

American Staffing Association

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VIA ELECTRONIC MAIL TO Fran.lusk@house.ks.gov

February 20, 2020

Representative Susan Concannon
Chairwoman
House Committee on Children & Seniors
Room 346-S
Kansas State Capitol
300 SW 10th Street
Topeka, Kansas 66612

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Re: HB 2629; An Act Concerning Health and Healthcare; Regulation of Supplemental Nursing Services Agencies

Dear Representative Concannon:

The American Staffing Association (ASA) represents Kansas' healthcare staffing firms. I am writing to express ASA's deep concern regarding the impact that HB 2629 would have on the supply of nurses and patient care in Kansas.

Temporary nurses assigned by staffing firms play a vital role in meeting the nursing needs of hospitals, nursing homes, and other healthcare facilities. Temporary nursing is an attractive option for many nurses because staffing firms pay competitive wages while providing greater scheduling flexibility—an advantage that keeps many in the profession who would otherwise leave. This helps to mitigate the nursing shortage.

Unfortunately, HB 2629 will negate those advantages. By imposing draconian restrictions on healthcare staffing firms' businesses, including a prohibition against conversion fees as well as limitations on staffing firms' fees charged to clients, this legislation would drive healthcare staffing firms either out of business or to neighboring states—thereby reducing the supply of nurses and adversely affecting patient care.

Healthcare Staffing Firm Conversion Fees are Economically Justified, are Not a Barrier to Permanent Jobs, and Should Not be Prohibited

In a time of acute healthcare worker shortages, staffing firms perform an essential role in providing skilled workers willing to travel and fill their clients' critical business needs. At the same time, temporary employment is highly beneficial for healthcare employees—providing job flexibility, valuable work experience, and the opportunity to evaluate multiple potential full-time positions before making a permanent commitment.

To provide these beneficial services, staffing firms must make a major investment in advertising, recruiting, onboarding, and orienting temporary staff—a process that can take months, especially given the skills and credentials required for nurses and healthcare professionals. In certain cases, the firms charge a “conversion fee” to ensure that clients do not use the firm as a free placement service by hiring its employees before that investment can be recouped.¹ As explained below, such fees have never been a barrier to full-time employment.

¹ Staffing firms typically do not use “liquidated damages” provisions. Traditionally, such provisions set the amount that the parties to a contract agreed they would pay for breaches of contract in cases where the actual damages were difficult to quantify. Strictly speaking, a staffing client has not breached its agreement when it hires employees before a specified period—it simply agrees to pay an additional amount for the service if it does so.

Healthcare staffing firms use conversion fees solely to protect the firms' investment in recruiting and screening potential job candidates and to deter clients from using them as a free placement service. This is eminently fair and reasonable because, in using staffing services, clients avoid the costs of advertising, recruiting, interviewing and onboarding workers, plus the risk and expense of hiring the wrong person—costs that far outweigh any conversion fees. Using staffing firms to recruit nurses also can improve patient safety by allowing the facility to evaluate the nurse before committing to a permanent hire.

Furthermore, in most cases, clients do not pay any conversion fee. Fees are charged on a sliding scale based on how long the employee is on the staffing firm's payroll. The fee generally is waived entirely if the employee was on the staffing firm's payroll for the minimal period (e.g., 90 days) necessary to recoup the firm's investment.

The average tenure of temporary employees is very short. Nationwide, staffing firms employ over 3 million people each day, over 15 million annually with an average tenure of about 11 weeks. The short tenure of temporary workers belies the notion that conversion fees deter businesses from making permanent job offers to temporary workers. On the contrary, the growth of so-called "temp-to-perm" arrangements shows just the opposite—that businesses increasingly are using staffing firms specifically for the purpose of recruiting permanent employees.

It is for these reasons that no neighboring state restricts or prohibits conversion fees; if Kansas were to become the outlier, this would only drive healthcare staffing firms out of business or out-of-state—adversely affecting both jobs and patient care.

Imposing Rate Caps on Healthcare Staffing Firms Will Hurt Workers

Moreover, the proposed legislation's imposition of a limitation on the rates charged to staffing firm clients would only serve to hurt healthcare workers, as staffing firms would face the Hobson's choice of going out of business, moving to neighboring states, or reducing the level of compensation and benefits to their employees. The negative effects of these options are not hard to fathom. If staffing firms reduce employee wages, that means fewer dollars in the pockets of temporary and contract workers, a large percentage of whom are women, mothers, and caregivers. If firms go out of business or relocate, this will limit job opportunities. In short, imposing rate caps would have disastrous consequences for temporary healthcare workers, staffing firms, healthcare clients, and patient care.

Temporary Healthcare Workers Should be Classified as Either Employees or Independent Contractors Under Existing Law

Finally, like all other healthcare workers, temporary nurses should be classified either as employees or independent contractors under existing wage and hour and other laws. There is no compelling reason to treat temporary workers differently from their counterparts who work directly for healthcare facilities.

For all of the foregoing reasons, we urge you to reject this legislation. Thank you for your consideration.

Very truly yours,



Stephen C. Dwyer
Senior Vice President and Chief Legal Officer