

HOUSE BILL 236

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

INTRODUCED BY

Eleanor Chavez

AN ACT

RELATING TO HEALTH CARE; REQUIRING THE DEPARTMENT OF HEALTH TO PROMULGATE AND ENFORCE MINIMUM NURSING STAFF-TO-PATIENT RATIOS IN LICENSED HOSPITALS; CREATING THE STAFFING ADVISORY COMMITTEE; REQUIRING LICENSED HOSPITALS TO DEVELOP AND IMPLEMENT POLICIES AND PROCEDURES; PROVIDING ADMINISTRATIVE PENALTIES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

A. "critical care unit" means a unit that is established to treat patients whose severity of medical 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.