

Chapter 246-15 WAC

WHISTLEBLOWER COMPLAINTS IN HEALTH CARE SETTINGS

WAC

- 246-15-001 Purpose and scope.
- 246-15-010 Definitions.
- 246-15-020 Rights and responsibilities—Whistleblower and department.
- 246-15-030 Procedures for filing, investigation, and resolution of whistleblower complaints.

WAC 246-15-001 Purpose and scope. Regulations for whistleblower protection are hereby adopted pursuant to RCW 43.70.075. The purpose of these regulations is to protect the identity of persons who communicate in good faith to the department alleging the improper quality of care by a health care facility or provider as defined in this chapter, and set forth the process the department will use in **receiving filing, investigating, and resolving complaints.**

[Statutory Authority: RCW 43.70.075 and 43.70.040. WSR 97-02-013, § 246-15-001, filed 12/20/96, effective 1/20/97.]

WAC 246-15-010 Definitions. The words and phrases in this chapter have the following meanings unless the context clearly indicates otherwise.

- (1) "Consumer" means:

(a) An individual receiving health care or services from a health care facility or health care professional;

(b) A person pursuant to RCW 7.70.065 authorized to provide informed consent to health care on behalf of (a) of this subsection who is not competent to consent.

(2) "Department" means the Washington state department of health.

(3) "Employee" means an individual employed by a health care facility or health care professional at the time the:

(a) Alleged improper quality of care occurred; or

(b) Alleged improper quality of care is discovered.

(4) "Good faith" means an honest and reasonable belief in the truth of the allegation.

(5) "Health care" means any care, service, or procedure provided by a health care facility or a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or function of the human body.

(6) "Health care facility" ~~includes the following~~ means the following facilities and includes such facilities if owned and operated by a political subdivision or instrumentality of the state, and such other facilities as required by federal law and implementing regulations:

~~(a) Adult residential rehabilitation centers regulated pursuant to chapter 71.12 RCW;~~

~~(b) Alcoholism treatment facilities regulated pursuant to chapter 71.12 RCW;~~

~~(c) Alcoholism hospitals regulated pursuant to chapter 71.12 RCW;~~

~~(d) Ambulance and aid services regulated pursuant to chapter 18.73 RCW;~~

~~(e) Assisted living facilities regulated pursuant to chapter 18.20 RCW;~~

~~(f) Childbirth centers regulated pursuant to chapter 18.46 RCW;~~

~~(g) Home care agencies regulated pursuant to chapter 70.127 RCW;~~

(a) Ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 RCW;

(b) Ambulatory surgical facilities licensed under chapter 70.230 RCW;

(c) Community mental health centers licensed under chapter 71.05 or 71.24 RCW;

~~(h)~~ (d) Home health agencies ~~regulated pursuant to licensed~~ under chapter 70.127 RCW;

~~(i)~~ (e) Hospices ~~agencies regulated pursuant to licensed~~ under chapter 70.127 RCW;

~~(j)~~ (f) Hospitals ~~regulated pursuant to licensed~~ under chapter 70.41 RCW;

~~(k) Pharmacies regulated pursuant to chapter 18.64 RCW;~~

(g) Kidney disease treatment centers licensed under chapter 70.41 RCW;

(h) Nursing homes licensed under chapter 18.51 RCW;

(i) Psychiatric hospitals ~~regulated pursuant to licensed~~ under chapter 71.12 RCW;

~~(m) Residential treatment facilities for psychiatrically impaired children and youth regulated pursuant to chapter 71.12 RCW;~~

~~(n) (j) Rural health care facilities regulated pursuant to chapter 70.175 RCW, as defined in RCW 70.175.020; or~~

(k) Substance use disorder treatment facilities licensed under chapter 71.24 RCW.

(7) "Health care provider," "health care professional," "professional" or "provider" mean a person who is licensed, certified, registered or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(8) "Improper quality of care," ~~as defined in RCW 43.70.075,~~ means any practice, procedure, action, or failure to act that violates any state law or rule of the applicable state health licensing authority under Title 18 RCW or chapters 70.41, ~~70.96A,~~ 70.127, 70.175, **70.230,** 71.05, 71.12, and 71.24 RCW, and enforced by the department of health. **Each health disciplinary authority as defined in RCW 18.130.040 may have further defined improper quality of care.** Improper quality of care shall not

include good faith personnel actions related to employee performance or actions taken according to established terms and conditions of employment. ~~Good faith personnel action will not prevent investigations of alleged improper quality of care.~~

(9) "Reprisal" or "retaliatory action" means but is not limited to conduct that negatively affects the whistleblower's work environment, results in termination, poor performance evaluations, or as defined in RCW 43.70.075;

(10) "Whistleblower" means a consumer, employee, or health care professional ~~who in good faith reports alleged quality of care concerns to the department of health.~~ including a health care provider as defined in RCW 7.70.020(1) or member of a medical staff at a health care facility, who in good faith reports alleged quality of care concerns to the department of health or initiates, participates, or cooperates in any investigation or administrative proceeding under RCW 43.70.075.

[Statutory Authority: RCW 43.70.075 and 2012 c 10. WSR 14-08-046, § 246-15-010, filed 3/27/14, effective 4/27/14. Statutory Authority: RCW 43.70.075 and 43.70.040. WSR 97-02-013, § 246-15-010, filed 12/20/96, effective 1/20/97.]

WAC 246-15-020 Rights and responsibilities—Whistleblower

and department. (1) ~~A person who in good faith communicates a complaint or information as defined in this chapter as provided in RCW 43.70.075 is~~ A whistleblower may be:

(a) Immune from civil liability on claims based upon that communication to the department under RCW 4.24.510;

(b) Entitled to recover costs and reasonable attorneys' fees incurred in ~~establishing a defense under RCW 4.24.510 if prevailing upon the defense a civil action;~~ and

(c) Afforded the protections and remedies of the human rights commission pursuant to chapter 49.60 RCW. The department will refer whistleblowers expressing concern about reprisal or retaliatory action to the human rights commission.

(2) ~~The department will protect the identity of the whistleblower~~ The identity of a whistleblower remains confidential when, in good faith, the whistleblower:

(a) Complains about the improper quality of care by a health care provider or health care facility;

(b) Initiates any investigation or administrative proceeding about a complaint of improper quality of care; or

(c) Submits a notification or report of an adverse event or an incident to the department of health under RCW 70.56.020 or to the independent entity under RCW 70.56.040.

(3) A whistleblowers identity will be revealed only: by ~~revealing it only:~~

(a) To appropriate ~~department government agency~~ staff or disciplining authority member;

(b) By court order; or

(c) If the complaint ~~is not initiation, notification, or report was not made or done~~ in good faith.

[Statutory Authority: RCW 43.70.075 and 43.70.040. WSR 97-02-013, § 246-15-020, filed 12/20/96, effective 1/20/97.]

WAC 246-15-030 Procedures for filing, investigation, and resolution of whistleblower complaints. In filing, investigating, and resolving a whistleblower complaint, the department will follow its usual procedures for complaint processing while protecting a whistleblower's identity consistent with WAC 246-15-020.

(1) Filing.

(a) Upon receipt of a complaint from a whistleblower ~~alleging improper quality of care,~~ department staff will enter

the complaint into the tracking system ~~for complaints against health care providers or facilities~~ and create a file on that complaint.

(b) ~~Staff will affix a permanent cover to the letter of complaint, or other form of notice, in the complaint file, noting the statutory citation for protection of identity of the complainant.~~

~~(c) Staff will assess priority of the case and conduct the initial case planning based on the complainant information the complaint based on potential imminent danger to the public and prioritize based on the initial determination.~~

(2) Investigation.

(a) For cases assigned to ~~investigations an investigation,~~ ~~staff will develop an investigative plan.~~ The investigator will gather pertinent information and perform other functions as appropriate to the allegation. ~~The investigator may interview witnesses or others with information relevant to the investigation, review records and consult with staff of other agencies.~~

(b) At the conclusion of the investigation, the investigator will prepare the necessary documents, ~~such as an investigative report summarizing the findings, and other documents necessary~~ for the department to take further action.

(3) Resolution. The regulatory authority ~~for the health facility or provider~~ will:

(a) Review investigative findings to determine ~~whether a~~ violation of any statutes or rules ~~occurred; and~~

(b) Take appropriate disciplinary action ~~as necessary; or~~ close the case.

~~(c) Ensure upon case closure, that the permanent cover affixed in subsection (1)(c) of this section will remain;~~

~~(d) Will code or obliterate references to the whistleblower complainant in investigative materials or in the investigative report as necessary to protect the whistleblower's identity prior to any public disclosure; and~~

~~(e) Make the case file available to the public upon case closure, subject to public disclosure and other relevant laws.~~

[Statutory Authority: RCW 43.70.075 and 43.70.040. WSR 97-02-013, § 246-15-030, filed 12/20/96, effective 1/20/97.]