

2022 Regular Session

HOUSE BILL NO. 958

BY REPRESENTATIVE DUSTIN MILLER

HEALTH CARE/PROVIDERS: Provides for licensure and regulation of nurse staffing agencies by the Louisiana Department of Health

1 AN ACT

2 To enact Part II-E of Chapter 11 of Title 40 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 40:2120.11 through 2120.24, relative to the licensure and
4 regulation of nurse staffing agencies by the Louisiana Department of Health; to
5 provide for definitions; to provide for the licensure and registration of nurse staffing
6 agencies; to provide for the protection of public rights to health care; to provide for
7 licensed and certified personnel in healthcare facilities; to provide for applicability
8 provisions for prospective agencies; to provide for regulations and grounds for
9 issuance, renewal, and denial of a license; to establish standards for the operation of
10 nurse staffing agencies; to provide for penalty provisions; to provide for rulemaking
11 requirements; to provide for fees; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Part II-E of Chapter 11 of Title 40 of the Louisiana Revised Statutes of
14 1950, comprised of R.S. 40:2120.11 through 2120.24, is hereby enacted to read as follows:

15 PART II-E. LICENSING OF NURSE STAFFING AGENCIES

16 §2120.11. Short title

17 This Part shall be known and may be cited as the "Nurse Staffing Agency
18 Licensing Law".

1 §2120.12. Purpose

2 The purpose of this Part is to authorize the Louisiana Department of Health
3 to promulgate and publish rules and regulations to provide for the licensure of nurse
4 staffing agencies.

5 §2120.13. Definitions

6 As used in this Part, the following terms have the meanings ascribed to them
7 in this Section:

8 (1) "Certified nurse aide" means an individual who has completed a Nurse
9 Aide Training and Competency Evaluation Program approved by the state as
10 meeting the requirements of 42 CFR 483.151 and 483.154 or has been determined
11 competent as provided in 42 CFR 483.150(a) and (b) and is listed as certified and in
12 good standing on the state's Certified Nurse Aide Registry.

13 (2) "Department" means the Louisiana Department of Health or any office
14 or agency thereof designated by the secretary of the department to administer the
15 provisions of this Part.

16 (3) "Healthcare facility" means any person, partnership, corporation,
17 unincorporated association, or other legal entity licensed pursuant to R.S. 40:2006
18 (A)(2) and operating or planning to operate within the state.

19 (4) "Licensee" means any nursing agency properly licensed in accordance
20 with this Part.

21 (5) "Nurse" means a registered nurse as defined in R.S. 37:913 or a licensed
22 practical nurse as defined in R.S. 37:961.

23 (6) "Nurse staffing agency" means any individual, firm, corporation,
24 partnership, or other legal entity that employs, assigns, or refers nurses or certified
25 nurse aides to render healthcare services in a healthcare facility for a fee.

26 (7) "Secretary" means the secretary of the Louisiana Department of Health
27 or his designee.

1 §2120.14. Licensure required

2 The department shall license nurse staffing agencies in accordance with this
3 Part. No person, partnership, corporation, unincorporated association, or other legal
4 entity may establish, operate, maintain, or advertise as a nurse staffing agency in this
5 state unless the person, partnership, corporation, unincorporated association, or other
6 legal entity is licensed by the department in accordance with this Part.

7 §2120.15. Application for licensure; fees

8 A. An application to operate a nurse staffing agency shall be made to the
9 department on forms provided by the department. A separate license shall be
10 obtained for each location from which a nurse staffing agency is operated unless the
11 nurse staffing agency is owned and managed by the same entity, person, or persons.

12 B. The application shall contain all of the following information:

13 (1) The name and address of the person, partnership, corporation, or other
14 entity that is the applicant.

15 (2) If the applicant is a corporation, a copy of its articles of incorporation,
16 a copy of its current bylaws, and the names and addresses of its officers, directors,
17 and shareholders owning more than five percent of the corporation's stock.

18 (3) The names and addresses of the person or persons under whose
19 management or supervision the nurse staffing agency will be operated.

20 (4) A statement of financial solvency.

21 (5) A statement detailing the experience and qualifications of the applicant
22 to operate a nurse staffing agency.

23 (6) Evidence of compliance with the Louisiana Workers' Compensation Law,
24 R.S. 23:1020.1, et seq. with a minimum coverage in the amount of one million
25 dollars.

26 (7) Evidence of professional liability insurance in an amount sufficient to
27 provide coverage in accordance with the total amount recoverable for all malpractice
28 claims as indicated in R.S. 40:1231.2.

1 (8) Any other relevant information the department determines is necessary
2 to properly evaluate the applicant and application as required by the department by
3 rule.

4 C. Any person, partnership, corporation, unincorporated association, or other
5 legal entity operating or planning to operate a nurse staffing agency shall be assessed
6 a nonrefundable fee of six hundred dollars, payable to the department, at the time an
7 initial licensing application is made to the department and shall be assessed a
8 nonrefundable fee of six hundred dollars biennially thereafter for renewal of the
9 license. Any person, partnership, corporation, unincorporated association, or other
10 legal entity shall be assessed a delinquent fee of one hundred dollars for failure to
11 timely renew its license; the delinquent fee shall be assessed and shall become due
12 and payable to the department at 12:01 a.m. on the first day following the expiration
13 date of the license. These licensing fees are for the initial application and renewal
14 of a license only and are in addition to any other fees that may be assessed according
15 to the laws, rules, regulations, and standards that are applicable to a nurse staffing
16 agency.

17 §2120.16. Issuance of a license

18 Upon receipt and after review of an application for a license in accordance
19 with this Part, the secretary shall issue a license if it is determined that the applicant
20 is qualified to operate a nurse staffing agency based upon demonstrated compliance
21 with this Part. A license issued by the department in accordance with this Section
22 shall remain effective for a period of two years unless the license is revoked or
23 suspended pursuant to this Part. When a nurse staffing agency is sold or ownership
24 is transferred, the transferee shall notify the department and apply for a new license
25 at least forty-five days prior to the transfer. The transferor shall remain responsible
26 for the operation of the agency until such time as a license is issued to the transferee.

27 §2120.17. Renewal of a license

28 At least thirty days prior to license expiration, the licensee shall submit an
29 application which meets the requirements of this Part for renewal of the license. If

1 the application is approved, the license shall be renewed for an additional two-year
2 period.

3 §2120.18. Grounds for denial of a license

4 An application for a license may be denied for any of the following reasons:

5 (1) Failure to comply with the minimum standards set forth by this Part as
6 well as any licensing regulations promulgated by the department.

7 (2) Conviction of the applicant of a felony offense.

8 (3) Insufficient financial or other resources to operate the nurse staffing
9 agency in accordance with the requirements of this Part and the minimum standards,
10 rules, and regulations promulgated in this Part.

11 (4) Failure to establish appropriate personnel policies and procedures for
12 selecting nurses and certified nurse aides for employment, assignment, or referral.

13 (5) Failure to perform criminal history checks as required by R.S. 40:1203.1
14 et seq.

15 (6) Failure to report hours worked by certified nurse aides to the Certified
16 Nurse Aide Registry.

17 §2120.19. Suspension, revocation, or refusal to issue or renew a license

18 The department may, after appropriate notice and hearing, suspend, revoke,
19 or refuse to issue or renew any license if the licensee or applicant fails to comply
20 with this Part or the rules and regulations promulgated by the department in
21 accordance with this Part.

22 §2120.20. Minimum standards; prohibited actions

23 A. The department, by rule, shall establish minimum standards for the
24 operation of nurse staffing agencies. Those standards shall include but are not
25 limited to the following:

26 (1) The maintenance of written policies and procedures.

27 (2) The development of personnel policies, which include a personal
28 interview, a reference check, and an annual evaluation of each employee or
29 contracted staff.

1 (3) Licensure application and renewal application procedures and
2 requirements.

3 (4) Survey and complaint investigations.

4 (5) Provisions for denial, revocation, suspension and nonrenewal of licenses,
5 and appeals thereof.

6 (6) Such other standards or regulations that will ensure proper care and
7 treatment of patients, clients, and persons receiving services.

8 B. Each nurse staffing agency shall have a nurse serving as a manager or
9 supervisor of all nurses and certified nurse aides.

10 C. Each nurse staffing agency shall ensure that its employees or contracted
11 staff meet the minimum licensing, training, and orientation standards for which those
12 employees or contracted staff are licensed or certified.

13 D. A nurse staffing agency shall not employ, assign, or refer for use in a
14 healthcare facility in this state, a nurse or certified nurse aide unless the nurse or
15 certified nurse aide is certified or licensed in accordance with the applicable
16 provisions of state and federal laws or regulations. Each certified nurse aide shall
17 comply with all pertinent regulations of the department relating to the health and
18 other qualifications of personnel employed in healthcare facilities.

19 E. The department may adopt rules to monitor the usage of nurse staffing
20 agency services to determine their impact.

21 F.(1) Nurse staffing agencies are prohibited from requiring, as a condition
22 of employment, assignment, or referral, that their employees or contracted staff
23 recruit new employees for the nurse staffing agency from among the permanent
24 employees of the healthcare facility to which the nurse staffing agency employees
25 or contracted staff have been assigned or referred.

26 (2) The healthcare facility is prohibited from requiring, as a condition of
27 employment, its employees to recruit nurse staffing agency employees or contracted
28 staff to become permanent employees at the healthcare facility.

1 G. Nurse staffing agencies are prohibited from offering or providing
2 financial incentives to their employees or contracted staff for the purpose of inducing
3 permanent employees of healthcare facilities to which they are assigned to become
4 employed or enter into a contract with the nurse staffing agency.

5 H. Nurse staffing agencies may not contractually obligate any nurse staffing
6 agency employee or contracted staff nor any provider to any terms restricting the
7 nurse staffing agency's employee or contracted staff to accept nor any provider's
8 ability to hire which in any way restricts the nurse staffing agency employee or
9 contracted staff from accepting employment within his trade with any provider
10 within the state.

11 §2120.21. Investigations; inspections; orders; civil penalties

12 A. The department may at any time, upon receiving a complaint from any
13 interested person regarding allegations that a nurse staffing agency is operating
14 without a valid license issued by the department, investigate any entity, person, or
15 persons.

16 B. The department may examine the premises of any nurse staffing agency
17 and may examine and inspect books, payrolls, records, papers, documents, and other
18 evidence in any survey or investigation. The nurse staffing agency shall cooperate
19 in any survey or investigation conducted by the department. Failure to cooperate or
20 produce any documentation for inspection or survey may result in action up to and
21 including license revocation.

22 C. The department shall assess a nurse staffing agency a survey or
23 investigation fee not to exceed one thousand dollars for any complaint survey or
24 investigation conducted by the department at which deficiencies are substantiated.
25 This survey or inspection fee shall be imposed by the department only after the nurse
26 staffing agency has completed the administrative process which has upheld the
27 deficiencies or the time for filing any administrative appeal has expired. The survey
28 or investigation fee shall not exceed the cost of performing the survey. This fee shall
29 be in addition to any other sanctions.

1 §2120.22. Operation without a license; penalty

2 A. A nurse staffing agency shall not operate without a license issued by the
3 department. Any person, partnership, corporation, or other entity operating such an
4 agency without a license shall be guilty of a misdemeanor and upon conviction shall
5 be fined no less than two hundred fifty dollars nor more than one thousand dollars.
6 Each day of violation shall constitute a separate offense. It shall be the responsibility
7 of the department to inform the appropriate district attorney of the alleged violation
8 to ensure enforcement.

9 B. If a person, partnership, corporation, or other entity is operating a nurse
10 staffing agency without a license issued by the department, the department may have
11 the authority to issue an immediate cease and desist order to that person, partnership,
12 corporation, or other entity. Any such agency receiving a cease and desist order
13 from the department shall immediately cease operations until such time that the
14 agency is issued a license by the department.

15 C. The department shall seek an injunction in the Nineteenth Judicial District
16 Court against any person, partnership, corporation, or other entity operating an
17 agency that receives a cease and desist order from the department in accordance with
18 Subsection B of this Section and that does not cease operations immediately. Any
19 such person, partnership, corporation, or other entity operating an agency against
20 which an injunction is granted shall be liable to the department for attorney fees,
21 costs, and damages.

22 §2120.23. Implementation

23 A. No nurse staffing agency shall be required to obtain a license in
24 accordance with this Part until the initial rules, regulations, and licensing standards
25 are promulgated by the department in accordance with the Administrative Procedure
26 Act.

27 B. Each person, partnership, corporation, or other entity operating an agency
28 that meets the definition of nurse staffing agency as defined in this Part shall submit
29 an initial licensing application and fee to the department within ninety days of the

1 promulgation of the initial rules, regulations, and licensing standards. If the person,
 2 partnership, corporation, or other entity is not licensed within one hundred eighty
 3 days after submission of its initial licensing application and fee, the person,
 4 partnership, corporation, or other entity shall cease operations until such time as the
 5 person, partnership, corporation, or other entity is licensed as a nurse staffing agency
 6 by the department.

7 §2120.24. Administrative rulemaking

8 The department shall adopt all rules and regulations in accordance with the
 9 Administrative Procedure Act as necessary for the implementation of the provisions
 10 of this Part.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 958 Re-Reengrossed

2022 Regular Session

Dustin Miller

Abstract: Creates the "Nurse Staffing Agency Licensing Law".

Proposed law authorizes the La. Dept. of Health to promulgate and publish rules and regulations to provide for the licensure and registration of nurse staffing agencies.

Proposed law authorizes the La. Dept. of Health to protect the public's right to high quality health care by assuring that nurse staffing agencies employ, assign, and refer licensed and certified personnel to healthcare facilities.

Proposed law defines "certified nurse aide", "department", "healthcare facility", "licensee", "nurse", "nurse staffing agency", and "secretary".

Proposed law provides requirements for licensure and applicability provisions for prospective agencies.

Proposed law establishes regulations, processes, and grounds for issuance, renewal, and denial of a license.

Proposed law requires the department to establish minimum standards for the operation of nurse staffing agencies.

Proposed law provides that the department may at any time and shall, upon receiving a complaint from any interested person, investigate any entity, person, or persons licensed or applying for a license.

Proposed law gives the department authority to investigate any entity, person, or persons who operate or advertise a nurse staffing agency without being licensed in accordance with proposed law.

Proposed law authorizes the department to examine certain premises when the investigation or survey of a nurse staffing agency is required by proposed law.

Proposed law requires the department to adopt all rules and regulations in accordance with the present law (Administrative Procedure Act) as necessary for the implementation of proposed law and includes additional provisions for the implementation of proposed law.

Proposed law establishes fee provisions for any person, partnership, corporation, unincorporated association, or legal entity operating or planning to operate a nurse staffing agency, specifically regarding licensure and renewal.

Proposed law adds penalty provisions for the unlicensed operation of a nurse staffing agency.

(Adds R.S. 40:2120.11-2120.24)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Health and Welfare to the original bill:

1. Define "certified nurse aide".
2. Establish fee provisions for any person, partnership, corporation, unincorporated association, or legal entity operating or planning to operate a nurse staffing agency, specifically regarding licensure and renewal.
3. Change the duration of effectiveness for licensure from one year to two years.
4. Provide additional information regarding the department's authority and abilities when conducting a survey or investigation regarding allegations made against a nurse staffing agency.
5. Expand minimum standards for the operation of a nurse staffing agency.
6. Add penalty provisions for the unlicensed operation of a nurse staffing agency.
7. Add provisions for the implementation of the proposed law.
8. Change application for renewal requirements from ninety days to thirty days.
9. Delete the provision relating to the secretary's authority to examine certain premises when an investigation or survey is required by the proposed law and give such authority to the department.
10. Make technical corrections.

The Committee Amendments Proposed by House Committee on Appropriations to the engrossed bill:

1. Remove provisions making the nurse staffing agency liable for penalties for operation without a license and instead make the person, partnership, corporation, or entity operating the nurse staffing agency without a license liable for penalties.

2. Remove provisions requiring the nurse staffing agency to submit an initial licensing application pursuant to proposed law and instead require the person, partnership, corporation, or entity operating the nurse staffing agency to submit the application.
3. Make technical changes.