STATE OF NEW YORK

5667

2023-2024 Regular Sessions

IN SENATE

March 13, 2023

Introduced by Sen. MANNION -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law, in relation to establishing temporary health care staffing agencies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public health law is amended by adding a new section 211-b to read as follows:

§ 211-b. Temporary health care staffing agency. 1. Whenever used in this section:

a. "Temporary health care staffing agency" means a person that is regularly engaged in the business of providing or procuring, whether as an employee of the temporary health care staffing agency or as an independent contractor, for a fee, health care professionals to serve as temporary staff for health care facilities. Temporary health care staffing agency also includes any web-based or app-based staffing agencies. "Temporary health care staffing agency" shall not include any of the following: (1) a government agency; or (2) a health care facility that provides less than five staff members in aggregate to other health care facilities.

b. "Health care facility" means: (1) a hospital as defined in section twenty-eight hundred one of this chapter; (2) a nursing home as defined by such section; and (3) a residential health care facility as defined by such section.

c. "Health care professional" means: (1) any person licensed under articles one hundred thirty-one, one hundred thirty-one-B, one hundred fifty-three, one hundred sixty, one hundred sixty-two, one hundred sixty-three, one hundred sixty-four, one hundred sixty-five, one hundred sixty-six, one hundred sixty-seven or one hundred sixty-eight of the education law; and (2) any person certified under articles thirty-five, thirty-six, thirty-seven or thirty-seven-A of this chapter.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD02114-03-3

d. "Temporary employee" shall mean a health care professional hired through a temporary health care staffing agency for temporary placement at a health care facility.

2. a. Each temporary health care staffing agency shall annually register with the department of health. For purposes of the registration requirement, each physical location of a health care staffing agency shall separately register with the department of health.

b. The commissioner shall establish the registration application forms and procedures pursuant to this subdivision. Each registration application shall be accompanied by the fee set forth in paragraph c of this subdivision and include at least the following:

(1) (i) the name and address of each owner with an interest of twenty-five percent or more in the temporary health care staffing agency, except that if that information does not result in a disclosure of at least eighty-five percent of the ownership of the agency, all owners shall be disclosed;

(ii) if an owner is not a natural person, the name and address of each natural person with more than a twenty-five percent interest in that owner.

(2) if the temporary health care staffing agency, or an owner, is a corporation, a copy of the associated articles of incorporation and current bylaws, and the name and address of each officer and director;

(3) a copy of the temporary health care staffing agency's policies and procedures designed to ensure compliance with paragraphs b and c of subdivision six of this section as well as any other proof of compliance required by the commissioner;

(4) a copy of the temporary health care staffing agency's policies and procedures regarding record retention and availability designed to ensure compliance with paragraph d of subdivision six of this section;

(5) certification that the temporary health care staffing agency has not had a registration revoked by the commissioner within the three years immediately preceding the date of the application; and

(6) any other information or documentation required by the commissioner of health.

c. Each applicant for registration of a temporary health care staffing agency shall pay an application fee in the amount of two hundred fifty dollars. Such fee shall be nonrefundable.

d. No temporary health care staffing agency shall operate in this state without a license issued or renewed pursuant to this section.

3. The commissioner shall review each application received under subdivision two of this section for registration of a temporary health care staffing agency. The commissioner shall register a temporary health care staffing agency if the applicant has submitted a complete application, paid the application fee, and demonstrated to the commissioner's satisfaction that the requirements for registration as set forth in this section are met.

4. a. A registration issued under this section to a temporary health care staffing agency is valid for one year from the date of its issuance, unless earlier revoked or suspended, or unless the temporary health care staffing agency is sold, or ownership or management is transferred, as described in paragraph b of this subdivision.

b. When a temporary health care staffing agency is sold, leased, or otherwise transferred, including a transfer of ownership or management such that forty percent or more of the owners or management of the agency was not previously registered with the commissioner, the new owner or management shall apply for a new registration within a time period

established by the commissioner. A new owner or management may operate under the prior temporary health care staffing agency registration until the new registration is issued only if the commissioner receives acknowledgement from the prior and new owners and management that each is jointly and severally liable for compliance with this section and any rule or regulation adopted under it.

5. Beginning one year after the effective date of this section, no temporary health care staffing agency shall knowingly operate as such unless the agency is registered pursuant to this section.

6. Each temporary health care staffing agency registered under this section shall do all of the following:

a. Employ as an employee of the temporary health care staffing agency each health care professional that the agency provides to a health care facility;

b. Verify and maintain supporting documentation that each temporary employee provided to a health care facility, at the time of placement, meets all of the following:

(1) minimum licensing, training, and continuing education standards for the position in which the employee will be working;

(2) criminal records check requirements of the facility; and

(3) any health requirement or other facility qualification or requirement;

c. Prohibit all temporary health care staffing agency staff from recruiting employees of the temporary health care facility at which the staff is placed and instruct all staff on this prohibition;

d. Make temporary health care staffing agency records immediately available to the commissioner of health during normal business hours;

e. Retain temporary health care staffing agency records for a minimum of ten years or a longer period if required by state or federal law;

f. Carry professional malpractice and general liability insurance related to the provision of health care staffing services by the temporary health care staffing agency and the provision of health care services by the agency's employees, in an amount not less than one million dollars;

g. Secure and maintain workers' compensation coverage in accordance with the workers' compensation law;

h. Assign a temporary employee to settings for which such employee has the appropriate work experience and background to provide the services required by the specific setting; and

i. Maintain a written agreement or contract with each health care facility, which shall include, at a minimum:

(1) any requirement for minimum advance notice in order to assure prompt arrival of assigned health care personnel;

(2) procedures for the investigation and resolution of complaints about the performance of temporary health care services agency personnel;

(3) procedures for notice from health care facilities of failure of medical personnel to report to assignments and for back-up staff in such instances; and

(4) procedures for notice of actual or suspected abuse, theft, tampering or other diversion of controlled substances by medical personnel.

7. A temporary health care staffing agency shall not do any of the following:

a. Restrict the employment opportunities of its employees, including by requiring any of the following:

(1) that an employee pay money to terminate employment or otherwise cease to provide services;

(2) that an employee enter into a post-termination of services noncompete agreement; or

(3) that an employee accept an employment buyout;

b. Require in any contract with an employee or health care facility the payment of liquidated damages, employment fees, or other compensation related to an employee being hired as a permanent employee of the health care facility;

c. Recruit, solicit, or entice an employee of a health care facility to leave the employee's employment unless such employment opportunity is one hundred or more miles away from the employee's current employment and is offered at least one year after the start of such employee's current employment;

d. Pay or make a gift to any staff of a health care facility; and

e. Contract with health care professionals as independent contractors.

8. The total amount a temporary health care staffing agency charges a health care facility for any employee, including for all wages and any other fees or charges associated with that employee, when converted to an hourly rate for the employee based on the total hours worked for a given period, shall not be more than fifteen percent above the hourly rate the agency pays to a health care professional for that same period. The hourly rate paid by a temporary health care staffing agency to a health care professional shall be calculated based on the gross amount paid to a health care professional by the temporary health care staffing agency for services provided in the given period divided by the total hours worked for that period.

9. a. Except as provided in paragraph b of this subdivision, the commissioner of health, for reasons specified in rules adopted under subdivision eleven of this section, may revoke a registration for violations of this section, refuse to issue a registration, refuse to renew or reinstate a registration, impose limitations on a registration, suspend a registration, place a registration holder on probation with regard to the registration or otherwise reprimand a registration holder.

b. The commissioner shall impose disciplinary actions, as follows:

(1) If a temporary health care staffing agency is found to have violated any provision of this section more than three times in a registration period, the commissioner shall revoke the agency's registration; or

(2) If a temporary health care staffing agency fails upon a request made during regular business hours to make the agency's records immediately available to the commissioner, the commissioner shall suspend the agency's registration or refuse to issue a registration.

10. a. The commissioner shall establish a system for the reporting of complaints against a temporary health care staffing agency or its employees. Reports may be made by any individual. The commissioner shall investigate all complaints made against a temporary health care staffing agency.

b. Any temporary health care staffing agency found to be in violation of this section shall be fined as provided in section twelve of this chapter.

11. The commissioner shall promulgate any rule or regulation the commissioner considers necessary to implement this section including rules and regulations regarding all of the following:

a. registration application forms and procedures;

b. the time period within which a new owner or management shall apply for a registration when a temporary health care staffing agency is sold, leased, or otherwise transferred;

c. registration renewal forms and procedures; and

d. reasons for which the commissioner may impose disciplinary actions under subdivision nine of this section.

12. All registration fees and fines collected pursuant to this section shall be deposited in the general fund and shall be used solely for purposes of administering and enforcing this section and the rules adopted under it.

13. An employee of a temporary health care staffing agency or any health care facility may assert a cause of action against a temporary health care staffing agency for a violation of this section in the county court where such violation has occurred. If the court finds a violation, it shall award the plaintiff actual damages, costs, and reasonable attorney's fees.

14. If a declared state of emergency is in effect the total amount a temporary health care staffing agency charges a health care facility for any employee, including for all wages and any other fees or charges associated with that employee, when converted to an hourly rate for the employee based on the total hours worked for a given period, shall not be more than thirty percent above the hourly rate the health care facility pays to a health care professional of the same qualifications for that same period.

§ 2. Severability. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.