

LFC Requester:**Eric Chenier****AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov
(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Date Prepared: 2/10/2025 *Check all that apply:*
Bill Number: HB337 Original Correction
 Amendment Substitute

Sponsor: Rep. Pamelyn Herndon **Agency Name and Code** HCA 630
Short Title: Health Care Whistleblower Protection Act **Number:** _____
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SECTION II: FISCAL IMPACT**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
0.0	0.0	n/a	n/a

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
0.0	0.0	0.0	n/a	n/a

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0.0	unknown	unknown	unknown	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 337 would enact new whistleblower protection to certain health care providers, defined as a person certified, registered, licensed or otherwise authorized to perform or provide health care services to individuals in the state. It prohibits a health care entity from taking retaliatory action against a whistleblower who discloses to the state, the attorney general, the Health Care Authority or any other federal, state or local government agency information about an action or a failure to act that the whistleblower believes in good faith constitutes an unlawful or improper act.

HB337 is limited to a specific subset of licensed health care facilities and does not include all types of licensed health care facilities, nor does it include home and community-based waiver providers who provider Medicaid waiver services to individuals. It does not include the following types of health care facilities: adult day care facilities, freestanding birth centers, skilled nursing facilities, intermediate care facilities, boarding homes, child care facilities or shelter care homes.

FISCAL IMPLICATIONS

The fiscal implication to the Health Care Authority is unknown at this time. HB337 does not specify how the bill would be enforced or what agency would ensure compliance. The costs would vary depending upon the solution chosen to oversee the process.

SIGNIFICANT ISSUES

HB377 is limited to a specific subset of licensed health care facilities and does not include all types of licensed health care facilities, nor does it include home and community-based waiver providers who provider Medicaid waiver services to individuals. HB337 includes “home health” within the definition of “health care services” and home health agencies may provide services under the Developmental Disabilities Supports Division Medically Fragile Waiver. The bill omits information pertaining to other services on the Medically Fragile Waiver and other home and community-based waivers, rendering it unclear if and how this bill may apply to providers of home and community-based services.

It does not include the following types of health facilities licensed by DHI: adult day care facilities, freestanding birth centers, skilled nursing facilities, intermediate care facilities, boarding homes, child care facilities or shelter care homes.

In Section 2. D. the definition of “health care facility” has conflicts, it includes long term care facilities as to what is applicable, however, it then excludes the following long term care facilities in the definition; skilled nursing facilities, intermediate care facilities, and boarding homes.

The bill would include assisted living facilities as defined.

The definition of “health care facility is also in conflict with the definition of “health facility”

as defined in the health care code 24A-1-2 D.

Section 4. Prohibits retaliatory action for disclosure of 3 categories of information. It does not include a section for the reporting of abuse, neglect, exploitation, suspicious injuries, injuries of unknown origin, environmental hazards that pose an immediate threat to health and safety and death.

HB337 definition of “health care entity” includes “telemedicine provider”, and “telemedicine provider” is defined as providers who use telecommunications “from a distance to evaluate, diagnose and treat patients in real time.” The Developmental Disabilities Supports Division Developmental Disabilities, Mi Via and Medically Fragile Waivers allows individuals to receive some healthcare services via StationMD, a telemedicine provider. The bill does not determine how whistleblower protections will be applied to and enforced amongst out-of-state telemedicine providers.

Section 4 does not specify what state agency would have oversight authority, nor does it authorize any powers to enforce the bill or impose any type of remedy or sanction.

Potential for harm: Staff could fear retaliatory actions, such as termination from employment, for reporting abuse neglect and exploitation. When health care entities “retaliate” against caregivers, hospital caregivers and other professional staff and employees for reporting abuse, neglect and exploitation. it has a potential negative impact “chilling effect”, upon staff who may choose not to report abuse neglect and exploitation of individuals receiving care out of fear of retaliation including loss of employment. This could result in an increase of unreported abuse, neglect and exploitation in our most vulnerable New Mexicans.

PERFORMANCE IMPLICATIONS

A new process and system would need to be created, to manage complaints of retaliation and investigate complaints.

An expert in employment law would be needed to investigate these types of cases.

ADMINISTRATIVE IMPLICATIONS

A new process and system would need to be created, to manage complaints of retaliation and investigate complaints.

Additional personnel and information technology would be required to manage the complaints and conduct investigations, this would include office space, administrative support, IT support and equipment, and travel budget. Detailed discovery sessions would need to be conducted to accurately estimate IT-related costs.

The bill only provides the remedy of civil action for damages to the whistleblower. There is no provision for an oversight agency to enforce the bill or take action against the health care entity.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

In Section 2. D. the definition of “health care facility” has conflicts, it includes long term care facilities as to what is applicable, however, it then excludes the following long term care facilities in the definition; skilled nursing facilities, intermediate care facilities, and boarding homes. The bill would include assisted living facilities as defined. The definition of “health

care facility is also in conflict with the definition of “health facility” as defined in the health care code 24A-1-2 D.

In the realm of Medicaid this is duplicative as this area is currently covered by the False Claims Act.

TECHNICAL ISSUES

The Bill at (N)(1-3) is conjunctively unclear. After clause (1) probably an “or” was intended to make the entire definition inclusive. The “and” at the end of (3) is superfluous.

OTHER SUBSTANTIVE ISSUES

It is unclear why the bill only addresses a small subset of “health facilities” and does not include all types of licensed health facilities and Medicaid home and community-based provider agencies.

ALTERNATIVES

None- status quo

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Health facilities and Medicaid home and community-based providers who retaliate against employees who report abuse, neglect and exploitation would continue to have a “chilling effect” on the reporting of ANE, with the likelihood of more cases of abuse not being reported.

If HB 377 is not enacted, there would be no whistleblower protection for certain health care providers, defined as a person certified, registered, licensed or otherwise authorized to perform or provide health care services to individuals in the state.

AMENDMENTS

n/a