

HOUSE BILL REPORT

SHB 1049

As Passed Legislature

Title: An act relating to health care provider and health care facility whistleblower protections.

Brief Description: Concerning health care provider and health care facility whistleblower protections.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Macri, Stokesbary, Riccelli, Jinkins, Tharinger, Slatter, Caldier, Appleton, Wylie, Cody, Doglio and Stonier).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/15/19, 1/18/19 [DPS].

Floor Activity:

Passed House: 3/7/19, 97-0.

Passed Senate: 4/12/19, 47-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Expands the definition of "whistleblower" to include a health care provider or a medical care staff at a health care facility.
- Provides a civil remedy to nonemployee whistleblowers who have been subject to retaliatory action.
- Establishes standards for the sanction process against medical staff.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

Staff: Ingrid Lewis (786-7289).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Whistleblower protections, which include confidentiality and freedom from workplace reprisals, extend to consumers, employees, and health care professionals who communicate allegations of improper quality of care by a health care facility or provider to the Department of Health in good faith. Only a whistleblower who is an employee of a health care facility or provider may have recourse against retaliatory action.

Hospitals maintain a quality improvement program that includes a medical staff privileges sanction procedure through which professional conduct is reviewed as part of an evaluation of staff privileges of health care providers.

Summary of Substitute Bill:

The definition of "whistleblower" for a person who is a health care professional is amended to include a health care provider or a medical care staff at a health care facility.

Whistleblower protection is expanded to include a whistleblower who initiates in good faith any investigation or administrative proceeding about a complaint made to the Department of Health.

A nonemployee whistleblower who is subjected to reprisal or retaliatory action by a health care provider or health care facility may file a civil cause of action within two years of the retaliatory action. The nonemployee may recover damages and reasonable attorney's fees and costs, as well as enjoin further violations. A respondent may be awarded attorney's fees for unfounded and frivolous claims by a nonemployee whistleblower.

Absent the adherence to a medical staff privilege sanction process, any reduction of medical staff membership or privileges qualifies as a "reprisal or retaliatory action."

A professional peer review action taken by a health care facility must meet the federal standards for professional review actions.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill passed out of this committee last year unanimously, as did the companion bill in the Senate.

The significance of this bill is to have our laws keep up with the modern day business of health care. Patient care is degraded when health care professionals feel that they cannot raise issues of concern in the health care setting. When health care professionals are not held

accountable, bad cultures can develop and bad things happen. This bill will encourage bringing forward information that is in the public interest and the public safety. It takes a tremendous amount of courage to come forward as a whistleblower. A person's career, reputation, and future are on the line.

Today, there are more instances where health care professionals may be providing patient care in a variety of settings and may not always be employed by that setting. Current law extends protections for whistleblowers to employed physicians. This bill extends those same protections to nonemployed health care professionals and professionals who are a part of the care team but may not be a direct employee in a specific health care setting.

The Health Care Quality Improvement Act of 1986 (HCQIA) created a process that took physician complaints out of the court room and under the authority of hospital peer review committees. Accused physicians were disadvantaged because the physician judges and peer review were required only to have a reasonable belief in the truthfulness of their decisions. That is not an adequate standard in medicine.

Physicians employed by hospitals usually have at-will contracts, which means that they can be terminated for a good cause, a bad cause, or no cause at all. This is even less protection than the HCQIA. If the hospital terminates a bad physician for no cause, there is no requirement to report. If the hospital terminates a good physician for no cause, the physician has no cause of action to sue for wrongful termination unless there has been an unlawful act.

This bill ensures the protection and the integrity of being able to access information that is in the public interest and the public safety and does not allow it to get buried in the peer review quality improvement process. Peer review and quality improvement are in essence black boxes. It is a decision that this Legislature made in the interest of public safety to encourage reviews that fully and completely bring forward all information without fear of retribution so that problems can be solved. The flipside is that information is never available to the patient or family. It is not discoverable, and it cannot be introduced as evidence, even if it were to leak out.

In one particular case, a physician was terminated without cause and subject to retaliatory action after bringing attention to substandard medical practices, the tampering of timesheets, and compensation issues. While the physician was exonerated through the peer review process, the hospital tried to keep the peer review records out of the legal records of a subsequent civil lawsuit, claiming that the information was legally protected peer review.

This bill ensures that a whistleblower could bring forward a process to try and unveil information that runs contrary to state and federal standards. There is appropriate balance in the bill to protect institutions from any kind of harassing or unfounded complaints.

The bill restates and amends some of the peer review chapter to clarify how medical staff privileges can be suspended, limited, or revoked.

The bill also protects colleagues and others who cooperated in the investigation. One suggestion is to include the provisions in RCW 42.40.020 that describe an employee who is

perceived as reporting. If someone is thought to be a whistleblower, they could still be subject to retaliation.

(Opposed) None.

Persons Testifying: Representative Macri, prime sponsor; Kay Funk; Ramon Anel; Larry Shannon, Washington State Association for Justice; Bob Cooper, National Association of Social Workers - Washington Chapter; and Katie Kolan, Washington State Medical Association.

Persons Signed In To Testify But Not Testifying: None.