



# Washington State Auditor's Office

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## Whistleblower Investigation Report

# Department of Social and Health Services

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June 25, 2015

Kevin Quigley, Secretary  
Department of Social and Health Services

### Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 15-007 at the Department of Social and Health Services.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

Questions about this report should be directed to Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

A handwritten signature in blue ink that reads "Jan M. Jutte".

JAN M. JUTTE, CPA, CGFM  
ACTING STATE AUDITOR  
OLYMPIA, WA

cc: Andrew Colvin, Public Disclosure and Ethics Administrator  
Governor Jay Inslee  
Kate Reynolds, Executive Director, Executive Ethics Board  
Jennifer Wirawan, Investigator

# WHISTLEBLOWER INVESTIGATION REPORT

## Assertions and results

Our Office received a Whistleblower complaint asserting a Department of Social and Health Services (Department) manager deleted long term care facility citations which impeded the ability of the Department surveyors to properly discharge their duties. The complaint stated the subject placed nursing home residents in harm's way when she deleted the citations.

We found no reasonable cause to believe an improper governmental action occurred.

## Background

The Department monitors long term care facilities for compliance with federal and state laws. When the Department receives a complaint, or when a facility's license is to be renewed, a team of nursing home surveyors visits the facility to gather documentation, observe conditions and interview staff and residents.

A citation is written for each law allegedly violated and each citation is assigned a letter code indicating the scope and severity of the violation. Citations are documented in a Statement of Deficiencies (statement) and entered into the Automated Survey Processing Environment (ASPEN), a computer software program maintained by the federal government.

Once the statement is complete it is reviewed by the field manager for completeness and severity code assignment. If the field manager does not believe enough evidence has been obtained to support a citation, they work with the surveyor to substantiate the violation.

Federal guidelines require the Department to send the final statement to the facility within 10 working days of survey completion. If a facility does not agree with the findings, they can appeal the citation or associated severity code through the Department's Informal Dispute Resolution unit, who may remove the citation. Feedback from the surveyor, the field manager and the facility may be considered before a citation is removed.

## About the Investigation

We spoke with witnesses who said it is not unusual for field managers to delete citations that are not substantiated. A final statement is usually a collaboration between the surveyors and the field manager and citations are deleted if there is not enough information gathered to prove the violation.

Approximately 155 Department employees have security rights to delete a citation before the statement is finalized. If a citation is deleted before the statement is finalized, the Department cannot recover the citation. If a citation is deleted by Informal Dispute Resolution, it is crossed out and not included in the printed statement, but is still accessible by the Department.

We found the subject deleted 13 citations in 2014. During an interview the subject said she deletes citations if there is not enough evidence to prove a violation of law, but not without first discussing it with the surveyor. She said when she cannot meet with the surveyor she prints the statement and writes questions or comments in the margin. If she does not receive a response from the surveyor within 10 days, she modifies or deletes the citation. We reviewed documentation that demonstrated this process is being followed. None of the deletions absolved the facility from responding to the Department regarding other quality care concerns addressed in the statement.

Preparation of a statement is a joint effort between surveyors and managers and the deletion of a citation due to insufficient evidence does not prevent a surveyor from performing their duties. Additionally, no evidence obtained in the investigation indicated that patients were harmed as a result of the deleted citations. Therefore, we found no reasonable cause to believe an improper governmental action occurred.

## **State Auditor's Office Concluding Remarks**

We thank Agency officials and personnel for their assistance and cooperation during the investigation.

## WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

### **Assertion 1:**

42 CFR §488.26 Determining compliance.

(a) Additional rules for certification of compliance for SNFs and NFs are set forth in §488.330.

(b) The decision as to whether there is compliance with a particular requirement, condition of participation, or condition for coverage depends upon the manner and degree to which the provider or supplier satisfies the various standards within each condition. Evaluation of a provider's or supplier's performance against these standards enables the State survey agency to document the nature and extent of deficiencies, if any, with respect to a particular function, and to assess the need for improvement in relation to the prescribed conditions.

(c) The State survey agency must adhere to the following principles in determining compliance with participation requirements:

(1) The survey process is the means to assess compliance with Federal health, safety and quality standards;

(2) The survey process uses resident and patient outcomes as the primary means to establish the compliance process of facilities and agencies. Specifically, surveyors will directly observe the actual provision of care and services to residents and/or patients, and the effects of that care, to assess whether the care provided meets the needs of individual residents and/or patients.

(3) Surveyors are professionals who use their judgment, in concert with Federal forms and procedures, to determine compliance;

(4) Federal procedures are used by all surveyors to ensure uniform and consistent application and interpretation of Federal requirements;

(5) Federal forms are used by all surveyors to ensure proper recording of findings and to document the basis for the findings.

(d) The State survey agency must use the survey methods, procedures, and forms that are prescribed by CMS.

(e) The State survey agency must ensure that a facility's or agency's actual provision of care and services to residents and patients and the effects of that care on such residents and patients are assessed in a systematic manner.

## **Assertion 2:**

RCW 42.40.020(6)(a)

“Improper governmental action” means any action by an employee undertaken in the performance of the employee’s official duties:

(iii) Which is of substantial and specific danger to the public health or safety;