION, BUT THE
13 PERSON HAS THE RIGHT TO CONTINUE AS A PARTY TO THE ACTION, SUBJECT
14 TO THE LIMITATIONS SPECIFIED IN SUBSECTION (6) OF THIS SECTION.

15 (6) (a) FOR GOOD CAUSE SHOWN AND NOTWITHSTANDING THE
16 OBJECTION OF THE PERSON BRINGING THE ACTION, THE STATE MAY MOVE
17 TO DISMISS AN ACTION UNDER SUBSECTION (4) OF THIS SECTION OR AN
18 ADMINISTRATIVE PROCEEDING UNDER SUBSECTION (9) OF THIS SECTION TO
19 WHICH THE STATE IS A PARTY, SO LONG AS THE PERSON BRINGING THE
20 ACTION IS SERVED WITH A COPY OF THE STATE'S MOTION AND IS GIVEN AN
21 OPPORTUNITY TO OPPOSE THE MOTION BEFORE THE COURT OR THE
22 ADMINISTRATIVE AGENCY BEFORE WHICH THE PROCEEDING IS CONDUCTED.

23 (b) WITH THE APPROVAL OF THE GOVERNOR AND
24 NOTWITHSTANDING THE OBJECTION OF THE PERSON BRINGING THE ACTION,
25 THE ATTORNEY GENERAL MAY COMPROMISE AND SETTLE AN ACTION
26 UNDER SUBSECTION (4) OF THIS SECTION OR AN ADMINISTRATIVE
27 PROCEEDING UNDER SUBSECTION (9) OF THIS SECTION TO WHICH THE

1 STATE IS A PARTY. HOWEVER, THE ATTORNEY GENERAL MAY SETTLE THE
2 ACTION ONLY AFTER THE COURT:

3 (I) GIVES THE PERSON BRINGING THE ACTION THE RIGHT TO A
4 HEARING AT WHICH THE PERSON MAY PRESENT EVIDENCE IN OPPOSITION
5 TO THE PROPOSED SETTLEMENT; AND

6 (II) DETERMINES THAT THE PROPOSED SETTLEMENT IS FAIR,
7 ADEQUATE, AND REASONABLE CONSIDERING THE RELEVANT
8 CIRCUMSTANCES PERTAINING TO THE VIOLATION.

9 (c) THE COURT MAY LIMIT A PERSON'S PARTICIPATION IN THE
10 PROSECUTION OF AN ACTION UNDER SUBSECTION (4) OF THIS SECTION OR
11 AN ALTERNATE PROCEEDING UNDER SUBSECTION (9) OF THIS SECTION TO
12 WHICH THE STATE IS A PARTY IF THE STATE DEMONSTRATES THAT THE
13 PERSON'S UNRESTRICTED PARTICIPATION WOULD INTERFERE WITH OR
14 UNDULY DELAY THE PROSECUTION OF THE ACTION OR PROCEEDING OR
15 WOULD RESULT IN CONSIDERATION OF REPETITIOUS OR IRRELEVANT
16 EVIDENCE OR EVIDENCE PRESENTED FOR PURPOSES OF HARASSMENT.
17 LIMITS IMPOSED BY THE COURT MAY INCLUDE, BUT NEED NOT BE LIMITED
18 TO:

19 (I) LIMITING THE NUMBER OF WITNESSES THAT THE PERSON MAY
20 CALL;

21 (II) LIMITING THE LENGTH OF THE TESTIMONY OF THE WITNESSES;

22 (III) LIMITING THE PERSON'S CROSS-EXAMINATION OF WITNESSES;

23 OR

24 (IV) OTHERWISE LIMITING THE PARTICIPATION BY THE PERSON IN
25 THE PROSECUTION OF THE ACTION OR PROCEEDING.

26 (d) THE COURT MAY LIMIT A PERSON'S PARTICIPATION IN THE
27 PROSECUTION OF AN ACTION UNDER SUBSECTION (4) OF THIS SECTION OR

1 AN ALTERNATE PROCEEDING UNDER SUBSECTION (9) OF THIS SECTION TO
2 WHICH THE STATE IS A PARTY IF A DEFENDANT DEMONSTRATES THAT THE
3 PERSON'S UNRESTRICTED PARTICIPATION WOULD RESULT IN HARASSMENT
4 OR WOULD CAUSE THE DEFENDANT UNDUE BURDEN OR UNNECESSARY
5 EXPENSE.

6 (7) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6) OF THIS
7 SECTION, IF THE STATE ELECTS NOT TO PARTICIPATE IN AN ACTION FILED
8 UNDER SUBSECTION (4) OF THIS SECTION, THE PERSON BRINGING THE
9 ACTION MAY PROSECUTE THE ACTION. IF THE ATTORNEY GENERAL SO
10 REQUESTS, THE ATTORNEY GENERAL SHALL, AT THE STATE'S EXPENSE, BE
11 SERVED WITH COPIES OF ALL PLEADINGS AND DEPOSITION TRANSCRIPTS IN
12 THE ACTION. IF THE PERSON BRINGING THE ACTION INITIATES
13 PROSECUTION OF THE ACTION, THE COURT, WITHOUT LIMITING THE STATUS
14 AND RIGHTS OF THE PERSON, MAY PERMIT THE STATE TO INTERVENE AT A
15 LATER DATE IF THE STATE SHOWS GOOD CAUSE FOR THE PROPOSED
16 INTERVENTION.

17 (8) REGARDLESS OF WHETHER THE STATE PARTICIPATES IN AN
18 ACTION UNDER SUBSECTION (4) OF THIS SECTION, IF THE ATTORNEY
19 GENERAL SHOWS IN CAMERA THAT DISCOVERY BY THE PERSON BRINGING
20 THE ACTION WOULD INTERFERE WITH THE STATE'S ONGOING
21 INVESTIGATION OR PROSECUTION OF A CRIMINAL OR CIVIL MATTER ARISING
22 OUT OF THE SAME FACTS AS THE FACTS UPON WHICH THE ACTION IS BASED,
23 THE COURT MAY STAY THE DISCOVERY IN WHOLE OR IN PART FOR A PERIOD
24 OF NOT MORE THAN SIXTY DAYS. THE COURT MAY EXTEND THE PERIOD OF
25 THE STAY IF THE ATTORNEY GENERAL FURTHER SHOWS IN CAMERA THAT
26 THE STATE HAS PURSUED THE CRIMINAL OR CIVIL INVESTIGATION OF THE
27 MATTER WITH REASONABLE DILIGENCE AND THAT THE PROPOSED

1 DISCOVERY IN THE ACTION BROUGHT UNDER SUBSECTION (4) OF THIS
2 SECTION WILL INTERFERE WITH THE ONGOING CRIMINAL OR CIVIL
3 INVESTIGATION OR PROSECUTION.

4 (9) (a) THE ATTORNEY GENERAL MAY PURSUE A CLAIM RELATING
5 TO AN ALLEGED VIOLATION OF SUBSECTION (2) OF THIS SECTION THROUGH
6 AN ALTERNATE REMEDY AVAILABLE TO THE STATE OR A STATE AGENCY,
7 INCLUDING AN ADMINISTRATIVE PROCEEDING TO ASSESS A CIVIL **PENALTY**
8 <{*The word "penalty" is replacing "forfeiture", right?*}> . IF THE
9 ATTORNEY GENERAL ELECTS TO PURSUE AN ALTERNATE REMEDY, HE OR
10 SHE SHALL SERVE TIMELY NOTICE OF HIS OR HER ELECTION UPON THE
11 PERSON BRINGING THE ACTION UNDER SUBSECTION (4) OF THIS SECTION,
12 AND THE PERSON HAS THE SAME RIGHTS IN THE ALTERNATE VENUE AS THE
13 PERSON WOULD HAVE HAD IF THE ACTION HAD CONTINUED UNDER
14 SUBSECTION (4) OF THIS SECTION.

15 (b) A FINDING OF FACT OR CONCLUSION OF LAW MADE BY A COURT
16 OR BY A STATE AGENCY IN THE ALTERNATE VENUE THAT HAS BECOME
17 FINAL IS CONCLUSIVE UPON ALL PARTIES NAMED IN AN ACTION UNDER
18 SUBSECTION (4) OF THIS SECTION.

19 (c) FOR PURPOSES OF THIS SUBSECTION (9), A FINDING OR
20 CONCLUSION IS FINAL IF IT HAS BEEN FINALLY DETERMINED ON APPEAL, IF
21 ALL TIME FOR FILING AN APPEAL OR PETITION FOR REVIEW WITH RESPECT
22 TO THE FINDING OR CONCLUSION HAS EXPIRED, OR IF THE FINDING OR
23 CONCLUSION IS NOT SUBJECT TO JUDICIAL REVIEW.

24 (10) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS (b) AND
25 (e) OF THIS SUBSECTION (10), IF THE STATE PROCEEDS WITH AN ACTION
26 BROUGHT BY A PERSON UNDER SUBSECTION (4) OF THIS SECTION OR THE
27 STATE PURSUES AN ALTERNATE REMEDY UNDER SUBSECTION (9) OF THIS

1 SECTION RELATING TO THE SAME VIOLATION, THE PERSON WHO BRINGS
2 THE ACTION SHALL RECEIVE AT LEAST FIFTEEN PERCENT BUT NOT MORE
3 THAN TWENTY-FIVE PERCENT OF THE PROCEEDS OF THE ACTION OR
4 SETTLEMENT OF THE CLAIM, DEPENDING UPON THE EXTENT TO WHICH THE
5 PERSON CONTRIBUTED TO THE PROSECUTION OF THE ACTION OR CLAIM.

6 (b) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (e) OF THIS
7 SUBSECTION (10), IF THE COURT OR OTHER ADJUDICATOR FINDS THAT AN
8 ACTION OR CLAIM IS BASED PRIMARILY ON SPECIFIC INFORMATION ABOUT
9 ALLEGATIONS OR TRANSACTIONS, WHICH INFORMATION WAS DISCLOSED
10 IN A CRIMINAL, CIVIL, OR ADMINISTRATIVE HEARING, IN A LEGISLATIVE OR
11 ADMINISTRATIVE REPORT, HEARING, AUDIT, OR INVESTIGATION, OR IN A
12 REPORT MADE BY THE NEWS MEDIA, AND WHICH WAS NOT INFORMATION
13 PROVIDED BY THE PERSON BRINGING THE ACTION UNDER SUBSECTION (4)
14 OF THIS SECTION, THE COURT OR OTHER ADJUDICATOR MAY AWARD THE
15 PERSON SUCH AN AMOUNT AS THE COURT CONSIDERS APPROPRIATE,
16 DEPENDING ON THE SIGNIFICANCE OF THE INFORMATION THE PERSON
17 PROVIDED AND THE PERSON'S ROLE IN ADVANCING THE PROSECUTION OF
18 THE ACTION OR CLAIM. HOWEVER, THE AMOUNT MAY NOT BE MORE THAN
19 TEN PERCENT OF THE PROCEEDS OF THE ACTION OR SETTLEMENT OF THE
20 CLAIM.

21 (c) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (e) OF THIS
22 SUBSECTION (10), IN ADDITION TO ANY AMOUNT AWARDED UNDER
23 PARAGRAPH (a) OR (b) OF THIS SUBSECTION (10), A PERSON BRINGING AN
24 ACTION UNDER SUBSECTION (4) OF THIS SECTION SHALL BE AWARDED HIS
25 OR HER REASONABLE EXPENSES NECESSARILY INCURRED IN BRINGING THE
26 ACTION TOGETHER WITH THE PERSON'S COSTS AND REASONABLE ACTUAL
27 ATTORNEY FEES. THE COURT OR OTHER ADJUDICATOR SHALL ASSESS ANY

1 AWARD PURSUANT TO THIS PARAGRAPH (c) AGAINST THE DEFENDANT.

2 (d) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (e) OF THIS
3 SUBSECTION (10), IF THE STATE DOES NOT PROCEED WITH AN ACTION OR
4 AN ALTERNATE PROCEEDING UNDER SUBSECTION (9) OF THIS SECTION, THE
5 PERSON BRINGING THE ACTION UNDER SUBSECTION (4) OF THIS SECTION
6 SHALL RECEIVE AN AMOUNT OF THE CIVIL PENALTY AND DAMAGES THAT
7 THE COURT DECIDES IS REASONABLE. THE AMOUNT SHALL BE NOT LESS
8 THAN TWENTY-FIVE PERCENT AND NOT MORE THAN THIRTY PERCENT OF
9 THE PROCEEDS OF THE ACTION AND SHALL BE PAID FROM THE PROCEEDS.
10 IN ADDITION, THE PERSON SHALL BE PAID HIS OR HER EXPENSES, COSTS,
11 AND ATTORNEY FEES PURSUANT TO PARAGRAPH (c) OF THIS SUBSECTION
12 (10).

13 (e) REGARDLESS OF WHETHER THE STATE PROCEEDS WITH AN
14 ACTION UNDER SUBSECTION (4) OF THIS SECTION OR AN ALTERNATE
15 PROCEEDING UNDER SUBSECTION (9) OF THIS SECTION, IF THE COURT OR
16 OTHER ADJUDICATOR FINDS THAT AN ACTION WAS BROUGHT UNDER
17 SUBSECTION (4) OF THIS SECTION BY A PERSON WHO PLANNED OR
18 INITIATED THE VIOLATION UPON WHICH THE ACTION OR PROCEEDING IS
19 BASED, THEN THE COURT MAY, TO THE EXTENT THAT THE COURT
20 CONSIDERS APPROPRIATE, REDUCE THE SHARE OF THE PROCEEDS OF THE
21 ACTION THAT THE PERSON WOULD OTHERWISE RECEIVE UNDER
22 PARAGRAPH (a), (b), OR (d) OF THIS SUBSECTION (10). IN REDUCING THE
23 SHARE OF THE PROCEEDS, THE COURT SHALL TAKE INTO ACCOUNT THE
24 ROLE OF THE PERSON IN ADVANCING THE PROSECUTION OF THE ACTION OR
25 CLAIM AND ANY OTHER RELEVANT CIRCUMSTANCE PERTAINING TO THE
26 VIOLATION; EXCEPT THAT, IF THE PERSON BRINGING THE ACTION IS
27 CONVICTED OF CRIMINAL CONDUCT ARISING FROM HIS OR HER ROLE IN THE

1 COMMISSION OF A VIOLATION OF SUBSECTION (2) OF THIS SECTION, THE
2 COURT OR OTHER ADJUDICATOR SHALL DISMISS THE PERSON AS A PARTY
3 AND THE PERSON SHALL NOT RECEIVE ANY SHARE OF THE PROCEEDS OF
4 THE ACTION OR CLAIM OR ANY EXPENSES, COSTS, AND ATTORNEY FEES
5 UNDER PARAGRAPH (c) OF THIS SUBSECTION (10).

6 (11) (a) A COURT DOES NOT HAVE JURISDICTION OVER AN ACTION
7 BROUGHT BY A PERSON UNDER SUBSECTION (4) OF THIS SECTION AGAINST
8 A STATE PUBLIC OFFICIAL IF THE ACTION IS BASED ON INFORMATION
9 KNOWN TO THE ATTORNEY GENERAL AT THE TIME THAT THE ACTION IS
10 BROUGHT.

11 (b) A PERSON SHALL NOT BRING AN ACTION UNDER SUBSECTION (4)
12 OF THIS SECTION BASED ON ALLEGATIONS OR TRANSACTIONS THAT ARE
13 THE BASIS FOR A CIVIL ACTION OR AN ADMINISTRATIVE PROCEEDING TO
14 ASSESS A CIVIL PENALTY IN WHICH THE STATE IS A PARTY IF THE STATE'S
15 ACTION OR PROCEEDING HAS COMMENCED PRIOR TO THE DATE THAT THE
16 PERSON'S ACTION WOULD BE FILED.

17 (12) THE STATE IS NOT LIABLE FOR ANY EXPENSES INCURRED BY
18 A PRIVATE PERSON IN BRINGING AN ACTION UNDER SUBSECTION (4) OF THIS
19 SECTION.

20 (13) (a) IF AN EMPLOYEE IS DISCHARGED, DEMOTED, SUSPENDED,
21 THREATENED, HARASSED, OR IN ANY OTHER MANNER DISCRIMINATED
22 AGAINST BY HIS OR HER EMPLOYER BECAUSE OF LAWFUL ACTIONS TAKEN
23 BY OR ON BEHALF OF THE EMPLOYEE OR BY OTHERS IN FURTHERANCE OF
24 AN ACTION OR CLAIM FILED UNDER SUBSECTION (4) OF THIS SECTION, THE
25 EMPLOYEE IS ENTITLED TO ALL NECESSARY RELIEF TO MAKE THE
26 EMPLOYEE WHOLE. SUCH LAWFUL ACTIONS INCLUDE <{"**but are not**
27 **limited to**"?}> INVESTIGATION FOR, INITIATION OF, TESTIMONY FOR, OR

1 ASSISTANCE IN THE ACTION OR CLAIM FILED OR TO BE FILED.

2 (b) THE RELIEF SHALL INCLUDE:

3 (I) REINSTATEMENT WITH THE SAME SENIORITY STATUS THAT THE
4 EMPLOYEE WOULD HAVE HAD BUT FOR THE DISCRIMINATION;

5 (II) TWO TIMES THE AMOUNT OF BACK PAY DUE TO THE EMPLOYEE;

6 (III) INTEREST ON THE BACK PAY AT THE LEGAL RATE; AND

7 (IV) COMPENSATION FOR ANY SPECIAL DAMAGES SUSTAINED AS
8 A RESULT OF THE DISCRIMINATION, INCLUDING BUT NOT LIMITED TO COSTS
9 AND REASONABLE ACTUAL ATTORNEY FEES.

10 (c) AN EMPLOYEE MAY BRING AN ACTION TO OBTAIN THE RELIEF
11 TO WHICH THE EMPLOYEE IS ENTITLED UNDER THIS SUBSECTION (13).

12 (14) (a) A PERSON SHALL NOT FILE A CIVIL ACTION FOR A
13 VIOLATION OF SUBSECTION (2) OF THIS SECTION MORE THAN THREE YEARS
14 AFTER THE DATE OF DISCOVERY OF THE VIOLATION OR, IN ANY EVENT,
15 MORE THAN TEN YEARS AFTER THE DATE UPON WHICH THE VIOLATION OF
16 SUBSECTION (2) IS COMMITTED. <{*The Wisconsin Act cross referenced*
17 *its statute of limitations. The letter from the HHS OIG approving the*
18 *Wisconsin statute under the DRA noted that it was approving it because*
19 *it incorporated the ten-year statute. I'm not sure that there is a*
20 *comparable Colorado statute to cross reference.*>

21 (b) A CIVIL ACTION MAY BE BROUGHT BASED ON ACTS OCCURRING
22 PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, IF THE ACTION IS
23 BROUGHT WITHIN THE PERIOD SPECIFIED IN PARAGRAPH (a) OF THIS
24 SUBSECTION (14).

25 (15) A JUDGMENT OF GUILTY ENTERED AGAINST A DEFENDANT IN
26 A CRIMINAL ACTION IN WHICH THE DEFENDANT IS CHARGED WITH FRAUD
27 OR MAKING FALSE STATEMENTS ESTOPS THE DEFENDANT FROM DENYING

1 THE ESSENTIAL ELEMENTS OF THE OFFENSE IN ANY ACTION UNDER
2 SUBSECTION (4) OF THIS SECTION THAT INVOLVES THE SAME ELEMENTS AS
3 IN THE CRIMINAL ACTION.

4 (16) THE REMEDIES PROVIDED UNDER THIS SECTION ARE IN
5 ADDITION TO ANY OTHER REMEDIES PROVIDED UNDER ANY OTHER LAW OR
6 AVAILABLE UNDER THE COMMON LAW.

7 (17) THIS SECTION SHALL BE LIBERALLY CONSTRUED AND APPLIED
8 TO PROMOTE THE PUBLIC INTEREST AND TO EFFECT THE CONGRESSIONAL
9 INTENT IN ENACTING THE FEDERAL "FALSE CLAIMS ACT", 31 U.S.C. SEC.
10 3279 TO 3733, AS REFLECTED IN THE ACT AND THE LEGISLATIVE HISTORY
11 OF THE ACT.

12 **SECTION 2.** 25.5-4-305, Colorado Revised Statutes, is
13 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

14 **25.5-4-305. Unlawful remuneration - medicaid claims -**
15 **restitution - civil penalties.** (1) AS USED IN THIS SECTION, UNLESS THE
16 CONTEXT OTHERWISE REQUIRES:

17 (a) "INTENTIONALLY" MEANS THAT, WITH RESPECT TO
18 INFORMATION, A PERSON HAS ACTUAL KNOWLEDGE OF THE FALSITY OF THE
19 INFORMATION AND ACTS WITH SPECIFIC INTENT TO DEFRAUD.

20 (b) "RECKLESS DISREGARD" MEANS THAT A PERSON ACTS WITH
21 CONSCIOUS INDIFFERENCE TO THE TRUTH OR THE FALSITY OF THE
22 INFORMATION. "RECKLESS DISREGARD" DOES NOT REQUIRE PROOF OF
23 SPECIFIC INTENT TO DEFRAUD.

24 (2) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
25 THIS SUBSECTION (2), IT IS UNLAWFUL FOR A PERSON TO INTENTIONALLY
26 OR WITH RECKLESS DISREGARD OFFER, SOLICIT, RECEIVE, OR PAY ANY
27 REMUNERATION, INCLUDING A KICKBACK, BRIBE, OR REBATE, DIRECTLY OR

1 INDIRECTLY, OVERTLY OR COVERTLY, IN CASH OR IN KIND, IN RETURN FOR:

2 (I) REFERRING AN INDIVIDUAL TO A PERSON WHO PROVIDES OR
3 ASSISTS IN PROVIDING AN ITEM OR SERVICE FOR WHICH PAYMENT MAY BE
4 MADE IN WHOLE OR IN PART UNDER THIS ARTICLE AND ARTICLES 5 AND 6
5 OF THIS TITLE; OR

6 (II) PURCHASING, LEASING, ORDERING, OR ARRANGING FOR OR
7 RECOMMENDING PURCHASING, LEASING, ORDERING, OR ARRANGING FOR
8 ANY GOOD, FACILITY, SERVICE, OR ITEM FOR WHICH PAYMENT MAY BE
9 MADE IN WHOLE OR IN PART UNDER THIS ARTICLE AND ARTICLES 5 AND 6
10 OF THIS TITLE.

11 (b) THE ACTIONS DESCRIBED IN PARAGRAPH (a) OF THIS
12 SUBSECTION (2) SHALL NOT BE UNLAWFUL IF THE REMUNERATION
13 OBTAINED BY THE PERSON <{"person" -- *is this the right word rather*
14 *than "provider"?*}> OR OTHER ENTITY IS:

15 (I) PERMITTED PURSUANT TO SECTION 25.5-4-414 OR ANY SAFE
16 HARBOR REGULATIONS OF THE FEDERAL DEPARTMENT OF HEALTH AND
17 HUMAN SERVICES, OR ANY SUCCESSOR AGENCY;

18 (II) PROPERLY DISCLOSED AND APPROPRIATELY REFLECTED IN THE
19 CLAIMS OR COST DOCUMENTS SUBMITTED UNDER THIS ARTICLE OR
20 ARTICLE 5 OR 6 OF THIS TITLE;

21 (III) PAID BY AN EMPLOYER TO AN EMPLOYEE WHO HAS A BONA
22 FIDE EMPLOYMENT RELATIONSHIP WITH THE EMPLOYER TO PROVIDE THE
23 MEDICAL ASSISTANCE; OR

24 (IV) PAID BY A VENDOR OF GOODS OR SERVICES TO A PERSON
25 AUTHORIZED TO ACT AS A PURCHASING AGENT FOR A GROUP OF PROVIDERS
26 SO LONG AS THE PERSON:

27 (A) HAS A WRITTEN CONTRACT WITH THE PROVIDERS THAT

1 SPECIFIES THE AMOUNT TO BE PAID TO THE PERSON, WHICH AMOUNT MAY
2 BE A FIXED AMOUNT OR A FIXED PERCENTAGE OF THE VALUE OF THE
3 PURCHASES MADE BY THE PERSON; OR

4 (B) IN THE CASE OF A PROVIDER <{should this be "vendor" to
5 reflect the language in the introductory portion of this (IV)?}> OF
6 SERVICES, THE PERSON DISCLOSES, IN THE FORM AND MANNER AS THE
7 STATE DEPARTMENT REQUIRES, TO THE PROVIDERS AND, UPON REQUEST,
8 TO THE STATE DEPARTMENT THE AMOUNT RECEIVED FROM EACH SUCH
9 VENDOR WITH RESPECT TO PURCHASES MADE BY OR ON BEHALF OF THE
10 PROVIDERS.

11 <{Check language of 25.5-4-306 to see if it still works with the new 305.
12 Headnote for 306 OK. Should reference in 306 (4) be changed to
13 25.5-4-305 and is the info in (4) still correct?}>

14 SECTION 3. Act subject to petition - specified effective date
15 - applicability. (1) This act shall take effect _____ (insert a fixed
16 date); except that, if a referendum petition is filed pursuant to section 1
17 (3) of article V of the state constitution against this act or an item, section,
18 or part of this act within the ninety-day period after final adjournment of
19 the general assembly, then the act, item, section, or part shall not take
20 effect unless approved by the people at the general election to be held in
21 November 2010 and shall take effect on the date of the official
22 declaration of the vote thereon by the governor.

23 (2) The provisions of this act shall apply to actions filed <{??}>
24 on or after the applicable effective date of this act.

25 <{Does member want a safety clause, specified effective date,
26 applicability clause?}>