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HOUSE BILL 2258

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By Representatives Macri, Rodne, Tharinger, Stokesbary, Jinkins, Riccelli, Cody, Fey, McBride, Slatter, Valdez, Appleton, Pollet, Doglio, and Stonier

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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, participates, or cooperates in good faith, in any  
13 investigation or administrative proceeding about a complaint of  
14 improper quality of care made to the department under this section;  
15 or

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

20 (b) The provisions of RCW 4.24.500 through 4.24.520, providing  
21 certain protections to persons who communicate to government

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

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

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

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

24 (3) In this section:

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

39 (b) "Improper quality of care" means any practice, procedure,  
40 action, or failure to act that violates any state law or rule of the

1 applicable state health licensing authority under Title 18 or  
2 chapters 70.41, (~~70.96A~~) 71.24, 70.127, 70.175, 71.05, 71.12, and  
3 71.24 RCW, and enforced by the department of health. Each health  
4 disciplinary authority as defined in RCW 18.130.040 may, with  
5 consultation and interdisciplinary coordination provided by the state  
6 department of health, adopt rules defining accepted standards of  
7 practice for their profession that shall further define improper  
8 quality of care. Improper quality of care shall not include good  
9 faith personnel actions related to employee performance or actions  
10 taken according to established terms and conditions of employment.

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

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

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

33 (~~(4)~~) (5) The department shall adopt rules to implement  
34 procedures for filing, investigation, and resolution of whistleblower  
35 complaints that are integrated with complaint procedures under Title  
36 18 RCW for health professionals or health care facilities.

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

1           (1) A medical staff privilege sanction process that results in a  
2 revocation, suspension, or reduction of medical staff privileges or  
3 membership at a health care facility must meet the requirements of  
4 RCW 70.41.200(1)(b).

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

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

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