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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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(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: 2/10/25 *Check all that apply:*
Bill Number: HB 337 Original Correction
 Amendment Substitute

Sponsor: Rep. Pamela Herndon **Agency Name and Code:** AOC
Short Title: Health Care Whistleblower Protection Act **Number:** 218
Person Writing: Kathleen Sabo **Phone:** 505-470-3214 **Email:** aoccaj@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY25 | FY26 | | |
| None | None | Rec. | General |
| | | | |

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|---------|---------|---------------------------|---------------|
| FY25 | FY26 | FY27 | | |
| Unknown | Unknown | Unknown | Rec. | General |
| | | | | |

(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 | Unknown | Unknown | Unknown | Unknown | Rec. | General |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 337 enacts the “Health Care Whistleblower Protection Act,” (HCWPA) prohibiting a health care entity from taking retaliatory action against a whistleblower who:

- (1) 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;
- (2) provides information to or testifies before a public body as part of an investigation, a hearing or an inquiry into an alleged unlawful or improper act on the part of a health care entity; or
- (3) objects to or refuses to participate in an activity, a policy or a practice that the whistleblower believes in good faith constitutes an unlawful or improper act.

HB 337 requires the identity of a whistleblower to remain confidential unless the whistleblower consents in writing to the release of the whistleblower’s identity.

HB 337 permits a whistleblower who is an employee, a contractor a subcontractor or an authorized agent of the health care entity, to bring a civil action against a health care entity that violates the HCWPA, for actual damages, reinstatement with the same seniority status that the whistleblower would have had but for the violation, two times the amount of back pay with interest on the back pay and compensation for any special damage sustained as a result of the violation. Additionally, SB 337 requires the health care entity to pay the litigation costs and reasonable attorney fees of the whistleblower.

HB 337 provides that it is an affirmative defense to a civil action brought pursuant to the HCWPA that the action taken by a health care entity against a whistleblower was due to misconduct, poor job performance or other legitimate business purpose unrelated to conduct prohibited pursuant to the HCWPA and that retaliatory action was not a motivating factor.

HB 337 permits a whistleblower who is not an employee, a contractor, a subcontractor or an authorized agent of a health care entity and who, as a result of being a whistleblower, has been subjected to reprisal or retaliatory action to initiate a civil action to enjoin further violations, recover actual damages sustained by the whistleblower and recover the cost of the suit, including reasonable attorney fees. In this instance, HB 337 requires the court to award reasonable attorney fees in favor of the health care entity when the court finds that the health care entity has not engaged in the alleged reprisal or retaliatory action and the complaint was frivolous, unreasonable or groundless

HB 337 provides that the remedies in the HCWPA are not exclusive and shall be in addition to any other remedies provided for in any other statute or available pursuant to common law. HB 337 further provides that the rights and remedies provided in the Act are prohibited from being waived by an agreement, a policy form or a condition of employment. Under the HCWPA, any employment agreement requiring arbitration shall not prevent any litigation

pursuant to the HCWPA.

HB 337 provides that nothing in the HCWPA shall be deemed to diminish the rights, privileges or remedies pursuant to any federal or state law or pursuant to any collective bargaining agreement.

HB 337 defines the following terms as used in the HCWPA: “federally qualified health center,” “good faith,” “health care entity,” “health care facility,” “health care provider,” “health care services,” “health care staffing company,” “hospital,” “independent health care practice,” “long-term care facility,” “management services organization,” “retaliatory action” and “telemedicine provider.” The law defines “unlawful or improper act” to mean “a practice, procedure, action or failure to act on the part of a health care entity that:

(1) violates a federal law or regulation, a state law or rule or a law of any political subdivision of the state;

(2) is illegal, unsafe or fraudulent; or

(3) constitutes: (a) malfeasance; (b) gross mismanagement; (c) a waste of funds; (d) a misrepresentation; (e) an abuse of authority; or (f) a substantial and specific danger to patients, consumers or the public.

The law defines “whistleblower” to mean:

(1) a health care provider who reveals information about an unlawful or improper act by a health care entity;

(2) a patient, including a patient's family member or guardian, who reveals information about an unlawful or improper act by a health care entity;

(3) a volunteer who reveals information about an unlawful or improper act by a health care entity;

(4) a consumer who reveals information about an unlawful or improper act by a health care entity; and

(5) an officer, board member, employee, contractor, subcontractor or authorized agent of a health care entity who reveals information about an unlawful or improper act by a health care entity.

HB 337 provides a two-year statute of limitations for a civil action pursuant to the HCWPA, running from the date on which the retaliatory action occurred.

The effective date of the Act is July 1, 2025.

FISCAL IMPLICATIONS

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

- 1) HB 337 requires a notice of the whistleblower protection policy that every health care entity is required to adopt and enforce be visibly posted and published in English and Spanish to inform patients, residents, volunteers, employees and visitors that if they report in good faith acts that are unlawful or improper, they are protected against recriminations by the HCWPA. The Act does not provide a penalty for not complying

with the posting requirement, nor does it contain a general penalty for a violation of the HCWPA.

- 2) New Mexico's existing Whistleblower Protection Act, Section 10-16C-1 NMSA 1978 et. seq, prohibits retaliatory action against a public employee by a public employer.

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/> .

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See "Fiscal Implications," above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS