

Chapter 246-15 WAC

WHISTLEBLOWER COMPLAINTS IN HEALTH CARE SETTINGS

WAC

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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, 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:

(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;

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

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

(h) Home health agencies regulated pursuant to chapter 70.127 RCW;

(i) Hospice agencies regulated pursuant to chapter 70.127 RCW;

(j) Hospitals regulated pursuant to chapter 70.41 RCW;

(k) Pharmacies regulated pursuant to chapter 18.64 RCW;

(l) Private psychiatric hospitals regulated pursuant to chapter 71.12 RCW;

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

(n) Rural health care facilities regulated pursuant to chapter 70.175 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, 71.05, 71.12, and 71.24 RCW, and enforced by the department of health. 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) "Whistleblower" means a consumer, employee, or health care professional who in good faith reports alleged quality of care concerns to the department of health.

[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) 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; and

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(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 by revealing it only:

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

(b) By court order; or

(c) If the complaint is not 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.

(2) Investigation.

(a) For cases assigned to 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 violation of any statutes or rules;

(b) Take appropriate disciplinary action as necessary;

(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.]