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

SPONSOR Lopez **ORIGINAL DATE** 02/22/13 **LAST UPDATED** 03/04/13 **HB**

SHORT TITLE Safe Staffing Act **SB** 514

ANALYST Esquibel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Significant	Significant	Significant	Recurring	General Fund, Other State Funds, Federal Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicate to HB 445, Safe Staffing Act

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General's Office (AGO)
Medical Board (MB)
Board of Nursing (BN)
Human Services Department (HSD)
Department of Health (DOH)

SUMMARY

Synopsis of Bill

Senate Bill 514 (SB 514) proposes to establish the Safe Staffing Act, which would (1) require hospitals to establish staffing levels for hospital nursing units; (2) permit a nurse to refuse an assignment that (a) conflicts with established staffing levels, (b) exceeds, in the nurse's judgment, his or her ability to perform the task, or (c) is outside the nurse's scope of practice; (3) require hospitals to post in a conspicuous place their daily hospital patient census and staffing level in each nursing unit for every shift, and require hospitals to report this daily information to the Department of Health (DOH) on a quarterly basis; (4) authorize the DOH to enforce compliance with the Safe Staffing Act through penalties and corrective action; (5) authorize the DOH to promulgate rules to implement the Safe Staffing Act.

FISCAL IMPLICATIONS

The bill contains no appropriation.

The DOH indicates the provisions of the bill would place significant administrative oversight burdens on the Department. Currently, the DOH surveys hospitals either through an initial licensure request or through Centers for Medicare and Medicaid Services (CMS) funding and requirements. The bill would require the DOH to survey each hospital to enforce compliance with its provisions. The bill would require the DOH to promulgate rules, develop a new survey tool, and train staff in order to complete compliance surveys. The DOH does not currently have funding for hospital licensure surveys and could not absorb the costs of these surveys.

SIGNIFICANT ISSUES

The Board of Nursing (BN) indicates it does not support regulated nurse patient staffing ratios to resolve staffing issues. Though ratios may be one of several approaches and tools an organization uses, determining appropriate staffing for any given unit and/or facility is complex and should take into account multiple variables, including shift-to-shift variables, patient turnover, and the experience, education, skills and competency of available staff. Mandated ratios imply a one-size-fits-all approach that the BN feels is inappropriate for the diverse healthcare organizations of New Mexico.

The DOH has seven facilities that rely on overtime nursing staff for patient care as there is a national and statewide nursing shortage. The bill states that "a hospital shall not achieve nursing staffing levels with mandatory overtime." If a hospital is unable to hire nurses due to the staff shortage and unable to meet the requirement of mandatory overtime, it is possible that they will face the imposition of penalties and corrective action. This could have unintended negative consequences on the ability of facilities to maintain available staffed beds for patients in need of treatment.

Although SB 514 states that a hospital "shall not discriminate or retaliate in any manner" against an employee who exercises the right to "refuse an assignment pursuant to the Safe Staffing Act," a nurse may be hesitant to reveal that he or she does not possess the capability to perform a given assignment (whether the reason is a lack of experience or training or both), since the nurse may believe that his or her standing as a nurse relative to other nurses, and indeed his or her viability as an employee of the hospital, may hang in the balance. In such cases, the nurse may attempt to perform an assignment for which he or she is not sufficiently prepared or qualified to perform, thereby putting the safety and welfare of a patient at risk.

ADMINISTRATIVE IMPLICATIONS

The DOH indicates it would prescribe for all hospitals in New Mexico (approximately 75) the format, form and due date for each hospital's quarterly submission of the report required pursuant to SB 514. The DOH would then publish each quarterly report on its web site for public inspection.

TECHNICAL ISSUES

The term hospital is not defined in the bill. While most people would readily have an intuitive

understanding of the term "hospital" the Legislature's understanding should be clearly set forth in the definition section. The addition of a definition of "hospital" would help identify the category of entities/persons to which the statute applies. Also, the definition of "nurse" under SB 514 includes registered nurses and licensed practical nurses. The Legislature should determine if the term is sufficient for the purposes of the SSA. General nurse licensure categories and requirements are set forth in NMSA 1978, § 61-3-5.

The Attorney General's Office (AGO) indicates the bill seeks to provide a licensed nurse a statutory basis to refuse an assignment beyond their scope of practice, education or experience (see Section 7 (A) and (B)). Under current law, a licensed nurse is not permitted to practice outside of their scope of practice. *See* § 61-3-28 (A) (3) (unprofessional conduct); § 16.12.1.9 (2) (q). A nurse who is asked to do so is duty bound to refuse. Section 7 (A) and (B) have the potential of muddying the waters with respect to the rights and obligations of a licensed nurse in an employment context and their rights and obligations under the Nursing Practice Act (NPA) and Board of Nursing rules. The Legislature may wish to add language limiting the right to refuse an employment assignment and specifically requiring full compliance with the licensee's obligations under the Nurse Practice Act and other applicable law.

Under the provisions of the bill, "safe staffing" is essentially considered in the context of employment. The Board of Nursing indicates there is a substantial difference between refusing an assignment as a consequence of an employment dispute and "abandonment" of a patient. Abandonment of a patient by a nurse is a basis for discipline under the Nurse Practice Act (unprofessional conduct, § 61-3-28 (A) (6)) and other applicable rules. *See e.g.* § 16.12.1.9 (2) (m). The bill has the potential of confusing the issue of employment abandonment/refusal and the abandonment by a nurse of a patient.

The Department of Health (DOH) indicates the bill contradicts the Code of Federal Regulations (CFR) 482.23(a) *Standard: Organization* that states "The director of the nursing service 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." (http://www.gpo.gov/fdsys/pkg/CFR-2011-title42-vol5/pdf/CFR-2011-title42-vol5-sec482-23.pdf)

OTHER SUBSTANTIVE ISSUES

The New Mexico Hospital Association indicates over the past several years, states have addressed nurse staffing in various ways:

- CA, CT, IL, ME, MN, NV, NJ, NY, NC, OH, OR, RI, TX, VT, WA enacted legislation and/or adopted regulations to address nurse staffing;
- CT, IL, NV, OH, OR, TX, WA require hospitals to have staffing committees responsible for plans and staffing policy;
- CA stipulates in law and regulations the required minimum nurse to patient ratios to be maintained at all times; and
- IL, NJ, NY, RI, VT require some form of disclosure and/or public reporting.

The New Mexico Hospital Association indicates California's passed legislation requiring higher registered nurse staffing per patient day has had a limited positive impact on adverse events in California hospitals.

ALTERNATIVES

The Board of Nursing indicates Welton (2008) proposes that instead of imposing mandatory ratios, which would result in increased overall cost of care, an alternative approach would be to provide market-based incentives to hospitals to optimize nursing staffing levels by unbundling nursing care from current room and board charges. The revenue code data, used to charge for inpatient nursing care, could be used to benchmark and evaluate inpatient nursing care performance by case mix across hospitals. A nursing intensity adjustment to hospital payment, such as that described above, has already been endorsed by national nursing organizations. In this way, nursing care would be billed based on intensity of nursing care provided.

RAE/svb:blm