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F I S C A L I M P A C T R E P O R T

		ORIGINAL DATE	2/16/17		
SPONSOR	HLEDC	**LAST UPDATED**	3/13/17	**HB**	288/HLEDCS
SHORT TITLE	Patient Safe Staffing Act			**SB**	
				ANALYST	Chilton/Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	Up to $1,916.3	Up To $1,916.3	Up to $3,832.6	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases) Note: Department of Health agency analysis received 2/22/17; this revised FIR adds both language and fiscal impact information based on that analysis.

Duplicated Senate Bill 281 prior to the amendment; similar to 2016 House Bill 179.

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Medical Board (MB)
Office of the Attorney General (OAG)
Board of Nursing (BN; related to identical SB 281)
Department of Health (DOH)
New Mexico Hospital Association (NMHA)

SUMMARY

Synopsis of Committee Substitute

House Bill 288 would require that each New Mexico hospital set up a committee primarily for the purpose of determining staffing levels for each unit in the hospital. A majority of the members of the committee would be nurses providing direct patient cares (not nurses in administration).

Duties of the committee, aside from determining the staffing pattern, would include using national standards and local patient satisfaction data to determine outcome indicators for each hospital unit, and to update staffing levels for each unit at least every 12 months.

Staffing plans would specify the number of nurses needed on each unit for each shift, taking into account local factors and circumstances. Staffing levels would be determined based on nurse and other local recommendations, the characteristics of each unit, the characteristics of nurses on a unit (e.g., experience level). Hospitals would be prohibited from achieving desired staffing levels

by mandating overtime.

Nurses would be empowered to refuse assignments if the nurse "lacked the experience, training or experience to ensure patient safety," if the assignment were outside the nurse's scope of duty, or if taking the assignment would require the nurse to abandon a patient with whom she/he had established a nurse-patient relationship without notifying the patient or her/his representative according to hospital policy. Nurses' refusal of an assignment would not be considered "patient abandonment".

Hospitals would be required to report and post at the beginning of each shift a notice stating patient census, the staffing level of both nursing and ancillary staff in both actuality and in plan. Quarterly, each hospital would be required to report to DOH the daily census and staffing numbers for each shift and each unit. DOH would specify the format of this reporting, and then would post the information on its website for public consumption.

DOH would also be required to enforce hospitals' compliance with the Act. A complaint process for "aggrieved persons" (not defined in the bill but presumably including nurses and patients) should be set up by DOH, with the department required to investigate the allegations, to issue a report and to take appropriate action. Whistleblower protection would be granted.

In addition, "aggrieved or potentially aggrieved parties" are given permission to request a district court in any county to issue an injunction if they believed the Department of Health is not enforcing the Patient Safe Staffing Act or the department's rules regarding the act.

FISCAL IMPLICATIONS

This bill does not include an appropriation.

In recent years, the DOH Health Certification, Licensing, and Oversight (HLCO) program has experienced general fund budget reductions while being required to expand the number and types of surveys they perform due to federal and state mandates. However, the DOH analysis below likely overstates the costs to HCLO. For example, below DOH states that 11 FTE would be required to investigate its estimate of a possible 200 complaints annually. This is likely overstated since each FTE would conduct an average of 1.5 investigations monthly.

(200 annual complaint investigations ÷ 11 FTE) ÷ 12 months = 1.5 investigations monthly.

Assuming 200 annual complaint investigations, the job could likely be done with 2 FTE conducting an average of 8 investigations monthly.

In addition, it is entirely unknown how many investigations would result in a court case requiring an attorney, but again the 0.5 FTE attorney would seem to be unlikely to be utitilized to the extent of twenty hours per week.

However, DOH did not take into account costs associated with implementing staffing committees within their own facilities which would be an added cost.

The Department of Health's analysis adds numbers to this fiscal impact report in the table above. DOH's explanation for the fiscal impact on that agency follows:

- DOH estimates it would take 2.0 FTE health care surveyors to survey 51 hospitals annually for compliance with posted staffing for each hospital unit.
- While the number of complaints of violations of HB288 requirements is unknown, the DOH bases FTE estimates on 200 complaint investigations including necessary follow-ups per year. DOH estimates it would take an additional 11 FTE nurse surveyors to investigate complaints annually.
- DOH estimates it would take 0.50 FTE attorney to participate in or respond to court filings for injunctive relief.
- DOH estimates it would take 0.25 FTE annually to develop and maintain the DOH website for posting hospital reports.

Expenditures

- DOH estimates it would take an additional 13.75 FTE to monitor compliance, investigate complaints, respond to law suits, and maintain the database. Salary and benefits are a total state general fund cost of $1,028.8 (dollars in thousands).
- General Fund Salary and Benefits Costs

General Fund Salary and Benefits Costs ($$/thousands)				
FTE	Pay Grade	Salary	Benefits	Total
2.0	65	$108.7	$40.2	$148.9
11.25	75	$611.5	$226.3	$837.8
0.50	80	$30.7	$11.4	$42.1
Total State General Funds				**$1028.8**

- Costs for rent, supplies, equipment, communication, travel, cars, copying and information technology for 13.75 FTE are $137.5 state general funds.
- The number of hearings that may be held is unknown. However, based on about 250 surveys per year, DOH estimates 50 hearings annually for a total cost of $750.0 state general fund for hearing officer contracts.
- **Total State General Funds Cost Estimate: $1,916.3**

The fiscal impact of this bill would not be limited to state government, as indicated by the New Mexico Hospital Association, which stated

> The bill imposes new regulatory reporting burdens on hospitals; this would require adding new personnel costs to each inpatient unit for regulatory compliance activities such as: committee management, tracking, recording, posting, and reporting to NM Dept of Health. That individual's compensation, including benefits, may cost approximately $32,000 per year.
>
> The bill clearly implies hospitals may be required to hire additional nurses. Presuming one new nurse per shift for each unit, this equates to three new nurses or $350,000 for each inpatient unit. Hospitals will need to choose how to cover those additional costs, either raising prices to accommodate the higher costs of delivering care or eliminating other members of the care team.

SIGNIFICANT ISSUES

The Office of the Attorney General comments that there may be "a potential conflict created by the portion of the provision that allows nurses to turn down assignments and New Mexico Board of Nursing and the Nurse Practice Act, NMSA 1978, § 61-3-1 et seq. There is no apparent conflict, but the Board of Nursing should likely be consulted about any ethical implications of HB 288." This caveat refers to Section 7 of the current bill.

The Board of Nursing notes that the bill applies only to hospitals; nurse-patient ratios in other venues such as schools or nursing homes are not mentioned. Other points made by BN include

1) overlapping shifts make it difficult to determine at what time a unit report is to be posted, and
2) a requirement that a given unit have "an equal mix of more-experienced nurses," which may be difficult to achieve and may also be inappropriate for units that uniformly require more experienced nurses, such as intensive care units.

The Department of Health states that "The Patient Safe Staffing Act would significantly expand the existing complaint process for hospitals. While it is not possible to predict the volume of complaints, the process to receive, analyze the allegations, prioritize, assign, investigate, write up and enforce all complaints would have a significant administrative and fiscal impact on DOH."

The Department of Health notes that decisions on staffing would be made by the committee by majority vote, whereas the federal Center for Medicare and Medicaid Services (CMS) specifies that such decisions be made by the Director of Nursing, quoting 42 CFR 482.23(a) as stating "The director of nursing services must be a licensed registered nurse. He or she is responsible for the operation of the service, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the hospital."

DOH goes on to state that it would be placed in an "irreconcilable" position monitoring the hospital committee's decisions regarding staffing and also pursuing its assigned role in monitoring CMS's conflicting regulations in hospitals. Hospitals too "would be put in the position of meeting the requirements of HB288 or meeting the reimbursement requirements of CMS." And if they failed to comply with CMS dictates, they could be denied Medicaid and Medicare reimbursement. NMHA echoes these concerns.

DOH commented with respect to the original bill that "patient abandonment" is not a term generally used in a hospital setting, where nursing assignments to given patients may be fluid. "Patient abandonment would typically apply to a private-duty or similar arrangement when a nurse makes a commitment directly to an individual patient." It would appear as if the committee substitute resolves this problem.

DOH states that "Monitoring compliance with HB288 would be a new and additional workload. Currently, DOH surveys hospitals upon initial license of the hospital, when directed to do so by CMS or when a state complaint is received. DOH would need additional staff to monitor compliance with all requirements of HB288 and investigate complaints."

Another significant DOH comment follows: "HB288 states that 'a hospital shall not achieve nursing staffing levels with mandatory overtime.' If a hospital is unable to hire nurses due to the state shortage of nurses, or any other reason, and is unable to meet staffing requirements through

mandatory overtime, it is possible that they will face the imposition of penalties and corrective action, or be required to close certain units within the hospital, if not the entire hospital." DOH mentions the current nursing shortage in New Mexico and notes the agency's own difficulty in attracting nurses to its facilities along with its strenuous efforts to do so.

NMHA indicates that there is no evidence that nursing staffing levels correlate with patient outcomes, and that New Mexico hospitals have made considerable progress in addressing key quality indicators without the proposed staffing initiatives in the bill.

DUPLICATION of Senate Bill 281, prior to this bill's amendment and substitution.

RELATIONSHIP to similar bill: 2016 House Bill 179, which was nearly identical to the original House Bill 288, but also included a $100,000 appropriation.

TECHNICAL ISSUES

The Board of Nursing makes the following points:

- (Page 2, Lines 6-11) the state-certified role of hemodialysis technician is not included in the list of ancillary staff. It is noteworthy that hemodialysis technicians must function under the supervision of a nurse.
- (Page 5, line 7) An algorithm may be an insufficient tool for determining how to address staffing in a period of shortage. Suggestion: insert the phrase "and procedures" after algorithm.
- (Page 5, line 16-17) scope of practice should have a clear definition because even though all nurses take OB in school, not all should work in Labor and Delivery.

AMENDMENTS

The Board of Nursing suggests the following changes:

1) In page 7, line 7, define "periodically"
2) In page 4, lines 19-22, change the current wording to require that nursing training, education and experience be taken into account when the committee determines staffing of a given unit.
3) (Page 7, Line 19) This statement indicates that AGGRIEVED persons may file a complaint. The suggestion is to remove the word AGGRIEVED, so that anyone aware of the violation may file a complaint. Should this become law, other state agencies, such as the Board of Nursing may become aware of these violations and may want to report and would not necessarily be aggrieved.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Staffing decisions for hospital units would continue to be made by administrators, who may or may not be nurses or other medical care providers.

LAC/al/jle/sb