



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4658

Introduced 1/21/2022, by Rep. Frances Ann Hurley

SYNOPSIS AS INTRODUCED:

See Index

Amends the Nurse Agency Licensing Act. Defines "covenant not to compete". Changes the definition of "Department" to the Department of Public Health (rather than the Department of Labor). Changes the definitions of "health care facility" and "nurse". Provides that in an application for licensure under the Act, a limited liability company can apply, evidence of general professional liability insurance in the amount of at least \$1,000,000 (instead of \$500,000) is required per incident and \$3,000,000 (instead of \$1,000,000) in the aggregate is required for workers' compensation coverage, and there is an application fee of \$2,000. Provides that collected fees shall be deposited in the state treasury and credited to the Nursing Dedicated and Professional Fund. Provides that for renewal of licensure, the licensee shall submit an attestation detailing the number of contracted shifts, number of shifts missed, and number of shifts fulfilled for the 3 quarters preceding the application. Provides that an application for a license may be denied for failure to develop and implement contingency staffing plans to minimize missed shifts. Provides that nurse agencies who knowingly employ, assign, or refer to a health care facility a nurse or certified nurse aid with an illegally or fraudulently obtained or issued diploma, registration, license, certificate, or background study constitutes negligent hiring and are grounds for suspension, revocation, or refusal to issue or renew a license. Provides that the Department shall establish updated minimum standards. Provides that nurse agencies are prohibited from entering into covenants not to compete with nurses and certified nurse aides. Provides that a nurse agency's maximum rate for services provided to a health care facility by a nurse or certified nurse aide may not exceed 130% of the regional average hourly wage for each staffing position. Provides that the Department shall establish a system of reporting complaints against a health care staffing agency or its employees. Increases the civil penalty for violation of the Act to \$10,000 per occurrence (currently \$1,000 per day for each violation). Makes other changes.

LRB102 24487 AMQ 33721 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Nurse Agency Licensing Act is amended by
5 changing Sections 3, 4, 5, 7, 8, 13, 14, and 14.1 as follows:

6 (225 ILCS 510/3) (from Ch. 111, par. 953)

7 Sec. 3. Definitions. As used in this Act:

8 (a) "Certified nurse aide" means an individual certified
9 as defined in Section 3-206 of the Nursing Home Care Act,
10 Section 3-206 of the ID/DD Community Care Act, or Section
11 3-206 of the MC/DD Act, as now or hereafter amended.

12 (a-5) "Covenant not to compete" means an agreement between
13 an employer and an employee that restricts such employee from
14 performing:

15 (1) any work for another employer for a specified
16 period of time;

17 (2) any work for a specified geographic area; or

18 (3) work for another employer that is similar to such
19 employee's work for the employer included as a party to
20 the agreement.

21 (b) "Department" means the Department of Public Health
22 ~~Labor~~.

23 (c) "Director" means the Director of Public Health ~~Labor~~.

1 (d) "Health care facility" is defined as in Section 3 of
2 the Illinois Health Facilities Planning Act, as now or
3 hereafter amended, and includes any facility licensed,
4 certified, or approved by any State agency and covered by the
5 Assisted Living and Shared Housing Act or subsection (a) of
6 Section 5-5.01 of the Illinois Public Aid Code.

7 (e) "Licensee" means any nursing agency which is properly
8 licensed under this Act.

9 (f) "Nurse" means a registered nurse, ~~or~~ a licensed
10 practical nurse, an advanced practice registered nurse, or any
11 individual licensed under ~~as defined in~~ the Nurse Practice
12 Act.

13 (g) "Nurse agency" means any individual, firm,
14 corporation, partnership or other legal entity that employs,
15 assigns or refers nurses or certified nurse aides to a health
16 care facility for a fee. The term "nurse agency" includes
17 nurses registries. The term "nurse agency" does not include
18 services provided by home health agencies licensed and
19 operated under the Home Health, Home Services, and Home
20 Nursing Agency Licensing Act or a licensed or certified
21 individual who provides his or her own services as a regular
22 employee of a health care facility, nor does it apply to a
23 health care facility's organizing nonsalaried employees to
24 provide services only in that facility.

25 (Source: P.A. 98-104, eff. 7-22-13; 99-180, eff. 7-29-15.)

1 (225 ILCS 510/4) (from Ch. 111, par. 954)

2 Sec. 4. Licensing. The Department shall license nurse
3 agencies in accordance with this Act for the protection of the
4 health, welfare and safety of patients and residents. No
5 person may establish, operate, maintain, or advertise as a
6 nurse agency in the State of Illinois unless the person is
7 licensed under this Act by the Department of Public Health
8 ~~Labor~~. Being licensed under the Home Health, Home Services,
9 and Home Nursing Agency Licensing Act does not relieve home
10 health agencies that provide nurse agency services from the
11 requirement of obtaining licensure under this Act. No health
12 care facility shall use the services of an unlicensed nurse
13 agency.

14 (Source: P.A. 94-379, eff. 1-1-06.)

15 (225 ILCS 510/5) (from Ch. 111, par. 955)

16 Sec. 5. Application for license. An application to operate
17 a nurse agency shall be made to the Department on forms
18 provided by the Department. A separate application shall be
19 submitted for each additional location from which a nurse
20 agency is operated. All applications must be under oath and
21 must be accompanied by an equitable application fee which will
22 be set by the Department by rule. A separate license must be
23 obtained for each location from which a nurse agency is
24 operated unless the nurse agency is owned and managed by the
25 same person or persons. Submission of false or misleading

1 information is a petty offense punishable by a fine of \$500.

2 The application shall contain the following information:

3 (1) name and address of the person, partnership,
4 corporation or other entity that is the applicant;

5 (2) if the applicant is a corporation or a limited
6 liability company, a copy of its articles of incorporation or
7 organization, a copy of its current bylaws, and the names and
8 addresses of its officers and directors and shareholders
9 owning more than 5% of the corporation's stock or membership
10 units;

11 (3) the name and location of premises from which the
12 applicant will provide services;

13 (4) the names and addresses of the person or persons under
14 whose management or supervision the nurse agency will be
15 operated;

16 (5) a statement of financial solvency;

17 (6) a statement detailing the experience and
18 qualifications of the applicant to operate a nurse agency,
19 however, the failure of a nurse agency to demonstrate previous
20 experience to operate an agency does not in and of itself
21 constitute grounds for the denial of a license;

22 (7) evidence of compliance or intent to comply with State
23 or federal law relating to employee compensation, including
24 but not limited to, social security taxes, State and federal
25 income taxes, workers' compensation, unemployment taxes, ~~and~~
26 State and federal overtime compensation laws, and federal

1 occupational safety and health administration laws;

2 (8) evidence of general professional liability insurance
3 in the amounts of at least \$1,000,000 ~~\$500,000~~ per incident
4 and \$3,000,000 ~~\$1,000,000~~ in aggregate and workers'
5 compensation coverage for all nurses or certified nursing
6 aides employed, assigned, or referred by the nurse agency to a
7 healthcare facility; and

8 (9) any other relevant information which the Department
9 determines is necessary to properly evaluate the applicant and
10 application as required by the Department by rule; and-

11 (10) an application fee of \$2,000.

12 Fees collected under this Section shall be deposited in
13 the State treasury and credited to the Nursing Dedicated and
14 Professional Fund. Funds deposited into the Fund shall be set
15 aside for nursing scholarships awarded pursuant to the Nursing
16 Education Scholarship Law and may not be transferred under
17 Section 8h of the State Finance Act.

18 (Source: P.A. 86-817; 86-1043; 86-1472; 87-435.)

19 (225 ILCS 510/7) (from Ch. 111, par. 957)

20 Sec. 7. Renewal of license. At least 90 days prior to
21 license expiration, the licensee shall submit an attestation
22 detailing the number of contracted shifts, number of shifts
23 missed, and number of shifts fulfilled for the 3 quarters
24 preceding the application and an application which meets the
25 requirements of Section 5 of this Act for renewal of the

1 license. If the application is approved pursuant to Section 6,
2 the license shall be renewed for an additional one-year
3 period.

4 (Source: P.A. 86-817; 86-1043.)

5 (225 ILCS 510/8) (from Ch. 111, par. 958)

6 Sec. 8. Grounds for denial of a license. An application
7 for a license may be denied for any of the following reasons:

8 (a) failure to comply with the minimum standards set forth
9 by this Act or its rules;

10 (b) conviction of the applicant of a felony;

11 (c) insufficient financial or other resources to operate
12 the nurse agency in accordance with the requirements of this
13 Act and the minimum standards, rules and regulations
14 promulgated thereunder; or

15 (d) failure to establish appropriate personnel policies
16 and procedures for selecting nurses and certified nurse aides
17 for employment, assignment, ~~or~~ referral, or to develop and
18 implement contingency staffing plans to minimize missed
19 shifts.

20 (Source: P.A. 86-817.)

21 (225 ILCS 510/13) (from Ch. 111, par. 963)

22 Sec. 13. Application for employment.

23 (a) Every nurse agency shall cause each applicant for
24 employment, assignment, or referral, as a nurse to complete an

1 application form including the following information:

2 (1) name and address of the applicant;

3 (2) whether or not such applicant is a nurse currently
4 licensed by the Department of Financial and Professional
5 Regulation;

6 (3) if so licensed, the number and date of such
7 license; and

8 (4) references and dates and places of previous
9 employment.

10 Prior to employing, assigning, or referring a nurse, the
11 agency shall contact the Department of Financial and
12 Professional Regulation to determine whether the nurse's
13 license is valid and in good standing and that the nurse is not
14 ineligible to be hired by health care employers or long-term
15 care facilities pursuant to Section 25 of the Health Care
16 Worker Background Check Act. Written verification shall be
17 sent by the Department of Financial and Professional
18 Regulation within 20 working days. At least biennially
19 thereafter, the agency shall contact the Department of
20 Financial and Professional Regulation to verify this
21 information in writing. The nurse agency shall review the
22 disciplinary report published by the Department of Financial
23 and Professional Regulation on a monthly basis to determine
24 whether the nurse's license is valid and in good standing.

25 (b) Every nurse agency shall cause each applicant for
26 employment, assignment, or referral, as a certified nurse aide

1 to complete an application form including the following
2 information:

3 (1) name and address of the applicant;

4 (2) whether or not the nurse aide is registered as
5 having completed a certified course as approved by the
6 Department of Public Health;

7 (3) references and dates and places of previous
8 employment.

9 Prior to employing, assigning, or referring a certified
10 nurse aide, the agency shall review the information provided
11 on the Health Care Worker Registry to verify that the
12 certification is valid and that the certified nurse aide is
13 not ineligible to be hired by health care employers or
14 long-term care facilities pursuant to Section 25 of the Health
15 Care Worker Background Check Act.

16 (c) Every nurse agency shall check at least 2 recent
17 references and the dates of employment provided by the
18 applicant, unless the applicant has not had 2 previous
19 employers.

20 (c-5) Nurse agencies who knowingly employ, assign, or
21 refer to a health care facility a nurse or certified nurse aid
22 with an illegally or fraudulently obtained or issued diploma,
23 registration, license, certificate, or background study
24 constitutes negligent hiring and are grounds for suspension,
25 revocation, or refusal to issue or renew a license under
26 Section 9 of this Act.

1 (d) Nurses or certified nurses aides employed, assigned,
2 or referred to a health care facility by a nurse agency shall
3 be deemed to be employees of the nurse agency while working for
4 the nurse agency or on nurse agency employment, assignment or
5 referral.

6 (Source: P.A. 99-652, eff. 1-1-17.)

7 (225 ILCS 510/14) (from Ch. 111, par. 964)

8 Sec. 14. Minimum Standards. (a) The Department, by rule,
9 shall establish minimum standards for the operation of nurse
10 agencies. Those standards shall include, but are not limited
11 to: (1) the maintenance of written policies, ~~and~~ procedures,
12 and documentation, including contracts with all health care
13 facilities to which it assigns or refers nurses or certified
14 nurse aides demonstrating that its employees' scope of work
15 aligns with the appropriate scope of practices and contingency
16 staff plans; and (2) the development of personnel policies
17 which include payroll records, including for nurses or
18 certified nurse aides employed, assigned, or referred to
19 health care facilities, a personal interview, a reference
20 check, an annual evaluation of each employee (which may be
21 based in part upon information provided by health care
22 facilities utilizing nurse agency personnel), documentation
23 that nurses or certified nurse aides who will be assigned or
24 referred to health care facilities meet the minimum licensing,
25 training, and continuing education standards for the position

1 referred or assigned and comply with all pertinent
2 requirements relating to personnel employed in health care
3 facilities, and periodic health examinations.

4 (b) Each nurse agency shall have a nurse serving as a
5 manager or supervisor of all nurses and certified nurses
6 aides.

7 (c) Each nurse agency shall ensure that its employees meet
8 the minimum licensing, training, and orientation standards for
9 which those employees are licensed or certified.

10 (d) A nurse agency shall not employ, assign, or refer for
11 use in an Illinois health care facility a nurse or certified
12 nurse aide unless certified or licensed under applicable
13 provisions of State and federal law or regulations. Each
14 certified nurse aide shall comply with all pertinent
15 regulations of the Illinois Department of Public Health
16 relating to the health and other qualifications of personnel
17 employed in health care facilities.

18 (e) The Department may adopt rules to monitor the usage of
19 nurse agency services to determine their impact.

20 (f) Nurse agencies are prohibited from recruiting
21 potential employees on the premises of a health care facility
22 or requiring, as a condition of employment, assignment, or
23 referral, that their employees recruit new employees for the
24 nurse agency from among the permanent employees of the health
25 care facility to which the nurse agency employees have been
26 employed, assigned, or referred, and the health care facility

1 to which such employees are employed, assigned, or referred is
2 prohibited from requiring, as a condition of employment, that
3 their employees recruit new employees from these nurse agency
4 employees. Violation of this provision is a business offense.

5 (g) Nurse agencies are prohibited from entering into
6 covenants not to compete with nurses and certified nurse
7 aides. After the effective date of this Act of the 102nd
8 General Assembly, a covenant not to compete entered into
9 between a nurse agency and a nurse or certified nurse aid is
10 illegal and void. The nursing agency shall not, in any
11 contract with any employee or health care facility, require
12 the payment of liquidated damages, employment fees, buy out
13 fees, placement fees, or other compensation should the
14 employee be hired as a permanent employee of a health care
15 facility.

16 (h) A nurse agency's maximum rate for services provided to
17 a health care facility by a nurse or certified nurse aide may
18 not exceed 130% of the regional average hourly wage for each
19 staffing position. The Department shall use and publish the
20 most current median hourly wage data reported by the United
21 States Department of Labor Bureau of Labor Statistics (BLS) in
22 the BLS' Occupational Employment Statistics metropolitan and
23 nonmetropolitan Area Occupational Employment and Wage
24 Estimates for the State. These positions shall include
25 registered nurse, licensed practical nurse, certified nursing
26 assistant, and orderlies, rehab, or therapy aides. The maximum

1 rate shall include all charges for administrative fees,
2 contract fees, or other special charges in addition to the
3 hourly rates for the temporary nursing pool personnel supplied
4 to a health care facility. A health care facility that pays for
5 the actual travel and housing costs for nurse or certified
6 nurse aides working at the facility and that pays these costs
7 to the employee, the agency, or another vendor, is not
8 violating the limitation on charges described in this Section.

9 (i) No less than 80% of the rates charged to a health care
10 facility shall be passed on to the employee.

11 (Source: P.A. 86-817.)

12 (225 ILCS 510/14.1)

13 Sec. 14.1. Investigations; orders; civil penalties.

14 (a) The Department may at any time, and shall upon
15 receiving a complaint from any interested person, investigate
16 any person licensed or applying for a license under this Act.
17 The Department shall investigate any person who operates or
18 advertises a nurse agency without being licensed under this
19 Act. The Department shall establish a system of reporting
20 complaints against a health care staffing agency or its
21 employees. Complaints may be made by any member of the public.
22 Complaints against a health care staffing agency shall be
23 investigated by the Office of Health Care Regulation within
24 the Department of Public Health.

25 The Director or his or her authorized representative may

1 examine the premises of any nurse agency, may compel by
2 subpoena, for examination or inspection, the attendance and
3 testimony of witnesses and the production of books, payrolls,
4 records, papers and other evidence in any investigation or
5 hearing, and may administer oaths or affirmations to
6 witnesses.

7 (b) After appropriate notice and hearing, and if supported
8 by the evidence, the Department may issue and cause to be
9 served on any person an order to cease and desist from
10 violation of this Act and to take any further action that is
11 reasonable to eliminate the effect of the violation.

12 Whenever it appears that any person has violated a valid
13 order of the Department issued under this Act, the Director
14 may commence an action and obtain from the court an order
15 directing the person to obey the order of the Department or be
16 subject to punishment for contempt of court.

17 The Department may petition the court for an order
18 enjoining any violation of this Act.

19 (c) Any licensee or applicant who violates any provision
20 of this Act or the rules adopted under this Act shall be
21 subject to a civil penalty of \$10,000 per occurrence ~~\$1,000~~
22 ~~per day for each violation~~. Civil penalties may be assessed by
23 the Department in an administrative action and may, if
24 necessary, be recovered in a civil action brought by the
25 Director through the Attorney General of the State of Illinois
26 or the State's attorney of any county in which the violation

1 occurred. The court may order that the civil penalties
2 assessed for violation of this Act, together with any costs or
3 attorney's fees arising out of the action to collect the
4 penalties, be paid to the Department. The fact that the
5 violation has ceased does not excuse any person from liability
6 for civil penalties arising from the violation.

7 (Source: P.A. 88-230.)

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2 Statutes amended in order of appearance

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6	225 ILCS 510/7	from Ch. 111, par. 957
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