

1 HOUSE BILL 236

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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5 Patricia Roybal Caballero and Ambrose Castellano
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10 AN ACT

11 RELATING TO HEALTH CARE; REQUIRING THE DEPARTMENT OF HEALTH TO
12 PROMULGATE AND ENFORCE MINIMUM NURSING STAFF-TO-PATIENT RATIOS
13 IN LICENSED HOSPITALS; CREATING THE STAFFING ADVISORY
14 COMMITTEE; REQUIRING LICENSED HOSPITALS TO DEVELOP AND
15 IMPLEMENT POLICIES AND PROCEDURES; PROVIDING ADMINISTRATIVE
16 PENALTIES; DECLARING AN EMERGENCY.
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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. A new section of the Public Health Act is
20 enacted to read:

21 "[NEW MATERIAL] HOSPITAL STAFFING RATIOS--DEFINITIONS.--As
22 used in Sections 1 through 5 of this 2023 act:

23 A. "critical care unit" means a unit that is
24 established to treat patients whose severity of medical
25 conditions require continuous monitoring and complex

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1 intervention by licensed nurses;

2 B. "hospital" means any public, private for-profit
3 or not-for-profit acute care, rehabilitation, limited services,
4 critical access, general or specific facility offering
5 in-patient services, nursing and overnight care seven days a
6 week on a twenty-four-hour basis that is capable of treating no
7 fewer than three patients for the purposes of diagnosing,
8 treating and providing medical, psychological or surgical care
9 for physical or mental illness, disease, injury, rehabilitative
10 conditions and pregnancies; and

11 C. "hospital unit" includes critical care units,
12 burn units, labor and delivery rooms, post-anesthesia service
13 areas, emergency departments, operating rooms, pediatric units,
14 step-down or intermediate care units, specialty care units,
15 telemetry units, general medical care units, subacute care
16 units and transitional inpatient care units."

17 SECTION 2. A new section of the Public Health Act is
18 enacted to read:

19 "[NEW MATERIAL] HOSPITAL STAFFING RATIOS--STAFFING
20 ADVISORY COMMITTEE--CREATION--PER DIEM AND MILEAGE--
21 ORGANIZATION.--

22 A. The "staffing advisory committee" is created for
23 the purpose of advising the department on matters related to
24 nurse staffing as provided in this 2023 act. The committee
25 shall have ten members, appointed by the department as follows:

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1 (1) two members shall be private hospital
2 administrators or chief nursing officers;

3 (2) two members shall be public hospital
4 administrators or chief nursing officers;

5 (3) two members shall be non-managerial and
6 non-supervisory employees of private hospitals involved in
7 direct patient care;

8 (4) two members shall be non-managerial and
9 non-supervisory employees of public hospitals involved in
10 direct patient care; and

11 (5) two members shall represent labor
12 organizations representing employees in public or private
13 hospitals.

14 B. The members of the staffing advisory committee
15 shall serve for terms of four years and no more than three
16 terms. A member appointed by the committee to fill a vacancy
17 shall serve the remainder of the term.

18 C. Term-length conditions for appointments to the
19 staffing advisory committee are:

20 (1) for initial appointments, four members
21 shall serve for four-year terms, three members shall serve for
22 three-year terms, two members shall serve for two-year terms
23 and one member shall serve for a one-year term;

24 (2) for regular appointments after the initial
25 appointments, four-year terms;

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1 (3) for a vacancy appointment, the balance of
2 the term; and

3 (4) a committee member shall continue to serve
4 on the committee until a replacement is appointed.

5 D. The staffing advisory committee shall elect
6 annually a chairperson and other officers as the committee
7 determines to be necessary.

8 E. The staffing advisory committee shall meet at a
9 frequency necessary for the committee to advise and provide
10 data for the department to use in promulgating rules pursuant
11 to Section 3 of this 2023 act.

12 F. A majority of the staffing advisory committee
13 members currently serving shall constitute a quorum.

14 G. Public members of the staffing advisory
15 committee shall be reimbursed as nonsalaried public officers
16 pursuant to the Per Diem and Mileage Act. Members shall
17 receive no other compensation, perquisite or allowance for
18 their service on the committee.

19 H. The department may remove from office a member
20 of the staffing advisory committee for neglect of duties."

21 SECTION 3. A new section of the Public Health Act is
22 enacted to read:

23 "[NEW MATERIAL] HOSPITALS--LICENSED NURSE-TO-PATIENT
24 RATIOS--DEPARTMENT--COMMITTEE--POWERS AND DUTIES.--

25 A. The department, with the advice of the staffing
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1 advisory committee, shall have the power to:

2 (1) ensure that staffing ratios promulgated by
3 the department are maintained by a hospital;

4 (2) waive staffing ratios for rural general
5 acute care hospitals as needed to increase operational
6 efficiency; provided that doing so would not jeopardize the
7 health, safety and well-being of patients; and

8 (3) seek injunctive relief for violations of
9 this 2023 act.

10 B. By July 1, 2024, the department, with the advice
11 of the staffing advisory committee, shall hold hearings and
12 promulgate rules regarding:

13 (1) minimum, specific and numerical staffing
14 ratios for hospitals licensed by the department pursuant to the
15 Public Health Act, which shall include:

16 (a) licensed nurse-to-patient ratios by
17 licensed nurse classification and hospital unit; and

18 (b) unlicensed employee-to-patient
19 ratios by unlicensed classification and hospital unit for
20 unlicensed employees involved in direct patient care;

21 (2) rural general acute care hospital staffing
22 needs; provided that the ratios promulgated pursuant to
23 Paragraph (1) of this subsection may be adjusted to accommodate
24 these needs;

25 (3) emergency department staffing, which shall

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1 include the ratios provided pursuant to Paragraph (1) of this
2 subsection but shall distinguish between regularly scheduled
3 core staff licensed nurses and additional licensed nurses
4 required to treat critical care patients; and

5 (4) the documented patient classification
6 systems to be used by hospitals in determining nursing care
7 requirements, including the:

8 (a) severity of the illness to be
9 treated;

10 (b) need for specialized equipment and
11 technology;

12 (c) complexity of clinical judgment
13 needed to design, implement and evaluate the patient care plan
14 and the ability for self-care; and

15 (d) licensure of the personnel required
16 for care.

17 C. The rules promulgated by the department pursuant
18 to Subsection B of this section shall not replace existing
19 nurse-to-patient ratios and unlicensed employee-to-patient
20 ratios that may exist as provided by rule or existing state or
21 federal law as of the effective date of this 2023 act.

22 D. The department, in consultation with the
23 staffing advisory committee, shall:

24 (1) review the rules adopted pursuant to
25 Subsection B of this section after five years following the

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1 adoption of the rules; and

2 (2) report proposed rules to the legislature
3 prior to promulgation."

4 SECTION 4. A new section of the Public Health Act is
5 enacted to read:

6 "[NEW MATERIAL] HOSPITAL STAFFING RATIOS--HOSPITAL
7 POLICIES AND PROCEDURES--TRAINING.--

8 A. A hospital shall:

9 (1) employ staff to meet the staffing ratios
10 established by the department, which shall be the minimum
11 number of registered and licensed nurses and unlicensed
12 employees involved in direct patient care; and

13 (2) adopt written policies and procedures for
14 nursing staff and unlicensed employees involved in direct
15 patient care and temporary personnel, which shall require:

16 (a) training and orientation for
17 providing direct patient care;

18 (b) orientation for registered nurses
19 and unlicensed employees sufficient to provide competent care
20 to patients in a nursing unit or clinical area prior to
21 assigning the registered nurse or unlicensed employees to those
22 areas; provided that the registered nurse or unlicensed
23 employee also demonstrates competency in providing care in the
24 assigned area; and

25 (c) temporary personnel orientation and

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1 competency evaluation.

2 B. A hospital may employ additional staff in
3 accordance with a documented patient classification system.

4 C. A hospital shall not:

5 (1) assign unlicensed personnel to perform
6 nursing functions in lieu of a registered nurse; or

7 (2) allow unlicensed personnel under the
8 direct clinical supervision of a registered nurse to perform
9 functions that require a substantial amount of scientific
10 knowledge and technical skills, including:

11 (a) administration of medication;

12 (b) venipuncture or intravenous therapy;

13 (c) parenteral or tube feedings;

14 (d) invasive procedures, including
15 inserting nasogastric tubes, inserting catheters and tracheal
16 suctioning;

17 (e) assessment of the condition of a
18 patient;

19 (f) educating patients and their
20 families concerning the patient's health care problems,
21 including post-discharge care; and

22 (g) moderate complexity laboratory
23 tests.

24 D. Nothing in this section precludes a licensed or
25 registered nurse from working within that person's scope of

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practice."

SECTION 5. A new section of the Public Health Act is enacted to read:

"~~[NEW MATERIAL]~~ HOSPITAL STAFFING RATIOS--VIOLATION--REMEDIES.--The requirements of this 2023 act or any rules promulgated may be enforced by a civil action brought by any interested person or organization, including the department, for injunctive relief to enforce the provisions of this 2023 act or any rules promulgated pursuant to Section 3 of this 2023 act. In the event such an action is at least partially successful, the court may award the interested person or organization litigation costs and reasonable attorney fees."

SECTION 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.