

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:

1 Section 1. The public health law is amended by adding a new section
2 211-b to read as follows:

3 § 211-b. Temporary health care staffing agency. 1. Whenever used in
4 this section:

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

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

19 c. "Health care professional" means: (1) any person licensed under
20 articles one hundred thirty-one, one hundred thirty-one-B, one hundred
21 fifty-three, one hundred sixty, one hundred sixty-two, one hundred
22 sixty-three, one hundred sixty-four, one hundred sixty-five, one hundred
23 sixty-six, one hundred sixty-seven or one hundred sixty-eight of the
24 education law; and (2) any person certified under articles thirty-five,
25 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.

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

4 2. a. Each temporary health care staffing agency shall annually regis-
5 ter with the department of health. For purposes of the registration
6 requirement, each physical location of a health care staffing agency
7 shall separately register with the department of health.

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

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

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

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

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

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

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

33 (6) any other information or documentation required by the commission-
34 er of health.

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

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

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

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

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

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

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

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

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

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

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

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

21 (3) any health requirement or other facility qualification or require-
22 ment;

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

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

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

30 f. Carry professional malpractice and general liability insurance
31 related to the provision of health care staffing services by the tempo-
32 rary health care staffing agency and the provision of health care
33 services by the agency's employees, in an amount not less than one
34 million dollars;

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

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

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

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

44 (2) procedures for the investigation and resolution of complaints
45 about the performance of temporary health care services agency person-
46 nel;

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

50 (4) procedures for notice of actual or suspected abuse, theft, tamper-
51 ing or other diversion of controlled substances by medical personnel.

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

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

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

3 (2) that an employee enter into a post-termination of services noncom-
4 pete agreement; or

5 (3) that an employee accept an employment buyout;

6 b. Require in any contract with an employee or health care facility
7 the payment of liquidated damages, employment fees, or other compen-
8 sation related to an employee being hired as a permanent employee of the
9 health care facility;

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

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

16 e. Contract with health care professionals as independent contractors.

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

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

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

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

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

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

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

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

55 a. registration application forms and procedures;

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

4 c. registration renewal forms and procedures; and

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

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

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

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

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

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