



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do **NOT** use for expedited rule making

Agency: Attorney General's Office

Subject of possible rule making: Mandatory inflation adjustment to civil penalties imposed for violation of the Medicaid False Claims Act, chapter 74.66 RCW

Statutes authorizing the agency to adopt rules on this subject: RCW 74.66.020 (1) & (5)

Reasons why rules on this subject may be needed and what they might accomplish: The Legislature, in enacting the False Claims Act (FCA), chapter 74.66 RCW, imposed civil penalties in RCW 74.66.020(1) of "not less than \$5,500 and not more than \$11,000, plus three times the amount of damages which the government entity sustains because of the act of that person..." for violation of subsections RCW 74.66.020(1) (a) through (g) RCW 74.66.020. In RCW 74.66.020(5), the Legislature required that the Attorney General enact a rule to "...annually adjust the civil penalties established in subsection (1) of this section so that they are equivalent to the civil penalties provided under the federal false claims act and in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990."

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: The Department of Justice (DOJ) enforces the federal False Claims Act 31 U.S.C. § 3730 (a). Section 1909 of the Social Security Act, 42 U.S.C. 1396h, provides that if a state enacts a substantially identical false claims act, which includes having consistent penalty provisions, it can receive an additional 10% of Medicaid fraud recoveries which are typically split between federal and state.

Pursuant to Section 701 of the Bipartisan Budget Act of 2015, Public Law 114-74, titled the Federal Civil Penalties Inflation Adjustment Act Improvements Act (FCPIAIIA), Congress required inflationary adjustments to the federal FCA penalty provisions. DOJ has made adjustments to the federal FCA penalty provisions and Washington's FCA penalties are not consistent. Pursuant to RCW 74.66.050(2), Washington must adopt regulations to be consistent.

Process for developing new rule (check all that apply):
 Negotiated rule making
 Pilot rule making
 Agency study
 Other: Effective February 3, 2017, the Department of Justice, in accordance with FCPIAIIA, adjusted for inflation civil monetary penalties assessed or enforced by the Department. This is the second time since enactment of the Washington Medicaid FCA in May 2012 that the federal government has adjusted the civil penalties for the federal FCA. The new range is \$10,957.38 to \$21,916. See 31 USC 3729(a), 28 CFR 85.3(a)(9)*. This triggers the process required under RCW 74.66.020(5) to adjust Washington's FCA penalties to keep pace with federal inflation adjustments.
[*https://www.federalregister.gov/documents/2017/02/03/2017-01306/civil-monetary-penalties-inflation-adjustment-for-2017](https://www.federalregister.gov/documents/2017/02/03/2017-01306/civil-monetary-penalties-inflation-adjustment-for-2017)

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:
Interested parties can contact or submit written comments to:
Douglas D. Walsh, Senior Assistant Attorney General--Director Medicaid Fraud Control Unit
Office of the Attorney General
P.O. Box 40114
Olympia, WA 98504.
Email: DougW@atg.wa.gov
Phone: (360) 586-8872
Interested parties can also use the email or mailing address above to request to be added to the stakeholder email list for this anticipated rulemaking. Rulemaking information for interested parties will also be posted on the Attorney General's Office website at www.atg.wa.gov.

DATE February 15, 2017
NAME (TYPE OR PRINT) Bob Ferguson
SIGNATURE
TITLE Washington State Attorney General

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