

WSR 22-02-017

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 27, 2021, 2:32 p.m., effective January 27, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 246-15 WAC, Whistleblower complaints in health care settings. The department of health (department) is amending sections of this chapter to implement SHB 1049 (chapter 62, Laws of 2019), codified in RCW 43.70.075, and to ensure the rules are clear, up-to-date, and align with best practices.

Citation of Rules Affected by this Order: Amending WAC 246-15-001, 246-15-010, 246-15-020, and 246-15-030.

Statutory Authority for Adoption: RCW 43.70.075.

Other Authority: SHB 1049 (chapter 62, Laws of 2019), codified as RCW 43.70.075.

Adopted under notice filed as WSR 21-19-017 on September 7, 2021.

Changes Other than Editing from Proposed to Adopted Version: The department made the following nonsubstantive changes in response to feedback from interested parties:

The department removed the definition of "reprisal or retaliatory action" from WAC 246-15-010 as it is not used in the rule. The term is used and it is defined in RCW 43.70.075 (3) (c).

Department staff identified that the rule describing when the identity of the whistleblower may be revealed could be confusing about whether the identity protections were for reporting whistleblowers only or if those identity protections might also be applied to others. The department added language to WAC 246-15-020(2) to clarify when a whistleblower's identity will remain confidential and the limited circumstances when the whistleblower's identity will be revealed.

The department added clarification to WAC 246-15-030 that, if authorized, the regulatory authority can investigate whistleblower complaints and gather relevant evidence during the investigation. This is current department practice and interested parties asked that it be stated here in the rule for clarity.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: December 27, 2021.

Kristin Peterson, JD  
Deputy Secretary  
Policy and Planning  
for Umair A. Shah, MD, MPH  
Secretary

## OTS-3160.4

AMENDATORY SECTION (Amending WSR 97-02-013, filed 12/20/96, effective 1/20/97)

**WAC 246-15-001 Purpose and scope.** (~~((Regulations for whistle-blower protection are hereby))~~) The rules in this chapter are adopted pursuant to RCW 43.70.075. The purpose of these ~~((regulations))~~ rules 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.]

AMENDATORY SECTION (Amending WSR 14-08-046, filed 3/27/14, effective 4/27/14)

**WAC 246-15-010 Definitions.** The ~~((words and phrases))~~ definitions in this section apply throughout 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;~~

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

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

(c) Behavioral health agencies licensed under chapter 71.05 or 71.24 RCW;

(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;~~

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

(h) Nursing homes licensed under chapter 18.51 RCW;

(i) Private psychiatric hospitals ((regulated pursuant to)) licensed under chapter 71.12 RCW; or

((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.

(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. Each health disciplinary authority as defined in RCW 18.130.040 may, with consultation and interdisciplinary coordination provided by the department, further define 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) "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.]

AMENDATORY SECTION (Amending WSR 97-02-013, 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~~

~~(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)) remains confidential when, in good faith, the whistleblower:~~

~~(a) Complains about the improper quality by a health care provider or in a 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 under RCW 70.56.020 or to the independent entity under RCW 70.56.040.~~

~~(2) The identity of the whistleblower under subsection (1) of this section will be revealed 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.]

AMENDATORY SECTION (Amending WSR 97-02-013, 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.) (1) In filing, investigating, and resolving a whistleblower complaint, the department will protect a whistleblower's identity consistent with WAC 246-15-020.~~

~~(2) The regulatory authority ((for the health facility or provider)) will:~~

~~(a) Assess complaints based on potential imminent danger to the public and prioritize based on the initial determination;~~

~~(b) If authorized, conduct investigations and gather information as appropriate to the allegation;~~

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

~~((b)) (d) Take appropriate disciplinary action ((as necessary;~~

~~(e) 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)) or close the case.~~

[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.]