

HOUSE HEALTH COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 201

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

AN ACT

RELATING TO CIVIL ACTIONS; AMENDING, REPEALING AND ENACTING  
PROVISIONS OF THE MEDICAID FALSE CLAIMS ACT AND THE FRAUD  
AGAINST TAXPAYERS ACT; INCREASING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 27-14-3 NMSA 1978 (being Laws 2004,  
Chapter 49, Section 3) is repealed and a new Section 27-14-3  
NMSA 1978 is enacted to read:

"27-14-3. [NEW MATERIAL] DEFINITIONS.--As used in the  
Medicaid False Claims Act:

A. "claim" means any request or demand, whether  
under a contract or otherwise, for money or property and  
whether or not the state has title to the money or property,  
that:

(1) is presented to an officer, employee or

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1 agent of the state; or

2 (2) is made to a contractor, grantee or other  
3 recipient, if the money or property is to be spent or used on  
4 the government's behalf or to advance a government program or  
5 interest, and if the state:

6 (a) provides or has provided any portion  
7 of the money or property requested or demanded; or

8 (b) will reimburse such contractor,  
9 grantee or other recipient for any portion of the money or  
10 property that is requested or demanded; and

11 (3) does not include requests or demands for  
12 money or property that the government has paid to an individual  
13 as compensation for federal employment or as an income subsidy  
14 with no restrictions on that individual's use of the money or  
15 property;

16 B. "department" means the human services  
17 department;

18 C. "document" means the original or any copy of any  
19 book, record, report, memorandum, paper, communication,  
20 tabulation, chart or other document, or data compilations, in  
21 whatever format created or maintained, whether stored in or  
22 accessible through computer or other information retrieval  
23 systems, together with instructions and all other materials  
24 necessary to use or interpret such data compilations;

25 D. "knowing" or "knowingly" means that a person,

1 with respect to information, has:

2 (1) actual knowledge of the information;

3 (2) acts in deliberate ignorance of the truth  
4 or falsity of the information; or

5 (3) acts in reckless disregard of the truth or  
6 falsity of the information;

7 E. "material" means having a natural tendency to  
8 influence, or be capable of influencing, the payment or receipt  
9 of money or property;

10 F. "medicaid" means the federal-state program  
11 administered by the human services department pursuant to Title  
12 19 or Title 21 of the federal Social Security Act;

13 G. "medicaid recipient" means a person who has  
14 received, or is eligible to receive, medicaid assistance or  
15 services for which a claim has been made;

16 H. "obligation" means an established duty, whether  
17 or not fixed, arising from an express or implied contractual,  
18 grantor-grantee or licensee-licensor relationship, from a fee-  
19 based or similar relationship, from statute or regulation, or  
20 from the retention of any overpayment;

21 I. "original source" means a person who either:

22 (1) prior to a public disclosure under Section  
23 27-14-7 NMSA 1978, has voluntarily disclosed to the government  
24 the information on which allegations or transactions in a claim  
25 are based; or

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1 (2) has knowledge that is independent of and  
2 materially adds to the publicly disclosed allegations or  
3 transactions and has voluntarily provided the information to  
4 the government before filing an action under Section 27-14-7  
5 NMSA 1978;

6 J. "public official" means a person elected to an  
7 office in an election covered by the Campaign Reporting Act or  
8 a person appointed to an office that is subject to an election  
9 covered by that act;

10 K. "qui tam action" means a private civil action  
11 brought on behalf of the state pursuant to the Medicaid False  
12 Claims Act; and

13 L. "relator" means a qui tam plaintiff."

14 SECTION 2. Section 27-14-4 NMSA 1978 (being Laws 2004,  
15 Chapter 49, Section 4) is repealed and a new Section 27-14-4  
16 NMSA 1978 is enacted to read:

17 "27-14-4. [NEW MATERIAL] FALSE CLAIMS AGAINST THE STATE--  
18 LIABILITY FOR CERTAIN ACTS.--

19 A. A person shall not:

20 (1) knowingly present or cause to be  
21 presented:

22 (a) a false or fraudulent claim for  
23 payment by medicaid or for approval for payment by medicaid; or

24 (b) a claim for payment by medicaid for  
25 assistance or services provided to a person who is not

1 eligible, or presumptively eligible, for medicaid;

2 (2) knowingly make or use, or cause to be made  
3 or used, a false record or statement material to a false or  
4 fraudulent medicaid claim;

5 (3) knowingly make or use, or cause to be made  
6 or used, a false record or statement material to an obligation  
7 to pay, or transmit money or property to, medicaid;

8 (4) knowingly make, use or cause to be made or  
9 used, a false record or statement material to an obligation to  
10 pay or transmit money or property to the government, or  
11 knowingly conceal or knowingly and improperly avoid or decrease  
12 an obligation to pay or transmit money or property to the  
13 government;

14 (5) knowingly apply for and receive a benefit  
15 or payment from medicaid on behalf of another person and  
16 convert such benefit or payment to the person's own use, except  
17 pursuant to a lawful assignment of benefits;

18 (6) knowingly make a false statement or  
19 misrepresentation of material fact concerning the conditions or  
20 operations of a health care facility to qualify for medicaid  
21 certification or recertification;

22 (7) knowingly make a claim for a service or a  
23 product that was not provided;

24 (8) have possession, custody or control of  
25 medicaid funds or property and knowingly deliver, or cause to

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~~[bracketed material]~~ = delete

1 be delivered, less than all such funds or property;

2 (9) make or deliver a document certifying  
3 receipt of medicaid property, without verifying receipt of all  
4 such property;

5 (10) knowingly buying, or receiving as a  
6 pledge of an obligation or debt, medicaid property from an  
7 officer, employee or agent of the state, or from a contractor  
8 or grantee of the state or other recipient of state medicaid  
9 funds, who does not have lawful authority to sell or pledge  
10 such property; or

11 (11) conspire to commit a violation of this  
12 subsection.

13 B. Proof of specific intent to defraud is not  
14 required for a violation of Subsection A of this section.

15 C. Any person found to have violated any provision  
16 of Subsection A of this section shall be liable to the state  
17 for:

18 (1) a civil penalty of not less than five  
19 thousand five hundred dollars (\$5,500) and not more than eleven  
20 thousand dollars (\$11,000) for each such violation, which  
21 amount shall be adjusted pursuant to the Federal Civil  
22 Penalties Inflation Adjustment Act of 1990;

23 (2) three times the amount of damages  
24 sustained by the state from each such violation; and

25 (3) reasonable attorney fees and costs of a

1 civil action brought to recover damages or penalties and the  
 2 costs of investigation incurred by the state related to such  
 3 violation."

4 SECTION 3. Section 27-14-5 NMSA 1978 (being Laws 2004,  
 5 Chapter 49, Section 5) is amended to read:

6 "27-14-5. DOCUMENTARY MATERIAL IN POSSESSION OF STATE  
 7 AGENCY.--

8 A. The department and the attorney general shall  
 9 have access to all documentary materials of persons and  
 10 medicaid recipients to which a state agency has access.  
 11 Documentary material provided pursuant to this subsection is  
 12 provided to allow investigation of an alleged unlawful act or  
 13 for use or potential use in an administrative or judicial  
 14 proceeding.

15 B. Except for disclosure to any person under  
 16 investigation or who is the subject of allegations made  
 17 pursuant to the Medicaid False [~~Claim~~] Claims Act or as ordered  
 18 by a court for good cause shown, neither the department nor the  
 19 attorney general shall [~~not~~] produce for inspection or copying  
 20 or otherwise disclose the contents of documentary material  
 21 obtained pursuant to this section to a person other than:

22 (1) an authorized employee of the attorney  
 23 general;

24 (2) an agency of this state, the United States  
 25 or another state;

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1 (3) a district attorney, city attorney or  
2 county attorney of this state;

3 (4) the United States attorney general; ~~[or]~~

4 (5) a state or federal grand jury; or

5 (6) a relator."

6 SECTION 4. Section 27-14-7 NMSA 1978 (being Laws 2004,  
7 Chapter 49, Section 7) is amended to read:

8 "27-14-7. CIVIL ACTION FOR FALSE CLAIMS.--

9 A. The department and the attorney general shall  
10 diligently investigate suspected violations. If the department  
11 or the attorney general finds that a person has violated or is  
12 violating the provisions of the Medicaid False Claims Act, the  
13 department or the attorney general may bring a civil action  
14 pursuant to ~~[Subsection F of]~~ this section.

15 B. A ~~[private-civil]~~ qui tam action may be brought  
16 by ~~[an-affected-person]~~ a relator for a violation of the  
17 Medicaid False Claims Act on behalf of the ~~[person-bringing~~  
18 ~~suit]~~ relator and ~~[for]~~ the state. The action shall be brought  
19 in the name of the state. The action may be dismissed only if  
20 the court ~~[and the department, pursuant to Subsection F of this~~  
21 ~~section],~~ the department and the attorney general give written  
22 consent to the dismissal and their reasons for consenting.

23 C. For ~~[private-civil]~~ qui tam actions, a copy of  
24 the complaint and written disclosure of substantially all  
25 material evidence and information the ~~[person]~~ relator



1 possesses shall be served on the department and the attorney  
 2 general. The complaint shall be filed [~~in writing~~] under seal  
 3 and [~~shall~~] remain under seal for at least sixty days. The  
 4 complaint shall not be served on the defendant until the  
 5 expiration of sixty days or any extension approved. [~~Within~~  
 6 ~~sixty days after receiving a copy of the complaint, the~~  
 7 ~~department shall conduct an investigation of the factual~~  
 8 ~~allegations and legal contentions made in the complaint, shall~~  
 9 ~~make a written determination of whether there is substantial~~  
 10 ~~evidence that a violation has occurred and shall provide the~~  
 11 ~~person against which a complaint has been made with a copy of~~  
 12 ~~the determination. If the department determines that there is~~  
 13 ~~not substantial evidence that a violation has occurred, the~~  
 14 ~~complaint shall be dismissed] While the complaint remains under  
 15 seal, the department or the attorney general shall, to the  
 16 extent either deems appropriate, investigate the legal and  
 17 factual basis for the claims to determine whether to intervene  
 18 and prosecute the action.~~

19 D. The department or the attorney general may, for  
 20 good cause shown, move the court for extensions of time during  
 21 which the complaint remains under seal. Any such motion may be  
 22 supported by affidavits or other submissions in camera. The  
 23 defendant shall not be required to respond to a complaint filed  
 24 pursuant to this section until twenty days after the complaint  
 25 is unsealed and served [~~to~~] upon the defendant. [~~The complaint~~

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1 ~~shall be deemed unsealed at the expiration of the sixty-day~~  
2 ~~period in the absence of a court-approved extension.]~~

3 E. Before the expiration of the sixty-day period or  
4 any extensions obtained, the department [~~pursuant to Subsection~~  
5 ~~F of this section~~] or the attorney general shall:

6 (1) proceed with the action, in which case the  
7 action shall be conducted by the department or the attorney  
8 general; or

9 (2) notify the court and the [~~person who~~  
10 ~~brought the action~~] relator that it declines to take over the  
11 action, in which case the [~~person bringing the action~~] relator  
12 shall have the right to conduct the action [~~if the department~~  
13 ~~determined that there is substantial evidence that a violation~~  
14 ~~of the Medicaid False Claims Act has occurred]~~.

15 F. The department shall notify the attorney general  
16 prior to filing a civil action pursuant to the Medicaid False  
17 Claims Act and shall not proceed with the action except with  
18 the written approval of the attorney general. The attorney  
19 general shall, within [~~twenty working~~] sixty days from the  
20 notification by the department, notify the department whether  
21 it may proceed with the civil action. [~~Failure by the attorney~~  
22 ~~general to notify the department of its determination within~~  
23 ~~the specified time period shall be construed as consent to~~  
24 ~~proceed.~~] The department shall, after filing the civil action,  
25 notify the attorney general of any proposed dismissal or

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1 settlement, and the department shall not proceed with the  
 2 dismissal or settlement except with the written approval of the  
 3 attorney general.

4 G. The department or the attorney general is  
 5 authorized to prosecute a civil action for violation of the  
 6 Medicaid False Claims Act.

7 H. When a person brings an action under this  
 8 section, no person other than the government may intervene or  
 9 bring a related action based on the facts underlying the  
 10 pending action."

11 SECTION 5. Section 27-14-8 NMSA 1978 (being Laws 2004,  
 12 Chapter 49, Section 8) is repealed and a new Section 27-14-8  
 13 NMSA 1978 is enacted to read:

14 "27-14-8. [NEW MATERIAL] RIGHTS OF QUI TAM PARTIES.--

15 A. If the department or the attorney general  
 16 proceeds with a qui tam action:

17 (1) the state shall have the primary  
 18 responsibility for prosecuting the action;

19 (2) the relator shall have the right to  
 20 continue as a party to the action, subject to limitations set  
 21 forth in this section; and

22 (3) the court may limit the relator's  
 23 participation in the proceedings if, upon motion of the state,  
 24 it finds that the relator's participation interferes with or  
 25 unduly delays the state's prosecution of the case.

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1           B. Notwithstanding an objection on the part of the  
2 relator, the state may dismiss or settle a qui tam action  
3 brought pursuant to the Medicaid False Claims Act, whether  
4 prosecuted jointly or separately by the state or the relator;  
5 provided that the state has served notice upon the relator of  
6 the state's intent to dismiss or settle and the relator is  
7 afforded an opportunity for a hearing.

8           C. A hearing on the settlement may be held in  
9 camera for good cause shown. The settlement shall be approved  
10 by the court if it finds that the proposed settlement is fair,  
11 adequate and reasonable under all of the circumstances.

12           D. If the state elects not to intervene, the  
13 relator shall have the right to prosecute the qui tam action.  
14 If the department or the attorney general requests, the state  
15 shall be served with copies of pleadings and all deposition  
16 transcripts at the state's expense.

17           E. Upon a showing of good cause, the court may  
18 allow the state to intervene in the qui tam action at a later  
19 date, without limiting the status and rights of the relator.

20           F. Upon a showing by the state, which shall take  
21 place in camera, that certain discovery on the part of the  
22 relator will interfere with the state's own investigation or  
23 prosecution of a criminal or civil matter arising out of the  
24 same facts, the court may stay such discovery by the relator  
25 for a period not to exceed sixty days. The court may extend

1 the stay upon a further showing that the state has pursued a  
2 criminal or civil investigation or proceedings with reasonable  
3 diligence and that certain discovery by the relator will  
4 interfere with ongoing proceedings conducted by the state.

5 G. Upon a showing by the state that unrestricted  
6 participation of the relator would interfere with or unduly  
7 delay the state's prosecution of the qui tam action, or would  
8 be repetitious, irrelevant or for purposes of harassment, the  
9 court may limit:

10 (1) the number of witnesses the relator may  
11 call;

12 (2) the length of a relator's examination of a  
13 witness;

14 (3) the cross-examination of a witness by a  
15 relator; or

16 (4) the relator's participation in the qui tam  
17 action in any other respect.

18 H. Notwithstanding Subsection B of Section 27-14-7  
19 NMSA 1978, the government may elect to pursue its claim through  
20 any alternate remedy available to the government, including any  
21 administrative proceeding to determine a civil monetary  
22 penalty. If any such alternate remedy is pursued in another  
23 proceeding, the person initiating the action shall have the  
24 same rights in such proceeding as such person would have had if  
25 the action had continued under Section 27-14-7 NMSA 1978. Any

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1 finding of fact or conclusion of law made in such proceeding  
2 that has become final shall be conclusive on all parties to an  
3 action under Section 27-14-7 NMSA 1978. For purposes of the  
4 preceding sentence, a finding or conclusion is final if it has  
5 been finally determined on appeal to the appropriate court, if  
6 all time for filing such an appeal with respect to the finding  
7 or conclusion has expired or if the finding or conclusion is  
8 not subject to judicial review."

9 SECTION 6. Section 27-14-9 NMSA 1978 (being Laws 2004,  
10 Chapter 49, Section 9) is repealed and a new Section 27-14-9  
11 NMSA 1978 is enacted to read:

12 "27-14-9. [NEW MATERIAL] AWARD TO RELATOR.--

13 A. If the state proceeds with a qui tam action  
14 pursuant to the Medicaid False Claims Act, the relator shall  
15 receive at least fifteen percent but not more than twenty-five  
16 percent of the proceeds of the final judgment or settlement of  
17 the action, depending upon the extent to which the relator  
18 substantially contributed to the prosecution of the action.  
19 Where the action is one that the court finds to be based  
20 primarily on disclosures of specific information, other than  
21 information provided by the person bringing the action,  
22 relating to allegations or transactions in a criminal, civil or  
23 administrative hearing, in a legislative, administrative or  
24 other state report, hearing, audit or investigation, or from  
25 news media, the court may award such sums as it considers

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1 appropriate, but in no case more than ten percent of the  
2 proceeds, taking into account the significance of the  
3 information and the role of the person bringing the action in  
4 advancing the case to litigation. Any payment to a person  
5 pursuant to this subsection shall be made from the proceeds.  
6 Any such person shall also receive an amount for reasonable  
7 expenses that the court finds to have been necessarily  
8 incurred, plus reasonable attorney fees and costs. All such  
9 expenses, fees and costs shall be awarded against the  
10 defendant.

11 B. If the state does not proceed with an action  
12 under this section, the relator bringing the action or settling  
13 the claim shall receive an amount that the court decides is  
14 reasonable for collecting the civil penalty and damages. The  
15 amount shall be not less than twenty-five percent and not more  
16 than thirty percent of the proceeds of the action or settlement  
17 and shall be paid out of such proceeds. The relator shall also  
18 receive an amount for reasonable expenses that the court finds  
19 to have been necessarily incurred, plus reasonable attorney  
20 fees and costs. All such expenses, fees and costs shall be  
21 awarded against the defendant.

22 C. Whether or not the state proceeds with the  
23 action, if the court finds that the action was brought by a  
24 relator who planned and initiated the violation of Section  
25 27-14-4 NMSA 1978 upon which the action was brought, then the

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1 court may, to the extent the court considers appropriate,  
2 reduce the share of the proceeds of the action that the relator  
3 would otherwise receive under Subsection A or B of this  
4 section, taking into account the role of the relator in  
5 advancing the case to litigation and any relevant circumstances  
6 pertaining to the violation. If a relator bringing the action  
7 is convicted of criminal conduct arising from the relator's  
8 role in the violation of Section 27-14-4 NMSA 1978, such  
9 relator shall be dismissed from the civil action and shall not  
10 receive any share of the proceeds of the action. Such  
11 dismissal shall not prejudice the right of the state to  
12 continue the action, represented by the attorney general.

13 D. If the state does not proceed with the action  
14 and the relator bringing the action conducts the action, the  
15 court may award to the defendant its reasonable attorney fees  
16 and expenses if the defendant prevails in the action and the  
17 court finds that the claim of the relator bringing the action  
18 was clearly frivolous, clearly vexatious or brought primarily  
19 for purposes of harassment."

20 SECTION 7. Section 27-14-10 NMSA 1978 (being Laws 2004,  
21 Chapter 49, Section 10) is repealed and a new Section 27-14-10  
22 NMSA 1978 is enacted to read:

23 "27-14-10. [NEW MATERIAL] CERTAIN ACTIONS BARRED.--

24 A. A court shall not have jurisdiction over an  
25 action brought pursuant to the Medicaid False Claims Act



1 against a member of the legislature, a member of the judiciary  
 2 or a public official if the action is substantially based on  
 3 evidence or information known to the state when the action was  
 4 brought.

5 B. A person shall not bring an action pursuant to  
 6 the Medicaid False Claims Act that is substantially based upon  
 7 allegations or transactions that are, or have been, the subject  
 8 of a civil suit or administrative civil money penalty  
 9 proceeding to which the state is, or was, a party.

10 C. Unless the action is brought by the state or the  
 11 person bringing the action is an original source of the  
 12 information, the court shall dismiss an action or claim under  
 13 this section, unless opposed by the state, if substantially the  
 14 same allegations or transactions as alleged in the action or  
 15 claim were publicly disclosed:

16 (1) in a state criminal, civil or  
 17 administrative proceeding to which the state or its agent is or  
 18 was a party;

19 (2) in a legislative, administrative or other  
 20 state report, hearing, audit or investigation; or

21 (3) in the news media."

22 SECTION 8. Section 27-14-11 NMSA 1978 (being Laws 2004,  
 23 Chapter 49, Section 11) is amended to read:

24 "27-14-11. [~~DEPARTMENT~~] STATE NOT LIABLE FOR CERTAIN  
 25 EXPENSES.--The [~~department~~] state shall not be liable for

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1 expenses that a [~~person~~] relator incurs in bringing [~~an~~] a qui  
2 tam action pursuant to the Medicaid False Claims Act."

3 SECTION 9. Section 27-14-12 NMSA 1978 (being Laws 2004,  
4 Chapter 49, Section 12) is repealed and a new Section 27-14-12  
5 NMSA 1978 is enacted to read:

6 "27-14-12. [NEW MATERIAL] WHISTLEBLOWER PROTECTION.--

7 A. An employee, contractor or agent shall be  
8 entitled to all relief necessary to make that person whole if  
9 such person is discharged, demoted, suspended, threatened,  
10 harassed or in any manner discriminated against in the terms  
11 and conditions of employment because of lawful acts done by the  
12 employee, contractor, agent or associated others in furtherance  
13 of an action brought pursuant to the Medicaid False Claims Act,  
14 or other efforts to stop one or more violations of the Medicaid  
15 False Claims Act.

16 B. Relief under Subsection A of this section shall  
17 include:

18 (1) reinstatement with the same seniority  
19 status that such person would have had but for the retaliation  
20 or discrimination;

21 (2) two times the amount of back pay;

22 (3) interest on the amount of back pay;

23 (4) compensation for any special damages  
24 sustained as a result of the retaliation or discrimination; and

25 (5) reasonable attorney fees and costs.

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1           C. An action brought under this section shall not  
2 be brought more than three years after the date on which the  
3 retaliation or discrimination occurred."

4           **SECTION 10.** Section 27-14-13 NMSA 1978 (being Laws 2004,  
5 Chapter 49, Section 13) is repealed and a new Section 27-14-13  
6 NMSA 1978 is enacted to read:

7           "27-14-13. [NEW MATERIAL] FALSE CLAIMS AND REPORTING  
8 PROCEDURE.--

9           A. A civil action pursuant to the Medicaid False  
10 Claims Act may not be brought:

11                   (1) more than six years after the date on  
12 which the violation of the Medicaid False Claims Act occurred;  
13 or

14                   (2) more than three years after the date on  
15 which the state official charged with responsibility to act in  
16 the circumstances knew or reasonably should have known facts  
17 material to its right of action, but in no event more than ten  
18 years after the date on which the violation was committed,  
19 whichever occurs last.

20           B. If the state intervenes in a qui tam action  
21 pursuant to the Medicaid False Claims Act, the state may file  
22 its own complaint or amend the relator's complaint, including  
23 adding additional claims for relief. Any such state pleading  
24 shall relate back to the filing date of the relator's original  
25 complaint, to the extent the state's pleading arises out of the

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1 conduct, transactions or occurrences set forth in the relator's  
2 original complaint.

3 C. In any action brought pursuant to the Medicaid  
4 False Claims Act, the state shall be required to prove all  
5 essential elements of the cause of action, including damages,  
6 by a preponderance of the evidence.

7 D. Notwithstanding any rule or other provision of  
8 law, a final judgment entered in favor of the state in any  
9 criminal proceeding charging fraud or false statements, whether  
10 upon a verdict after trial or upon a plea of guilty or nolo  
11 contendere, shall estop the defendant from denying the  
12 essential elements of the offense in any action brought  
13 pursuant to the Medicaid False Claims Act that involves the  
14 same transaction as in the criminal proceeding."

15 SECTION 11. Section 27-14-15 NMSA 1978 (being Laws 2004,  
16 Chapter 49, Section 15) is amended to read:

17 "27-14-15. USE OF FUNDS.--

18 A. Damages collected pursuant to the Medicaid False  
19 Claims Act on behalf of the state shall be remitted to the  
20 state treasurer for deposit in the general fund to be used for  
21 the state's medicaid program.

22 B. Penalties [~~legal fees or costs of investigation~~]  
23 recovered pursuant to the Medicaid False Claims Act on behalf  
24 of the state shall be remitted to the state treasurer for  
25 deposit in the general fund to be used for the state's medicaid

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1 program.

2 C. ~~[Pursuant to Subsection C of Section 30-44-8~~  
3 ~~NMSA 1978, penalties recovered pursuant to the Medicaid False~~  
4 ~~Claims Act on behalf of the state may be claimed by the~~  
5 ~~attorney general pursuant to procedures established by the~~  
6 ~~department and the attorney general]~~ Attorney fees and costs,  
7 and costs of investigation incurred by the department, shall be  
8 paid to the department. Attorney fees and costs, and costs of  
9 investigation incurred by the attorney general, shall be paid  
10 to the office of the attorney general."

11 SECTION 12. A new section of the Medicaid False Claims  
12 Act is enacted to read:

13 "[NEW MATERIAL] CIVIL INVESTIGATIVE DEMAND.--

14 A. Whenever the attorney general has reason to  
15 believe that any person may have information, or be in  
16 possession, custody or control of any document or tangible  
17 thing that the attorney general believes to be relevant to a  
18 false claims investigation, the attorney general may, prior to  
19 filing a civil proceeding alleging violations of the Medicaid  
20 False Claims Act or intervening in a qui tam proceeding under  
21 that act, execute in writing and cause to be served upon such  
22 person a civil investigative demand requiring such person to:

23 (1) produce documents or tangible things for  
24 inspection, or copying;

25 (2) give written answers to written

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1 interrogatories; or

2 (3) give oral testimony.

3 B. The civil investigative demand shall not be a  
4 matter of public record and shall not be disclosed or published  
5 by the attorney general except by court order.

6 C. A civil investigative demand shall:

7 (1) state the nature of the conduct  
8 constituting the alleged Medicaid False Claims Act violation  
9 that is under investigation and the applicable provision of law  
10 alleged to have been violated;

11 (2) if the demand is for the production of  
12 documents or tangible things:

13 (a) describe the documents or tangible  
14 things with reasonable particularity;

15 (b) specify the date, time and place on  
16 which the documents or tangible things are to be produced,  
17 which shall not be less than ten days after service of the  
18 demand; and

19 (c) identify the person to whom the  
20 documents or tangible things are to be made available;

21 (3) if the demand is for answers to written  
22 interrogatories, specify the date, time and place on which  
23 answers shall be served upon the attorney general; and

24 (4) if the demand is for the giving of oral  
25 testimony:

1 (a) specify the name of each person to  
2 be examined, if known, or name an organization or governmental  
3 agency as the witness and describe with reasonable  
4 particularity the matters on which the examination is  
5 requested, and the organization or agency shall designate one  
6 or more persons to testify on its behalf as to such matters;

7 (b) specify the date, time and place on  
8 which the examination shall take place, which shall not be less  
9 than seven days after service of the demand, unless the  
10 attorney general determines that exceptional circumstances are  
11 present that warrant the commencement of such testimony in a  
12 lesser period of time; and

13 (c) state that attendance and testimony  
14 are necessary to the investigation and provide notice of the  
15 right to be accompanied by counsel.

16 D. A civil investigative demand shall not:

17 (1) be issued more than once to the same  
18 person for oral testimony unless the person requests otherwise  
19 or the attorney general, after investigation, notifies the  
20 person in writing that an additional demand for oral testimony  
21 is necessary;

22 (2) contain any requirement that would be  
23 unreasonable or improper if contained in a subpoena or subpoena  
24 duces tecum issued by a court of this state;

25 (3) require the disclosure of privileged

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1 matters or matters otherwise protected from disclosure under  
2 standards applicable to a subpoena or subpoena duces tecum  
3 issued by a court of this state; or

4 (4) require the removal of any documents from  
5 the custody of the person upon whom the demand is served,  
6 except in accordance with Subsection E of this section.

7 E. Requested documents and tangible things shall be  
8 produced for inspection and copying during normal business  
9 hours at the principal place of business of the person served  
10 with the demand, or at such other place and time as may be  
11 agreed upon by such person and the attorney general.

12 F. Except as provided by Subsection G of this  
13 section, the attorney general shall not disclose the product of  
14 discovery received pursuant to a civil investigative demand to  
15 anyone.

16 G. The attorney general may disclose the product of  
17 discovery received pursuant to a civil investigative demand to:

18 (1) an attorney general of another state, law  
19 enforcement authorities of this or another state or federal law  
20 enforcement authorities for purposes of investigating:

21 (a) allegations of one or more  
22 violations of the Medicaid False Claims Act that form the basis  
23 of the civil investigative demand; or

24 (b) other violations of state or federal  
25 law arising from matters disclosed pursuant to the civil



1 investigative demand; and

2 (2) a relator and the relator's counsel;  
3 provided that the product of discovery relates to the relator's  
4 qui tam action.

5 H. Service of a duly executed copy of the civil  
6 investigative demand shall be made by:

7 (1) delivering a copy of the demand to the  
8 person to whom the demand is addressed, wherever such person  
9 may be found, or by leaving the demand with a person over  
10 fifteen years old residing at the usual place of abode of the  
11 addressee or at the addressee's principal office or place of  
12 business;

13 (2) if the addressee is not a natural person,  
14 delivering a copy of the demand to an officer, managing or  
15 general agent or to any other agent authorized by appointment  
16 or by law to receive service of process; or

17 (3) registered or certified mail addressed to  
18 the person at the person's principal office or place of  
19 business, whether in this state or elsewhere.

20 I. At any time before the return date of the civil  
21 investigative demand, a person receiving the demand may file a  
22 complaint under seal seeking an order to set aside or modify  
23 the demand in the district court of the New Mexico county in  
24 which the person resides or has a principal office or place of  
25 business or in the district court of Santa Fe county if the

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1 person does not reside or have a principal office or place of  
2 business in New Mexico. Upon a showing of good cause, the  
3 court may set aside or modify the demand or extend the time for  
4 discovery requested in the demand."

5 SECTION 13. Section 44-9-1 NMSA 1978 (being Laws 2007,  
6 Chapter 40, Section 1) is amended to read:

7 "44-9-1. SHORT TITLE.--~~[This act]~~ Chapter 49, Article 9  
8 NMSA 1978 may be cited as the "Fraud Against Taxpayers Act"."

9 SECTION 14. Section 44-9-2 NMSA 1978 (being Laws 2007,  
10 Chapter 40, Section 2, as amended) is amended to read:

11 "44-9-2. DEFINITIONS.--As used in the Fraud Against  
12 Taxpayers Act:

13 A. "claim" means a request or demand for money,  
14 property or services when all or a portion of the money,  
15 property or services requested or demanded issues from or is  
16 provided or reimbursed by the state or a political subdivision;

17 B. "document" means the original or any copy of any  
18 book, record, report, memorandum, paper, communication,  
19 tabulation, chart or other document, or data compilations, in  
20 whatever format created or maintained, whether stored in or  
21 accessible through computer or other information retrieval  
22 systems, together with instructions and all other materials  
23 necessary to use or interpret such data compilations;

24 ~~[B.]~~ C. "employer" includes an individual,  
25 corporation, firm, association, business, partnership,

1 organization, trust, charter school and the state and any of  
 2 its agencies, institutions or political subdivisions;

3 ~~[G.]~~ D. "knowing" or "knowingly" means that a  
 4 person, with respect to information, acts:

5 (1) with actual knowledge of the truth or  
 6 falsity of the information;

7 (2) in deliberate ignorance of the truth or  
 8 falsity of the information; or

9 (3) in reckless disregard of the truth or  
 10 falsity of the information;

11 ~~[D.]~~ E. "person" means an individual, corporation,  
 12 firm, association, organization, trust, business, partnership,  
 13 limited liability company, joint venture or any legal or  
 14 commercial entity;

15 ~~[E.]~~ F. "political subdivision" means a political  
 16 subdivision of the state or a charter school; ~~[and]~~

17 G. "qui tam action" means a private civil action  
 18 brought on behalf of the state or political subdivision  
 19 pursuant to the Fraud Against Taxpayers Act;

20 H. "relator" means a qui tam plaintiff; and

21 ~~[F.]~~ I. "state" means the state of New Mexico or  
 22 any of its branches, agencies, departments, boards,  
 23 commissions, officers, institutions or instrumentalities,  
 24 including the New Mexico finance authority, the New Mexico  
 25 mortgage finance authority and the New Mexico lottery

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1 authority."

2 SECTION 15. Section 44-9-4 NMSA 1978 (being Laws 2007,  
3 Chapter 40, Section 4, as amended) is amended to read:

4 "44-9-4. INVESTIGATION BY THE ATTORNEY GENERAL--  
5 DELEGATION--CIVIL ACTION.--

6 A. To the extent the attorney general deems  
7 appropriate, the attorney general shall diligently investigate  
8 suspected violations of Section 44-9-3 NMSA 1978, and if the  
9 attorney general finds that a person has violated or is  
10 violating that section, the attorney general may bring a civil  
11 action against that person pursuant to the Fraud Against  
12 Taxpayers Act.

13 B. The attorney general may in appropriate cases  
14 delegate the authority to investigate or to bring a civil  
15 action to the state agency or political subdivision to which a  
16 false claim was made, and when this occurs, the state agency or  
17 political subdivision shall have every power conferred upon the  
18 attorney general pursuant to the Fraud Against Taxpayers Act.  
19 If the attorney general has delegated authority to a state  
20 agency or political subdivision, all references to the attorney  
21 general in the Fraud Against Taxpayers Act shall apply to the  
22 delegee."

23 SECTION 16. Section 44-9-5 NMSA 1978 (being Laws 2007,  
24 Chapter 40, Section 5, as amended) is amended to read:

25 "44-9-5. [~~GIVIL~~] QUI TAM ACTION BY [~~QUI TAM PLAINTIFF~~]

1 RELATOR--STATE OR POLITICAL SUBDIVISION MAY INTERVENE.--

2           A. A person may bring a [~~civil~~] qui tam action for  
3 a violation of Section 44-9-3 NMSA 1978 on behalf of the person  
4 and the state or political subdivision. The action shall be  
5 brought in the name of the state or political subdivision. The  
6 person bringing the action shall be referred to as the [~~qui tam~~  
7 ~~plaintiff~~] relator. Once filed, the action may be dismissed  
8 only with the written consent of the court, taking into account  
9 the best interest of the parties involved and the public  
10 purposes behind the Fraud Against Taxpayers Act.

11           B. A complaint filed by a [~~qui tam plaintiff~~]  
12 relator shall be filed [~~in camera~~] under seal in district court  
13 and shall remain under seal for at least sixty days, and shall  
14 remain under seal until lifted by order of the court. No  
15 service shall be made on a defendant and no response is  
16 required from a defendant until the seal has been lifted and  
17 the complaint served pursuant to the rules of civil procedure.

18           C. On the same day as the complaint is filed, the  
19 [~~qui tam plaintiff~~] relator shall serve the attorney general,  
20 and the political subdivision, if applicable, with a copy of  
21 the complaint and written disclosure of substantially all  
22 material evidence and information the [~~qui tam plaintiff~~]  
23 relator possesses. The attorney general on behalf of the state  
24 or of the political subdivision [~~or the political subdivision~~  
25 ~~on its own behalf~~] may intervene and proceed with the action

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1 within sixty days after receiving the complaint and the  
2 material evidence and information. Upon a showing of good  
3 cause and reasonable diligence in the [~~state's or political~~  
4 ~~subdivision's~~] attorney general's investigation, the [~~state or~~  
5 ~~political subdivision~~] attorney general may move the court for  
6 an extension of time during which the complaint shall remain  
7 under seal.

8 D. Before the expiration of the sixty-day period or  
9 any extensions of time granted by the court, the attorney  
10 general [~~or political subdivision~~] shall notify the court that  
11 the state or the political subdivision:

12 (1) intends to intervene and proceed with the  
13 action; in which case, the seal shall be lifted and the action  
14 shall be conducted by the attorney general on behalf of the  
15 state or the political subdivision [~~or the political~~  
16 ~~subdivision shall conduct the action on its own behalf~~]; or

17 (2) declines to take over the action; in which  
18 case the seal shall be lifted and the [~~qui tam plaintiff~~]  
19 relator may proceed with the action.

20 E. When a person brings an action pursuant to this  
21 section, no person other than the attorney general on behalf of  
22 the state or a political subdivision [~~or a political~~  
23 ~~subdivision on its own behalf~~] may intervene or bring a related  
24 action based on the facts underlying the pending action."

25 SECTION 17. Section 44-9-6 NMSA 1978 (being Laws 2007,

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1 Chapter 40, Section 6, as amended) is repealed and a new  
2 Section 44-9-6 NMSA 1978 is enacted to read:

3 "44-9-6. [NEW MATERIAL] RIGHTS OF QUI TAM PARTIES.--

4 A. If the attorney general intervenes in a qui tam  
5 action:

6 (1) the state or political subdivision shall  
7 have the primary responsibility for prosecuting the action;

8 (2) the relator shall have the right to  
9 continue as a party to the action, subject to limitations set  
10 forth in this section; and

11 (3) the court may limit the relator's  
12 participation in the proceedings if, upon motion of the state,  
13 it finds that the relator's participation interferes with or  
14 unduly delays the state's or political subdivision's  
15 prosecution of the case.

16 B. Notwithstanding an objection on the part of the  
17 relator, the state or political subdivision may dismiss or  
18 settle a qui tam claim or action brought pursuant to the Fraud  
19 Against Taxpayers Act, whether prosecuted jointly or separately  
20 by the state, political subdivision or the relator; provided  
21 that the state or political subdivision has served notice upon  
22 the relator of the state's or political subdivision's intent to  
23 dismiss or settle and the relator is afforded an opportunity  
24 for a hearing.

25 C. A hearing on the settlement may be held in

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1 camera for good cause shown. The settlement shall be approved  
2 by the court if it finds that the proposed settlement is fair,  
3 adequate and reasonable under all of the circumstances.

4 D. If the state or political subdivision elects not  
5 to intervene, the relator shall have the right to prosecute the  
6 qui tam action. If requested by the attorney general, the  
7 state or political subdivision shall be served with copies of  
8 pleadings and all deposition transcripts at the attorney  
9 general's expense.

10 E. Upon a showing of good cause, the court may  
11 allow the state or political subdivision to intervene in the  
12 qui tam action at a later date, without limiting the status and  
13 rights of the relator.

14 F. Upon a showing by the state or political  
15 subdivision, which shall take place in camera, that certain  
16 discovery on the part of the relator will interfere with the  
17 state's or political subdivision's own investigation or  
18 prosecution of a criminal or civil matter arising out of the  
19 same facts, the court may stay such discovery by the relator  
20 for a period not to exceed sixty days. The court may extend  
21 the stay upon a further showing that the state or political  
22 subdivision has pursued a criminal or civil investigation or  
23 proceedings with reasonable diligence and that certain  
24 discovery by the relator will interfere with ongoing  
25 proceedings conducted by the state or political subdivision.

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1           G. Upon a showing by the state that unrestricted  
2 participation of the relator would interfere with or unduly  
3 delay the state's prosecution of the qui tam action, or would  
4 be repetitious, irrelevant or for purposes of harassment, the  
5 court may limit:

6                   (1) the number of witnesses the relator may  
7 call;

8                   (2) the length of a relator's examination of a  
9 witness;

10                   (3) the cross-examination of a witness by a  
11 relator; or

12                   (4) the relator's participation in the qui tam  
13 action in any other respect.

14           H. Notwithstanding the provisions of Section 44-9-5  
15 NMSA 1978, the attorney general or a political subdivision may  
16 elect to pursue the state's or political subdivision's claim  
17 through any alternate remedy available, including an  
18 administrative proceeding to determine a civil money penalty.  
19 If an alternate remedy is pursued, the relator shall have the  
20 same rights in such a proceeding as the relator would have had  
21 if the action had continued pursuant to this section. A  
22 finding of fact or conclusion of law made in the other  
23 proceeding that has become final shall be conclusive on all  
24 parties to an action under the Fraud Against Taxpayers Act.  
25 For purposes of this subsection, a finding or conclusion is

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1 final if it has been finally determined on appeal to the  
2 appropriate court, if all time for filing an appeal with  
3 respect to the finding or conclusion has expired or if the  
4 finding or conclusion is not subject to judicial review."

5 SECTION 18. Section 44-9-7 NMSA 1978 (being Laws 2007,  
6 Chapter 40, Section 7, as amended) is amended to read:

7 "44-9-7. AWARDS TO [~~QUI TAM PLAINTIFF~~] RELATOR AND THE  
8 STATE OR POLITICAL SUBDIVISION.--

9 A. Except as otherwise provided in this section, if  
10 the state or a political subdivision proceeds with an action  
11 brought by a [~~qui tam plaintiff~~] relator and the state or  
12 political subdivision prevails in the action, the [~~qui tam~~  
13 ~~plaintiff~~] relator shall receive:

14 (1) at least fifteen percent but not more than  
15 twenty-five percent of the proceeds of the action or  
16 settlement, depending upon the extent to which the [~~qui tam~~  
17 ~~plaintiff~~] relator substantially contributed to the prosecution  
18 of the action; or

19 (2) no more than ten percent of the proceeds  
20 of the action or settlement if the court finds that the action  
21 was based primarily on disclosures of specific information, not  
22 provided by the [~~qui tam plaintiff~~] relator, relating to  
23 allegations or transactions in a criminal, civil,  
24 administrative or legislative hearing, proceeding, report,  
25 audit or investigation or from the news media, taking into

1 account the significance of the information and the role of the  
2 [~~qui tam plaintiff~~] relator in advancing the case to  
3 litigation. However, if the attorney general or political  
4 subdivision determines and certifies in writing that the [~~qui~~  
5 ~~tam plaintiff~~] relator provided a significant contribution in  
6 advancing the case, then the [~~qui tam plaintiff~~] relator shall  
7 receive the share of proceeds set forth in Paragraph (1) of  
8 this subsection.

9 B. If the state or political subdivision does not  
10 proceed with an action brought by a [~~qui tam plaintiff~~] relator  
11 and the state or political subdivision prevails in the action,  
12 the [~~qui tam plaintiff~~] relator shall receive an amount that is  
13 not less than twenty-five percent or more than thirty percent  
14 of the proceeds of the action or settlement, as the court deems  
15 reasonable for collecting the civil penalty and damages.

16 C. Whether or not the state or political  
17 subdivision proceeds with an action brought by a [~~qui tam~~  
18 ~~plaintiff~~] relator:

19 (1) if the court finds that the action was  
20 brought by a person that planned or initiated the violation of  
21 Section 44-9-3 NMSA 1978 upon which the action was based, the  
22 court may reduce the share of the proceeds that the person  
23 would otherwise receive under Subsection A or B of this  
24 section, taking into account the role of the person as the [~~qui~~  
25 ~~tam plaintiff~~] relator in advancing the case to litigation and

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1 any relevant circumstances pertaining to the violation; or

2 (2) if the person bringing the action is  
3 convicted of criminal conduct arising from that person's role  
4 in the violation of Section 44-9-3 NMSA 1978 upon which the  
5 action was based, that person shall be dismissed from the civil  
6 action and shall not receive a share of the proceeds. The  
7 dismissal shall not prejudice the right of the state or  
8 political subdivision to continue the action.

9 D. Any award to a [~~qui tam plaintiff~~] relator shall  
10 be paid out of the proceeds of the action or settlement, if  
11 any. The [~~qui tam plaintiff~~] relator shall also receive an  
12 amount for reasonable expenses incurred in the action plus  
13 reasonable attorney fees that shall be paid by the defendant.

14 E. The state or political subdivision is entitled  
15 to all proceeds collected in an action or settlement not  
16 awarded to a [~~qui tam plaintiff~~] relator. The state or  
17 political subdivision is also entitled to reasonable expenses  
18 incurred in the action plus reasonable attorney fees, including  
19 the fees of the attorney general or state agency counsel or  
20 counsel employed by the political subdivision that shall be  
21 paid by the defendant.

22 F. Proceeds and penalties collected by the state or  
23 political subdivision shall be deposited as follows:

24 (1) proceeds in the amount of the false claim  
25 paid and attorney fees and costs shall be returned to the fund

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1 or funds from which the money, property or services came, and  
 2 attorney fees and costs incurred by the office of the attorney  
 3 general shall be paid to the office of the attorney general;

4 (2) civil penalties shall be deposited in the  
 5 current school fund pursuant to Article 12, Section 4 of the  
 6 constitution of New Mexico; or

7 (3) [~~except as provided in Paragraph (4) of~~  
 8 ~~this subsection~~] all remaining proceeds shall be deposited as  
 9 follows:

10 (a) one-half into a fund for the use of  
 11 the [~~attorney general in furtherance of the obligations imposed~~  
 12 ~~upon that office by the Fraud Against Taxpayers Act~~] office of  
 13 the attorney general to provide staffing for cases arising  
 14 pursuant to the Fraud Against Taxpayers Act in furtherance of  
 15 the obligations imposed upon that office by that act; and

16 (b) one-half into the general fund [~~or~~  
 17 (4) ~~remaining proceeds collected by counties~~  
 18 ~~or municipalities as political subdivisions acting on their own~~  
 19 ~~behalf shall be disposed of in accordance with the direction of~~  
 20 ~~the governing body of the county or municipality]."~~

21 SECTION 19. Section 44-9-8 NMSA 1978 (being Laws 2007,  
 22 Chapter 40, Section 8, as amended) is amended to read:

23 "44-9-8. AWARD OF ATTORNEY FEES AND COSTS TO DEFENDANT.--  
 24 If the state or political subdivision does not proceed with the  
 25 qui tam action and the [~~qui tam plaintiff~~] relator conducts the

1 action, the court may award a defendant reasonable attorney  
2 fees and costs if the defendant prevails and the court finds  
3 the action clearly frivolous, clearly vexatious or brought  
4 primarily for the purpose of harassment."

5 SECTION 20. Section 44-9-9 NMSA 1978 (being Laws 2007,  
6 Chapter 40, Section 9, as amended) is amended to read:

7 "44-9-9. CERTAIN ACTIONS BARRED.--

8 A. No court shall have jurisdiction over ~~[an]~~ a qui  
9 tam action brought pursuant to Section 44-9-5 NMSA 1978 by a  
10 present or former employee of the state or political  
11 subdivision unless the employee, during employment with the  
12 state or political subdivision and in good faith, exhausted  
13 existing internal procedures for reporting false claims and the  
14 state or political subdivision failed to act on the information  
15 provided within a reasonable period of time.

16 B. No court shall have jurisdiction over ~~[an]~~ a qui  
17 tam action brought pursuant to Section 44-9-5 NMSA 1978 against  
18 an elected or appointed ~~[state]~~ official of the state or of a  
19 political subdivision, a member of the state legislature or a  
20 member of the judiciary if the action is based on evidence or  
21 information known to the official of the state ~~[agency]~~ or  
22 political subdivision who is charged with responsibility to act  
23 in the circumstances to which the false claim was made or to  
24 the attorney general when the action was filed.

25 C. Unless the attorney general ~~[or political]~~

1 ~~subdivision]~~ determines and certifies in writing that the qui  
 2 tam action is in the interest of the state or political  
 3 subdivision, no court shall have jurisdiction over an action  
 4 brought pursuant to Section 44-9-5 NMSA 1978 when that action  
 5 is based on allegations or transactions that are the subject of  
 6 a criminal, civil or administrative proceeding in which the  
 7 state or political subdivision is a party.

8 D. Upon motion of the attorney general [~~or~~  
 9 ~~political subdivision]~~, a court may, in its discretion, dismiss  
 10 [~~an~~] a qui tam action or claim brought pursuant to Section  
 11 44-9-5 NMSA 1978 if the elements of the alleged false or  
 12 fraudulent claim have been publicly disclosed [~~in the news~~  
 13 ~~media or in a publicly disseminated governmental report at the~~  
 14 ~~time the complaint is filed]~~:

15 (1) in a state criminal, civil or  
 16 administrative proceeding to which the state or political  
 17 subdivision or an agent of either was a party;

18 (2) in a legislative or other state report,  
 19 audit or investigation; or

20 (3) in the news media."

21 SECTION 21. Section 44-9-10 NMSA 1978 (being Laws 2007,  
 22 Chapter 40, Section 10, as amended) is amended to read:

23 "44-9-10. STATE OR POLITICAL SUBDIVISION NOT LIABLE.--The  
 24 state or political subdivision shall not be liable for expenses  
 25 or fees that a [~~qui tam plaintiff]~~ relator may incur in

1 investigating or bringing [~~an~~] a qui tam action pursuant to the  
2 Fraud Against Taxpayers Act."

3 SECTION 22. Section 44-9-12 NMSA 1978 (being Laws 2007,  
4 Chapter 40, Section 12, as amended) is amended to read:

5 "44-9-12. LIMITATION OF ACTIONS--ESTOPPEL--STANDARD OF  
6 PROOF.--

7 A. A civil action pursuant to the Fraud Against  
8 Taxpayers Act may be brought at any time. A civil action  
9 pursuant to the Fraud Against Taxpayers Act may be brought for  
10 conduct that occurred prior to the effective date of that act,  
11 but not for conduct that occurred prior to July 1, 1987.

12 B. Notwithstanding any other provision of law, a  
13 final judgment rendered in a criminal proceeding charging fraud  
14 or false statement, whether upon a guilty verdict after trial  
15 or upon a plea of guilty or nolo contendere, shall estop the  
16 defendant from denying the essential elements of a fraud  
17 against taxpayers action where the criminal proceeding concerns  
18 the same transaction that is the subject of the fraud against  
19 taxpayers action.

20 C. In an action brought pursuant to the Fraud  
21 Against Taxpayers Act, the state or political subdivision or  
22 the [~~qui tam plaintiff~~] relator shall be required to prove all  
23 essential elements of the cause of action, including damages,  
24 by a preponderance of the evidence."

25 SECTION 23. A new section of the Fraud Against Taxpayers



1 Act is enacted to read:

2 "[NEW MATERIAL] CIVIL INVESTIGATIVE DEMAND.--

3 A. Whenever the attorney general has reason to  
4 believe that any person may have information, or be in  
5 possession, custody or control of any document or tangible  
6 thing that the attorney general believes to be relevant to a  
7 false claims investigation, the attorney general may, prior to  
8 filing a civil proceeding alleging violations of the Fraud  
9 Against Taxpayers Act or intervening in a qui tam proceeding  
10 under that act, execute in writing and cause to be served upon  
11 such person a civil investigative demand requiring such person  
12 to:

13 (1) produce documents or tangible things for  
14 inspection or copying;

15 (2) give written answers to written  
16 interrogatories; or

17 (3) give oral testimony.

18 B. The civil investigative demand shall not be a  
19 matter of public record and shall not be disclosed or published  
20 by the attorney general except by court order.

21 C. A civil investigative demand shall:

22 (1) state the nature of the conduct  
23 constituting the alleged Fraud Against Taxpayers Act violation  
24 that is under investigation and the applicable provision of law  
25 alleged to have been violated;

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1 (2) if the demand is for the production of  
2 documents or tangible things:

3 (a) describe the documents or tangible  
4 things with reasonable particularity;

5 (b) specify the date, time and place on  
6 which the documents or tangible things are to be produced,  
7 which shall not be less than ten days after service of the  
8 demand; and

9 (c) identify the person to whom the  
10 documents or tangible things are to be made available;

11 (3) if the demand is for answers to written  
12 interrogatories, specify the date, time and place on which  
13 answers shall be served upon the attorney general; and

14 (4) if the demand is for the giving of oral  
15 testimony:

16 (a) specify the name of each person to  
17 be examined, if known, or name an organization or governmental  
18 agency as the witness and describe with reasonable  
19 particularity the matters on which the examination is  
20 requested, and the organization or agency shall designate one  
21 or more persons to testify on its behalf as to such matters;

22 (b) specify the date, time and place on  
23 which the examination shall take place, which shall not be less  
24 than seven days after service of the demand, unless the  
25 attorney general determines that exceptional circumstances are

1 present that warrant the commencement of such testimony in a  
2 lesser period of time; and

3 (c) state that attendance and testimony  
4 are necessary to the investigation and provide notice of the  
5 right to be accompanied by counsel.

6 D. A civil investigative demand shall not:

7 (1) be issued more than once to the same  
8 person for oral testimony unless the person requests otherwise  
9 or the attorney general, after investigation, notifies the  
10 person in writing that an additional demand for oral testimony  
11 is necessary;

12 (2) contain any requirement that would be  
13 unreasonable or improper if contained in a subpoena or subpoena  
14 duces tecum issued by a court of this state;

15 (3) require the disclosure of privileged  
16 matters or matters otherwise protected from disclosure under  
17 standards applicable to a subpoena or subpoena duces tecum  
18 issued by a court of this state; or

19 (4) require the removal of any documents from  
20 the custody of the person upon whom the demand is served,  
21 except in accordance with Subsection E of this section.

22 E. Requested documents and tangible things shall be  
23 produced for inspection and copying during normal business  
24 hours at the principal place of business of the person served  
25 with the demand, or at such other place and time as may be

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1 agreed upon by such person and the attorney general.

2 F. Except as provided by Subsection G of this  
3 section, the attorney general shall not disclose the product of  
4 discovery received pursuant to a civil investigative demand to  
5 anyone.

6 G. The attorney general may disclose the product of  
7 discovery received pursuant to a civil investigative demand to:

8 (1) an attorney general of another state, law  
9 enforcement authorities of this or another state or federal law  
10 enforcement authorities for purposes of investigating:

11 (a) allegations of one or more  
12 violations of the Fraud Against Taxpayers Act that form the  
13 basis of the civil investigative demand; or

14 (b) other violations of state or federal  
15 law arising from matters disclosed pursuant to the civil  
16 investigative demand; and

17 (2) a relator and the relator's counsel;  
18 provided that the product of discovery relates to the relator's  
19 qui tam action.

20 H. Service of a duly executed copy of the civil  
21 investigative demand shall be made by:

22 (1) delivering a copy of the demand to the  
23 person to whom the demand is addressed, wherever such person  
24 may be found, or by leaving the demand with a person over  
25 fifteen years old residing at the usual place of abode of the

1 addressee or at the addressee's principal office or place of  
2 business;

3 (2) if the addressee is not a natural person,  
4 delivering a copy of the demand to an officer, managing or  
5 general agent or to any other agent authorized by appointment  
6 or by law to receive service of process; or

7 (3) registered or certified mail addressed to  
8 the person at the person's principal office or place of  
9 business, whether in this state or elsewhere.

10 I. At any time before the return date of the civil  
11 investigative demand, a person receiving the demand may file a  
12 complaint under seal seeking an order to set aside or modify  
13 the demand in the district court of the New Mexico county in  
14 which the person resides or has a principal office or place of  
15 business or in the district court of Santa Fe county if the  
16 person does not reside or have a principal office or place of  
17 business in New Mexico. Upon a showing of good cause, the  
18 court may set aside or modify the demand or extend the time for  
19 discovery requested in the demand."

20 **SECTION 24. APPLICABILITY.**--The provisions of this act  
21 apply to civil actions alleging violations of the Medicaid  
22 False Claims Act or the Fraud Against Taxpayers Act filed on or  
23 after July 1, 2016.

24 **SECTION 25. EFFECTIVE DATE.**--The effective date of the  
25 provisions of this act is July 1, 2016.

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