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**Quality Improvement Program**

The Quality Improvement Program (Program) is an ongoing, comprehensive and integrated system designed to actively initiate, monitor and evaluate standards of health care practice and infrastructure essential to the delivery of quality clinical care and service to members.

The goals of the Program are:

- To develop and maintain a well-integrated system that continuously measures clinical and operational performance, identifies the need for and initiates meaningful corrective action when appropriate and evaluates the result of actions taken to improve quality of care outcomes and service levels.
- To establish a mechanism for the safe, culturally-sensitive delivery of health care that not only promotes efficient, appropriate and effective use of resources, but also supports the physician-patient relationship.
- To ensure access to and availability of qualified and competent providers.
- To engage members in managing, maintaining or improving their current states of health.
- To provide a forum for members, providers and various health care associations and community agencies to provide suggestions regarding the implementation of the Program.
- To ensure compliance with standards as required by contract, regulatory statutes and accreditation agencies.

The Quality Improvement Committee is delegated by the organization's board of directors with monitoring and evaluating the results of Program initiatives and implementing corrective action when the results are less than desired or when areas needing improvement are identified.

The Plan's Quality Improvement Program serves to improve the health of its members through the emphasis on health maintenance, education, diagnostic testing and treatment.

The Program incorporates ongoing screening of the medical record to assure compliance with all regulatory and accreditation agency guidelines. Studies will also be conducted on the accessibility, availability, efficiency, safety, efficacy, appropriateness, effectiveness and continuity of the patient care and services delivered by the health care providers and the Plan itself.

When opportunities to improve patient care or documentation are present, a plan of action will be instituted. Providers may be asked to participate in formulating the plan of action, as collaborative input will provide the key for a workable solution.

The Quality Improvement department will assess the minimum guidelines of care and documentation required by regulatory agencies and accreditation organizations for medical record review, health screening and high-risk diagnoses on an ongoing basis. A Plan representative will make an appointment to review these items in the provider's office.

Upon completion of the review, providers will be provided with a Physician Report Card during the exit meeting to outline any deficiencies found during the review. The report will assist provider offices with making any necessary corrections. A Plan of Correction will be requested for all deficiencies.

**Quality  
Improvement  
Organization  
(QIO)**

Under a Memorandum of Agreement between the Plan and the Quality Improvement Organization (QIO) and Florida Medical Quality Assurance, Inc. (FMQAI), the Plan is required to participate in specific reviews and tasks applicable to the Medicare QIO Programs geared towards improving care for beneficiaries enrolled in managed care.

Providers contracted with the Plan are required to participate in all quality improvement functions and tasks required by the QIO. These activities may include, but are not limited to:

- Compliance with requests for medical records for quality improvement studies and audits;
- Cooperation with quality improvement initiatives related to QIO collaborative projects;
- Cooperation with QIO efforts to improve care for chronic disease and/or preventive care measures; and/or
- Compliance with requests for information and recommendations formulated by the QIO in the process of reviewing or resolving beneficiary and/or provider complaints.

The QIO, Centers for Medicare & Medicaid (CMS), the Agency for Health Care Administration (AHCA) and the Accreditation Association for Ambulatory Health Care (AAAHC) may also perform annual audits. Providers will need to copy office records for these audits. It is very important that any time a copy of a record is requested the entire record is sent.

In addition to monitoring the guidelines in this manual, continuity of all patient care will be monitored (see the **Medical Records** section). The results of all reviews are maintained in a physician profile and utilized at the time of re-credentialing.

#### **Provider Participation with QI Activities**

In accordance with regulatory contracts and accreditation guidelines, the Plan and its providers contractually agree to participate in quality improvement projects and medical record review activities to:

- Promote the appropriate medical record documentation and management of patients with designated diagnoses;

- Identify areas of medical record documentation and management that may be improved;
- Oversee the quality of the medical record;
- Provide periodic feedback to the physicians;
- Identify areas of practice that require peer review; and
- Provide a performance profile to be utilized during the credentialing process.

#### Access to Records

- Access to the Plan member's medical record in the office or facility for review is required.

#### Other Requirements

- Copying and providing office records as needed for quality review activities;
- Requests for internal QI data from delegated credentialing entities;
- Copying and providing office records for state, federal and professional review; and
- See the **Medical Records** section for details on record retention time frames.

#### Quality Improvement Activities

The following are examples of Quality Improvement activities performed by the Plan on an ongoing basis:

- Review of Potential Quality of Care Concerns
- Mortality reviews
- Healthcare Effectiveness Data and Information Set (HEDIS<sup>®</sup>) reviews
- Over- and under-utilization monitoring
- Preventive Health Initiatives
- Chronic care improvement programs

- Medicare Quality Improvement Activities
- State Performance Improvement Projects
- Provider-specific issues identified through tracking and trending of complaints or referrals
- Medical record content reviews – see the **Medical Records** section for specific documentation standards and requirements

Results of all reviews will be housed in a provider profile to utilize during re-credentialing and re-contracting.

### **Fraud and Abuse**

The Plan is committed to the prevention, detection and reporting of health care fraud and abuse according to applicable federal and state statutory, regulatory and contractual requirements. The Plan has developed an aggressive, proactive fraud and abuse program designed to collect, analyze and evaluate data in order to identify suspected fraud and abuse. Effective detection tools have been developed to identify patterns of health care service use, including over-utilization, unbundling, up-coding, misuse of modifiers and other common schemes.

Federal and state regulatory agencies, law enforcement and the Plan vigorously investigate incidents of suspected fraud and abuse. Service providers are cautioned that unbundling, fragmenting, up-coding, and other activities designed to manipulate codes contained in the International Classification of Diseases (ICD), Providers' Current Procedural Terminology (CPT), the Health Care Common Procedure Coding System (HCPCS), and/or Universal Billing Revenue Coding Manual as a means of increasing reimbursement, may be considered an improper billing practice and may be a misrepresentation of the services actually rendered.

In addition, providers are reminded that medical records and other documentation must be legible and support the level of care and service indicated on claims. Providers engaged in fraud and abuse may be subject to disciplinary and corrective actions, including but not limited to, warnings, monitoring, administrative sanctions, suspension or termination as an authorized

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provider, loss of licensure, and/or civil and/or criminal prosecution, fines and other penalties.

To report suspected fraud and abuse, please refer to the **Quick Reference Guides** in this manual and call our confidential Trust Program Hotline.

**Fraud and Abuse Updates**

As part of our effort to educate and improve awareness regarding fraud, waste and abuse (FWA), we ask you please take the time to read through the selected portions of the False Claims Act and the Florida State False Claims Act we have included for you. As you may know, the Deficit Reduction Act of 2005 (DRA 2005) requires states to ensure that any entity receiving Medicaid payments of at least \$5 million per year must establish written policies with information about the federal False Claims Act; state laws regarding civil or criminal penalties for false claims and statements; and whistleblower protections with respect to preventing and detecting fraud, waste and abuse in federal health care programs. This provision became effective January 1, 2007. The following hotline numbers can be used to report FWA.

**WellCare Fraud Hotline: 1-866-678-8355**

**AHCA: 1-888-419-3456**

**HHS-OIG: 1-800-HHS-TIPS (447-8477)**

**THE FEDERAL FALSE CLAIMS ACT**

31 U.S.C. §§ 3729-3733  
As amended, May 2009

**§ 3729. False Claims****(a) LIABILITY FOR CERTAIN ACTS**

(1) IN GENERAL.—Subject to paragraph (2), any person who—

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(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

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

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410), plus 3 times the amount of damages which the Government sustains because of the act of that person.

**§ 3730. Civil Actions for False Claims****(a) RESPONSIBILITIES OF THE ATTORNEY GENERAL**

The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

**(b) ACTIONS BY PRIVATE PERSONS**

(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

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(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

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

### **(c) RIGHTS OF THE PARTIES TO QUI TAM ACTIONS**

(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the

person's participation, such as —

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

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

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil

investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

**(d) AWARD TO QUI TAM PLAINTIFF**

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person

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bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails

in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, “original source” means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

**(f) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES**

The Government is not liable for expenses which a person incurs in bringing an action under this section.

**(g) FEES AND EXPENSES TO PREVAILING DEFENDANT**

In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

**(h) RELIEF FROM RETALIATORY ACTIONS**

(1) IN GENERAL.—Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent on behalf of the employee, contractor, or agent or associated others in

furtherance of other efforts to stop 1 or more violations of this subchapter.

(2) RELIEF.—Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

**68.081 Florida False Claims Act; short title; purpose.--**

(1) Sections 68.081-68.09 may be cited as the "Florida False Claims Act."

(2) The purpose of the Florida False Claims Act is to deter persons from knowingly causing or assisting in causing state government to pay claims that are false or fraudulent, and to provide remedies for obtaining treble damages and civil penalties for state government when money is obtained from state government by reason of a false or fraudulent claim.

**History.--**s. 1, ch. 94-316; s. 1, ch. 2007-236.

**68.082 False claims against the state; definitions; liability.--**

(1) As used in this section, the term:

(a) "Agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

(b) "Claim" includes any written or electronically submitted request or demand, under a contract or otherwise, for money, property, or services, which is made to any employee, officer, or agent of an agency, or to any contractor, grantee, or other

recipient if the agency provides any portion of the money or property requested or demanded, or if the agency will reimburse the contractor, grantee, or other recipient for any portion of the money or property requested or demanded.

(c) "Knowing" or "knowingly" means, with respect to information, that a person:

1. Has actual knowledge of the information;
2. Acts in deliberate ignorance of the truth or falsity of the information; or
3. Acts in reckless disregard of the truth or falsity of the information.

No proof of specific intent to defraud is required. Innocent mistake shall be a defense to an action under this act.

(2) Any person who:

(a) Knowingly presents or causes to be presented to an officer or employee of an agency a false or fraudulent claim for payment or approval;

(b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by an agency;

(c) Conspires to submit a false or fraudulent claim to an agency or to deceive an agency for the purpose of getting a false or fraudulent claim allowed or paid;

(d) Has possession, custody, or control of property or money used or to be used by an agency and, intending to deceive the agency or knowingly conceal the property, delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;

(e) Is authorized to make or deliver a document

certifying receipt of property used or to be used by an agency and, intending to deceive the agency, makes or delivers the receipt without knowing that the information on the receipt is true;

(f) Knowingly buys or receives, as a pledge of an obligation or a debt, public property from an officer or employee of an agency who may not sell or pledge the property lawfully; or

(g) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to an agency, is liable to the state for a civil penalty of not less than \$5,500 and not more than \$11,000 and for treble the amount of damages the agency sustains because of the act or omission of that person.

(3) The court may reduce the treble damages authorized under subsection (2) if the court finds one or more of the following specific extenuating circumstances:

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

(b) The person fully cooperated with any official investigation of the violation;

(c) At the time the person furnished the agency with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this section with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation; in which case the court shall award no less than 2 times the amount of damages sustained by the agency because of the act of the person. The court shall set forth in a written order its findings and

basis for reducing the treble damages award.

**History.**--s. 2, ch. 94-316; s. 2, ch. 2007-236.

**68.083 Civil actions for false claims.--**

(1) The department may diligently investigate a violation under s. 68.082. If the department finds that a person has violated or is violating s. 68.082, the department may bring a civil action under the Florida False Claims Act against the person. The Department of Financial Services may bring a civil action under this section if the action arises from an investigation by that department and the Department of Legal Affairs has not filed an action under this act.

(2) A person may bring a civil action for a violation of s. 68.082 for the person and for the affected agency. Civil actions instituted under this act shall be governed by the Florida Rules of Civil Procedure and shall be brought in the name of the State of Florida. Prior to the court unsealing the complaint under subsection (3), the action may be voluntarily dismissed by the person bringing the action only if the department gives written consent to the dismissal and its reasons for such consent.

(3) The complaint shall be identified on its face as a qui tam action and shall be filed in the circuit court of the Second Judicial Circuit, in and for Leon County. Immediately upon the filing of the complaint, a copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General, as head of the department, and on the Chief Financial Officer, as head of the Department of Financial Services, by registered mail, return receipt requested. The department, or the Department of Financial Services under the circumstances specified in subsection (4), may elect to intervene and proceed with the action, on behalf of the state, within 60 days after it receives both the complaint and the material evidence and information.

(4) If a person brings an action under subsection (2)

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and the action is based upon the facts underlying a pending investigation by the Department of Financial Services, the Department of Financial Services, instead of the department, may take over the action on behalf of the state. In order to take over the action, the Department of Financial Services must give the department written notification within 20 days after the action is filed that the Department of Financial Services is conducting an investigation of the facts of the action and that the Department of Financial Services, instead of the department, will take over the action filed under subsection (2). If the Department of Financial Services takes over the action under this subsection, the word "department" as used in this act means the Department of Financial Services, and that department, for purposes of that action, shall have all rights and standing granted the department under this act.

(5) The department may, for good cause shown, request the court to extend the time during which the complaint remains under seal under subsection (2). Any such motion may be supported by affidavits or other submissions in camera. The defendant is not required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant in accordance with law.

(6) Before the expiration of the 60-day period or any extensions obtained under subsection (5), the department shall:

(a) Proceed with the action, in which case the action is conducted by the department on behalf of the state; or

(b) Notify the court that it declines to take over the action, in which case the person bringing the action has the right to conduct the action.

(7) When a person files an action under this section, no person other than the department on behalf of the state may intervene or bring an action under this act based on the facts underlying the pending action.

**History.**--s. 3, ch. 94-316; s. 103, ch. 2003-261; s. 3, ch. 2007-236.

**68.084 Rights of the parties in civil actions.--**

(1) If the department, on behalf of the state, proceeds with the action, it has the primary responsibility for prosecuting the action, and is not bound by any act of the person bringing the action. The person bringing the action has the right to continue as a party to the action, subject to the limitations specified in subsection (2).

(2)(a) The department may voluntarily dismiss the action notwithstanding the objections of the person initiating the action.

(b) Subject to s. 17.04, nothing in this act shall be construed to limit the authority of the department or the qui tam plaintiff to compromise a claim brought in a complaint filed under this act if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

(c) Upon a showing by the department that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the department's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including, but not limited to:

1. Limiting the number of witnesses the person may call;
2. Limiting the length of the testimony of the person's witnesses;
3. Limiting the person's cross-examination of witnesses; or
4. Otherwise limiting the participation by the

person in the litigation.

(d) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the department elects not to proceed with the action, the person who initiated the action has the right to conduct the action. If the Attorney General, as head of the department, or the Chief Financial Officer, as head of the Department of Financial Services, so requests, it shall be served, at the requesting department's expense, with copies of all pleadings and motions filed in the action and copies of all deposition transcripts. When a person proceeds with the action, the court, without limiting the rights of the person initiating the action, may nevertheless permit the department to intervene and take over the action on behalf of the state at a later date upon showing of good cause.

(4) Whether or not the department proceeds with the action, upon a showing by the department that certain actions of discovery by the person initiating the action would interfere with an investigation by state government or the prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera by the department that the criminal or civil investigation or proceeding has been pursued with reasonable diligence and any proposed discovery in the civil action will interfere with an ongoing criminal or civil investigation or proceeding.

(5) The application of one civil remedy under this act does not preclude the application of any other remedy, civil or criminal, under this act or any other provision of law. Civil remedies under this act are supplemental, not

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mutually exclusive. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. As used in this subsection, the term "final" means not subject to judicial review.

(6) The Department of Financial Services, or the department, may intervene on its own behalf as a matter of right.

**History.**--s. 4, ch. 94-316; s. 104, ch. 2003-261; s. 4, ch. 2007-236.

**68.085 Awards to plaintiffs bringing action.--**

(1) If the department proceeds with and prevails in an action brought by a person under this act, except as provided in subsection (2), the court shall order the distribution to the person of at least 15 percent but not more than 25 percent of the proceeds recovered under any judgment obtained by the department in an action under s. 68.082 or of the proceeds of any settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(2) If the department proceeds with an action which the court finds to be based primarily on disclosures of specific information, other than that provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing; a legislative, administrative, inspector general, or auditor general report, hearing, audit, or investigation; or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds recovered under a judgment or received in settlement of a claim under this act, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) If the department does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the

court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds recovered under a judgment rendered in an action under this act or in settlement of a claim under this act.

(4) Following any distributions under subsection (1), subsection (2), or subsection (3), the agency injured by the submission of a false or fraudulent claim shall be awarded an amount not to exceed its compensatory damages. Any remaining proceeds, including civil penalties awarded under s. 68.082, shall be deposited in the General Revenue Fund.

(5) Any payment under this section to the person bringing the action shall be paid only out of the proceeds recovered from the defendant.

(6) Whether or not the department proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of s. 68.082 upon which the action was brought, the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under this section, taking into account the role of the person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of s. 68.082, the person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the department to continue the action.

**History.**--s. 5, ch. 94-316; s. 11, ch. 95-153; s. 5, ch. 2007-236.

**68.086 Expenses; attorney's fees and costs.--**

(1) If the department initiates an action under this act or assumes control of an action brought by a person under this act, the department shall be awarded its reasonable

attorney's fees, expenses, and costs.

(2) If the court awards the person bringing the action proceeds under this act, the person shall also be awarded an amount for reasonable attorney's fees and costs. Payment for reasonable attorney's fees and costs shall be made from the recovered proceeds before the distribution of any award.

**(3) If the department does not proceed with an action under this act and the defendant is the prevailing party, the court shall award the defendant reasonable attorney's fees and costs against the person bringing the action.**

(4) No liability shall be incurred by the state government, the affected agency, or the department for any expenses, attorney's fees, or other costs incurred by any person in bringing or defending an action under this act.

**History.**--s. 6, ch. 94-316.

#### **68.087 Exemptions to civil actions.--**

(1) No court shall have jurisdiction over an action brought under this act against a member of the Legislature, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the state government when the action was brought. For purposes of this subsection, the term "senior executive branch official" means any person employed in the executive branch of government holding a position in the Senior Management Service as defined in s. 110.402.

(2) In no event may a person bring an action under s. 68.083(2) based upon allegations or transactions that are the subject of a civil action or an administrative proceeding in which the agency is already a party.

(3) No court shall have jurisdiction over an action brought under this act based upon the public disclosure of allegations or transactions in a criminal, civil, or

administrative hearing; in a legislative, administrative, inspector general, or Auditor General, Chief Financial Officer, or Department of Financial Services report, hearing, audit, or investigation; or from the news media, unless the action is brought by the department, or unless the person bringing the action is an original source of the information. For purposes of this subsection, the term "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the department before filing an action under this act based on the information.

(4) No court shall have jurisdiction over an action where the person bringing the action under s. 68.083(2) is:

(a) Acting as an attorney for state government; or

(b) An employee or former employee of state government, and the action is based, in whole or in part, upon information obtained in the course or scope of government employment.

(5) No court shall have jurisdiction over an action where the person bringing the action under s. 68.083(2) obtained the information from an employee or former employee of state government who was not acting in the course or scope of government employment.

(6) No court shall have jurisdiction over an action brought under this act against a local government. For the purposes of this subsection, the term "local government" means any county or municipality.

**History.**--s. 7, ch. 94-316; s. 12, ch. 95-153; s. 105, ch. 2003-261.

**68.088 Protection for participating employees.**--Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or

others in furtherance of an action under this act, including investigation for initiation of, testimony for, or assistance in an action filed or to be filed under this act, shall have a cause of action under s. 112.3187.

**History.**--s. 8, ch. 94-316.

**68.089 Limitation of actions.**--A civil action under this act may not be brought:

- (1) More than 6 years after the date on which the violation of s. 68.082 is committed; or
- (2) More than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the state official charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

**History.**--s. 9, ch. 94-316; s. 6, ch. 2007-236.

**68.09 Burden of proof.**--In any action brought under this act, the State of Florida or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

**History.**--s. 10, ch. 94-316.

**68.091 Construction and severability of provisions.**-

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(1) This act shall be liberally construed to effectuate its remedial and deterrent purposes.

(2) If any provision of this act or its application to any particular person or circumstance is held invalid, that provision or its application is severable and does not affect the validity of other provisions or applications of this act.

**History.**--s. 11, ch. 94-316.

**68.092 Deposit of recovered moneys.**--All moneys recovered by the Chief Financial Officer as head of the Department of Financial Services under s. 68.086(1) in any civil action for violation of the Florida False Claims Act shall be deposited in the Administrative Trust Fund of the Department of Financial Services.

**History.**--s. 13, ch. 94-316; s. 106, ch. 2003-261.