

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.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_