FISCAL IMPACT REPORT

SPONSOR Cates/Borrego/Jaramillo **LAST UPDATED** 02/11/2025
ORIGINAL DATE 01/31/2025
SHORT TITLE Hospital Patient Safety Act **BILL NUMBER** House Bill 138/ec/aHHHC
ANALYST Rommel

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
HCA	Up to $251.9	Up to $1,007.5	Up to $1,007.5	Up to $2,266.9	Recurring	General Fund
DOH	Up to $1,178.4	Up to $4,713.4	Up to $4,713.4	Up to $10,605.2	Recurring	General Fund
UNM-HSC	$38,312.0	$102,603.0	$105,680.0	$246,595.0	Recurring	Other State Funds
Total	Up to $39,742.3	Up to $108,323.9	$Up to $111,380.9	Up to $259,467.1	Recurring	

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 72

Sources of Information

LFC Files

Agency Analysis Received From
Health Care Authority (HCA)
Aging and Long-Term Services Department (ALTSD)
Department of Health (DOH)
Board of Nursing (BON)
UNM Health Sciences Center (UNM-HSC)

SUMMARY

Synopsis of HHHC Amendment

House Bill 138 (HB138/ec/aHHHC) as amended by the House Health and Human Services Committee (HHHC) addresses two technical issues: 1) The bill strikes references to "Public Health Act" and inserts in lieu thereof "Health Care Code" and 2) All references to the Department of Health are replaced by references to the Health Care Authority (HCA).

HB138/ec/aHHHC adds a new section regarding enforcement. HCA shall adopt rules by July 1, 2026 specifying reporting requirements for deviations and allow for the acceptance, investigation, and resolution of complaints from hospital staff, the exclusive representatives of

hospital staff, or members of the public. It further authorizes HCA to impose civil penalties.

Synopsis of House Bill 138

House Bill 138 creates the Hospital Patient Safety Act and would require hospitals to establish three staffing committees for nursing, direct care professional and technical staff, and service staff. Staffing plans are to be certified to be sufficient to provide adequate and healthcare services.

HB138 would require hospitals to post approved hospital staffing plans and submit the plans to the Department of Health (DOH) by January 1, 2026, and on every July 1 and January 1 thereafter.

HB138 would require hospitals to employ sufficient staff to meet the ratios outlined by the legislation and to adopt rules on the training of direct patient care personnel, whether they are permanently or temporarily employed. Hospitals would be prohibited from assigning unlicensed personnel to perform duties that require a licensed nurse or require specialized knowledge, but licensed and registered nurses could work within their scope of practice.

Staffing plans would be waived in the event of national or state emergencies, unforeseen weather conditions, or infectious disease epidemic affecting hospital staff. Staffing committees may meet to consider other emergencies not described above.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

DOH provides an estimate of budget impact for the New Mexico Behavioral Health Institute (NMBHI) under the legislation that would require hiring additional nurses at a cost of $4.6 million a year to meet the 1:4 staffing ratio required under the bill:

> Currently, the [nurse to patient] ratios at NMBHI are roughly 1:16. This would require NMBHI to hire four times the nurses currently employed at both the Adult Psychiatric Division (APD) and Forensic Division. A conservative estimate at NMBHI would be 40 additional nurses.

The Health Care Authority (HCA) Division of Health Improvement (DHI) notes expenses would include computer hardware, phone and IT services and subscriptions, and provides an estimate of additional operating budget impact:

> [HB138] would require both the addition of a new data reporting system application to track and manage the information, as well as the need for additional staff (16.5 FTE) to provide oversight to conduct surveys and complaint investigations and administrative support for those activities.
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> • HCA estimates that a new data management and reporting system will need to be developed and implemented to collect and manage the data. It is unknown what the cost of such an application would be.
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> • HCA estimates it would take 4 FTE healthcare surveyors to survey 50 hospitals annually for compliance with the act and posted staffing for each hospital unit.
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> • While the number of complaints of violations of HB138 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 1 FTE complaint intake specialist, and 10 FTE nurse surveyors to investigate complaints annually.

• HCA estimates it would take a 0.5 FTE attorney to participate in or respond to court filings for injunctive relief.

• HCA estimates it would take 1 FTE annually to develop and maintain the HCA website for posting hospital reports, analyzing data and reporting performance, managing records requests, and associated tasks.

SIGNIFICANT ISSUES

Healthcare providers in New Mexico and throughout the United States are experiencing nursing shortages, which affects patient care. The *2024 New Mexico Healthcare Workforce Committee Report* indicates, with no redistribution of the current workforce, an additional 5,353 registered nurses would be needed for all New Mexico counties to meet the national benchmark (92 per 10 thousand population).[1]

High patient-staff ratios likely increase unsafe conditions for patients and burnout for nurses. The Board of Nursing (BON) documents considerable evidence in the medical/nursing literature that attests to high ratios leading to burnout. BON also points to one preliminary study indicating that better staffing ratios could result in cost savings for hospitals.[2]

Hospitals may serve very different populations and, thus, have different staffing ratios needed to provide quality care. The Centers for Medicare and Medicaid Services (CMS) publish requirements for participation in Medicare and Medicaid that dictate adequate staffing but do not dictate specific ratios.[3] In accordance with CMS rules, the hospital director of nursing is responsible for nurse staffing levels and 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 considers many variables, including patient complexity and needs; the experience, education, qualifications, skills and competency of available staff; shift-to-shift variables; and patient turnover.

BON notes prohibiting an unlicensed assistive person (UAP) from the scope of practice outlined may have unintended effects. BON points out that many of these procedures have, under direct supervision, been performed by UAPs in the past. It further notes, "Non-traditional health professions students benefit from pipeline and pathway programs through stacked credential approaches to traditional college. This exclusion of UAP roles may interrupt or negatively impact that option."

PERFORMANCE IMPLICATIONS

HB138/ec/aHHHC contains no performance measures but the HCA Division of Health

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[1] https://digitalrepository.unm.edu/nmhc_workforce/13/

[2] Lasater, K. B., Aiken, L. H., Sloane, D., French, R., M. B., Alexander, M., & McHugh, M. D. (2021). Patient outcomes and cost saving associated with hospital safe nurse staffing legislation: an observational study. BMJ Open, 11:e052899. doi: 10.1136/bmjopen-2021-052899.

[3] Code of Federal Regulations 42 CFR 482.23(b)

Improvement may wish to consider developing metrics such as trends in staffing ratios, patient outcomes, and the number of staffing violations and resolutions. Other potential measurable outcomes would be nurse job satisfaction, nurse burnout, and nurse retention.

ADMINISTRATIVE IMPLICATIONS

While HB138/ec/aHHHC references DOH, the bill would require the HCA to promulgate rules, monitor, investigate alleged violations of the act, and ensure compliance with the requirements of the legislation. See "Technical Issues."

HCA notes the following administrative implications:

> Monitoring compliance with HB138 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 HB138 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.

The UNM Health Sciences Center calculated fiscal impact as follows:

> HB138 has the potential to significantly increase operating costs at University of New Mexico Hospital (UNMH) and its Sandoval Regional Medical Center campus. For the last 4 months of FY25 (assuming the bill was signed at the end of February), HB138 would increase UNMH operating costs by $38.3M, increasing to $102.6 M in FY 2026 and growing at an estimated rate of 3% going forward.
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> UNMH have determined that the cost of forming the staffing committees as outlined in HB 138 would be $6.5M in FY25, a recurring cost that, for purposes of the fiscal impact estimate, is assumed to grow at 3 percent annually.
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> If the ratios mandated in HB 72 (2025) were promulgated by the staffing committees, FY25 nurse staffing costs would increase by $76,291,891 and unlicensed staff staffing costs would increase by $16,819,200, for a total increase in staffing costs of $93,111,091 in FY25. The fiscal impact estimate assumes a 3 percent annual inflation rate.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB138/ec/aHHHC potentially duplicates House Bill 72 (HB72), which creates a hospital staffing ratio committee to advise the HCA in setting minimum staffing ratios for nursing units in the state's hospitals. HB72 would develop ratios through a statewide committee and HB138 would result in each hospital developing its own staffing committee.

TECHNICAL ISSUES

HB138/ec/aHHHC references "the department" [of Health] within Chapter 24 NMSA 1978 but hospital licensing authority now lies within the Health Care Authority's Division of Health Improvement.

OTHER SUBSTANTIVE ISSUES

A growing body of research indicates that enhanced nurse-to-patient ratios can have a positive impact on quality of care and patient outcomes.[4] California and Massachusetts require specific ratios within certain hospital units. Other states require public reporting of staffing ratios by the hospitals. Another option states have exercised is nurse-driven staffing committees convened at the hospital level.

On April 22, 2024, CMS issued the *Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting* final rule. CMS is finalizing a total nurse staffing standard of 3.48 hours per resident day (HPRD), which must include at least 0.55 HPRD of direct registered nurse (RN) care and 2.45 HPRD of direct nurse aide care. Long-term care facilities may use any combination of nurse staff (RN, licensed practical nurse (LPN) and licensed vocational nurse (LVN), or nurse aide) to account for the additional 0.48 HPRD needed to comply with the total nurse staffing standard.

HR/hj/hg/sgs/SL2/rl

[4] Health Serv Res. 2021 Mar 15;56(5):885–907. doi: 10.1111/1475-6773.13647