FISCAL IMPACT REPORT

SPONSOR	Chávez/Borrego/Rubio/Roybal Caballero/ Castellano	**LAST UPDATED**	2/16/23
		ORIGINAL DATE	02/06/23
SHORT TITLE	Nursing Staff Ratios and Committee	**BILL NUMBER**	House Bill 236/ec
		ANALYST	Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	$1,916.30	$1,916.30	$1,916.30	$5,748.90	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Relates to 2019 House Bill 178.

Sources of Information

LFC Files

Responses Received From
University of New Mexico Health Sciences Center (UNM HSC)
Board of Nursing (BON)
Department of Health (DOH)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of House Bill 236

House Bill 236 creates a hospital staffing ratio committee to advise the Department of Health in setting forth minimum staffing ratios for nursing units in the state's hospitals and requires DOH to enforce those requirements, if necessary by court action.

Section 1 adds several definitions to the Public Health Act.

Section 2 creates a 10-member "staffing advisory committee" to be advisory to DOH, consisting of hospital administrators, non-managerial persons engaged in direct patient care in public and in private hospitals, and union representatives, and would be appointed by DOH for staggered four-year terms, with mechanisms of replacement given. They would not be paid but would receive per diem and mileage compensation.

Section 3 establishes DOH's duties relative to nursing staff ratios. DOH is to be sure that its staffing ratio rules are followed, that staffing ratios for rural general hospitals could be waived if

needed and safe, and to enjoin hospitals not following the guidelines. General units, critical care units, and emergency departments would be covered by ratios specific to each. The rules and ratios would be reported to the Legislature before being issued.

Section 4 requires hospitals to employ sufficient staff to meet the ratios required and to adopt rules on the training of direct patient care personnel, whether they be permanently or temporarily employed. Hospitals are prohibited from assigning unlicensed personnel to perform duties that require a licensed nurse or require specialized knowledge, but licensed and registered nurses could work within their scope of practice.

Section 5 establishes a cause of action for DOH, individuals or organizations for injunctive relief if that entity felt the act's provisions or the department's regulations were being ignored.

This bill contains an emergency clause (section 6) and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

There is no appropriation in House Bill 236. DOH estimates its expenses as follows, and as indicated in the table above:

- NMDOH estimates it would take 4.0 FTE health care surveyors to survey 50 hospitals annually for compliance with the Act and posted staffing for each hospital unit.
- While the number of complaints of violations of HB236 requirements is unknown, the NMDOH bases FTE estimates on 200 complaint investigations, including necessary follow-ups, per year. NMDOH estimates it would take some additional 11 FTE nurse surveyors to investigate complaints annually.
- NMDOH estimates it would take a 0.50 FTE attorney to participate in or respond to court filings for injunctive relief.
- NMDOH estimates it would take 0.25 FTE annually to develop and maintain the NMDOH website for posting hospital reports.
- Computer hardware for each additional FTE.
- Phone services for each additional FTE.
- IT services and enterprise applications and subscriptions for each additional FTE.
- Office space for each additional FTE.
- Rule promulgation and hearing costs.
- The number of hearings that may be held is unknown. However, based on about 250 surveys per year, the NMDOH estimates 50 hearings annually for a total cost of $750 thousand state general fund for hearing officer contracts.
- Expenses for in state travel and per diem for attending committee meetings per NMSA10-8-4.
- Total State General Funds Cost Estimate: $1.9 million.

SIGNIFICANT ISSUES

This bill comes at a time when a conjunction of nursing shortages (throughout the United States and especially in New Mexico), outbreaks of respiratory diseases causing high hospital censuses, and provider burnout make decision-making difficult for hospitals and nurses alike. On the one

hand, high patient:staff ratios are likely to increase unsafe conditions for patients and burnout for nurses, and on the other hand, there must be hospital beds available for routine as well as epidemic-affected patients.

BON documents considerable evidence in the medical/nursing literature that attests to high patient:staff ratios leading to burnout. BON also points to one preliminary study indicating that better staffing ratios could result in cost savings for hospitals.[1]

UNM HSC points out concerns regarding increasing costs for hospitals, especially regarding costs for contract labor, also known as traveling nurses:

> Nurse-to-patient ratios have been the topic of much research into patient safety, including mortality. Evidence-based studies show that better nurse staffing is shown to improve patient outcomes in hospitals, but mandated ratios may or may not be the be the best way to achieve better nurse staffing.
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> HB236 creates a committee to develop uniform staffing ratios. This committee will need to develop a set of assumptions that may not hold true in all clinical scenarios. In order to provide the highest level of care to patients, hospitals may benefit from maintaining flexibility in how staff are utilized and the ratios that are appropriate in any given unit at any point in time. These variables are constantly changing and creating a uniform set of requirements would potentially result in the inefficient use of scarce resources and added administrative burden on clinical staff.
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> Further, with the current workforce environment, many hospitals are hiring traveling nurses on contract that result in significant costs. This year, contract labor costs at Sandoval Regional Medical Center have increased 1,480 percent ($11 million total cost) from 2019 pre-pandemic levels. Depending on the ratios adopted if this bill is passed, these costs could be escalated.

DOH makes note of a likely conflict between staffing levels recommended by the committee and requirements from the Centers for Medicaid and Medicare Services (CMS), and the difficult position DOH would be in if forced to choose one or the other. This may also put hospitals in an impossible position if CMS denies either Medicaid or Medicare payments or both based on state hospitals' non-compliance with CMS regulations, which require the nurse executive to decide staffing patterns. CMS standards state, in part, "the nurse executive [at each hospital] establishes guidelines for the delivery of nursing care, treatment and services." Among four enumerated items that the nurse executive must write and approve is "Nurse staffing plans."

RELATIONSHIP

Related to 2019 House Bill 178 (not enacted), which specified that each hospital be required to set up a "safe staffing council" to determine the ration of nurses to patients in each unit.

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[1] Lasater, K. B., Aiken, L. H., Sloane, D., French, R., M. B., Alexander, M., & McHugh, M. D. (2021). Patient outcomes and cost saving associated with hospital safe nurse staffing legislation: an observational study. *BMJ Open*, 11:e052899. doi: 10.1136/bmjopen-2021-052899.

Relation to 2018 Senate Bill 82, the Safe Harbor for Nurses Act, which required healthcare facilities to develop processes by which nurses may invoke safe harbor when given an assignment where the nurse believes she/he lacks the knowledge, skills, or abilities to deliver the minimum standard of care, and which may violate the Nurse Practice Act.

TECHNICAL ISSUES

Only rural general hospitals could have nursing staff ratios waived; urban or non-general hospitals might need to have a waiver in case of a public health emergency or other unanticipated patient load increases.

The Board of Nursing points out the following, which it feels may need adjustment:

- On page three, lines five to seven and lines eight to ten refer to an advisory committee member non-supervisory who is involved in direct patient care. These lines infer that unlicensed assistive personnel (UAP) could be on the advisory committee. In most hospital settings registered nurses are the largest sector of the workforce. If the intention was to assure that a nurse involved in direct patient care is on the committee, this legislation might benefit by specifying a registered nurse for this role.
- Also of note, there is some confusion about the current scope of practice of unlicensed assistive personnel (see page eight, lines four – twenty-three). This includes nurse aides, nurse technicians, nurse interns, nurse externs, and others that are not listed, who currently and for years have performed some of the duties that would not be permitted, such as nurse techs who perform venipuncture, insert urinary catheters, and basic wound care, among many other tasks. Certified medication aides in long-term care facilities, excluded here it appears, are assistive personnel who administer medications.
- Additionally, facilities differ in other types of patient care supports. Some organizations have lifting teams, transport teams to diagnostics, rapid response teams, vascular access/PICC teams, on-unit lactation nurses on women's units, on-unit physical therapy techs orthopedic units, wound care teams, in-unit care management and/or social work, and telemonitor staff that may be depleted during the recent pandemic surge. How does this bill interfere with these roles?

OTHER SUBSTANTIVE ISSUES

UNM HSC points out that “The composition of the proposed staffing advisory committee places hospital representation in the minority compared to other members. This imbalance has the potential to produce rules and regulations that are not administratively feasible for hospitals to implement without the closure of beds and services.”

TECHNICAL ISSUES

Unless the conflict between this bill and CMS requirements can be resolved through a waiver or some other means, the conflict could result in hospitals being denied Medicaid and Medicare funding, essential to virtually all New Mexico hospitals.

LAC/al/ne/rl