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

SPONSOR Trujillo CH/ Lopez **ORIGINAL DATE** 3/04/19 **LAST UPDATED** **HB** 178

SHORT TITLE Patient Safe Staffing Act **SB**

ANALYST Chilton

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		$1,916.3	$1,916.3	$3,832.6	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Similar to 2017 House Bill 288/Senate Bill 281
Similar to House Bill 65, which has been withdrawn.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Regulation and Licensing Department (RLD)
Board of Nursing (BN)
Human Services Department (HSD; to similar HB 65)
Department of Health (DOH)

SUMMARY

Synopsis of Bill:

Senate Bill 281 would require that each New Mexico hospital set up a committee primarily for the purpose of determining appropriate, safe nursing staffing levels for each unit in the hospital. Sixty percent of the members of the committee would be nurses providing direct patient care more than half of their time and not hospital managers or administrators.

Duties of the committee, aside from determining the staffing pattern, would include using national standards and local patient satisfaction data to determine outcome indicators for each hospital unit, and to update staffing levels for each unit at least every 12 months and to reevaluate the outcome indicator plan.

Staffing plans would specify the number of nurses needed on each unit for each shift, taking into account local factors and circumstances. Staffing levels would be determined based on nurse and other local recommendations, the characteristics of each unit, the characteristics of nurses on a

unit (e.g., experience level), and would also take into account the regulation of critical access hospitals by DOH. Hospitals would be prohibited from achieving desired staffing levels by mandating overtime. The committee would also assure that nurses were given adequate orientation before being assigned to any unit. Further, instances in which a desired staffing pattern was not possible, such as a local or regional disaster, would be specified.

Nurses would be empowered to refuse assignments if the nurse "lacked the experience, training or experience to ensure patient safety" or if the assignment were outside the nurse's scope of duty. Nurses' refusal of an assignment would not be considered "patient abandonment".

Hospitals would be required to report and post at the beginning of each shift a notice stating patient census, the staffing level of both nursing and ancillary staff in both plan and in actuality. Quarterly, each hospital would be required to report to DOH the daily census and staffing numbers for each shift and each unit. DOH would specify the format of this reporting, and then would post the information on its website for public consumption.

DOH would also be required to enforce hospitals' compliance with the Act. A complaint process for "aggrieved persons" (not defined in the bill but presumably including nurses and patients) should be set up by DOH, with the department required to investigate the allegations, to issue a report and to take appropriate action. Whistleblower protection would be granted.

In addition, "aggrieved or potentially aggrieved parties" are given permission to request a district court in any county to issue an injunction if they believed the Department of Health were not enforcing the Patient Safe Staffing Act or the department's rules regarding the act.

Passage of the Patient Safe Staffing Act would not obviate any other rights or remedies available under other laws or common law.

FISCAL IMPLICATIONS

This bill does not include an appropriation.

The costs to hospitals throughout the state are not considered here, but would be substantial in personnel time. Most of the rule-making, public notice and enforcement actions would fall to the Department of Health, which estimates its costs as follows:

> NMDOH would be required to: survey each of the 54 hospitals on-site and ensure compliance with all components of the Patient Safe Staffing Act; receive, prioritize, investigate complaints; and audit hospital staffing reports and post them on the website. It is estimated NMDOH would require an additional $1,916,300 in state general funds.
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> - NMDOH estimates it would take 2.0 FTE health care surveyors to survey 54 hospitals annually for compliance with the Act and posted staffing for each hospital unit.
> - While the number of complaints of violations of HB178 requirements is unknown, the NMDOH bases FTE estimates on 200 complaint investigations including necessary follow-ups per year. NMDOH estimates it would take an additional 11 FTE nurse surveyors to investigate complaints annually.

- NMDOH estimates it would take 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.

Expenditures

- NMDOH estimates it would take an additional 13.75 FTE to monitor compliance, investigate complaints, respond to law suits, and maintain the database. Salary and benefits are a total state general fund cost of $1,028.8 (dollars in thousands).

General Fund Salary and Benefit Costs				
FTE	Pay Grade	Salary	Benefits	Total
2.0	65	$108.7	$40.2	$148.9
11.25	75	$611.5	$226.3	$837.8
0.50	80	$30.7	$11.4	$42.1
Total State General Funds				$1028.8

- Costs for rent, supplies, equipment, communication, travel, cars, copying and information technology for 13.75 FTE is $137.5 state general funds.
- 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 $750.0 state general fund for hearing officer contracts.
- Total State General Funds Cost Estimate: $1,916.3

However, DOH would also see costs relating to implementing staffing committees within their own facilities, which include Fort Bayard Medical Center, New Mexico Rehabilitation Center, Turquoise Lodge Hospital, Sequoyah Adolescent Treatment Center and the New Mexico Behavioral Health Institute, and which would be an added cost.

As of this writing no hospitals provided input on the costs of complying with this bill upon enactment.

If the federal government removed Medicaid and/or Medicare funding from hospitals due to lack of compliance with the regulations requiring the Director of Nursing to make staffing decisions, the costs would be much higher and likely lead to the loss of some hospitals' financial viability.

SIGNIFICANT ISSUES

In a 2018 article, Marshall University researchers led by Ekaterina Gutsan MHSA looked at the connection between nurse/patient-staffing levels and nurse satisfaction, and its converse, nurse burnout. Their conclusions include the following:

> Burnout among Registered Nurses has been a great concern within the U.S. healthcare system and has been reported in many hospitals. Nurse Burnout has been defined as a chronic response to work-related stress comprising three components or dimensions:

> emotional exhaustion, depersonalization, and personal accomplishment. The purpose of this research was to analyze the nurse-to-patient ratio to determine how it affects the psychological, mental, emotional health and the nurse overall productivity in the workplace. The experts observed causes for nurse dissatisfaction in their position and general fatigue were attributed to mismanagement of personnel and resources, lack of follow through, extended shifts and stretched personal requirements all of which lead to feelings of burnout [and concluded that] the nurse-patient ratio is a direct determinate of the effects of psychological, mental, emotional health and nurse productivity in the workplace which also determines the patients' overall health."

The American Hospital Association's data indicate that New Mexico had higher hospital registered nurse ratios (as expressed in number of registered nurses per thousand annual inpatient days) than all but eight of the fifty states. Further, AHA points out that while there are currently 14 states whose regulations address the issue of hospital nurse staffing, none require that this be done by a committee made up largely of staff nurses.

The Office of the Attorney General comments that there may be "a potential conflict created by the portion of the provision that allows nurses to turn down assignments and New Mexico Board of Nursing and the Nurse Practice Act, NMSA 1978, § 61-3-1 et seq. There is no apparent conflict, but the Board of Nursing should likely be consulted about any ethical implications of SB 281." This caveat refers to Section 7 of the current bill.

The Board of Nursing notes that the bill applies only to hospitals; nurse-patient ratios in other venues such as schools or nursing homes are not mentioned. Other points made by BN include

> 1) overlapping shifts make it difficult to determine at what time a unit report is to be posted, and
> 2) a requirement that a given unit have "an equal mix of more-experienced nurses," which may be difficult to achieve and may also be inappropriate for units that uniformly require more experienced nurses, such as intensive care units.

In the DOH response to House Bill 178, the following points are included:

> Existing NMDOH regulation (NMAC 7.7.2.27. C Nursing Services: Staffing) already addresses appropriate staffing for a hospital requiring the following: "(1) An adequate number of professional registered nurses shall be on duty at all times to meet the nursing care needs of the patients. There shall be qualified supervisory personnel for each service or unit to ensure adequate patient care management. (2) The number of nursing personnel for all patient care services of the hospital shall be consistent with the nursing care needs of the hospital's patients. (3) The staffing pattern shall ensure the availability of professional registered nurses to assess, plan, implement and direct the nursing care for all patients on a 24-hour basis)"… Existing CMS and NMDOH requirements already address appropriate staffing for a hospital. CMS and NMDOH do not dictate specific approaches or tools the [Director of Nursing] DON must use to make staffing determinations. Rather, many approaches are allowed based on the specific situation of the hospital and community.
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> If the committee specified in HB178 made decisions that would increase the number of nurses required for each shift, it may be difficult to find sufficient nurses in more rural areas since New Mexico is currently experiencing a nursing shortage in most rural areas

of the State, although a Georgetown University Report, "Nursing Supply and Demand Through 2020" by Anthony P. Carnevale, Nicole Smith and Artem Gulish (https://cew.georgetown.edu/wp-content/uploads/Nursing-Supply-Final.pdf) indicates that in 2010, New Mexico was at the national average of 12 RNs per 100,000 residents. However, concern about sufficient nurses to meet staffing needs under HB178 would likely increase over the next few years. Several resources identify a growing Registered Nurse (RN) shortage across the country and especially in the southwest region of the United States due to several factors, including growth in the population of older adults in the country and the aging of current RNs.

NMDOH monitors hospital compliance with state and federal requirements through an on-site survey process. Current state and federal regulations do not require specific nurse and ancillary staffing numbers, levels, or ratios. Rather, CMS and NMDOH determine sufficient nurse staffing based on patient needs and patient care outcomes, rather than on an established, specified number, level or ratio of nursing staff. NMDOH determinations of non-compliance with appropriate staffing are based on the evidence of a negative patient outcome, (i.e., a patient was harmed) because appropriate care (the medications or treatments) was not delivered as required.

The requirement of HB178 to place the decision-making authority for nursing staff levels with a voting committee removes this authority from the DON, where it currently resides. While HB178 has the DON chairing the committee, decisions are still made by a majority vote. The committee decision-making of HB178 would conflict with CMS requirements for determining staffing levels. Hospitals would be put in the position of meeting the requirements of HB178 or meeting the reimbursement requirements of CMS.

If a hospital was not in compliance with CMS requirements, it would not be reimbursed for services provided and would ultimately lose its Medicare and Medicaid certification. The hospital might not be able to maintain financial viability without Medicaid or Medicare certification.

NMDOH would promulgate rules to prescribe for all licensed hospitals in New Mexico (approximately 54) to include the format, form, and due date for each hospital's quarterly submission of the report required pursuant to HB178. NMDOH would then publish each quarterly report on its website for public inspection.

RELATIONSHIP to similar bill: 2016 House Bill 179, which was nearly identical to the original Senate Bill 281, but also included a $100,000 appropriation.

TECHNICAL ISSUES

The Board of Nursing makes the following point:

By requiring staffing decisions to be made by majority vote of a committee, HB178 contradicts the Code of Federal Regulations (CFR) at 42 CFR 482.23 Condition of Participation: Nursing Services, subsection (a) Standard: Organization, which states that "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).

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Staffing decisions for hospital units would continue to be made by administrators, who may or may not be nurses or other medical care providers.

LAC/gb