

The American Nurses Association (ANA)

http://nursingworld.org/MainMenuCategories/ANAPoliticalPower/State/StateLegislativeAgenda/Whistleblower_1.aspx

Whistleblower Protection

Background

Whistleblower laws are intended to prevent employers from taking retaliatory action against nurses such as suspension, demotion, harassment or discharge for reporting improper patient care or business practices. Across the nation, nurses are speaking out or "blowing the whistle" against workplace conditions that jeopardize patients and staff and they need legal protection. With the restructuring of health care and its cost cutting measures, nurses are frustrated as they try to provide quality patient care while staffing levels, resources and support are often inadequate.

As part of the American Nurses Association's (ANA) Nationwide State Legislative Agenda, ANA and State Nurses Associations are promoting strong whistleblower laws on the state level that provide legal protections for nurses advocating for patients, without fear of reprisal.

Whistleblower protection for healthcare employees with varying degrees of protection and provisions exists (to date) in **18** states : **AZ** (2003), **CA** (2003), **CO** (2007), **FL** (2002), **GA** (2007), **HI** (amended 2002), **IL** (2003), **ME** (2003), **MD** (2002), **MI** (2002), **NV** (2002), **NJ** (2006), **NY** (2002), **OR** (2001), **TX** (2007). **UT** (2003), **VT** (2004), **VA** (2003), and **WV** (2001).

2007 Activities/Actions

Twenty six states introduced legislation in 2007 in an attempt to extend worker protections from retaliation either for the first time or to extend the protections already in statute; **three** enacted legislation: **CO, GA and TX.**

Passage in 2007 of whistleblower protections for nurses in **Texas** solidified and clarified incremental approaches taken in previous years. The protections permit nurses to enforce their role as patient advocates as well as advocates for peers without fear of retaliation. This legislation includes provisions for nurses' refusal to engage in conduct the nurse believes to be in violation of the Board of Nursing standards or rules; reporting of staffing concerns to a hospital staffing advisory committee in a hospital; and reporting of a practitioner or a facility for exposing a patient to risk of harm due to a failure to conform to minimal professional standards or regulatory / accreditation standards.

Colorado's law requires a health care worker making a good faith report or disclosure regarding patient safety or quality of patient care to follow internal reporting procedures of the health care provider prior to pursuing any further reporting or disclosure activity; prohibits a health care provider from taking disciplinary action against a worker in retaliation for making a report or disclosure; and allows health care providers to take other disciplinary actions against workers as appropriate.

Georgia's legislation affords protections for any employee (including nurse) who comes forward with information about unethical, immoral, or illegal business practices. The law also states that an employee of a state, local, or regional government entity or an employee of an entity which receives public money is protected from retaliation by their employer for reporting to their employer or a government authority a violation of law, rule, or regulation.

Bills passed in both houses in **NM**, however, the Governor vetoed them. **NY** legislation, seeking to extend whistleblower protections to public employees also passed both houses.

Brief Summary Activity (2001 and 2006)

(2006)

NJ was successful in enacting "The Worker Freedom from Employer Intimidation Act".

(2004)

VT passed legislation provides whistleblower protection for hospital and nursing home employees. The bill provides that no employer shall take retaliatory action against any employee because the employee discloses or threatens to disclose to any person or entity improper quality of patient care or objects to or refuses to participate in any practice of the employer or agent that the employee reasonably believes constitutes improper quality of patient care. The legislation also requires the internal processes of hospitals to be consistent with the American Nurses Credentialing Center's Magnet Recognition Program standards that support the improvement and quality patient care and professional nursing practice.

(2003)

AZ passed the Patient Safety Reporting Act that protects health care professionals who report any violations that put a patient at risk, from retaliation by a health care facility; it also sets up reporting procedures and policies.

IL enacted legislation protects hospital employees from discrimination or retaliation for disclosing information or refusing to participate in any activity that poses a risk to a patients health, safety or welfare. Legislation enacted in **ME** protects a health care worker who reports a deviation from standards of patient care.

In **ME**, the Governor signed into law the Whistleblower Protection Act, protecting healthcare workers who report medical errors to employers, patients, or public bodies, consistent with state and federal laws.

UT makes technical changes to state labor laws by adding retaliatory acts such as discharge, demotion or any other form of retaliation by an employer, prohibited.

VA specifically prohibits hospitals from retaliating against complainants who, in good faith, provide information to any entity having responsibility for protecting the rights of patients; complainant identity will also remain confidential.

(2002)

Legislation enacted in **MD** prevents retaliatory action against any individually licensed or certified employee who discloses to a supervisor or board an activity, policy or practice that is in violation of a law, rule, or regulation.

FL law offers protections to employees reporting suspected fraud to the Medicaid Fraud Unit.

NV law prevents a medical facility from retaliating or discriminating unfairly against an employee who in good faith reports a sentinel event to the health division.

NY enacted legislation that prevents an employer from taking retaliatory action against an employee who discloses to a supervisor or a public body an activity that constitutes improper quality of care or refuses to participate in that activity. The law also establishes a fund that consists of money received from civil penalties related to this law to be used for improving quality of patient care.

HI amended its Whistleblower Protection Act with increased penalties for violations and an extension of the statute of limitations for reporting.

(2001)

OR enacted legislation that prevents a hospital from taking retaliatory action against nursing staff for disclosure of an activity, policy or practice of the hospital that is in violation of a law or professional standard of practice and that poses a risk to patients. The law also protects the nurse from participating in any activity that the nursing staff believes poses a risk to the patient.

WV law prevents retaliation or discrimination against any health care worker who reports wrongdoing or waste or advocates on behalf of a patient in regards to care.

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