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FISCAL IMPACT REPORT

SPONSOR <u>Chavez</u>	LAST UPDATED _____
	ORIGINAL DATE <u>03/01/2023</u>
SHORT TITLE <u>Health Practitioner Nonsolicitation</u>	BILL NUMBER <u>House Bill 385</u>
	ANALYST <u>Chilton</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact	No fiscal impact		

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

New Mexico Medical Board (NMMB)
Board of Nursing (BON)

No Response Received

Department of Health (DOH)

SUMMARY

Synopsis of House Bill 385

House Bill 385 would prohibit the enforcement of non-solicitation clauses in contracts between a health care provider and her/his employer. Non-solicitation clauses state that upon leaving the employ of the current employer, the erstwhile employee cannot ask patients to follow her/him to a new practice, and also prohibit the former employee from asking staff members to follow her/him.

Section 1 of the bill amends Section 24-1I-2 NMSA 1978, adding “non-solicitation” to the title, making it “Enforceability of a Non-Compete or Non-Solicitation Provision.” Enforcement of a non-solicitation agreement cannot be carried out after termination of the agreement or the extension of the agreement, or after termination of the health care provider’s employment with the other party to the agreement.

Section 2 of the bill amends Section 24-1I-3, on the “Enforceability of Other Provisions,” removing the subsection that allowed enforcement of a non-solicitation agreement for a period of one year after the last employment day.

Section 3 of the Bill amends Section 24-11-5, on “Applicability,” making the bill’s provisions applicable to agreements or extensions of agreements entered into after the date the bill goes into effect, in this case June 1, 2023.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

There is no appropriation in Senate Bill 385. There is no fiscal impact of this bill to the state.

SIGNIFICANT ISSUES

Employers of health care practitioners typically offer incentives to bring new providers into their employ. Incentives may include paying off some or all school debt, providing a monetary incentive, helping with moving expenses or finding a house. In return, employers have often included clauses in contracts stating a minimum length of staying with that employment, non-compete clauses (which keep a practitioner from establishing a competing practice within a defined area around the employer) and non-solicitation clauses, making the employee unable to ask patients he or she has been seeing in the employers practice and other employees working there to follow her/him to the new practice.

The American Dental Association (ada.org) explains non-solicitation from the employer’s perspective, as follows:

A non-solicitation clause is designed to prevent the employee from actively soliciting employees, customers, suppliers or patients of an employer away from the employer. Often, a single provision of the employment agreement will cover non-solicitation of both employees AND patients.

The employees and patients of a practice are valuable assets of the business, and an employer wants to protect the practice’s assets, The employer will especially wish to stop an employee from using the relationships he or she has developed through the employment to misappropriate some of those assets.

With respect to employees, the employer has invested time and money in training the employees — they presumably have insider knowledge of the practice, know how the practice operates, and know the individual patients. The departure of this asset would be disruptive to the practice. The employer believes that an attempt at “poaching” of its employees by the departing employee-dentist (who was likely introduced to these employees and learned of their talents only by virtue of the dentists’ employment) would be an unfair attempt to take away a practice asset.