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FISCAL IMPACT REPORT

SPONSOR Maestas **ORIGINAL DATE** 02/08/09
LAST UPDATED 03/09/09 **HB** 557/aHJC
SHORT TITLE Improper Patient Care Reporting **SB** _____
ANALYST Hoffmann

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 394

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Department of Workforce Solutions (DWS)
Department of Health (DOH)

No Response

State Personnel Office (SPO)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment strikes section 2 of the bill in its entirety.

Section 2 contained a statement of the purpose of the Health Care Employee Protection Act.

Synopsis of Original Bill

House Bill 557 creates the Health Care Employee Protection Act, which states its purpose in part is to maintain and improve a high level of health throughout the state by encouraging health care professionals to notify appropriate public bodies, defined in the bill as "a state government department, agency or political subdivision," of suspected improper quality of patient care, defined as "a practice, procedure, action or failure to act on the part of the employer that violates any law, act, rule or best practice standard." House Bill 557 is a species of whistleblower protection for those employed in a health care setting.

It creates a right of action against employers for taking retaliatory action against an employee who (1) discloses or threatens to disclose to an employer or to a public body an activity, policy or practice of the employer that constitutes improper quality of patient care, (2) provides information to or testifies before a public body as part of an investigation, hearing or inquiry into improper quality of patient care, a violation of law, or a rule promulgated pursuant to law; or (3) objects to or refuses to participate in an activity, policy or practice that (a) is in violation of a law or rule, (b) constitutes improper quality of patient care, or (c) is fraudulent or criminal.

House Bill 557 provides that claims under the Health Care Employee Protection Act may be filed with the State Human Rights Division in accordance with the grievance procedures set out in the Human Rights Act. It mandates that the employee exhaust all other employer administrative grievance procedures and within 60 days of the final employer administrative procedure, file with the Division a written complaint that states the name and address of the person alleged to have engaged in the retaliatory action and information relating to the retaliatory act.

The Human Rights Commission would hear claims filed under the Health Care Employee Protection Act in accordance with the procedures specified in the Human Right Act. Any party may appeal an order of the Commission, also as provided in the Human Rights Act.

Finally, House Bill 557 requires employers to keep posted in a conspicuous place on the employer's premises notices prepared by the Human Rights Bureau of the Labor Relations Division of the Workforce Solutions Department (the "Division") that set forth prohibited actions, the definition of retaliatory action, and excerpts from the New Mexico Human Rights Act, NMSA 1978, §§ 28-1-1 through 28-1-15 (the "Human Rights Act"), regarding the filing of complaints, hearing procedures, enforcement and appeals, and other relevant information as determined by the Secretary of Workforce Solutions.

FISCAL IMPLICATIONS

House Bill 557 makes no appropriations.

The Attorney General provides legal counsel to the Division and the Commission. The AGO expresses concern that House Bill 557 may result in an increased workload for the AGO, but provides no appropriation for additional staff.

The DWS similarly notes that although the bill contains important protections, it adds additional responsibilities to its already taxed investigators. Currently there are seven (7) investigators who investigate claims under the Human Rights Act. The Bureau is short one (1) investigator position that is affected by the freeze and will likely be eliminated in FY2010. Currently, investigators are receiving approximately 40 new cases per month. Passage of this bill would result in more cases for existing investigators. Additionally, travel has been cut for Human Rights Commission members to travel to hearings where claims such as those contemplated in this Bill would be held.

SIGNIFICANT ISSUES

The DOH comments that House Bill 557 would require reference to the Human Rights Act (HRA) in order to fully understand its terms, and also would limit the HRA's provisions. In particular, unlike the illegal practices enumerated in the HRA, the practices prohibited by HB557 would not immediately entitle the employee to complain to the Human Rights Bureau. Instead, this new act would require the employee to exhaust the remedies available through their employer's grievance procedures in order to proceed with the HRA's administrative remedies. If they fail to file their complaint with the Human Rights Bureau of the Labor Relations Division within 60 days of the employer's final action, their claim would presumably be barred.

RELATIONSHIP

The DWS comments that there are many bills this session seeking to add to claims that can be brought as violations of the Human Rights Act. These include, but may not be limited to, Senate Bill 305, House Bill 394 (Whistleblower Protection Act), and House Bill 494 (no adverse actions for discussion pay) and House Bill 242 (no discrimination against the spouse of a military member) adverse action for reporting minimum wage violations).

TECHNICAL ISSUES

The AGO states that House Bill 557 is not clear as to whether an employee filing a claim the Health Care Employee Protection Act first must exhaust all employer administrative grievance procedures or whether an employee may file a claim with the Division at the same time he or she is seeking to exhaust employer administrative grievance procedures.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the DOH, the "Conscientious Health Care Employee Protection Act" would not be enacted to encourage licensed health care professionals working for an employer of four or more employees to: report activities, policies or practices of that employer that may constitute improper quality of patient care; to freely provide information to or testify before a public body investigating alleged deficient or illegal patient care; and to refuse to participate in illegal, improper, fraudulent or criminal activities related to patient care.

CH/mt:svb