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FISCAL IMPACT REPORT

SPONSOR: Miera DATE TYPED: 2/26/03 HB 313/aHLC/aHJC

SHORT TITLE: Conscientious Health Care Employee Protection SB _____

ANALYST: Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative	Recurring	General Fund

Relates to HB 11

SOURCES OF INFORMATION

Responses Received From
 Department of Labor (DOL)
 Administrative Office of the Courts (AOC)
 Health Policy HRC (HPC)
 Department of Health (DOH)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment removes the HLC amendment in its entirety.

Synopsis of HLC Amendment

The House Labor and Human Resources Committee amendment expands the definition of an employee from a “health care profession” to a “person”. The definition of employer is also narrowed from an employer who has four or more employees to an employer who has four or more employees “who are health care professionals”.

Synopsis of Original Bill

House Bill 313 encourages health care employees to notify appropriate public bodies of suspected improper quality of care, prohibits employer retaliatory action, and provides for grievance procedure and penalties. Only employers with four or more employees are covered under this

bill. The bill includes the following provisions:

- Defines “improper quality of patient care” as any practice, procedure, action or failure to act on the part of an employer that violates a law or a rule, promulgated pursuant to law.
- Prohibits an employer from taking retaliatory action against an employee because the employee 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.
- Authorizes the human rights division of the DOL to investigate and resolve such claims and provides a grievance process for the employee and employer to follow upon initiation of a written complaint by the employee.

Grievance Procedure: HB 313 sets up a grievance procedure that requires a complaint alleging retaliatory action to be filed within sixty days after the alleged retaliatory action was committed. Upon receipt of the complaint, the director of the human rights division of the DOL must perform the following tasks:

- Advise the respondent of the filing of a complaint against him and provide him a copy of the complaint;
- Promptly investigate the alleged retaliatory action and determine if probable cause exists for the complaint;
- If the director determines there is no probable cause, he shall dismiss the complaint and notify the parties of the dismissal;
- If the director determines there is probable cause, the director shall attempt to achieve a satisfactory resolution of the complaint through persuasion and conciliation.

Human Rights Commission (HRC) Role: If there is no conciliation and no waiver of right to hearing by the complainant, the HRC shall issue a written complaint against the respondent detailing the charges and the relief requested. The complaint will inform the respondent of a hearing before the HRC or hearing officer, to be conducted not more than fifteen or less than ten days after service of the complaint. The hearing is to be held in the county where the respondent does business or where the alleged retaliatory action occurred.

Within one year of the filing of the complaint, the HRC must either dismiss the complaint for lack of probable cause, achieve satisfactory adjustment of the complaint, or file a formal complaint on behalf of the HRC.

The HRC may petition the district court of the county where the respondent does business or the alleged retaliatory action occurred for injunctive relief, pending hearing by HRC or pending judicial review of an order of the HRC, in order to preserve the status quo or to ensure that the HRC’s order as issued will be effective.

Complainant: The complainant may seek a trial de novo in the district court in lieu of a hearing before the HRC, if a written request is made for a waiver of the complainant’s right to a hearing from the director. The waiver request must be made within sixty days of service of written notice of a probable cause determination by the director. The complainant’s request for a trial de

novo pursuant to Section 39-3-1 NMSA must be made within 30 days from the date of service of the waiver. Issuance of the notice is deemed a final order of the HRC for the purpose of appeal pursuant to Section 39-3-1.1 NMSA 1978.

Hearing: If a hearing is held before the HRC or a hearing officer, the complainant and the respondent may be represented by counsel at the hearing. The parties are not bound by the formal rules of evidence but shall be permitted to conduct reasonable direct examination and cross-examination and the submission of briefs. A panel of three members of the HRC shall sit and a decision may be made by two members of the panel. A hearing officer who conducts a hearing in lieu of the HRC has the same powers and duties as the HRC. Upon conclusion of the hearing, the hearing officer shall prepare a written report detailing proposed findings of fact and conclusions of law and recommending action to be taken by the HRC. The report must be submitted to a review panel consisting of no more than three members of the HRC. After any hearing, if the HRC finds that the respondent has engaged in retaliatory acts, it shall make written findings of fact and conclusions of law.

Within five days after an order is rendered by the HRC, the HRC shall serve upon each party and his attorney a written copy of the order by certified mail to the party's address of record. As part of the order, the HRC may require the respondent to pay actual damages to the complainant to pay reasonable attorney fees and to take such affirmative action as the HRC considers necessary. If the HRC finds that the respondent has not engaged in retaliatory action, it shall serve the parties with a copy of its written findings of fact and with an order dismissing the complaint.

Enforcement: If a respondent does not comply with an order of the HRC, the attorney general or district attorney, at the request of the DOL secretary, shall secure enforcement of the HRC's order by a district court. The court may make and enter upon the proceedings an order to decree enforcement of the order of the HRC.

Appeal: A party may appeal the final decision of the HRC pursuant to Section 39-3-1 NMSA 1978.

Posting: HB 313 requires every employer subject to HB 313 to keep excerpts of HB 313 and other relevant information as determined by the secretary posted in a conspicuous place.

Significant Issues

Quality of care is a significant issue in health care. The stated purpose of HB313 is to maintain and improve a high level of health care throughout New Mexico by encouraging health care employees to notify appropriate public bodies of suspected improper quality of patient care.

Many professional organizations have codes of ethics that encourage their members to report illegal activities to authorities. Some professions by the very nature of their responsibilities are required to look out for the safety of patients, but, in reporting illegal activities, the employees risk retaliation by employers including demotion, suspension or termination.

Employees in health care are not currently protected from employer retaliation in the event of reporting quality issues to authorities. The states of Kentucky, Minnesota, New Jersey, Arkansas, California, Colorado, Connecticut, Florida, Illinois, North Dakota, Texas, Utah, and Washington have passed job protection laws within the past five years.

HB 313 provides job protection to employees for reporting of quality issues. Employers can create an internal working climate that penalizes employees that would consider reporting to legal authorities any activity that would be considered illegal. Employees, fearful of losing their jobs, might not report actions of employers that could result in harm to the public.

HB 313 would encourage reporting of illegal activities by employees and provide a defined hearing process protecting the rights of both the employer and employee.

FISCAL IMPLICATIONS

DOL will require 3 additional FTEs for the Human Rights Division to investigate and resolve such claims according to the provisions of HB 313.

ADMINISTRATIVE IMPLICATIONS

Employers must prominently display posters describing HB 313. This will be difficult for DOL to monitor.

RELATIONSHIP

Relates to HB11, Whistle Blower Protection Act, prohibits employer retaliatory action against employees and encourages employees to notify appropriate persons of illegal acts of public concern.

TECHNICAL ISSUES

DOL notes there is a discrepancy between the time for filing a complaint under this Act and the time for filing under other provisions of the Human Rights Division Act.

OTHER SUBSTANTIVE ISSUES

HB 313 does not extend to an employee who objects to, or refuses to participate in, any activity, policy or practice of the employer if the employee believes the activity, policy or practice constitutes improper quality of patient care. This would go beyond illegal activities to include “generally recognized professional standards.” Employers would object to employees subjective interpretation of what are generally recognized professional standards.

DW/njw:pr