

AMENDMENTS TO LB335

Introduced by Business and Labor.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 9 of this act shall be known and may be
4 cited as the Health Care Staffing Agency Registration Act.

5 Sec. 2. For purposes of the Health Care Staffing Agency
6 Registration Act:

7 (1) Commissioner means the Commissioner of Labor;

8 (2) Department means the Department of Labor;

9 (3)(a) Direct services means services provided to consumers through
10 person-to-person contact; and

11 (b) Direct services does not mean:

12 (i) Services performed by an individual in a health care entity that
13 do not involve the provision of any direct service or treatment to a
14 consumer of a health care entity;

15 (ii) The practice of medicine and surgery or osteopathic medicine
16 and surgery by an individual licensed under the Medicine and Surgery
17 Practice Act; or

18 (iii) The practice of nursing by a nurse practitioner licensed under
19 the Nurse Practitioner Practice Act;

20 (4) Health care entity means a health care facility or a health care
21 service;

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

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

24 (7) Health care staffing agency means an individual, a trust, a
25 partnership, a corporation, a limited liability partnership, a limited
26 liability company, or any other business entity that provides one or more
27 temporary staff workers to a separate, third-party health care entity;

1 (8)(a) Nursing services means services that may be provided only by
2 or under the supervision of a nurse; and

3 (b) Nursing services does not mean the practice of nursing by a
4 nurse practitioner licensed under the Nurse Practitioner Practice Act;
5 and

6 (9) Staff worker means an individual who contracts with or is
7 employed by a health care staffing agency to provide direct services or
8 nursing services for a health care entity.

9 Sec. 3. (1) A health care staffing agency operating in the state
10 shall register annually with the department. As a condition of
11 eligibility for registration, the applicant shall certify that the health
12 care staffing agency will not enforce any noncompete clause in any
13 contract existing prior to registration with any health care entity or
14 staff worker that restricts in any manner the employment opportunities of
15 a staff worker.

16 (2) An applicant for registration and renewal of registration shall,
17 for each separate location at which the applicant intends to operate as a
18 health care staffing agency in Nebraska, file an application in a form
19 prescribed by the department and pay an annual registration fee of one
20 thousand dollars to the department. An application for the renewal of a
21 registration shall be made at least sixty days prior to the expiration of
22 the then-current registration period. The department shall issue the
23 applicant a separate certification of registration for each location at
24 which the applicant intends to operate as a health care staffing agency
25 in Nebraska upon approval of registration and payment of the fee. The
26 application shall include appropriate evidence of ability to comply with
27 the requirements of section 4 of this act. The department shall remit the
28 fees to the State Treasurer for credit to the General Fund.

29 (3) If the commissioner denies an application for registration or
30 renewal of registration of a health care staffing agency, the
31 commissioner shall issue a notice of denial. The health care staffing

1 agency may file an appeal with the commissioner within twenty days after
2 the date of mailing of the notice of denial. Except as otherwise provided
3 in the Health Care Staffing Agency Registration Act, an appeal under this
4 section shall be governed by the Administrative Procedure Act.

5 Sec. 4. (1) A health care staffing agency shall:

6 (a) Ensure that each staff worker complies with all applicable
7 requirements relating to the health requirements and qualifications for
8 personnel providing direct services or nursing services in a health care
9 entity;

10 (b) Document that each staff worker meets the minimum licensing,
11 certification, training, and health requirements and the continuing
12 education standards for the staff worker's position in the health care
13 entity;

14 (c) Maintain a record for each staff worker and report, file, or
15 otherwise provide any required documentation to any external party or
16 regulator if such duties would otherwise be the responsibility of the
17 health care entity if the staff worker was an employee of the health care
18 entity; and

19 (d) Maintain professional and general liability insurance coverage
20 with minimum per occurrence coverage of one million dollars and aggregate
21 coverage of three million dollars to insure against loss, damage, or
22 expense incident to a claim arising out of the death or injury of any
23 individual as the result of negligence or malpractice in the provision of
24 services by the health care staffing agency or a staff worker of the
25 agency.

26 (2) A health care staffing agency shall submit a report to the
27 department on a quarterly basis, in the form and manner prescribed by the
28 commissioner, for each health care entity participating in medicare or
29 medicaid and contracting with the agency, that includes the following
30 information by provider type:

31 (a) A detailed list of the average amount charged to the health care

1 entity for each category of staff worker in Nebraska, including any
2 ancillary charges or fees; and

3 (b) A detailed list by licensing category of the average amount paid
4 by the agency to staff workers in Nebraska.

5 (3) A health care staffing agency shall provide the department with
6 (a) proof of a certificate or policy of insurance written by an insurance
7 carrier duly authorized to do business in this state which gives the
8 effective dates of workers' compensation insurance coverage indicating
9 that it is in force, (b) proof of a certificate evidencing approval of
10 self-insurance privileges as provided by the Nebraska Workers'
11 Compensation Court pursuant to section 48-145, or (c) a signed statement
12 indicating that the health care staffing agency is not required to carry
13 workers' compensation insurance pursuant to the Nebraska Workers'
14 Compensation Act.

15 (4) A health care staffing agency that ceases to engage in the
16 business of or act as a health care staffing agency shall advise the
17 department as to the disposition of all files and other records relating
18 to its business as a health care staffing agency.

19 Sec. 5. (1) A health care staffing agency shall not:

20 (a) Include in any contract with a staff worker or a health care
21 entity a noncompete clause restricting in any manner the employment
22 opportunities of a staff worker; or

23 (b) In any contract with a staff worker or a health care entity,
24 require payment of liquidated damages, employment fees, or other
25 compensation if the staff worker is subsequently hired as a permanent
26 employee of the health care entity.

27 (2) Any clause of a contract that violates this section is void.

28 Sec. 6. (1) If the commissioner determines that a health care
29 staffing agency (a) failed to register as required by the Health Care
30 Staffing Agency Registration Act, (b) violated section 4 or 5 of this
31 act, (c) failed to provide documentation pursuant to section 7 of this

1 act, or (d) knowingly provided to a health care entity a staff worker who
2 has an illegally or fraudulently obtained or issued diploma,
3 registration, license, certification, or background check, the
4 commissioner may take one or more of the following actions:

5 (i) Assess a civil penalty of not more than five hundred dollars for
6 a first offense and five thousand dollars for each offense thereafter; or

7 (ii) Revoke the registration for a period of one calendar year. This
8 revocation shall apply to all locations of the health care staffing
9 agency.

10 (2) If the commissioner determines that a civil penalty or
11 revocation is warranted under this section, the commissioner shall issue
12 a notice of citation that notifies the health care staffing agency of the
13 proposed civil penalty or revocation. The notice of citation shall be
14 sent by certified mail or any other manner of delivery by which the
15 United States Postal Service can verify delivery.

16 (3) A health care staffing agency may appeal any notice of citation
17 by filing an appeal with the commissioner within twenty days after the
18 date of mailing of the notice of citation. Except as otherwise provided
19 in the Health Care Staffing Agency Registration Act, an appeal under this
20 subsection shall be governed by the Administrative Procedure Act.

21 (4) No penalty or revocation shall become effective until the later
22 of the day following expiration of the appeal period or thirty days after
23 a decision on appeal has become final. Once a revocation becomes
24 effective, it is effective for one calendar year and applies to revoke
25 any then-current registration for all locations of the health care
26 staffing agency and to preclude the health care staffing agency for
27 applying for a new registration for any location during the revocation
28 period. A health care staffing agency that has substantially common
29 ownership or management as a health care staffing agency whose
30 registration has been revoked under this section shall not be eligible
31 for registration during the revocation period.

1 (5) In any civil action to enforce the Health Care Staffing Agency
2 Registration Act, the commissioner and the state may be represented by
3 any qualified attorney who is employed by the commissioner and is
4 designated by the commissioner for this purpose or, at the commissioner's
5 request, by the Attorney General.

6 Sec. 7. (1) The commissioner shall establish a system for the
7 public to report complaints against a health care staffing agency or
8 staff worker regarding compliance with the Health Care Staffing Agency
9 Registration Act. The commissioner shall investigate any complaint
10 received.

11 (2) The commissioner may investigate to determine if a health care
12 staffing agency is in compliance with the Health Care Staffing Agency
13 Registration Act and shall conduct random audits of health care staffing
14 agencies with staff workers in Nebraska. Any investigation or audit shall
15 take place at such times and places as the commissioner directs. An
16 investigation or audit may be conducted without prior notice.

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

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

1 Sec. 8. (1) The department shall create a database of health care
2 staffing agencies registered under the Health Care Staffing Agency
3 Registration Act. The department shall make the database accessible to
4 the public on its website.

5 (2) The database shall include, but not be limited to, the following
6 information:

7 (a) The name, telephone number, and address of the health care
8 staffing agency;

9 (b) The name of each owner, member, officer, and partner associated
10 with the health care staffing agency;

11 (c) The date of registration approval for the health care staffing
12 agency; and

13 (d) The date of expiration or revocation of the registration of the
14 health care staffing agency.

15 Sec. 9. The department may adopt and promulgate rules and
16 regulations to carry out the Health Care Staffing Agency Registration
17 Act.

18 Sec. 10. Section 81-401, Revised Statutes Cumulative Supplement,
19 2022, is amended to read:

20 81-401 The Governor, through the agency of the Department of Labor
21 created by section 81-101, shall have power:

22 (1) To foster, promote, and develop the welfare of wage earners;

23 (2) To improve working conditions;

24 (3) To advance opportunities for profitable employment;

25 (4) To collect, collate, assort, systematize, and report statistical
26 details relating to all departments of labor, especially in its relation
27 to commercial, industrial, social, economic, and educational conditions
28 and to the permanent prosperity of the manufacturing and productive
29 industries;

30 (5) To acquire and distribute useful information on subjects
31 connected with labor in the most general and comprehensive sense of the

1 word;

2 (6) To acquire and distribute useful information concerning the
3 means of promoting the material, social, intellectual, and moral
4 prosperity of laboring men and women;

5 (7) To acquire and distribute information as to the conditions of
6 employment and such other facts as may be deemed of value to the
7 industrial interests of the state;

8 (8) To acquire and distribute information in relation to the
9 prevention of accidents, occupational diseases, and other related
10 subjects;

11 (9) To acquire and distribute useful information regarding the role
12 of the part-time labor force and the manner in which such labor force
13 affects the economy and citizens of the state; and

14 (10) To administer and enforce all of the provisions of the
15 Employment Security Law, the Farm Labor Contractors Act, the Health Care
16 Staffing Agency Registration Act, and the Wage and Hour Act and Chapter
17 48, articles 2, 3, 4, and 5, and for that purpose there is imposed upon
18 the Commissioner of Labor the duty of executing all of the provisions of
19 such acts, law, and articles.

20 Sec. 11. This act becomes operative on January 1, 2024.

21 Sec. 12. Original section 81-401, Revised Statutes Cumulative
22 Supplement, 2022, is repealed.