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HOUSE BILL 514

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Eleanor Chavez

AN ACT

RELATING TO EMPLOYMENT; ENCOURAGING REPORTING OF SUSPECTED  
IMPROPER QUALITY OF PATIENT CARE; PROHIBITING EMPLOYER  
RETALIATORY ACTION IN CERTAIN CIRCUMSTANCES; PROVIDING  
GRIEVANCE PROCEDURES AND PENALTIES.

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

**SECTION 1.** A new section of Chapter 28 NMSA 1978 is  
enacted to read:

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

**SECTION 2.** A new section of Chapter 28 NMSA 1978 is  
enacted to read:

"[NEW MATERIAL] PURPOSE.--It is the purpose of the  
Conscientious Health Care Employee Protection Act to maintain  
and improve a high level of health care throughout New Mexico

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1 by encouraging health care professionals to notify appropriate  
2 public bodies of suspected improper quality of patient care.  
3 This reporting is encouraged in order to protect patients and  
4 employees and to assist public bodies charged with ensuring  
5 that health care is safe and adequate."

6 SECTION 3. A new section of Chapter 28 NMSA 1978 is  
7 enacted to read:

8 "[NEW MATERIAL] DEFINITIONS.--As used in the Conscientious  
9 Health Care Employee Protection Act:

10 A. "division" means the human rights bureau of the  
11 labor relations division of the workforce solutions department;

12 B. "employee" means a licensed health care  
13 professional who performs services for and under the control  
14 and direction of an employer for wages or other remuneration;

15 C. "employer" means a person who has four or more  
16 employees and includes an agent of an employer and a public  
17 employer;

18 D. "health care professional" means a person  
19 licensed pursuant to Chapter 61 NMSA 1978;

20 E. "improper quality of patient care" means a  
21 practice, procedure, action or failure to act on the part of an  
22 employer that violates any law, act, rule or best practice  
23 standard;

24 F. "public body" means a state government  
25 department, agency or political subdivision;

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1           G. "retaliatory action" means the discharge,  
2           suspension, demotion, disciplining or discriminatory or adverse  
3           employment action against an employee in the terms and  
4           conditions of employment; and

5           H. "urgent medical condition" means any medical  
6           condition as defined by an appropriate medical authority  
7           through documentation or by direct witness of a clearly visible  
8           disablement and that poses a serious threat to the life of the  
9           person with the medical condition."

10           SECTION 4. A new section of Chapter 28 NMSA 1978 is  
11           enacted to read:

12           "[NEW MATERIAL] EMPLOYER RETALIATORY ACTION

13           PROHIBITED.--If an employee is in compliance with the federal  
14           Health Insurance Portability and Accountability Act of 1996, an  
15           employer shall not take retaliatory action against the employee  
16           for the following:

17           A. disclosing or threatening to disclose to an  
18           employer or to a public body an activity, policy or practice of  
19           the employer that constitutes improper quality of patient care;

20           B. providing information to or testifying before a  
21           public body as part of an investigation, hearing or inquiry  
22           into improper quality of patient care, a violation of law or a  
23           rule promulgated pursuant to law; or

24           C. objecting to or refusing to participate in an  
25           activity, policy or practice that:

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- 1 (1) is in violation of a law or rule;  
2 (2) constitutes improper quality of patient  
3 care; or  
4 (3) is fraudulent or criminal."

5 SECTION 5. A new section of Chapter 28 NMSA 1978 is  
6 enacted to read:

7 "[NEW MATERIAL] GRIEVANCE PROCEDURE.--An employee who  
8 alleges a retaliatory action pursuant to the Conscientious  
9 Health Care Employee Protection Act may file a grievance under  
10 procedures specified in the Human Rights Act. However, an  
11 employee who alleges a retaliatory action pursuant to the  
12 Conscientious Health Care Employee Protection Act shall also:

13 A. exhaust all other employer administrative  
14 grievance procedures; and

15 B. within sixty days of the final employer  
16 administrative procedure, file with the division a written  
17 complaint that states the name and address of the person  
18 alleged to have engaged in the retaliatory action and  
19 information relating to the retaliatory act."

20 SECTION 6. A new section of Chapter 28 NMSA 1978 is  
21 enacted to read:

22 "[NEW MATERIAL] HEARING PROCEDURES.--A Conscientious  
23 Health Care Employee Protection Act hearing shall be conducted  
24 according to procedures specified in the Human Rights Act."

25 SECTION 7. A new section of Chapter 28 NMSA 1978 is

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1 enacted to read:

2 "[NEW MATERIAL] ENFORCEMENT.--If a respondent to a  
3 complaint filed pursuant to the Conscientious Health Care  
4 Employee Protection Act has not complied with an order of the  
5 human rights commission within thirty days, the employee may  
6 seek enforcement pursuant to Section 28-1-12 NMSA 1978."

7 SECTION 8. A new section of Chapter 28 NMSA 1978 is  
8 enacted to read:

9 "[NEW MATERIAL] APPEAL.--Any party may appeal the final  
10 decision of the human rights commission pursuant to the  
11 provisions of Section 28-1-13 NMSA 1978."

12 SECTION 9. A new section of Chapter 28 NMSA 1978 is  
13 enacted to read:

14 "[NEW MATERIAL] POSTING OF LAW AND INFORMATION.--Every  
15 employer subject to the Conscientious Health Care Employee  
16 Protection Act shall keep posted in a conspicuous place on the  
17 employer's premises notices prepared by the division that set  
18 forth:

- 19 A. prohibited actions;
- 20 B. the definition of retaliatory action;
- 21 C. excerpts of the Human Rights Act regarding the  
22 filing of complaints, hearing procedures, enforcement and  
23 appeals; and
- 24 D. other relevant information as determined by the  
25 secretary of workforce solutions."

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SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011."