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Office of Research
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Office

H.B. 466
(1_134_1987-2)
134th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 466's Bill Analysis](#)

Version: In House Commerce and Labor

Primary Sponsor: Rep. Edwards

Local Impact Statement Procedure Required: No

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Highlights

- The Ohio Department of Health (ODH) will experience an increase in costs to establish a registration process for health care staffing agencies, conduct inspections, investigate complaints, and take any necessary disciplinary action. It is likely that staff will need to be hired and an information technology system will need to be developed. Costs will largely depend on the number of staffing agencies seeking registration.
- ODH will receive annual registration fees and civil fees for violations. These revenues will be deposited into the General Operations Fund (Fund 4700).
- Government-owned hospitals and other public facilities will likely experience some savings due to the bill's limitation on the total amount a health care staffing agency can charge a health care provider. The magnitude of these savings will depend on many factors, including the contracts each hospital or facility has with staffing agencies and the positions that are filled by staffing agency employees.
- The Ohio Department of Medicaid (ODM) will likely experience administrative costs to calculate and publish direct care median hourly wages as the bill requires.

Detailed Analysis

Registration of health care staffing agencies

The bill requires annual registration with the Ohio Department of Health (ODH) for health care staffing agencies that provide certain health care personnel to health care providers on a temporary basis. The bill requires each physical location of a health care staffing agency to separately register and pay a \$2,000 registration fee. Eligible staffing agencies may apply for annual registration renewal, which also includes a \$2,000 fee. The bill outlines certain staffing

agency obligations and prohibitions as well, including a requirement to 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. ODH is required to establish registration application forms and procedures in rules. The Director of Health is required to review each application received and register an application if the application is complete, the fee is paid, and registration requirements are met. As part of overseeing the operation of health care staffing agencies, ODH 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. Additionally, ODH may revoke a health care staffing agency's registration or take other disciplinary action for certain reasons to be specified in rules. ODH is also required to establish a system for reporting complaints against health care staffing agencies and their employees.

Fiscal impact

The total costs to regulate health care staffing agencies depends primarily on the number of such agencies seeking to register in Ohio. Because this number is uncertain, the total costs are also uncertain. However, what is known is that ODH will experience an increase in costs to establish a registration process, conduct inspections, investigate complaints (this will include complaints relating to the maximum rate provision described below), take any necessary disciplinary action, and to adopt rules. Costs will also depend on the length of time it takes for inspections of each location to be completed, the number of complaints that require investigation, travel costs for inspections, the number and extent of any disciplinary action, and the number of staff that will need to be hired. It is possible that in order to enforce and ensure compliance with the maximum rate provision below, ODH will need to hire staff with special experience, such as experience in financial auditing. Lastly, there would be costs to develop and maintain an information technology system to track registration and enforcement activities, which would include initial upfront investments and ongoing annual costs. Additionally, ODH will receive fee revenues (\$2,000 per facility per year), as well as any civil fees for violations of the bill. These will be deposited into the General Operations Fund (Fund 4700) and are to be used to administer and enforce the bill's provisions. Again, the amount of revenues will depend on the number of staffing agencies seeking registration.

Other states have implemented similar requirements or proposed legislation to register staffing entities. However, the number of such entities varies widely. For example, in Minnesota, a supplemental nursing services agency that is engaged in the business of providing or procuring temporary employment in health care facilities for nurses, nursing assistants, nurse aides, and orderlies is required to register each separate location with the Department of Health. Under Minnesota's program, a health care facility is defined as a hospital, boarding care home or outpatient surgical center, a nursing home, an assisted living facility, or a boarding and lodging establishment that provides support or health supervision services. The Department develops maximum allowed charges each year. According to the Department, there are currently 300 supplemental nursing services agencies registered in Minnesota, which includes agencies that are based in-state and out-of-state. Unfortunately, no information was available on personnel or regulation costs at the time of publication. Another state example is Kansas, which recently introduced legislation. This legislation required the Department for Aging and Disability Services to regulate supplemental nursing services agencies, to establish a complaint process, and to ensure that supplemental nursing services agency rates were capped at specific amounts. In the bill, supplemental nursing services agencies are those agencies engaged in the business of

providing or procuring temporary employment in health care facilities for nurses and nurse aides. Health care facilities include adult care homes, hospital long-term care units, hospitals, and ambulatory surgical centers or recuperation centers. The Kansas Division of the Budget's fiscal note for this legislation indicated that four additional full-time staff would be needed and assumed the registration of 25 agencies at a cost of about \$700,000 in FY 2023.¹ H.B. 466 is broader than either Minnesota's current program or Kansas' proposed program as it requires a person regularly engaged in providing or procuring health care personnel (defined as any licensed or unlicensed health care professional who provides care, support, or services directly to patients) to serve as temporary staff for health care providers (defined as hospitals, nursing homes, residential care facilities, home health agencies, hospice, residential facilities, community addiction services or mental health services providers, and Medicaid providers of waiver services) to register. In addition, Ohio has many more facilities, including hospitals, nursing homes, etc. that could utilize staffing agencies than either Minnesota or Kansas. Because of this, Ohio could have more health care staffing agencies that may register. As the number of registrations increases, so would the number of necessary personnel and the overall costs associated with regulation and enforcement, as well as the revenues received.

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 Ohio Department of Medicaid (ODM). ODM 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. The Medicaid Director 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. 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.

Fiscal impact

Government-owned hospitals and any other public facilities that contract with staffing agencies will likely experience some savings due to the maximum rates that the bill imposes. The

¹ See the [Fiscal Note for Kansas' H.B. 2524 \(PDF\)](#), which may be accessed by clicking on "Bills & Laws" then "House Bills" searching for "HB 2524" on the Kansas Legislature's website: <http://www.kslegislature.org/li/>.

magnitude of these savings will depend on many factors, including the contracts each hospital or facility has with staffing agencies and the positions that are filled by staffing agency employees. Savings will depend on the current rates being charged versus the rates established by the bill. However, it is likely that the impact will be widespread. The American Hospital Association reported that the vast majority of hospitals in the country, that responded to a survey, have utilized contract staff to maintain operations at some point during the course of the pandemic.² There could also be some indirect impacts for hospitals if staffing resources became less available. ODH costs to ensure compliance with these provisions is discussed in the registration provision above.

In the scenario that the maximum rate provisions lead to payment rate changes for Medicaid, there might be potential savings. For Medicaid Managed Care, any savings would be captured in broader capitated rate adjustments. Additionally, ODM will experience an increase in costs to calculate and publish direct care median hourly wages as outlined above. There may also be costs to establish median hourly wages for any category of personnel not reported on cost reports.

Prohibitions and violations

The bill prohibits any person from knowingly operating a health care staffing agency unless the agency is registered. The bill also specifies that 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. A staffing agency found to be in violation of the bill's provisions must be fined \$1,000 for each day that an offense continues. Additionally, an agency that violates the maximum charge provisions of the bill, as discussed below, must be fined 200% of the amount billed or received in excess of the maximum. An agency may request a reconsideration by the Director of Health if such a fine is imposed.

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 staffing agency for violations in a 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.

Fiscal impact

There may be costs to local courts if any violations occur and cases are brought regarding the bill's prohibition from operating a health care staffing agency without registering with ODH or other cases brought for other violations of the bill; however, costs may be offset by fees or court costs. The number of violations for operating without registration is likely to be small. Any revenue from fines imposed by the Director of Health will be deposited into the General Operations Fund (Fund 4700). The amount of fine revenue will depend on the number of violations.

² See the [American Hospital Association Workforce Data Brief](https://www.aha.org/workforce-home), which is available on the American Hospital Association's website: <https://www.aha.org/workforce-home>.

Temporary certificate of need changes

The bill requires the Director of Health to grant a certificate of need (CON) holder a 24-month extension to obligate capital expenditures for a proposed project for a CON granted during the period of the COVID-19 state of emergency. The bill also authorizes the owner of an entity for which a CON was granted during this period to sell its ownership in the entity without voiding the CON held by the owner. ODH is required to notify the CON holder of the date on which the 24-month extension expires.

Fiscal impact

ODH may experience a minimal increase in administrative costs to provide the abovementioned notification. Any other impacts will depend on the number of CONs impacted and whether any fees would have been charged under current law.