Session of 2020

HOUSE BILL No. 2629

By Committee on Children and Seniors

2-11

AN ACT concerning health and healthcare; relating to the Kansas department for aging and disability services; regulation of supplemental nursing services agencies.

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

Section 1. As used in this act:

(a) "Act" means section 1 et seq., and amendments thereto.

(b) "Controlling person" means:

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

(2) an individual who, directly or indirectly, beneficially owns an interest in a corporation, partnership or other business association that is a "controlling person."

(c) "Healthcare facility" includes any:

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

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

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

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

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

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

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

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

(2) "Supplemental nursing services agency" does not include any individual who only engages in providing such individual's services on a temporary basis to healthcare facilities.
Sec. 2. (a) The secretary shall adopt rules and regulations as necessary to implement the provisions of this act.
(b) The secretary shall be responsible for the oversight of supplemental nursing services agencies through unannounced surveys, complaint investigations and other actions necessary to ensure compliance with this act.
(c) The secretary shall establish a system for the reporting of complaints against supplemental nursing services agencies and against the employees of supplemental nursing services agencies. Complaints may be made by any member of the public.

Sec. 3. (a) A person who operates a supplemental nursing services agency shall register annually with the secretary. If such supplemental nursing services agency has more than one business location, each such location shall be individually registered with the secretary.
(b) (1) The secretary shall establish forms and procedures for processing each supplemental nursing services agency registration application. An application for a supplemental nursing services agency registration shall include, but not be limited to:
(A) The names and addresses of the owner or owners of the supplemental nursing services agency;
(B) if the owner is a corporation, copies of its articles of incorporation and current bylaws, together with the names and addresses of its officers and directors;
(C) satisfactory proof of compliance with section 4(a)(1)(E) through (G), and amendments thereto;
(D) any other relevant information that the secretary determines is necessary to properly evaluate an application for registration;
(E) a policy and procedure that describes how the supplemental nursing services agency's records will be immediately available at all times to the secretary; and
(F) a registration fee of $2,035.
(c) If a supplemental nursing services agency fails to provide the items required by this section to the department, the secretary shall immediately deny the supplemental nursing services agency's registration. The supplemental nursing services agency may appeal the secretary's findings in accordance with the provisions of the Kansas administrative procedure act, K.S.A. 77-501 et seq., and amendments thereto, except that the hearing must be conducted by an administrative law judge within 60 calendar days after the secretary receives any such request for a hearing.
(d) A registration issued by the secretary according to this section is effective for a period of one year from the date of its issuance unless the registration is revoked under section 4, and amendments thereto, or unless the supplemental nursing services agency is sold or ownership or
management of the agency is transferred. If a supplemental nursing
services agency is sold or ownership or management of the agency is
transferred, the registration of the agency shall be voided and the new
owner or operator may apply for a new registration.
(e) There is hereby created in the state treasury the supplemental
nursing services agency regulation fund. The fund shall be administered by
the secretary. All expenditures from the supplemental nursing services
agency regulation fund shall be made in accordance with appropriation
acts upon warrants of the director of accounts and reports issued pursuant
to vouchers signed by the secretary.
(f) The secretary shall remit all moneys received from fees collected
under this section to the state treasurer in accordance with the provisions
of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
remittance, the state treasurer shall deposit the entire amount in the state
 treasury to the credit of the supplemental nursing services agency
regulation fund.
Sec. 4. (a) (1) The secretary shall require, as a condition of
registration, that the supplemental nursing services agency shall:
(A) Document that each temporary employee provided to healthcare
facilities currently meets the minimum licensing, training and continuing
education standards for the position in which the employee will be
working;
(B) comply with all applicable legal requirements relating to the
qualifications of personnel employed in healthcare facilities, including the
performance of criminal history record checks in accordance with K.S.A.
39-970, and amendments thereto;
(C) not restrict, in any manner, the employment opportunities of its
employees;
(D) carry medical malpractice insurance coverage for the loss,
damage or expense incident to a claim arising out of the death or injury of
any person as the result of negligence or malpractice in the provision of
healthcare services by the supplemental nursing services agency or by any
employee of the agency;
(E) carry a fidelity bond or fidelity insurance in the amount of at least
$10,000;
(F) maintain insurance coverage for workers compensation for all
nurses and nurse aides provided or procured by the agency;
(G) comply with the applicable requirements of the Kansas
withholding and declaration of estimated tax act, K.S.A. 79-3294 et seq.,
and amendments thereto;
(H) in any contract with any employee or healthcare facility, not
require the payment of liquidated damages, employment fees or other
compensation if any such employee is hired as a permanent employee of a
healthcare facility;
   (I) document that each temporary employee provided to healthcare facilities is an employee of the agency and is not an independent contractor; and
   (J) retain all records for five calendar years and organize such records so that they can be made immediately available to the secretary upon request.

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

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

(c) Notwithstanding subsection (b), when a supplemental nursing services agency that knowingly supplies to a healthcare facility an employee with an illegally or fraudulently obtained or issued diploma, registration, license, certificate or background study, such agency's registration shall be revoked by the secretary. The secretary shall notify the supplemental nursing services agency 15 calendar days in advance of the date of revocation.

(d) Violations of section 5, and amendments thereto, shall be subject to a fine equal to 200% of the amount billed or received in excess of the maximum amount permitted under that section.

(e) (1) The controlling person of a supplemental nursing services agency whose registration has not been renewed or has been revoked because of noncompliance with the provisions of this act shall not be eligible to apply for or be granted a registration for five years following the effective date of such nonrenewal or revocation.

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

Sec. 5. A supplemental nursing services agency shall not bill or receive payments from an adult care home or a hospital long-term care unit at a rate higher than 150% of the sum of the weighted average wage
rate, plus a factor determined by the secretary to incorporate payroll taxes
for the applicable employee classification for the geographic group. The
weighted average wage rates shall be determined by the secretary on an
annual basis. For the purposes of this section, "wages" means an hourly
rate of pay and shift differential, including weekend shift differential and
overtime. Adult care homes and long-term care units shall provide
information necessary to determine weighted average wage rates in a
format requested by the secretary. The maximum rate shall include all
charges for administrative fees, contract fees or other special charges in
addition to the hourly rates for the temporary nursing personnel supplied to
an adult care home or a hospital long-term care unit. An adult care home or
a hospital long-term care unit that pays for the actual travel and housing
costs for supplemental nursing services agency staff working at the facility
and that pays these costs to the employee, the agency or another vendor, is
not violating the limitation on charges described in this section.
Sec. 6. This act shall take effect and be in force from and after its
publication in the statute book.