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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Herndon **ORIGINAL DATE** 2/13/2025

**BILL**

**SHORT TITLE** Health Care Whistleblower Protection Act **NUMBER** House Bill 337

**ANALYST** Chenier

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>AOC</b>	<b>No fiscal impact</b>	<b>Indeterminate but minimal</b>	<b>Indeterminate but minimal</b>		Recurring	<b>General Fund</b>

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

Agency Analysis Received From  
 Health Care Authority (HCA)  
 New Mexico Attorney General’s Office (NMAG)  
 Administrative Office of the Courts (AOC)

## SUMMARY

### Synopsis of House Bill 337

House Bill 337 creates protections for health care whistleblowers who disclose to the state, New Mexico Attorney General’s Office (NMAG), Health Care Authority (HCA), or other agency, information about an action or a failure to act that the whistleblower believes in good faith constitutes an unlawful or improper act on the part of a health care entity. The bill defines an unlawful or improper act as a violation of federal or state law, or rule that is illegal, unsafe or fraudulent, and that constitutes: malfeasance, gross mismanagement, a waste of funds, a misrepresentation, an abuse of authority, or a substantial and specific danger to patients, consumers, or the public. The bill would protect whistleblowers by prohibiting retaliatory action and requiring the entity be liable to the whistleblower for actual damages, reinstatement to prior positions, double the back pay, litigation costs, and attorney fees dependent on the relationship of the whistleblower to the entity.

The effective date of the provisions of this act is July 1, 2025.

## FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) notes:  
 There will be a minimal administrative cost for statewide update, distribution and

documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced civil actions and appeals from the awarding of damages, fees, costs, back pay, injunctions and reinstatement. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## SIGNIFICANT ISSUES

### HCA notes:

The bill 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 provide Medicaid waiver services to individuals. The bill 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 the Division of Health Improvement: 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 conflict as 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 three 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.

The bill’s 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’s 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.

AOC notes:

Several states have enacted anti-retaliation provisions that protect health care workers. See *Whistleblower Protection Laws for Healthcare Workers*, National Nurses United, 2017, <https://www.nationalnursesunited.org/whistleblower-protection-laws-for-healthcare-workers>. California Code, Health and Safety Code - HSC Section 1278.5 prohibits a health facility from discriminating or retaliating against a whistleblower who is a patient, employee, member of the medical staff, or other health care working of the health facility. <https://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-1278-5/>. See also New York’s Chapter 31, Article 20-C, Section 740, prohibiting retaliatory action by employers, <https://www.nysenate.gov/legislation/laws/LAB/740> and *State Whistleblower Laws*, <https://www.whistleblowerinfo.com/state-laws/>.

## 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.

In Section 2(D), the definition of “health care facility” has conflict as 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.

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