

LFC Requester:

Eric Chenier

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 02/10/2025

Check all that apply:

Bill Number: HB337

Original Correction
Amendment Substitute

Sponsor: Rep. Pamelya Herndon

Agency Name and Code Number: 305 – New Mexico
Department of Justice

Short Title: HEALTH CARE
WHISTLEBLOWER
PROTECTION ACT

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(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						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

House Bill 337 (“HB337” or the “Bill”) proposes to create the Health Care Whistleblower Protection Act (the “Proposed Act”). The Bill would create a prohibition against health care entities taking retaliatory actions against any whistleblower who reports in good faith actions that the whistleblower believes to be unlawful or improper. The Bill would additionally create a right of action for certain whistleblowers who sustain damages resulting from retaliatory actions taken by health care entities.

Section One creates the short title of the Proposed Act, the Health Care Whistleblower Protection Act.

Section Two creates the definitions section of the Proposed Act. The Section defines terms relevant to substantive provisions of the Bill, including “health care entity,” notably excluding state-owned special hospitals operated by the department of health. Section 2(L) defines “retaliatory action” to include discriminatory or adverse actions taken against a whistleblower, including termination, discharge, demotion, suspension, compensation and fringe benefit losses, harassment and limitations on access to health care services that constitute a substantial and specific danger to patients, consumers, or the public. Section 2(N) defines “unlawful or improper act” to include acts that violate federal or state laws or regulations or laws of political subdivisions, acts that are illegal, unsafe, or fraudulent, and acts that constitute malfeasance, gross mismanagement, wastes of funds, misrepresentations, an abuse of authority, or a substantial and specific danger to patients, consumers, or the public. Section 2(O) defines “whistleblower” to include any health care provider, patient, patient’s family member, patient guardian, volunteer, consumer, officer, board member, employee, contractor, subcontractor, or authorized agent of a health care entity who reveals/reports unlawful or improper acts in good faith.

Section Three provides that a whistleblower shall remain confidential unless the whistleblower consents in writing to the release of the whistleblower’s identity.

Section Four outlines the prohibition against retaliatory actions. The Section provides that retaliatory actions may not be taken against any whistleblower who: 4(A) discloses to the state, attorney general, health care authority or any other government agency information about an action believed in good faith to be unlawful or improper; 4(B) 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; or 4(C) objects to or refuses to participate in an action in good faith believed to be unlawful or improper.

Section Five creates a right of action for individuals that are harmed by retaliatory actions taken by health care entities in response to protected whistleblowing. Section 5(A) provides that a whistleblower who is an employee, contractor, subcontractor, or authorized agent of a health care entity may recover actual damages, reinstatement with the same seniority, and two times the amount of back pay with interest for lost wages, any special damages sustained, litigation costs, and reasonable attorney fees. Section 5(B) provides an affirmative defense for health care entities where adverse employment actions are taken as a result of misconduct, poor job performance, or other legitimate business purposes, provided that retaliatory action is not a motivating factor. Section 5(C) provides that non-employee/contractor/subcontractor/agent whistleblowers may recover actual damages, injunctive relief, litigation costs, and reasonable attorney fees; however, in such cases, the Court may award the health care entity attorney fees if it finds that the complaint is frivolous, unreasonable, or groundless. Section 5(D) provides that remedies under the Proposed Act are not exclusive to other statutory or common law remedies. Section 5(E) provides that the remedies may not be waived in agreement, policy form, or as condition of employment; arbitration in employment agreement shall not prevent a litigation pursuant to the Proposed Act. Section 5(F) provides that the Bill does not diminish rights, privileges, or remedies available under federal or state law or pursuant to any collective bargaining agreement.

Section Six would require that health care entities adopt a whistleblower protection policy. The Section requires that the policy, at a minimum protect conduct protected by the Proposed Act. Additionally, the Section requires that health care entities display the entity's policy in public areas and communicate the policy in writing or electronically to all officers, employees, contractors, or other agents.

Section Seven creates a two-year statute of limitations on actions brought under the Proposed Act.

Section Eight provides that the effective date of the Proposed Act is July 1, 2025.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

Section 2(H) excludes from the definition of "hospital" state-owned special hospitals operated by the Department of Health. The prohibition against retaliation against whistleblowers under the Bill therefore does not include such hospitals. Presumably, the intent of this exclusion is because such hospitals are covered under the Whistleblower Protection Act, Chapter 10, Article 16C NMSA 1978. However, the Whistleblower Protection Act only applies to employees or contractors. It does not apply to, say, patients or their family members, subcontractors, volunteers, or any other group covered under the Bill.

Section 4(A) of the Bill prohibits retaliation against whistleblowers who reveal information to federal, state, or local government agencies. Legislators may consider revising the language to include Tribal governments.

Section 3 of the Bill requiring confidentiality of the whistleblower does not specify to whom the Section applies or in what circumstances. For instance, it is unclear if this would require Courts to permit whistleblowers to file complaints under seal or with their names redacted in private actions enforcing the law.

PERFORMANCE IMPLICATIONS

None.

ADMINISTRATIVE IMPLICATIONS

None.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship

SB14 relates to this Bill in that SB14 also creates a health care-specific whistleblower protection statute as part of SB14's proposed Health Care Consolidation and Transparency Act. The Bill protects similar conduct concerning whistleblowing activity and similarly prevents retaliatory actions. Despite having nearly identical substantive provisions, the two bills are not inherently in conflict in that SB14 provides for administrative fines against entities that take retaliatory actions, while HB377 creates a private right of action for whistleblowers harmed by retaliatory conduct.

TECHNICAL ISSUES

None.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

See Significant Issues, *supra*.