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FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/11
 SPONSOR HJC LAST UPDATED 03/11/11 HB CS/514/HJCS
 SHORT TITLE Report Improper Patient Care SB _____
 ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		*See fiscal impact				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute for the House Labor and Human Resources Committee Substitute for House Bill 514 enacts the “conscientious health care employee protection act” (act) to prohibit employer retaliation against a licensed health care professional or other employee of a health care facility under certain circumstances.

Section two provides for definitions used in the act: *employee* includes a health care professional licensed pursuant to Chapter 61 NMSA 1978; *employer* includes a person with four or more employees and excludes entities that do not provide direct medical care patient services; *improper quality of patient care* includes an action or failure to act on the part of an employer that violates any law, act or rule or standard of care; and *retaliatory action* includes any adverse employment action.

Section three Subsection A prohibits employer retaliation for disclosing or threatening to disclose an activity, policy or practice that constitutes improper patient care; providing information or testifying before a public body into improper quality of patient care; or objecting to or refusing to participate in an activity, policy or practice that (1) is in violation of a law or rule, (2) constitutes improper patient care, or (3) is fraudulent or criminal. Subsection B provides that an employee may bring a civil action and if prevails, shall be entitled to reasonable attorney fees and costs.

Section four states that nothing in the act shall preclude an employee from pursuing other remedies available at law.

FISCAL IMPLICATIONS

State health and human services agencies and various boards of licensees receive complaints and there is a potential for duplication of efforts in any investigatory process.

The fiscal impact is indeterminate. The bill provides for civil penalties and there may be fiscal impact to state agencies with health care facilities for costs to defend their position and the Risk Management Division (RMD) as the insurance provider for the state. However, RMD does receive premiums from state agencies/state employers for providing liability coverage.

SIGNIFICANT ISSUES

The bill provides that an employee must be in compliance with the federal Health Insurance Portability and Accountability Act of 1996 for the provisions of the act to be in effect.

Any licensed healthcare professional who observes a violation of law, act or rule is obligated to report the violation through various incident management protocols. The bill will introduce a new criterion of violation – violation of a “standard of care.”

The act adds another layer of protection to health care providers within the state personnel system. Protection is provided to classified state employees covered by the Personnel Act and the Human Rights Act. The act, as it pertains to public employees, relates to the Whistleblower Protection Act passed and signed during the 2010 regular session.

The New Mexico Administrative Code, 7.1.13, contains requirements for filing a complaint and reporting allegations of abuse, neglect or exploitation of a recipient of services by employees of licensed health care facilities and community-based service providers. However, the Department of Health (DOH) has previously shown concern that these requirements may not allow for an employee to file a grievance or be afforded a right to a hearing for retaliation for filing an incident report with the Division of Health Improvement (DHI). The bill will expand the rights of an employee who files an incident report with DOH/DHI to include a hearing for retaliation for filing the report.

PERFORMANCE IMPLICATIONS

The Human Rights Act does not currently give protection to employees that this bill addresses. Section 28-1-12 NMSA 1978 provides:

If a respondent to a complaint filed pursuant to the Human Rights Act is not complying with an order of the commission, the attorney general or district attorney, at the request of the secretary, shall secure enforcement of the commission's order by a district court. The proceeding shall be initiated by the filing of a petition in the district court where the respondent is doing business or the alleged discriminatory practice occurred. A copy of the petition shall be served on the respondent personally or by registered mail, return receipt requested. The court may make and enter upon the proceedings an order to decree enforcement of the order of the commission.

10-16C-3, Whistleblower Protection Act, provides that a public employer shall not take any

retaliatory action against a public employee because the public employee:

- A. communicates to the public employer or a third party information about an action or a failure to act that the public employee believes in good faith constitutes an unlawful or improper act;
- B. provides information to, or testifies before, a public body as part of an investigation, hearing or inquiry into an unlawful or improper act; or
- C. objects to or refuses to participate in an activity, policy or practice that constitutes an unlawful or improper act.

10-16C-4, Whistleblower Protection, further provides that a public employer that violates the provisions of the Whistleblower Protection Act shall be liable to the public employee for actual damages, reinstatement with the same seniority status that the employee would have had but for the violation, two times the amount of back pay with interest on the back pay and compensation for any special damage sustained as a result of the violation. In addition, an employer shall be required to pay the litigation costs and reasonable attorney fees of the employee. An employee may bring an action pursuant to this section in any court of competent jurisdiction.

TECHNICAL ISSUES

While a violation of a law, act or rule can be investigated by comparing the offender's compliance or noncompliance with the law, act or rule, a violation of a "standard of care" in some cases may be subject to interpretation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

It remains uncertain the extent to which health care workers who choose to report improper quality of patient care are protected under current law.

AHO/mew:bym