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H.B. 466  
(1\_134\_1987-2)  
134<sup>th</sup> General Assembly

## Bill Analysis

[Click here for H.B. 466's Fiscal Note](#)

**Version:** As Pending in 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.

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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.<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 hospitals, 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>

The bill excludes from the definition of “health care staffing agency,” and, as a result, from the requirement for annual registration, all of the following: (1) individuals who provide their own services to health care providers as temporary employees or contractors, (2) persons who provide health care staffing on an occasional or periodic basis only, (3) government entities, and (4) professional associations of licensed individuals.<sup>6</sup>

### Prohibition

The bill prohibits any person from knowingly operating a health care staffing agency unless the agency is registered.<sup>7</sup> An agency who violates this prohibition is guilty of a second degree misdemeanor for the first offense, and a first degree misdemeanor for subsequent offenses.<sup>8</sup>

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

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

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

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

<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(B).

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

<sup>7</sup> R.C. 3724.06(A).

<sup>8</sup> R.C. 3724.99.

being registered until the earlier of the date the registration is denied or 120 days after the bill's effective date.<sup>9</sup>

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

The bill requires each physical location of a health care staffing agency to separately register.<sup>10</sup> Each application must include a nonrefundable \$2,000 fee and all of the following:<sup>11</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 in rules.

The Director is required to establish registration application forms and procedures in rules. 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>12</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>13</sup>

### **Registration renewal**

To be eligible for registration renewal, a health care staffing agency must have provided staffing services during the year preceding the renewal date. An eligible staffing agency must apply to the Director using forms and procedures to be adopted in rules. 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).<sup>14</sup>

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<sup>9</sup> R.C. 3724.06(B).

<sup>10</sup> R.C. 3724.02(A).

<sup>11</sup> R.C. 3724.02(B) and (C).

<sup>12</sup> R.C. 3724.03.

<sup>13</sup> R.C. 3724.04.

<sup>14</sup> R.C. 3724.05.

## Health care staffing agency obligations and prohibitions

Health care staffing agencies registered under the bill must do all of the following:<sup>15</sup>

- Require criminal records checks for owners, managers, officers, directors, and administrative staff to ensure those individuals have not been convicted of a felony or crime involving moral turpitude, and keep copies of the criminal records checks on file;
- Require employees to comply with the federal Drug-Free Workplace Act;
- 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 and maintain 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) any health requirement of the provider, including requirements related to infectious disease testing and vaccination, and (4) 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.

Health care staffing agencies are prohibited under the bill from doing the following:<sup>16</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;

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<sup>15</sup> R.C. 3724.07.

<sup>16</sup> R.C. 3724.08.

Recruiting, soliciting, or enticing an employee of a health care provider to leave the employee's employment;

Paying or making a gift to the employees of a health care provider;

Contracting with health care personnel as independent contractors.

### **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 120% of the direct care median hourly wage for that category of personnel for the peer group county in which the provider is located, as that wage is determined by the Department of Medicaid. The Department of Medicaid is required to calculate and publish direct care median hourly wages for each of the counties included within each peer group for all personnel categories reported on the cost reports as soon as practicable after receiving the reports.<sup>17</sup> 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.<sup>18</sup>

A maximum rate established under the bill must include all charges for administrative fees, contract fees, or any other charges in addition to the hourly rates of the health care personnel supplied to a health care provider, except 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.<sup>19</sup>

Regarding employee income tax withholdings, the bill requires staffing agencies to notify the Director of Health of the financial institution where employee income tax withholdings are deposited and the name and address of employees of the staffing agency whose income is not subject to income tax withholdings.<sup>20</sup>

### **Disciplinary actions**

The Director, for reasons to be specified in rules, may revoke a health care staffing agency's registration, refuse to issue a registration, refuse to renew or reinstate a registration,

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<sup>17</sup> R.C. 3724.09(A)(1).

<sup>18</sup> R.C. 3724.09(B).

<sup>19</sup> R.C. 3724.09(A)(2).

<sup>20</sup> R.C. 3724.09(C).

impose limitations on a registration or suspend it, place a registration holder on probation with regard to the registration, or otherwise reprimand a registration holder.<sup>21</sup>

If a health care staffing agency is found to have violated the bill's provisions more than three times in a registration period, the Director is required to revoke the registration. If a staffing agency fails to make records available to the Director as required by the bill, the Director must suspend the registration or refuse to issue it. If a staffing agency is found to have interfered with a survey or other inspection, the Director must revoke the agency's registration.<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>

## **Fines**

A health care staffing agency found to be in violation of the bill's provisions must be fined \$1,000 for each day that an offense continues. Each instance of an employee of the staffing agency violating the bill's provisions is a separate offense.<sup>24</sup>

In addition to the fine, a 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.<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>

## **Civil actions**

The bill provides that an employee of a health care staffing agency or any health care provider may assert a cause of action against a health care staffing agency for violations in a

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

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

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

<sup>24</sup> R.C. 3724.10(C)(1).

<sup>25</sup> R.C. 3724.10(C)(2) and (D).

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

<sup>27</sup> R.C. 3724.12.

court of common pleas where the violation occurred. If the court finds a violation, it must award the plaintiff actual damages, costs, and reasonable attorney's fees. If the plaintiff cannot prove actual damages, the court must award punitive damages of at least \$10,000, plus costs and reasonable attorney's fees.<sup>28</sup>

## **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>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>

## **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.<sup>31</sup> 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.<sup>32</sup>

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.<sup>33</sup>

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<sup>28</sup> R.C. 3724.15.

<sup>29</sup> R.C. 3724.13.

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

<sup>31</sup> R.C. 3702.51 through 3702.62, not in the bill.

<sup>32</sup> Section 6(A).

<sup>33</sup> Section 6(B); reasons for which a CON must be denied under current law can be found in R.C. 3702.59, not in the bill.

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## HISTORY

Action	Date
Introduced	10-26-21

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