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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

S.B. 110\*  
134<sup>th</sup> General Assembly

## Bill Analysis

[Click here for S.B. 110's Fiscal Note](#)

**Version:** As Reported by House Finance

**Primary Sponsors:** Sens. O'Brien and Wilson

Erika Kramer and Audra Tidball, Attorneys

### 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.
- Authorizes the Director to take disciplinary action against the registration holder.

#### Medicaid

- Makes a FY 2023 supplemental appropriation of \$615 million (\$204 million state share) for the Department of Medicaid (ODM) to conduct a rebasing in FY 2023 of all four cost centers using 2021 cost reports.
- Requires ODM to divide the funds based on the rebased data as follows: (1) 40% for enhanced base rates and (2) 60% for enhanced quality incentive payments incorporating the enhanced based rates.

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\* This analysis was prepared before the report of the House Finance Committee appeared in the House Journal. Note that the legislative history may be incomplete.

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## DETAILED ANALYSIS

### Registration of health care staffing agencies

The bill requires health care staffing agencies to annually register with the Director of Health.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>
- “Health care provider” is defined as nursing homes, residential care facilities, home health agencies, hospice care programs, residential facilities,<sup>4</sup> community addiction services providers, community mental health services providers, and Medicaid providers of waiver services.<sup>5</sup>
- “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.<sup>6</sup>

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.<sup>7</sup>

### Prohibition

The bill prohibits any person from knowingly operating a health care staffing agency unless the agency is registered.<sup>8</sup> Anyone who violates this prohibition is guilty of a second degree misdemeanor for the first offense, and a first degree misdemeanor for subsequent offenses.<sup>9</sup>

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<sup>1</sup> R.C. 3724.02(A).

<sup>2</sup> R.C. 3724.01(D).

<sup>3</sup> R.C. 3724.01(B).

<sup>4</sup> 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.

<sup>5</sup> R.C. 3724.01(C).

<sup>6</sup> R.C. 3724.01(E).

<sup>7</sup> R.C. 3724.01(D).

<sup>8</sup> R.C. 3724.06(A).

<sup>9</sup> R.C. 3724.99.

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.<sup>10</sup>

### **Registration application requirements and procedures**

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

- 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.<sup>13</sup> 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.<sup>14</sup>

### **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.<sup>15</sup>

### **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

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<sup>10</sup> R.C. 3724.06(B).

<sup>11</sup> R.C. 3724.02(A).

<sup>12</sup> R.C. 3724.02(B) and (C).

<sup>13</sup> R.C. 3724.02(B).

<sup>14</sup> R.C. 3724.03.

<sup>15</sup> R.C. 3724.04.

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 30<sup>th</sup> day after the renewal date, the Director may, in accordance with the Administrative Procedure Act, revoke the agency's registration.<sup>16</sup>

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.<sup>17</sup>

## **Health care staffing agency obligations and prohibitions**

### **Obligations**

Health care staffing agencies registered under the bill must do all of the following:<sup>18</sup>

- 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 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;

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<sup>16</sup> R.C. 3724.05.

<sup>17</sup> R.C. 3724.05(F).

<sup>18</sup> R.C. 3724.07.

- 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:<sup>19</sup>

- 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.<sup>20</sup>

### **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;

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<sup>19</sup> R.C. 3724.08.

<sup>20</sup> R.C. 3724.07(B).

- 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.<sup>21</sup>

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.<sup>22</sup> 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).<sup>23</sup>

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.<sup>24</sup> “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.<sup>25</sup>

### **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.<sup>26</sup>

### **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.<sup>27</sup>

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<sup>21</sup> R.C. 3724.10(B).

<sup>22</sup> R.C. 3724.10(C).

<sup>23</sup> R.C. 3724.10(E).

<sup>24</sup> R.C. 3724.10(F).

<sup>25</sup> R.C. 3724.01(A).

<sup>26</sup> R.C. 3724.11.

<sup>27</sup> 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.<sup>28</sup> The Director may begin implementing the bill's requirements, including issuing registrations, prior to adopting the rules.<sup>29</sup>

## 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.<sup>30</sup>

## Medicaid

### Private room inventory

The bill requires the Department of Medicaid (ODM), by April 1, 2023, to prepare and submit to the General Assembly a report detailing the inventory of private rooms in all Ohio nursing facilities. ODM must consult with the Department of Health and any other stakeholders ODM determines necessary to prepare the report.<sup>31</sup>

### Rebasing

The bill makes a supplemental appropriation of \$615 million (\$204 million state share and \$411 million federal share) for ODM to conduct a nursing facility rebasing to provide immediate relief to Ohio nursing facilities.<sup>32</sup>

Under continuing law, a nursing facility's payment from ODM for Medicaid residents is calculated using a formula that includes four cost components (referred to as "cost centers": ancillary and support costs, capital costs, direct care costs, and tax costs. At least every five years, ODM must redetermine the cost centers (referred to as a "rebasing").<sup>33</sup>

The bill requires ODM to conduct the rebasing during state FY 2023, which ends June 30, 2023. The rebasing must be of all four cost centers using cost reports from 2021. Continuing law requires nursing facilities to submit cost reports to ODM documenting the facility's expenses for each calendar year.

After conducting the rebasing, the Department of Medicaid must distribute the appropriated funds as follows:

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<sup>28</sup> R.C. 3724.13.

<sup>29</sup> Section 8.

<sup>30</sup> R.C. 3724.14 and 3701.83; Sections 3, 4, and 5.

<sup>31</sup> Section 7.

<sup>32</sup> Section 9(A).

<sup>33</sup> R.C. 5161.01 and 5165.36, not in the bill.

- 40% for enhanced nursing facility base rates, which are a part of the calculation for a nursing facility's quality incentive payment, an add-on to a facility's Medicaid payment rate based on certain quality metrics.
- 60% for enhanced nursing facility quality incentive payments, to be calculated based on the rebasing data and the enhanced base rates.<sup>34</sup>

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## HISTORY

Action	Date
Introduced	03-02-21
Reported, S. Finance	03-17-21
Passed Senate (33-0)	03-17-21
Reported, H. Finance	---

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<sup>34</sup> Section 9(B).