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H.B. 466
134th General Assembly

Bill Analysis

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Version: As Reported by House Commerce and Labor

Primary Sponsor: Rep. Edwards

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SUMMARY

Registration of health care staffing agencies

- Requires annual registration with the Director of Health for health care staffing agencies that provide certain health care personnel to health care providers on a temporary basis.
- Specifies various requirements and prohibitions applicable to registered staffing agencies, including a limitation on the maximum fees and charges a staffing agency may charge to a health care provider.
- Authorizes the Director to take disciplinary action against the registration holder.

Temporary certificate of need changes

- For a certificate of need (CON) granted during the period of the COVID-19 state of emergency:
 - Requires the Director to grant a CON holder a 24-month extension to obligate capital expenditures for the proposed project;
 - Authorizes the owner of an entity for which a CON was granted to sell its ownership in the entity without voiding the CON held by the owner.

ICF/IID Medicaid payment rates

- Eliminates an exception, enacted as uncodified law in the Main Operating Budget, specifying that if the statewide average Medicaid rate for ICFs/IID exceeds \$365.05, the payment rates for FY 2023 are reduced by the percentage the statewide average exceeds that amount.
- Instead, requires the Department of Developmental Disabilities, for FY 2023, to pay each ICF/IID a rate as determined under existing codified law, using funds from the enhanced

federal medical assistance percentage (FMAP) enacted in the “Families First Coronavirus Response Act.”

DETAILED ANALYSIS

Registration of health care staffing agencies

The bill requires health care staffing agencies to annually register with the Director of Health.¹ As defined by the bill, “health care staffing agency” is a person that is regularly engaged in the business of providing or procuring, for a fee, certain health care personnel to serve as temporary staff for certain health care providers, including an online health care staff matching service.² For purposes of this definition and the bill:

- “Health care personnel” is defined as any licensed health care professional or unlicensed health care personnel who provides care, support, or services directly to patients.³
- “Health care provider” is defined as nursing homes, residential care facilities, home health agencies, hospice care programs, residential facilities,⁴ community addiction services providers, community mental health services providers, and Medicaid providers of waiver services.⁵
- “Online health care staff matching service” is defined as a person that operates or offers an electronic platform on which health care personnel may be listed as available to serve as temporary staff for health care providers.⁶

The bill excludes from the definition of “health care staffing agency” and, as a result, from the requirement for annual registration, both of the following: (1) individuals who provide their own services to health care providers as temporary employees or contractors and (2) government entities.⁷

Prohibition

The bill prohibits any person from knowingly operating a health care staffing agency unless the agency is registered.⁸ Anyone who violates this prohibition is guilty of a second

¹ R.C. 3724.02(A).

² R.C. 3724.01(D).

³ R.C. 3724.01(B).

⁴ See R.C. 5119.35 and 5123.19, not in the bill, for a description of residential facilities licensed by the Department of Mental Health and Addiction Services and Department of Developmental Disabilities.

⁵ R.C. 3724.01(C).

⁶ R.C. 3724.01(E).

⁷ R.C. 3724.01(D).

⁸ R.C. 3724.06(A).

degree misdemeanor for the first offense, and a first degree misdemeanor for subsequent offenses.⁹

In the case of a health care staffing agency that is operating at the time the bill becomes effective, the agency is required to submit an application for registration within 30 days. If the application is submitted within that time period, the agency may continue to operate without being registered until the earlier of the date the registration is denied or 120 days after the bill's effective date.¹⁰

Registration application requirements and procedures

The bill requires each physical location of a health care staffing agency to separately register.¹¹ Each application must include a nonrefundable \$2,000 fee and all of the following:¹²

- Information about company ownership and, if applicable, copies of associated articles of incorporation, bylaws, and officer and director information;
- Copies of the staffing agency's policies and procedures designed to ensure compliance with the bill;
- Certification that the staffing agency has not had a health care staffing agency registration revoked by the Director of Health within the past three years;
- Any other information required by the Director.

The Director is required to establish registration application forms and procedures.¹³ The Director must review each application received and must register an applicant if the application is complete, the fee is paid, and the Director is satisfied that the bill's registration requirements are met.¹⁴

Period of registration validity

Health care staffing agency registration is valid for one year, unless earlier revoked or suspended, or unless the staffing agency is sold, or ownership or management is transferred. A transfer includes a transfer of ownership or management such that 40% or more of the owners or management were not previously registered.¹⁵

⁹ R.C. 3724.99.

¹⁰ R.C. 3724.06(B).

¹¹ R.C. 3724.02(A).

¹² R.C. 3724.02(B) and (C).

¹³ R.C. 3724.02(B).

¹⁴ R.C. 3724.03.

¹⁵ R.C. 3724.04.

Registration renewal

To be eligible for registration renewal, a health care staffing agency must provide documentation demonstrating that it provided staffing services during the year preceding the renewal date, and must describe any changes regarding application items. An eligible staffing agency must apply to the Director using forms and procedures established by the Director. The Director must renew a registration for one year if an applicant has paid the \$2,000 renewal fee and continues to meet requirements for registration as established by the bill (discussed above).

The bill requires renewal applicants to pay the renewal fee during the month of the renewal date. If an applicant fails to pay the renewal fee during that month, the applicant must pay a late fee of \$200. If the renewal fee or any late fee is not paid by the 30th day after the renewal date, the Director may, in accordance with the Administrative Procedure Act, revoke the agency's registration.¹⁶

A health care staffing agency that has not provided staffing services during the year preceding the agency's registration renewal date is not eligible for renewal, but may apply for a new registration.¹⁷

Health care staffing agency obligations and prohibitions

Obligations

Health care staffing agencies registered under the bill must do all of the following:¹⁸

- Ensure that when the agency provides health care personnel to a health care provider for a specific shift or time period, the personnel or a substitute works for the agreed time period at no additional charge to the provider;
- Establish and provide to health care providers a schedule of fees and charges that cannot be modified except with written notice 30 days in advance;
- Employ as employees of the staffing agency the health care personnel provided to a health care provider;
- Verify, maintain, and furnish on request supporting documentation that each temporary employee provided to a health care provider meets (1) minimum licensing, training, and continuing education standards for the position, (2) criminal records check requirements of the provider, (3) requirements for reviewing registries of persons with findings of abuse or neglect, (4) requirements for determining whether exclusions from Medicare or Medicaid exist, (5) any health requirement of the provider, including

¹⁶ R.C. 3724.05.

¹⁷ R.C. 3724.05(F).

¹⁸ R.C. 3724.07.

requirements related to drug testing and infectious disease testing and vaccination, and (6) any other provider qualification or requirement;

- Prohibit staffing agency employees from recruiting employees of the health care provider and instruct agency employees on the prohibition;
- Make staffing agency records available to the Director during normal business hours;
- Retain staffing agency records for at least five years;
- Carry professional liability insurance of at least \$1 million per occurrence and \$3 million aggregate;
- Secure and maintain workers' compensation coverage in accordance with Ohio law;
- Carry a surety bond for employee dishonesty of at least \$100,000.

Prohibitions

Health care staffing agencies are prohibited under the bill from doing the following:¹⁹

- Restricting employee employment opportunities, including by requiring the payment of money to terminate employment, requiring noncompete agreements, and requiring employment buyouts;
- Requiring the payment of liquidated damages, employment fees, or other compensation related to an employee being hired as a permanent employee of the health care provider;
- Recruiting, soliciting, or enticing an employee of a health care provider to leave the employee's employment; however, the bill specifies that it does not prohibit a health care staffing agency from generally advertising to the public that the staffing agency may pay a signing bonus, or from offering or paying a signing bonus to an individual who was or is an employee of a health care provider, so long as the staffing agency did not initiate contact related to employment while the individual was actively employed by a health care provider;
- Paying or making a gift to the employees of a health care provider;
- Contracting with health care personnel as independent contractors.

Additionally, the bill prohibits a health care staffing agency from attempting to require a health care provider, by contract or otherwise, to waive any of the requirements of the bill or related rules that will be adopted. Any waiver of the requirements that may result from such an attempt is void and unenforceable.²⁰

¹⁹ R.C. 3724.08.

²⁰ R.C. 3724.07(B).

Maximum charges for wages and other fees

The bill limits the total amount a health care staffing agency can charge a health care provider for employees, including for all wages and other fees or charges associated with each employee. Under the bill, health care staffing agencies are prohibited from billing or receiving payments from health care providers for any category of health care personnel listed in the Medicaid cost reports submitted under existing law at a rate that is higher than 150% of the statewide direct care median hourly wage for that category of personnel, as that wage is determined by the Department of Medicaid, and adjusted for inflation in accordance with the Employment Cost Index for Total Compensation, Health Care and Social Assistance Component, published by the U.S. Bureau of Labor Statistics. The Department of Medicaid is required to calculate and publish statewide direct care median hourly wages for all personnel categories reported on the cost reports as soon as practicable after receiving the reports.²¹ The Director of Medicaid may establish median hourly wages for any category of personnel not on the cost reports, based on data submitted by health care providers that utilize that category of personnel. If such wages are established, they must be used to set a maximum charge for that category of personnel.²²

A maximum rate established under the bill must include all charges for administrative fees, contract fees, shift bonuses, or any other charges in addition to the hourly rates of the health care personnel supplied to a health care provider. The bill specifies, however, that the agency may charge the provider an additional hourly amount of not more than 10% of the maximum rate for the individual, if providing care to patients with an infectious disease for which a declared public health emergency is in effect.²³

Disciplinary actions

The Director of Health may deny, refuse to renew, revoke, or suspend a health care staffing agency's registration for any of the following:

- Lack of financial solvency or suitability;
- Inadequate treatment and care or criminal activity by personnel supplied by the agency or by any person managing the agency;
- Interference with a survey or other inspection conducted by the Director;
- Failure to comply with the conditions or requirements that must be met to obtain and retain a registration;
- Failure to comply with any other requirement of the bill or related rules.²⁴

²¹ R.C. 3724.09(A)(1).

²² R.C. 3724.09(B).

²³ R.C. 3724.09(A)(2).

²⁴ R.C. 3724.10(B).

Additionally, the Director must revoke the registration of a health care staffing agency that knowingly provides to a health care provider a person with an illegally or fraudulently obtained or issued diploma, registration, license, certificate, criminal records check, or other item required for employment by a health care provider.²⁵ All of the above disciplinary actions, and the fines discussed below, must be taken in accordance with the Administrative Procedure Act (R.C. Chapter 119).²⁶

The bill provides that a controlling person of a health care staffing agency whose registration has not been renewed or has been revoked is not eligible to apply for or to be granted a registration for five years following the date that the registration is terminated for failure to renew or the date of the final order of revocation. Further, the Director is prohibited from issuing or renewing a registration to such a person during the five-year period immediately preceding the date the application for registration or renewal under consideration was submitted.²⁷ “Controlling person” is defined as a business entity, officer, program administrator, or director whose responsibilities include directing the management or policies of a health care staffing agency and individuals who, directly or indirectly, own an interest in such a business entity.²⁸

Fines

A health care staffing agency that violates the maximum charge provisions of the bill, as discussed above, must be fined 200% of the amount billed or received in excess of the maximum. A health care staffing agency is authorized by the bill to request a reconsideration by the Director if such a fine is imposed.²⁹

Complaint reporting

The Director is required to establish a system for reporting complaints against health care staffing agencies and their employees. The Director must investigate all complaints.³⁰

Inspections

As part of overseeing the operation of health care staffing agencies, the Director must conduct surveys and other inspections on an annual or unannounced basis. The Director may take other actions the Director considers necessary to ensure agency compliance.³¹

²⁵ R.C. 3724.10(C).

²⁶ R.C. 3724.10(E).

²⁷ R.C. 3724.10(F).

²⁸ R.C. 3724.01(A).

²⁹ R.C. 3724.10(D).

³⁰ R.C. 3724.11.

³¹ R.C. 3724.12.

Rules

The Director is required to adopt rules as necessary to implement the bill's provisions. The rules must be adopted in accordance with the Administrative Procedure Act.³² The Director may begin implementing the bill's requirements, including issuing registrations, prior to adopting the rules.³³

Deposit of fees and civil fines

The bill requires all registration application and renewal fees and civil fines collected to be deposited into the existing General Operations Fund to be used to administer and enforce the bill's provisions.³⁴

Temporary certificate of need changes

Under current law, certain activities involving long-term care facilities, such as constructing a new facility or increasing bed capacity, may be conducted only if a certificate of need (CON) has been granted by the Director of Health.³⁵ The bill makes the following two changes regarding certificates of need that were granted during the COVID-19 state of emergency (from March 9, 2020 through June 18, 2021):

- First, it grants a CON holder a 24-month extension to obligate capital expenditures for the proposed project and requires the Director of Health to notify the CON holder of the date the extension expires.³⁶
- Second, it authorizes the owner of an entity for which a CON was granted to sell its ownership in the entity without voiding the CON held by the owner. In the event of such a sale, the Director must transfer the CON to the new owner, unless the new owner would be prohibited from being granted a CON under existing law.³⁷

ICF/IID Medicaid payment rates

The bill eliminates a Medicaid payment rate exception for FY 2023 for intermediate care facilities for individuals with intellectual disabilities (ICF/IIDs) that was enacted as uncodified law in the Main Operating Budget. The provision being eliminated specifies that if the statewide average rate for ICF/IIDs exceeds \$365.05, the payment rates are reduced by the percentage the statewide average exceeds that amount.

³² R.C. 3724.13.

³³ Section 8.

³⁴ R.C. 3724.14 and 3701.83; Sections 3, 4, and 5.

³⁵ R.C. 3702.51 through 3702.62, not in the bill.

³⁶ Section 9(A).

³⁷ Section 9(B); reasons for which a CON must be denied under current law can be found in R.C. 3702.59, not in the bill.

Instead, the bill requires the Department of Developmental Disabilities to pay the Medicaid rate as calculated under current law without the exception established in the Main Operating Budget.³⁸ The payments are to be made using funds from the enhanced federal medical assistance percentage (FMAP) enacted in the “Families First Coronavirus Response Act.”³⁹

HISTORY

Action	Date
Introduced	10-26-21
Reported, H. Commerce & Labor	05-25-22

ANHB0466RH-134/ec

³⁸ See R.C. Chapter 5124, not in the bill.

³⁹ Section 6, amending Section 261.150 of H.B. 110 of the 134th General Assembly.