

<b>LFC Requester:</b>	<b>Kelly Klunt</b>
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply:  
**Original**     **Amendment**      
**Correction**     **Substitute**   

**Date** 1/19/24  
**Bill No:** HB145

**Sponsor:** Rep. Eleanor Chávez  
**Short Title:** MINIMUM NURSING STAFF-TO-PATIENT RATIOS, LEGISLATIVE APPROVES RULES

**Agency Name and Code**    HCA-630  
**Number:** \_\_\_\_\_  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0	0	N/A	N/A

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0	0	0		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
	\$0.00	\$964.70	\$964.70	\$1,929.40	R	GF (DHI)
	\$0.00	\$964.70	\$964.70	\$1,929.40	R	FF (DHI)
	\$0.00	\$12.20	\$12.20	\$24.40	R	GF (staff IT costs)
	\$0.00	\$12.20	\$12.20	\$24.40	R	FF (staff IT costs)
	\$0.00	\$23.75		\$23.75	NR	GF (staff IT costs)
	\$0.00	\$23.75		\$23.75	NR	GF (staff IT costs)
	\$0.00	\$161.20	\$0.00	\$161.20	NR	GF (rule promulgation)
	\$0.00	\$161.20	\$0.00	\$161.20	NR	FF (rule promulgation)

(Parenthesis ( ) Indicate Expenditure Decreases)

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

HB145 proposes that the department of health (DOH) promulgate & enforce new rules requiring minimum nursing-staff to patient ratios in licensed hospitals, create a staffing advisory committee that is composed of private and public hospitals administrators or chief nursing, private and public non-managerial and non-supervisory employees involved in direct patient care, labor organizations who represent employees in public or private hospitals, licensed hospital to develop and implement policies and procedures, provide administrative penalties and declaring an emergency.

SHB145 is similar to HB236 introduced in the 2023 legislative session.

**FISCAL IMPLICATIONS**

*The Division of Health Improvement, which currently exists within the Department of Health will be part of the Health Care Authority beginning in FY25.*

- HCA estimates it would take 4.0 FTE health care surveyors to survey 50 hospitals annually for compliance with the Act and posted staffing for each hospital unit.
- While the number of complaints of violations of HB145 requirements is unknown, the HCA bases FTE estimates on 200 complaint investigations, including necessary follow-ups, per year. HCA estimates it would take an additional 11 FTE nurse surveyors to investigate complaints annually.
- HCA estimates it would take a 0.50 FTE attorney to participate in or respond to court filings for injunctive relief.
- HCA estimates it would take 0.50 FTE annually to develop and maintain the HCA website for posting hospital reports.

- Computer hardware for each additional FTE.
- Phone services for each additional FTE
- IT services and enterprise applications and subscriptions for each additional FTE
- Office space for each additional FTE
- Rule promulgation and hearing costs

## **SIGNIFICANT ISSUES**

Existing CMS and NMDOH requirements address appropriate staffing for a hospital. CMS and NMDOH do not dictate specific approaches or tools the hospital's 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.

Currently, in accordance with Centers for Medicare and Medicaid Services (CMS), the DON makes decisions about nurse staffing levels and is responsible for determining the type and number of nursing staff necessary to provide nursing care for all areas of the hospital. Determining appropriate staffing for any given unit or facility is complex and should consider many variables including: patient complexity and needs; the experience, education, qualifications, skills and competency of available staff; shift-to-shift variables; and patient turnover.

The Division of Health Improvement monitors hospital compliance with state and federal requirements through an on-site survey process. The requirement of HB145 removes the decision-making authority for nursing staff levels from the DON, where it currently resides, to a department directed rule for staffing levels with input from the advisory committee.

HB145 would allow an aggrieved person to file a complaint for violations of any provision of the Act, require The Division of Health Improvement to investigate the complaints, and require The Division of Health Improvement to take appropriate action to ensure the hospital is in compliance. Currently, The Division of Health Improvement has rules that prescribe a complaint process for anyone to submit allegations of abuse, neglect, or exploitation in licensed health facilities. The Division of Health Improvement takes action based on the potential harm to a patient. This Act would significantly expand the existing complaint process for hospitals. While it is not possible to predict the volume of complaints, the process to receive, analyze the allegations, prioritize, assign, investigate, write up and enforce all complaints would have a significant administrative and fiscal impact on The Division of Health Improvement.

HB145 would allow the Attorney General or an aggrieved or potentially aggrieved party, including the department, to file suit in any district court to obtain injunctive relief.

Any suit filed would require a response from The Division of Health Improvement, which would take attorney and program staff time to participate, to answer, move to dismiss or defend against an injunction which can be filed under circumstances that only require "whenever it appears" as the level of proof.

Existing NMDOH regulation (NMAC 7.7.2.27. C Nursing Services: Staffing) 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.”

## **PERFORMANCE IMPLICATIONS**

HB145 will impact the current workload of the Division of Health Improvement. It will require the promulgation of new regulation and require an additional 16 FTE healthcare surveyors to monitor compliance, process and investigate complaints, and enforcement actions.

HB145 relates to the Division of Health Improvement's strategic goal of ensuring safety in New Mexico healthcare environments and improving the health status of all New Mexicans.

HB145 relates to the key performance measure, percent of acute and continuing care facility survey statement of deficiencies (CMS services form 2567/state form) distributed to the facility within ten days of survey exit

There is evidence on the positive impact of nurse/patient ratios on patient outcomes. One study showed that reducing the number of patients assigned to a nurse by one patient reduced mortality, reduced rate of readmissions, and shortened length of stay. Overall it was a positive return on investment in this study. Another study also found that lower nurse/patient ratios improves outcomes and has a positive return on investment, but also found that it improves nurse retention, an important factor in a state with a nurse shortage.

California has a state law on nurse/patient staffing ratios. The research on the impact of California's law shows that nurses on average care for 1-2 fewer patients than nurses in other states. It has had an overall positive impact on the mortality of patients in California hospitals. It also showed that burnout and job dissatisfaction were lower in California when compared to other states.

<https://oce-ovid-com.libproxy.unm.edu/article/00000446-202109000-00026/PDF>

<https://pubmed.ncbi.nlm.nih.gov/33989553/>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2908200/>

## **ADMINISTRATIVE IMPLICATIONS**

HB145 would require the HCA to promulgate rules, monitor, investigate complaints of alleged violations of the Act and ensure compliance with the requirements of HB145 through on-site surveys for 50 hospitals statewide.

To promulgate rules, the HCA would need staff to draft and promulgate the rules, and additional funds for the rules hearing and required notices.

Monitoring compliance with HB145 would be a new and additional workload. Currently, The Division of Health Improvement surveys hospitals either upon initial licensure of the hospital, when directed to do so by CMS, or when a state complaint is received. The Division of Health Improvement would need additional staff to monitor compliance with all requirements of HB145 and investigate complaints. Funds would be needed for salary and benefits, as well as rent, supplies, equipment, communication, travel, cars, copying, and information technology for new

staff. Contract funds would also be needed to cover the costs of fair hearings for contested civil monetary penalties and other sanctions imposed by The Division of Health Improvement to enforce the provisions of the Act. Additional attorney time would be needed to participate in or respond to court filings for injunctive relief.

The estimated IT costs include: laptop computer, smartphone, and standard Microsoft Office applications for each of the new staff outlined above. The numbers are included in the operating budget tables. HB145 takes effect immediately however it is assumed that costs will not be incurred until state fiscal year 2025. A 50/50 federal fund to general fund split is assumed as that is what the table indicated for the other costs.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 145 conflicts with current federal and state regulations in existence for required staffing levels.

### **TECHNICAL ISSUES**

Throughout the bill it refers to the department of health, this should be replaced with the health care authority department.

### **OTHER SUBSTANTIVE ISSUES**

None

### **ALTERNATIVES**

None

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

### **AMENDMENTS**

None