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

SPONSOR Lopez **ORIGINAL DATE** 01/28/14
LAST UPDATED 01/28/14 **HB**

SHORT TITLE Safe Staffing Act **SB** 151

ANALYST Weber

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY14	FY15		
	$100.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Significant-in excess of appropriation	Significant-in excess of appropriation		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Health (DOH)
Attorney General Office (AGO)
Board of Nursing (BN)
Medical Board (MB)
Office of Superintendent of Insurance (OSI)

SUMMARY

Synopsis of Bill

Senate Bill 151 proposes to establish the Safe Staffing Act, which generally would require hospitals to establish nursing staffing plans for each hospital nursing unit.

It would require a hospital, defined by the Act as "any general or special hospital licensed by the [New Mexico Department of Health], whether publicly or privately owned," to create a nursing staffing committee made up of seven nurses who provide direct patient care and are not nurse managers or hospital administrators, and four other qualified persons as determined by the

hospital. The duties of the nursing staffing committee include (1) developing a staffing plan for each of the hospital's nursing units; (2) selecting outcome indicators for each unit from among certain national databases; (3) conducting annual or more frequent reviews of the staffing plan for each unit; and (4) conducting annual or more frequent reviews of the outcome indicators for each unit.

The bill mandates that each hospital unit's staffing plan shall (1) specify the minimum number of nurses and ancillary staff required for each unit shift based upon the level of intensity of patient care required and the variability in the number of admissions, discharges and transfers; (2) take into account conditions or circumstances determined by a majority vote of the committee; (3) contain an algorithm formulated and adopted by the hospital for maintaining nursing staffing levels determined by the committee; and (4) prohibit a hospital from achieving nursing staffing levels with mandated overtime.

The bill requires hospitals to conspicuously post within one hour of the start of each shift a daily report in each of its nursing units that contains information on patient census, and planned and actual staffing levels for each shift. It also requires hospitals to electronically submit to Department of Health (DOH) for public disclosure on DOH's web site quarterly reports containing the above information for each day of the previous quarter and the number of daily admissions, discharges, and transfers for each unit shift.

The bill mandates that DOH shall (1) prescribe the format, form and due dates for the hospital quarterly reports to ensure that reports permit consumers of hospital services to make meaningful comparisons of hospital nursing staffing levels; (2) promptly publish each hospital quarterly report on its web site for public inspection; (3) periodically audit the information contained in the hospital quarterly reports; (4) enforce a hospital's compliance with the act and any related rules promulgated by DOH through the imposition of penalties and corrective action, which enforcement actions also shall be published on DOH's web site; and (5) promulgate rules necessary to implement and enforce the act.

The bill affords nurses the right to refuse an assignment if the nurse lacks the requisite education, training and experience to ensure patient safety, or if the assignment is outside the nurse's scope of practice. It also contains a whistleblower protection provision making it unlawful for a hospital to discriminate or retaliate against an employee as a result of a grievance or complaint relating to the various provisions of the Act, including a nurse's right to refuse an assignment.

FISCAL IMPLICATIONS

The appropriation of $100,000 contained in this bill is a recurring expense to the general fund. Of the total $65,000 is designated for staffing and $35,000 for other required expenses.
Any unexpended or unencumbered balance remaining at the end of Fiscal Year 2015 shall revert to the general fund.

DOH adds that currently hospital surveys are only done when an initial license application is received or directed by Centers for Medicare and Medicaid Services (CMS). SB 151 would require the DOH to survey each hospital "periodically" to enforce compliance with its provisions. Since SB 151 is a state requirement, DOH would have to fund the surveys solely from the general fund, no federal funds could be used for this purpose.
The appropriation in SB 151 would not be sufficient to cover DOH's costs of implementation of SB 151. It would not be possible to oversee the compliance of 75 hospitals statewide for the amount specified for staffing. Currently, DOH has no staff to perform the oversight function.

Since nurse staffing would be reviewed, it would be necessary for all surveyors for this task be registered nurses. DOH does not have funding for hospital licensure surveys and could not absorb the costs of these surveys.

SB 151 would also require DOH to develop and oversee a website to publish the hospitals' quarterly reports. Once the website is developed, the appropriation would not support continued maintenance of the website. DOH could not absorb the cost of this function with existing staff. Additionally, the costs to DOH would be recurring and the appropriation is for one year only.

SIGNIFICANT ISSUES

DOH comments:

> SB 151 proposes that each hospital shall develop a "nursing staffing committee" composed of seven members, that provide direct patient care but are not hospital nurse managers or hospital administrators, and four of whom are other qualified persons as determined by the hospital. The nursing staff committee will give consideration to the "recommendations" of various individuals and groups of individuals in developing the nursing staffing levels for each of the hospital's units. These individuals and groups of individuals – "the hospital's chief nursing officer, direct patient care nurses, ancillary staff, professional nursing organizations and other appropriate resources" – have potentially competing interests respective to staffing levels. SB 151 does not provide for the participation of the Director of Nursing (DON) or other nurse managers/administrator unless it would be one of the four "other qualified persons" the hospital may choose to add to the committee. Notably, union interests are not included in the bill. These competing interests may make consensus extremely difficult, if not impossible, to achieve.
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> SB 151 places the decision-making authority for determining staffing levels for nurses and ancillary staff with a committee and removes it from the DON. The United States Health and Human Services, CMS requires that the DON make decisions about nurse staffing levels for the hospital. The committee decision-making responsibility of SB 151 would be in direct conflict with CMS Medicare requirements for determining staffing levels. Hospitals would be put in the position of meeting the requirements of SB 151 or meeting the reimbursement requirements of CMS regarding decision making processes for determining levels of staff needed to provide nursing care. If the hospital followed SB 151 requirements, it would not be in compliance with CMS requirements and would not be able to bill Medicare for services provided.
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> SB 151 also places the DOH in an irreconcilable position since it is required to monitor hospitals for compliance with CMS Medicare requirements. The bill would also require DOH to monitor for compliance with SB 151 requirements. Since the requirements are contradictory, DOH would determine every hospital is out of compliance with one or the other requirement.
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> DOH has seven facilities that rely on nursing staff for patient care. There is a national and statewide nursing shortage. SB 151 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 151 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, 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.

SB 151 would require eleven staff to participate in the staffing level decision making process and would require seven direct-care nurses to be part of the committee. For some small or rural hospitals there may not be seven nurses available to participate in the committee each day. Sometimes the committee of eleven persons would include the entire medical staff of the hospital. In those cases compliance would be difficult or impossible to obtain while still caring for patients during the time the committee meets. SB 151 makes no provision for smaller hospitals to meet the requirements of the bill.

If the committee specified in SB 151 made decisions that would increase the number of nurses required for each shift, it would be difficult to find a sufficient number of nurses in more rural areas since New Mexico is currently experiencing a nursing shortage in many rural areas of the State.

The New Mexico Board of Nursing 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 myriad 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 appropriate that the New Mexico Board of Nursing feels is inappropriate for the diverse healthcare organizations of New Mexico.

TECHNICAL ISSUES

The AGO points out that Section 3 does not indicate who or how the seven nurses serving on the nursing staffing committee are selected, nor does it provide any criteria for the other four "qualified persons" serving on the committee. Section 7 of the Bill states that a nurse may refuse an assignment if the nurse lacks the requisite education, training and experience, or the assignment is outside the nurse's scope of practice but does not indicate who or what entity makes the determination regarding these requisites or scope of practice.

Both DOH and BN also include that the federal register (42.IV.G.482.23.b) already codifies nursing staffing standards for hospitals that receive CMS funding. The standards are not presented as minimum ratios, but do require nursing supervision of nursing activities and the

provision of continuous nursing care for patients, verification of licensure, guidance for nursing care assignments and a requirement of adequate numbers of registered nurses, licensed practical nurses and other nursing personnel. http://www.gpo.gov/fdsys/granule/CFR-2011-title42-vol5/CFR-2011-title42-vol5-sec482-23/content-detail.html

ALTERNATIVES

The BN offers that 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.

Reference
Welton, J.M. (2008). Mandatory Hospital Nurse to Patient Staffing Ratios: Time to Take a Different Approach. Medscape Nurses. Retrieved at
http://www.medscape.com/viewarticle/569391

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