

HOUSE LABOR AND HUMAN RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 514

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

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

.185873.3

underscored material = new
[bracketed material] = delete

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 health care professional
13 licensed pursuant to Chapter 61 NMSA 1978 or other employee who
14 performs services for and under the control and direction of an
15 employer that is a health care facility for wages or other
16 remuneration;

17 C. "employer" means a person who has four or more
18 employees and includes an agent of an employer and a public
19 employer, but "employer" does not include health plans or other
20 entities that do not provide direct medical care services to
21 patients;

22 D. "health care facility" means a hospital,
23 outpatient facility, diagnostic and treatment center,
24 rehabilitation center, freestanding hospice or other similar
25 facility at which medical care is provided;

.185873.3

1 E. "improper quality of patient care" means a
2 practice, procedure, action or failure to act on the part of an
3 employer that violates any law, act, rule or best practice
4 standard;

5 F. "public body" means a state government
6 department, agency or political subdivision; and

7 G. "retaliatory action" means the discharge,
8 suspension, demotion, disciplining or discriminatory or adverse
9 employment action against an employee in the terms and
10 conditions of employment."

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

13 "[NEW MATERIAL] EMPLOYER RETALIATORY ACTION

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

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

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

25 C. objecting to or refusing to participate in an

.185873.3

underscoring material = new
~~[bracketed material]~~ = delete

1 activity, policy or practice that:

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

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

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

14 A. exhaust all other employer administrative
15 grievance procedures; provided that all employer administrative
16 grievance procedures do not exceed ninety days, collectively,
17 from the date the employee files the grievance; and

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

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

25 "[NEW MATERIAL] HEARING PROCEDURES.--A Conscientious

1 Health Care Employee Protection Act hearing shall be conducted
2 according to procedures specified in the Human Rights Act."

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

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

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

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

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

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

- 22 A. prohibited actions;
- 23 B. the definition of retaliatory action;
- 24 C. excerpts of the Human Rights Act regarding the
25 filing of complaints, hearing procedures, enforcement and

.185873.3

1 appeals; and

2 D. other relevant information as determined by the
3 secretary of workforce solutions."

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

6 "[NEW MATERIAL] APPLICATION OF OTHER LAW.--Nothing in the
7 Conscientious Health Care Employee Protection Act shall
8 preclude an employee from pursuing other remedies available at
9 law, including remedies available under the Whistleblower
10 Protection Act."

11 SECTION 11. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2011.

underscoring = new
~~bracketed~~ = delete