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FISCAL IMPACT REPORT

SPONSOR Martinez ORIGINAL DATE 2/28/17
 LAST UPDATED _____ HB _____

SHORT TITLE Nursing Facility Minimum Staffing Standards SB 404

ANALYST Chilton

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
	\$4,693.2	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	\$16,906.5		Recurring	Federal Matching Funds to be applied to additional expense

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)
 Department of Health (DOH)
 Board of Nursing (BN)

SUMMARY

Synopsis of Bill (if bill is amended state "Synopsis of Original Bill")

Senate Bill 404, Nursing Facility Minimum Staffing Standards, appropriates \$4,693,237 from the General Fund to the Human Services Department for the purpose of increasing the number of nursing hours in nursing facilities to "at least" 4.1 nursing hours per resident per day in all

nursing facilities receiving reimbursement through HSD's medical assistance program (Medicaid).

FISCAL IMPLICATIONS

HSD's analysis indicates that the bill's appropriation, supplemented by the federal Medicaid match, estimated at approximately 78 percent, would be sufficient to cover the 1.4 million patient days in nursing facilities experienced in chronological year 2015. Its analysis is copied below:

SB404 would significantly increase the cost of nursing facility care to HSD. SB404 includes a \$4,693,237 non-recurring FY 18 appropriation to HSD for reimbursement to nursing facilities to cover the cost of meeting the new staffing requirements. These state funds would be matched by an estimated \$16,906,473 of federal money resulting in an overall funding increase of \$21,599,710. The current cost of nursing facility services in the New Mexico Medicaid program are approximately \$11 per 15 minute service unit. The requirement of 4 and 1/10 hours of nursing care per patient day (246 minutes) is an approximate 8.5% increase in nursing care services and results in a new estimated cost of \$180.40 per patient day (an additional \$14.13).

In CY 2015, the most recent year where a full year of data is available, HSD had 1,404,418 Medicaid patient days at skilled nursing facilities (SNFs). Assuming that number remains the same trended into FY 2018 (an assumption that likely is too low), the additional new cost of the increase in required nursing care services would be \$19,844,426. Therefore, it appears the appropriation plus the federal matching funds would cover the cost of the increase to nursing care services for Medicaid members for FY 18.

The appropriation of \$4,693,237 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2018 shall revert to the general fund.

Although HSD analysis suggests this would be a non-recurring expense, it appears unlikely that the requirement for nursing hours per resident would be allowed to go back to current levels once the requirement was implemented. Therefore, LFC assumes that this is a recurring expense to the General Fund, and will likely grow as the aging population in need of nursing home placement grows.

DOH states that it "would have to revise 7.9.2 NMAC, which would require a hearing and administrative costs."

SIGNIFICANT ISSUES

There are currently 69 New Mexico nursing homes receiving Medicaid funds for some or all of their residents – these are the institutions to be affected by this bill. DOH states that it currently requires a minimum of 2.3 hours per day of nursing time per resident, averaged over a week.

In 2001, a report to the federal Centers for Medicaid and Medicare Services (CMS) indicated that extensive literature supported the figure of 4.1 hours of nursing time per resident as the threshold

above which quality did not improve. Said another way, the number of adverse events decreased with every increase in nursing time up to that level but not beyond – falls, bed sores, etc. were at their minimum at 4.1 hours per resident per day at or above the level of 4.1 nursing hours per resident per day. Since then a number of organizations have adopted this figure as a desirable minimum, including the American Nurses Association, the Coalition of Geriatric Nursing Organizations, and the National Consumer Voice for Quality Long-Term Care. The report, available at https://www.justice.gov/sites/default/files/elderjustice/legacy/2015/07/12/Appropriateness_of_Minimum_Nurse_Staffing_Ratios_in_Nursing_Homes.pdf, notes the possibility that the national nursing shortage may make it difficult to implement this number of nursing hours, a point also made by DOH.

The Consumer Voice sums up its argument, saying that “The Federal government has found that nursing homes that do not meet a recommended level of 4.1 hours per day of total nursing time per resident may be putting their residents at risk.”

ADMINISTRATIVE IMPLICATIONS

HSD notes that it would be required to make amendments to Medicaid managed care organizations to ensure that 4.1 hours of nursing care would be allotted to each patient.

TECHNICAL ISSUES

The bill specifies that “each patient” shall be provided with “at least “4.1 hours of nursing care per patient day”. That would appear to be a minimum rather than an average; as some patients will require more than others, the actual average would be greater than 4.1, and thus the cost would be higher than predicted.

This bill specifies 4.1 hours of total nursing time per patient per day, while the recommendations of CMS are for 2.4-2.8 hours of nursing aide time plus 1.15-1.3 RN/LPN hours and 0.55-0.75 RN hours, for a total of at least 4.1 hours. As noted by the Board of Nursing, lack of specificity in the bill’s requirement might lead facilities to skimp on more expensive registered nurse and licensed practical nurse time in favor of more time for less expensive nurse aides.

DOH notes that it is currently responsible for oversight of nurse staffing at nursing homes, but the bill makes reference only to HSD as the recipient of the appropriation, making it appear that the “department” referred to as making the requirement for the nurse staffing hours is HSD.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Nursing staffing at nursing facilities would remain at a lower level than recommended (but not required) by CMS. Patient outcomes might be suboptimal.

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