

HOUSE BILL 337

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

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AN ACT

RELATING TO EMPLOYMENT; ENACTING THE HEALTH CARE WHISTLEBLOWER PROTECTION ACT; PROHIBITING HEALTH CARE ENTITY RETALIATORY ACTIONS IN CERTAIN CIRCUMSTANCES; CREATING A RIGHT TO CIVIL ACTION FOR DAMAGES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Health Care Whistleblower Protection Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Health Care Whistleblower Protection Act:

A. "federally qualified health center" means a health facility that the United States department of health and human services has deemed to qualify for federal funds as a federally qualified health center;

B. "good faith" means a reasonable basis exists in

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1 fact as evidenced by the facts available;

2 C. "health care entity" means a person that
3 provides or supports the provision of health care services to
4 patients in New Mexico, including a hospital, a health care
5 provider, an in-state or out-of-state telemedicine provider, a
6 health care staffing company, a health care provider
7 organization, a health care facility, a management services
8 organization or an organization of health care providers or
9 facilities; provided that "health care entity" does not mean a
10 federally qualified health center or an independent health care
11 practice;

12 D. "health care facility" means a hospital or other
13 facility licensed by the health care authority to provide
14 health care services in a health care setting, including
15 inpatient facilities; health systems consisting of one or more
16 health care entities that are jointly owned or managed;
17 ambulatory surgery or treatment centers; residential treatment
18 centers; diagnostic, laboratory and imaging centers;
19 freestanding emergency facilities' outpatient clinics and
20 rehabilitation facilities; hospice centers; long-term care
21 facilities; and other therapeutic health settings; provided
22 that "health care facility" does not include adult daycare
23 facilities, freestanding birth centers, skilled nursing
24 facilities, intermediate care facilities, boarding homes, child
25 care facilities or shelter care homes;

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1 E. "health care provider" means a person certified,
2 registered, licensed or otherwise authorized pursuant to state
3 law to perform or provide health care services to individuals
4 in the state;

5 F. "health care services" means the care,
6 prevention, diagnosis, treatment or relief of an illness,
7 injury, disease or other medical, dental, mental or behavioral
8 health or substance use disorder condition, including:

9 (1) inpatient, outpatient, habilitative,
10 rehabilitative, dental, palliative, home health, hospice or
11 mental or behavioral health services provided by a health care
12 entity; and

13 (2) retail and specialty pharmacy, including
14 provision of drugs;

15 G. "health care staffing company" means a person
16 engaged in the business of providing, procuring for employment
17 or contracting health care personnel for a health care
18 facility, but "health care staffing company" does not include
19 an individual who independently provides the individual's own
20 services to a health care facility as an employee or a
21 contractor;

22 H. "hospital" means a hospital licensed by the
23 health care authority but does not include state-owned special
24 hospitals operated by the department of health;

25 I. "independent health care practice" means a

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1 health care provider organization entirely owned or controlled
2 by one or more health care providers who are individuals and
3 who provide health care services through the health care
4 provider organization to patients in New Mexico;

5 J. "long-term care facility" means a nursing home
6 licensed by the health care authority to provide intermediate
7 or skilled nursing care;

8 K. "management services organization" means a
9 person that contracts with a health care entity to perform or
10 provide personnel to perform all or substantially all of the
11 administrative or management services relating to supporting or
12 facilitating the provision of health care services;

13 L. "retaliatory action" means any discriminatory or
14 adverse action taken by a health care entity against a
15 whistleblower, including termination, discharge, demotion,
16 suspension, compensation and fringe benefit losses, harassment
17 and limitations on access to health care services that
18 constitute a substantial and specific danger to patients,
19 consumers or the public;

20 M. "telemedicine provider" means a provider who
21 uses telecommunications and information technology to provide
22 clinical health care from a distance to evaluate, diagnose and
23 treat patients in real time or asynchronously;

24 N. "unlawful or improper act" means a practice,
25 procedure, action or failure to act on the part a health care

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1 entity that:

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

5 (2) is illegal, unsafe or fraudulent; or

6 (3) constitutes:

7 (a) malfeasance;

8 (b) gross mismanagement;

9 (c) a waste of funds;

10 (d) a misrepresentation;

11 (e) an abuse of authority; or

12 (f) a substantial and specific danger to
13 patients, consumers or the public; and

14 0. "whistleblower" means:

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

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

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

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

25 (5) an officer, board member, employee,

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1 contractor, subcontractor or authorized agent of a health care
2 entity who reveals information about an unlawful or improper
3 act by a health care entity.

4 SECTION 3. [NEW MATERIAL] CONFIDENTIALITY.--The identity
5 of a whistleblower shall remain confidential unless the
6 whistleblower consents in writing to the release of the
7 whistleblower's identity.

8 SECTION 4. [NEW MATERIAL] RETALIATORY ACTION
9 PROHIBITED.--A health care entity shall not take retaliatory
10 action against a whistleblower who:

11 A. discloses to the state, the attorney general,
12 the health care authority or any other federal, state or local
13 government agency information about an action or a failure to
14 act that the whistleblower believes in good faith constitutes
15 an unlawful or improper act;

16 B. provides information to or testifies before a
17 public body as part of an investigation, a hearing or an
18 inquiry into an alleged unlawful or improper act on the part of
19 a health care entity; or

20 C. objects to or refuses to participate in an
21 activity, a policy or a practice that the whistleblower
22 believes in good faith constitutes an unlawful or improper act.

23 SECTION 5. [NEW MATERIAL] RIGHT TO CIVIL ACTION FOR
24 DAMAGES--AFFIRMATIVE DEFENSES--REMEDY NOT EXCLUSIVE.--

25 A. A health care entity that violates the

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1 provisions of the Health Care Whistleblower Protection Act
2 shall be liable to a whistleblower who is an employee, a
3 contractor, a subcontractor or an authorized agent of the
4 health care entity for actual damages, reinstatement with the
5 same seniority status that the whistleblower as described in
6 this subsection would have had but for the violation, two times
7 the amount of back pay with interest on the back pay and
8 compensation for any special damage sustained as a result of
9 the violation. In addition, the health care entity shall be
10 required to pay the litigation costs and reasonable attorney
11 fees of the whistleblower. A whistleblower may bring an action
12 pursuant to this section in a court of competent jurisdiction.

13 B. It shall be an affirmative defense to a civil
14 action brought pursuant to this section that the action taken
15 by a health care entity against a whistleblower was due to
16 misconduct, poor job performance or other legitimate business
17 purpose unrelated to conduct prohibited pursuant to the Health
18 Care Whistleblower Protection Act and that retaliatory action
19 was not a motivating factor.

20 C. A whistleblower who is not an employee, a
21 contractor, a subcontractor or an authorized agent of a health
22 care entity and who, as a result of being a whistleblower, has
23 been subjected to reprisal or retaliatory action may initiate a
24 civil action in a court of competent jurisdiction to enjoin
25 further violations, recover actual damages sustained by the

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1 whistleblower and recover the cost of the suit, including
2 reasonable attorney fees. The court shall award reasonable
3 attorney fees in favor of the health care entity if the civil
4 action was initiated by a whistleblower who is not an employee,
5 a contractor, a subcontractor or an authorized agent of a
6 health care entity and the court finds that the health care
7 entity has not engaged in the alleged reprisal or retaliatory
8 action and the complaint was frivolous, unreasonable or
9 groundless.

10 D. The remedies provided for in the Health Care
11 Whistleblower Protection Act are not exclusive and shall be in
12 addition to any other remedies provided for in any other
13 statute or available pursuant to common law.

14 E. The rights and remedies provided in this section
15 shall not be waived by an agreement, a policy form or a
16 condition of employment. Any employment agreement requiring
17 arbitration shall not prevent any litigation pursuant to the
18 Health Care Whistleblower Protection Act.

19 F. Nothing in the Health Care Whistleblower
20 Protection Act shall be deemed to diminish the rights,
21 privileges or remedies pursuant to any federal or state law or
22 pursuant to any collective bargaining agreement.

23 SECTION 6. [NEW MATERIAL] POSTING OF LAW AND
24 INFORMATION.--Every health care entity shall adopt and enforce
25 a whistleblower protection policy that, at a minimum, meets the

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1 requirements of the Health Care Whistleblower Protection Act to
2 protect health care whistleblowers from any form of retaliatory
3 action by the health care entity. A notice of this policy
4 shall be visibly posted in public areas at each health care
5 entity's workplace, published on the health care entity's
6 website and given, by either written or electronic
7 communication, to every officer, employee, contractor or other
8 agent of the health care entity. The notice shall be published
9 in English and in Spanish and shall inform patients, residents,
10 volunteers, employees and visitors that if they report in good
11 faith acts that are unlawful or improper, they are protected
12 against recriminations by the Health Care Whistleblower
13 Protection Act.

14 SECTION 7. [NEW MATERIAL] LIMITATION ON ACTIONS.--A civil
15 action pursuant to the Health Care Whistleblower Protection Act
16 shall be barred unless the action is filed within two years
17 from the date on which the retaliatory action occurred.

18 SECTION 8. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2025.