

ACT No. 577

2022 Regular Session

HOUSE BILL NO. 958

BY REPRESENTATIVE DUSTIN MILLER

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".

19 §2120.12. Purpose

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

1 §2120.13. Definitions

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

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

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

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

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

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

19 (6) "Nurse staffing agency" means any person, partnership, corporation,
20 unincorporated association, or other legal entity that employs, assigns, or refers
21 nurses or certified nurse aides to render healthcare services in a healthcare facility
22 for a fee. However, for purposes of this Part, "nurse staffing agency" does not
23 include the following:

24 (a) A nurse staffing agency that solely provides services in Louisiana under
25 a contract or other agreement with the state of Louisiana, or any executive branch
26 department or agency thereof, as a result of a declared disaster, emergency, or public
27 health emergency.

28 (b) The federal or state government department or agency that provides
29 nursing staff or certified nurse aides to any health care provider setting, evacuation

1 site, or shelter location as a result of a declared disaster, emergency, or public health
 2 emergency.

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

5 §2120.14. Licensure required

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

11 §2120.15. Application for licensure; fees

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

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

17 (1) The name and address of the person, partnership, corporation,
 18 unincorporated association, or other legal entity that is the applicant.

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

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

24 (4) A statement of financial solvency.

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

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

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

4 (8) Any other relevant information the department determines is necessary
 5 to properly evaluate the applicant and application as required by the department by
 6 rule.

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

20 §2120.16. Issuance of a license

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

1 §2120.17. Renewal of a license

2 At least thirty days prior to license expiration, the licensee shall submit an
 3 application which meets the requirements of this Part for renewal of the license. If
 4 the application is approved, the license shall be renewed for an additional two-year
 5 period.

6 §2120.18. Grounds for denial of a license

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

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

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

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

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

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

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

20 §2120.19. Suspension, revocation, or refusal to issue or renew a license

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

25 §2120.20. Minimum standards; prohibited actions

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

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

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

4 (3) Licensure application and renewal application procedures and
 5 requirements.

6 (4) Survey and complaint investigations.

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

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

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

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

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

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

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

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

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

8 H.(1) Except as provided in Paragraph (2) of this Subsection, a nurse staffing
 9 agency shall not require, in any contract with a nurse staffing agency employee or
 10 contracted staff or a facility to which the employee or staff is assigned, the payment
 11 of a fee if the employee or contracted staff is hired as a permanent employee of the
 12 facility.

13 (2)(a) A nurse staffing agency may require the payment of a fee if the fee is
 14 payable solely by the facility and the contract with the facility specifies that the
 15 amount will be reduced pro-rata based on the length of time the nurse staffing agency
 16 employee or contracted staff performs services for the facility while in the
 17 employment of the nurse staffing agency. The fee shall be reduced to zero over a
 18 period of time not to exceed eighteen weeks from the date of the nurse staffing
 19 agency's initial assignment of the employee or contracted staff to the facility.

20 (b) A nurse staffing agency shall not charge a fee if a nurse staffing agency
 21 employee or contracted staff was employed by a facility as a permanent employee
 22 less than thirty days immediately preceding the agency's initial assignment of the
 23 employee or contracted staff to the facility.

24 §2120.21. Investigations; inspections; orders; civil penalties

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

29 B. The department may examine the premises of any nurse staffing agency
 30 and may examine and inspect books, payrolls, records, papers, documents, and other
 31 evidence in any survey or investigation. The nurse staffing agency shall cooperate

1 in any survey or investigation conducted by the department. Failure to cooperate or
2 produce any documentation for inspection or survey may result in action up to and
3 including license revocation.

4 C. The department shall assess a nurse staffing agency a survey or
5 investigation fee, not to exceed one thousand dollars, for any complaint survey or
6 investigation conducted by the department at which deficiencies are substantiated.
7 This survey or inspection fee shall be imposed by the department only after the nurse
8 staffing agency has completed the administrative process which has upheld the
9 deficiencies or the time for filing any administrative appeal has expired. The survey
10 or investigation fee shall not exceed the cost of performing the survey. This fee shall
11 be in addition to any other sanctions.

12 §2120.22. Operation without a license; penalty

13 A. A nurse staffing agency shall not operate without a license issued by the
14 department. Any person, partnership, corporation, unincorporated association, or
15 other legal entity operating such an agency without a license shall be guilty of a
16 misdemeanor and upon conviction shall be fined no less than two hundred fifty
17 dollars nor more than one thousand dollars. Each day of violation shall constitute
18 a separate offense. It shall be the responsibility of the department to inform the
19 appropriate district attorney of the alleged violation to ensure enforcement.

20 B. If a person, partnership, corporation, unincorporated association, or other
21 legal entity is operating a nurse staffing agency without a license issued by the
22 department, the department may have the authority to issue an immediate cease and
23 desist order to that person, partnership, corporation, unincorporated association, or
24 other legal entity. Any such agency receiving a cease and desist order from the
25 department shall immediately cease operations until such time that the agency is
26 issued a license by the department.

27 C. The department shall seek an injunction in the Nineteenth Judicial District
28 Court against any person, partnership, corporation, unincorporated association, or
29 other legal entity operating an agency that receives a cease and desist order from the
30 department in accordance with Subsection B of this Section and that does not cease
31 operations immediately. Any such person, partnership, corporation, unincorporated

1 association, or other legal entity operating an agency against which an injunction is
2 granted shall be liable to the department for attorney fees, costs, and damages.

3 §2120.23. Implementation

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

8 B. Each person, partnership, corporation, unincorporated association, or
9 other legal entity operating an agency that meets the definition of nurse staffing
10 agency as defined in this Part shall submit an initial licensing application and fee to
11 the department within ninety days of the promulgation of the initial rules,
12 regulations, and licensing standards. If the person, partnership, corporation,
13 unincorporated association, or other legal entity is not licensed within one hundred
14 eighty days after submission of its initial licensing application and fee, the person,
15 partnership, corporation, unincorporated association, or other legal entity shall cease
16 operations until such time as the person, partnership, corporation, unincorporated
17 association, or other legal entity is licensed as a nurse staffing agency by the
18 department.

19 §2120.24. Administrative rulemaking

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____