
SENATE BILL 5401

State of Washington

66th Legislature

2019 Regular Session

By Senators Keiser, Rivers, Carlyle, Conway, and Rolfes

Read first time 01/21/19. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to health care provider and health care facility
2 whistleblower protections; amending RCW 43.70.075; and adding a new
3 section to chapter 7.71 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 43.70.075 and 2006 c 8 s 109 are each amended to
6 read as follows:

7 (1)(a) The identity of a whistleblower (~~who~~) must remain
8 confidential if that whistleblower:

9 (i) Complains, in good faith, to the department of health about
10 the improper quality of care by a health care provider, or in a
11 health care facility(~~, as defined in RCW 43.72.010, or who~~);

12 (ii) Initiates in good faith any investigation or administrative
13 proceeding about a complaint of improper quality of care made to the
14 department under this section; or

15 (iii) Submits a notification or report of an adverse event or an
16 incident, in good faith, to the department of health under RCW
17 70.56.020 or to the independent entity under RCW 70.56.040(~~, shall~~
18 remain confidential)).

19 (b) The provisions of RCW 4.24.500 through 4.24.520, providing
20 certain protections to persons who communicate to government
21 agencies, shall apply to complaints and notifications or reports of

1 adverse events or incidents filed under this section. The identity of
2 the whistleblower shall remain confidential unless the department
3 determines that the complaint (~~(of)~~), initiation, participation,
4 cooperation, notification, or report (~~(of the adverse event or~~
5 ~~incident)~~) was not made or done in good faith.

6 (c) An employee who is a whistleblower, as defined in this
7 section, and who as a result of being a whistleblower has been
8 subjected to workplace reprisal or retaliatory action has the
9 remedies provided under chapter 49.60 RCW.

10 (d) A whistleblower who is not an employee and who as a result of
11 being a whistleblower has been subjected to reprisal or retaliatory
12 action may initiate a civil action in a court of competent
13 jurisdiction to either enjoin further violations, recover actual
14 damages sustained by the whistleblower, or both, and recover the cost
15 of the suit including reasonable attorneys' fees. The court shall
16 award reasonable attorneys' fees in favor of the respondent if the
17 civil action was initiated by a whistleblower who is not an employee
18 and the court finds that the respondent has not engaged in the
19 alleged reprisal or retaliatory action and that the complaint was
20 frivolous, unreasonable, or groundless.

21 (2) (~~(a)~~) A civil action under this section may not be brought
22 more than two years after the date when the retaliation occurred.

23 (3) In this section:

24 (a) "Health care facility" means hospices licensed under chapter
25 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health
26 care facilities as defined in RCW 70.175.020, psychiatric hospitals
27 licensed under chapter 71.12 RCW, nursing homes licensed under
28 chapter 18.51 RCW, community mental health centers licensed under
29 chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed
30 under chapter 70.41 RCW, ambulatory diagnostic, treatment, or
31 surgical facilities licensed under chapter 70.41 RCW, ambulatory
32 surgical facilities licensed under chapter 70.230 RCW, substance use
33 disorder treatment facilities licensed under chapter 71.24 RCW, and
34 home health agencies licensed under chapter 70.127 RCW, and includes
35 such facilities if owned and operated by a political subdivision or
36 instrumentality of the state and such other facilities as required by
37 federal law and implementing regulations.

38 (b) "Improper quality of care" means any practice, procedure,
39 action, or failure to act that violates any state law or rule of the
40 applicable state health licensing authority under Title 18 or

1 chapters 70.41, (~~70.96A~~) 71.24, 70.127, 70.175, 71.05, 71.12, and
2 71.24 RCW, and enforced by the department of health. Each health
3 disciplinary authority as defined in RCW 18.130.040 may, with
4 consultation and interdisciplinary coordination provided by the state
5 department of health, adopt rules defining accepted standards of
6 practice for their profession that shall further define improper
7 quality of care. Improper quality of care shall not include good
8 faith personnel actions related to employee performance or actions
9 taken according to established terms and conditions of employment.

10 (~~(b)~~) (c) "Reprisal or retaliatory action" means but is not
11 limited to: Denial of adequate staff to perform duties; frequent
12 staff changes; frequent and undesirable office changes; refusal to
13 assign meaningful work; unwarranted and unsubstantiated report of
14 misconduct pursuant to Title 18 RCW; letters of reprimand or
15 unsatisfactory performance evaluations; demotion; reduction in pay;
16 denial of promotion; suspension; dismissal; denial of employment;
17 (~~and~~) a supervisor or superior encouraging coworkers to behave in a
18 hostile manner toward the whistleblower; and the revocation,
19 suspension, or reduction of medical staff membership or privileges
20 without following a medical staff sanction process that is consistent
21 with section 2 of this act.

22 (~~(e)~~) (d) "Whistleblower" means a consumer, employee, or health
23 care professional including a health care provider as defined in RCW
24 7.70.020(1) or member of a medical staff at a health care facility,
25 who in good faith reports alleged quality of care concerns to the
26 department of health or initiates, participates, or cooperates in any
27 investigation or administrative proceeding under this section.

28 (~~(3)~~) (4) Nothing in this section prohibits a health care
29 facility from making any decision exercising its authority to
30 terminate, suspend, or discipline an employee who engages in
31 workplace reprisal or retaliatory action against a whistleblower.

32 (~~(4)~~) (5) The department shall adopt rules to implement
33 procedures for filing, investigation, and resolution of whistleblower
34 complaints that are integrated with complaint procedures under Title
35 18 RCW for health professionals or health care facilities.

36 NEW SECTION. Sec. 2. A new section is added to chapter 7.71 RCW
37 to read as follows:

38 (1) A medical staff privilege sanction process that results in a
39 revocation, suspension, or reduction of medical staff privileges or

1 membership at a health care facility must meet the requirements of
2 RCW 70.41.200(1)(b).

3 (2) A professional peer review action taken by a health care
4 facility that imposes a revocation, suspension, or reduction of
5 medical staff privileges or membership must meet the requirements of
6 and is subject to 42 U.S.C. Sec. 11112.

7 (3) In this section, "health care facility" has the same meaning
8 as in RCW 43.70.075.

--- END ---