

HOUSE BILL No. 2265

By Committee on Health and Human Services

2-1

1 AN ACT concerning health and healthcare; relating to the Kansas
2 department for aging and disability services; providing for the
3 regulation of supplemental nursing services agencies thereby; creating
4 the supplemental nursing services agency regulation fund.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. As used in sections 1 through 4, and amendments thereto:

8 (a) "Controlling person" means:

9 (1) A business entity, officer, program administrator or director whose
10 responsibilities include the direction of the management or policies of a
11 supplemental nursing services agency; or

12 (2) a person who, directly or indirectly, beneficially owns an interest
13 in a corporation, partnership or other business association described in
14 paragraph (1).

15 (b) "Healthcare facility" includes any:

16 (1) Medical care facility, as defined in K.S.A. 65-425, and
17 amendments thereto; or

18 (2) adult care home, as defined in K.S.A. 39-923, and amendments
19 thereto.

20 (c) "Hospital long-term care unit" means a nursing facility, as defined
21 in K.S.A. 39-923, and amendments thereto, that is owned and operated by
22 and a part of a hospital, as defined in K.S.A. 65-425, and amendments
23 thereto.

24 (d) "Nurse" means a practical nurse or professional nurse, as those
25 terms are defined in K.S.A. 65-1113, and amendments thereto.

26 (e) "Nurse aide" means an individual who has a nurse aide certificate
27 issued in accordance with rules and regulations adopted by the secretary.

28 (f) "Person" means any natural or artificial person, including, but not
29 limited to, individuals, partnerships, associations, trusts or corporations.

30 (g) "Secretary" means the secretary for aging and disability services.

31 (h) (1) "Supplemental nursing services agency" means a person
32 engaged for hire in the business of providing or procuring temporary
33 employment in healthcare facilities for nurses and nurse aides.

34 (2) "Supplemental nursing services agency" does not include any
35 individual who only engages in providing such individual's services on a
36 temporary basis to healthcare facilities.

1 Sec. 2. (a) The secretary shall adopt rules and regulations as
2 necessary to implement the provisions of sections 1 through 4, and
3 amendments thereto.

4 (b) The secretary shall be responsible for the oversight of
5 supplemental nursing services agencies through unannounced surveys,
6 complaint investigations and other actions necessary to ensure compliance
7 with sections 1 through 4, and amendments thereto.

8 (c) The secretary shall establish a system for the reporting of
9 complaints against supplemental nursing services agencies and against the
10 employees of supplemental nursing services agencies. Complaints may be
11 made by any member of the public.

12 Sec. 3. (a) A person who operates a supplemental nursing services
13 agency shall register annually with the secretary. If such supplemental
14 nursing services agency has more than one business location, each such
15 location shall be individually registered with the secretary.

16 (b) (1) The secretary shall establish forms and procedures for
17 processing each supplemental nursing services agency registration
18 application. An application for a supplemental nursing services agency
19 registration shall include, but not be limited to:

20 (A) The names and addresses of the owner or owners of the
21 supplemental nursing services agency;

22 (B) if the owner is a corporation, copies of the corporation's articles
23 of incorporation and current bylaws, together with the names and
24 addresses of the corporation's officers and directors;

25 (C) satisfactory proof of compliance with section 4(a)(1)(E) through
26 (G), and amendments thereto;

27 (D) any other relevant information that the secretary determines is
28 necessary to properly evaluate an application for registration;

29 (E) a policy and procedure that describes how the supplemental
30 nursing services agency's records will be immediately available at all times
31 to the secretary; and

32 (F) a registration fee of \$2,035.

33 (c) If a supplemental nursing services agency fails to provide the
34 items required by this section to the secretary, the secretary shall
35 immediately deny the supplemental nursing services agency's registration.
36 The supplemental nursing services agency may appeal the secretary's
37 findings in accordance with the provisions of the Kansas administrative
38 procedure act, K.S.A. 77-501 et seq., and amendments thereto, except that
39 the hearing shall be conducted by an administrative law judge within 60
40 calendar days after the secretary receives any such request for a hearing.

41 (d) A registration issued by the secretary according to this section is
42 effective for a period of one year from the date of its issuance unless the
43 registration is revoked under section 4, and amendments thereto, or unless

1 the supplemental nursing services agency is sold or ownership or
2 management of the agency is transferred. If a supplemental nursing
3 services agency is sold or ownership or management of the agency is
4 transferred, the registration of the agency shall be voided and the new
5 owner or operator may apply for a new registration.

6 (e) There is hereby created in the state treasury the supplemental
7 nursing services agency regulation fund. The fund shall be administered by
8 the secretary. All expenditures from the supplemental nursing services
9 agency regulation fund shall be made in accordance with appropriation
10 acts upon warrants of the director of accounts and reports issued pursuant
11 to vouchers signed by the secretary.

12 (f) The secretary shall remit all moneys received from fees collected
13 under this section to the state treasurer in accordance with the provisions
14 of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
15 remittance, the state treasurer shall deposit the entire amount in the state
16 treasury to the credit of the supplemental nursing services agency
17 regulation fund.

18 Sec. 4. (a) (1) The secretary shall require, as a condition of
19 registration, that the supplemental nursing services agency shall:

20 (A) Document that each temporary employee provided to healthcare
21 facilities currently meets the minimum licensing, training and continuing
22 education standards for the position in which the employee will be
23 working;

24 (B) comply with all applicable legal requirements relating to the
25 qualifications of personnel employed in healthcare facilities, including the
26 performance of criminal history record checks in accordance with K.S.A.
27 39-970, and amendments thereto;

28 (C) not restrict, in any manner, the employment opportunities of its
29 employees;

30 (D) carry medical malpractice insurance coverage for the loss,
31 damage or expense incident to a claim arising out of the death or injury of
32 any person as the result of negligence or malpractice in the provision of
33 healthcare services by the supplemental nursing services agency or by any
34 employee of the agency;

35 (E) carry a fidelity bond or fidelity insurance in the amount of at least
36 \$10,000;

37 (F) maintain insurance coverage for workers compensation for all
38 nurses and nurse aides provided or procured by the agency;

39 (G) comply with the applicable requirements of the Kansas
40 withholding and declaration of estimated tax act, K.S.A. 79-3294 et seq.,
41 and amendments thereto;

42 (H) in any contract with any employee or healthcare facility, not
43 require the payment of liquidated damages, employment fees or other

1 compensation if any such employee is hired as a permanent employee of a
2 healthcare facility;

3 (I) document that each temporary employee provided to healthcare
4 facilities is an employee of the agency and is not an independent
5 contractor;

6 (J) retain all records for five calendar years and organize such records
7 so that they can be made immediately available to the secretary upon
8 request; and

9 (K) submit a report to the secretary on a quarterly basis for each
10 healthcare facility that participates in medicare or medicaid with which the
11 supplemental nursing services agency contracts, and such report shall
12 include a detailed list of the average amount:

13 (i) Charged to the healthcare facility for each individual agency
14 worker category; and

15 (ii) paid by the agency to agency workers in each individual agency
16 worker category.

17 (2) In order to retain registration, the supplemental nursing services
18 agency shall provide services to a healthcare facility during the year
19 preceding the supplemental nursing services agency's registration renewal
20 date.

21 (b) Failure to comply with this section shall subject the supplemental
22 nursing services agency to revocation or nonrenewal of its registration. A
23 supplemental nursing services agency's registration or renewal registration
24 application shall not be revoked or denied without a hearing held in
25 accordance with the provisions of the Kansas administrative procedure act,
26 K.S.A. 77-501 et seq., and amendments thereto, except that any such
27 hearing shall be conducted by an administrative law judge within 60
28 calendar days after the secretary receives a request for any such hearing.

29 (c) Notwithstanding subsection (b), the secretary shall revoke the
30 registration of any supplemental nursing services agency that knowingly
31 supplies to a healthcare facility an employee with an illegally or
32 fraudulently obtained or issued diploma, registration, license, certificate or
33 background study. The secretary shall not be required to provide the
34 agency with an opportunity for a hearing described in subsection (b) prior
35 to revoking the registration under this subsection. The secretary shall
36 notify the supplemental nursing services agency at least 15 calendar days
37 in advance of the date of revocation.

38 (d) (1) The controlling person of a supplemental nursing services
39 agency whose registration has not been renewed or has been revoked
40 because of noncompliance with the provisions of sections 1 through 4, and
41 amendments thereto, shall not be eligible to apply for or be granted a
42 registration for five years following the effective date of such nonrenewal
43 or revocation.

1 (2) The secretary shall not issue or renew a registration to a
2 supplemental nursing services agency if the controlling person of such
3 agency includes any person or entity who was a controlling person of a
4 supplemental nursing services agency whose registration was not renewed
5 or was revoked under this subsection for five years following the effective
6 date of such nonrenewal or revocation.

7 Sec. 5. This act shall take effect and be in force from and after its
8 publication in the statute book.