

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 335

Introduced by Halloran, 33; Erdman, 47; Ibach, 44; McDonnell, 5; Murman,
38.

Read first time January 11, 2023

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to health care; to adopt the Health Care
- 2 Staffing Agency Registration Act.
- 3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 14 of this act shall be known and may be
2 cited as the Health Care Staffing Agency Registration Act.

3 Sec. 2. For purposes of the Health Care Staffing Agency
4 Registration Act:

5 (1) Commissioner means the Commissioner of Labor;

6 (2) Department means the Department of Labor;

7 (3) Health care facility has the same meaning as in section 71-413;

8 (4) Health care service has the same meaning as in section 71-415;

9 (5) Health care staffing agency means a person which provides one or
10 more temporary staff members for a health care facility or service; and

11 (6) Staff member means a staff member hired by a health care
12 staffing agency, as an employee or independent contractor, for purposes
13 of providing temporary staff members for a health care facility or
14 service, including, but not limited to, any registered nurse, licensed
15 practical nurse, nurse aide, medication aide, and social service,
16 laundry, housekeeping, dining, maintenance, and administrative personnel.

17 Sec. 3. A health care staffing agency operating in the state shall
18 register annually with the department. An applicant for registration
19 shall, for each separate location, file an application in a form
20 prescribed by the department and pay an annual registration fee of five
21 hundred dollars to the department. The department shall issue each
22 location a separate certification of registration upon approval of
23 registration and payment of the fee. The application shall include
24 appropriate evidence of ability to comply with the requirements of
25 section 4 of this act and the fee schedule required by section 6 of this
26 act. The department shall remit the fees to the State Treasurer for
27 credit to the General Fund.

28 Sec. 4. (1) In order to maintain approved status as a registered
29 health care staffing agency, an agency shall:

30 (a) Provide the following information about the business entity:

31 (i) If the agency is a corporation, the name, address, telephone

1 number, and position of each officer of the corporation;

2 (ii) If the agency is not a corporation, the name, address, and
3 telephone number of each owner;

4 (iii) The name and federal employer identification number of the
5 agency or, if the applicant is an individual, the social security number
6 of the applicant; and

7 (iv) The principal place of business of the agency in Nebraska. If
8 the agency's principal place of business is not in Nebraska, the
9 application shall state the address of the agency's principal place of
10 business and the name and address of the agency's registered agent in
11 Nebraska;

12 (b) Provide (i) proof of (A) a certificate or policy of insurance
13 written by an insurance carrier duly authorized to do business in this
14 state which gives the effective dates of workers' compensation insurance
15 coverage indicating that it is in force, (B) a certificate evidencing
16 approval of self-insurance privileges as provided by the Nebraska
17 Workers' Compensation Court pursuant to section 48-145, or (C) a signed
18 statement indicating that the health care staffing agency is not required
19 to carry workers' compensation insurance pursuant to the Nebraska
20 Workers' Compensation Act, and (ii) a description of the business which
21 includes the employer's standard industrial classification code or the
22 principal products and services provided;

23 (c) Ensure that each staff member complies with any applicable
24 health requirement and qualifications required of personnel providing
25 services in a health care facility or service;

26 (d) Document that a staff member meets the minimum licensing,
27 certification, training, and health requirements and the continuing
28 education standards for the staff member's position in the health care
29 facility or service prior to providing the staff member to that health
30 care facility or service;

31 (e) Maintain a record for each staff member and report, file, or

1 otherwise provide any required documentation to any external party or
2 regulator which would otherwise be the responsibility of the health care
3 facility or service if the staff member was employed by the health care
4 facility or service;

5 (f) Maintain professional and general liability insurance coverage
6 with minimum per occurrence coverage of one million dollars and aggregate
7 coverage of three million dollars to insure against loss, damage, or
8 expense incident to a claim arising out of the death or injury of any
9 person as the result of negligence or malpractice in the provision of
10 services by the health care staffing agency or a staff member of the
11 agency;

12 (g) Obtain any background screening required for the health care
13 facility or service, including, but not limited to:

14 (i) A state and federal criminal background check;

15 (ii) A background check by the Office of Inspector General of the
16 United States Department of Health and Human Services;

17 (iii) A check of the National Crime Information Center's National
18 Sex Offender Registry;

19 (iv) A check of the Adult Protective Services Central Registry, the
20 central registry created in section 28-718, or the Nurse Aide Registry;
21 and

22 (v) Self-assessment module course results; and

23 (h) Provide a copy of any background check for a staff member to the
24 health care facility or service prior to providing the staff member to
25 that health care facility or service.

26 (2) A health care staffing agency shall provide evidence to the
27 department of compliance with the requirements of this section with the
28 application for initial registration and renewal of registration.

29 (3) A health care staffing agency shall report to the commissioner
30 any change in the information originally reported on or with the
31 application within fifteen days after the change, except that the health

1 care staffing agency shall notify the commissioner of changes in workers'
2 compensation insurance coverage at least ten days prior to any change in
3 coverage.

4 Sec. 5. If a health care staffing agency contracts with a health
5 care facility or service to provide one or more staff members and the
6 health care facility or service participates in medicare or medicaid, the
7 health care staffing agency shall submit a report to the department on a
8 quarterly basis for each such health care facility or service that
9 includes the following by provider type:

10 (1) A detailed list of the average amount charged to the health care
11 facility or service for each category of staff member; and

12 (2) A detailed list of the average amount paid by the agency to
13 staff members in each category of staff member.

14 Sec. 6. A health care staffing agency shall establish a schedule of
15 fees to be charged to a health care facility or service for each category
16 of staff members to be provided. Each agency shall file the schedule with
17 the department, and no change in fees shall be effective until thirty
18 days after filing a changed fee schedule with the department.

19 Sec. 7. (1) A health care staffing agency shall not:

20 (a) In any contract between a staff member and the agency or between
21 the agency and a health care facility or service, restrict in any manner
22 the employment opportunities of a staff member by charging a fee or
23 including a noncompete clause;

24 (b) In any contract between a staff member and the agency or between
25 the agency and a health care facility or service, require payment of
26 liquidated damages, employment fees, or other compensation if the staff
27 member is subsequently hired as a permanent employee of the health care
28 facility or service;

29 (c) Except for applicant information given in the course of normal
30 agency operations, voluntarily sell, give, or otherwise transfer any
31 file, record, or other information relating to any applicant or staff

1 member of the agency or any health care facility or service to which a
2 staff member was provided;

3 (d) Knowingly misrepresent to any health care facility or service
4 the educational background, skills, or qualifications of any staff
5 member; or

6 (e) Knowingly misrepresent to a staff member the responsibilities,
7 salary, or other features of any position with a health care facility or
8 service.

9 (2) Any contract that violates this section shall be unenforceable
10 in court.

11 (3) A health care staffing agency that ceases to engage in the
12 business of or act as a health care staffing agency shall advise the
13 department as to the disposition of all files and other records relating
14 to its business as a health care staffing agency.

15 Sec. 8. A health care staffing agency that violates the Health Care
16 Staffing Agency Regulation Act is subject to denial or revocation of
17 registration for a period of one year and an administrative penalty of
18 one thousand dollars for a first offense and five thousand dollars for
19 each offense thereafter.

20 Sec. 9. A health care employment agency shall be subject to
21 immediate removal from the registry if the agency:

22 (1) Fails to comply with any requirement of the Health Care Staffing
23 Agency Registration Act;

24 (2) Knowingly provides a staff member who has illegally or
25 fraudulently obtained a credential or background check; or

26 (3) Provided a diploma, registration, license, certification, or
27 background check to a health care facility or service that the agency
28 knows is false or fraudulent.

29 Sec. 10. (1) The commissioner shall serve notice of revocation on a
30 health care staffing agency by mailing the notice by certified mail or
31 any other manner of delivery by which the United States Postal Service

1 can verify delivery to the address of the agency or the agency's
2 registered agent listed in the application. Upon a showing of compliance
3 with the application requirements set out in section 4 of this act, the
4 commissioner may temporarily reinstate the registration pending a hearing
5 on the revocation. A revoked registration shall not be permanently
6 reinstated, but the agency shall reapply for registration.

7 (2) The commissioner may investigate to determine if the agency is
8 in compliance with the Health Care Staffing Agency Registration Act. The
9 investigation shall take place at such times and places as the
10 commissioner directs. For purposes of any investigation under this
11 section, the commissioner may interview persons at the workplace, take
12 photographs, and utilize other reasonable investigatory techniques. The
13 conduct of the investigation shall be carried out in such a way as to
14 preclude unreasonable disruption of the agency, agency staff, or health
15 care facility or service. An investigation may be conducted, without
16 prior notice, by correspondence, telephone conversations, or review of
17 materials submitted to the department.

18 (3) For purposes of any investigation or proceeding under this
19 section, the commissioner or any officer designated by the commissioner
20 may administer oaths and affirmations, subpoena witnesses, compel their
21 attendance, take evidence, and require the production of any books,
22 papers, correspondence, memoranda, agreements, or other documents or
23 records which the commissioner deems relevant or material to the
24 investigation.

25 (4) In case of contumacy by or refusal to obey a subpoena issued to
26 any person, any court of competent jurisdiction, upon application by the
27 commissioner, may issue to such person an order requiring him or her to
28 appear before the commissioner or the officer designated by the
29 commissioner and produce documentary evidence if so ordered or give
30 evidence touching the matter under investigation or in question. Any
31 failure to obey the order of the court may be punished by the court as a

1 contempt.

2 Sec. 11. The department shall establish a system for the public to
3 report complaints against a health care staffing agency or staff member
4 regarding compliance with the Health Care Staffing Agency Registration
5 Act. If a complaint is made in writing to the department regarding a
6 health care staffing agency or staff member made to the commissioner in
7 which the complainant provides his or her name and address, the
8 department shall provide a written response as to the results of the
9 investigation. A complainant's name and other identifying information
10 shall not be released if the complaint was included as a part of another
11 complaint when the complainant's identity would be protected under other
12 statutes or rules and regulations.

13 Sec. 12. (1)(a) The commissioner shall issue a citation to a health
14 care staffing agency when an investigation reveals that the health care
15 staffing agency has violated:

16 (i) The requirement that the health care staffing agency be
17 registered; or

18 (ii) The requirement that the health care staffing agency's
19 registration information be substantially complete and accurate.

20 (b) When a citation is issued, the commissioner shall notify the
21 health care staffing agency of the proposed administrative penalty, if
22 any, by certified mail or any other manner of delivery by which the
23 United States Postal Service can verify delivery. The administrative
24 penalty shall be not more than one thousand dollars in the case of a
25 first violation and not more than five thousand dollars in the case of a
26 second or subsequent violation.

27 (c) The health care staffing agency shall have fifteen working days
28 after the date of the citation or penalty to contest such citation or
29 penalty. Notice of contest shall be sent to the commissioner who shall
30 provide a hearing pursuant to the Administrative Procedure Act.

31 (2) If the health care staffing agency has never been registered

1 under the Health Care Staffing Agency Registration Act, the health care
2 staffing agency shall have thirty working days after the date of the
3 citation to register. No administrative penalty shall be assessed if the
4 health care staffing agency registers within such thirty-day period. This
5 subsection shall remain in effect until January 1, 2025.

6 (3) In any civil action to enforce the Health Care Staffing Agency
7 Registration Act, the commissioner and the state may be represented by
8 any qualified attorney who is employed by the commissioner and is
9 designated by him or her for this purpose or, at the commissioner's
10 request, by the Attorney General.

11 Sec. 13. (1) If registration is denied or revoked for a health care
12 staffing agency, neither the agency nor the managing person or entity of
13 the agency shall be eligible to apply for or be granted registration for
14 the same or another agency during the two-year period following the date
15 of the denial or revocation.

16 (2) The department shall not approve a new registration or renew an
17 existing registration for any health care staffing agency for which the
18 managing person or entity is also the managing person or entity of an
19 agency for which registration has been denied or revoked during the two-
20 year period in which registration of the violating agency is denied or
21 revoked.

22 Sec. 14. (1) The department shall create a database of health care
23 staffing agencies that are registered under the Health Care Staffing
24 Agency Registration Act. The department shall make the database
25 accessible to the public on its website.

26 (2) The database shall include, but not be limited to, the following
27 information with respect to each registered health care staffing agency:

28 (a) Information regarding the business entity required by
29 subdivision (1)(a) of section 4 of this act; and

30 (b) Information reported as required by section 5 of this act.