



Sen. Omar Aquino

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10200SB3775sam002

LRB102 24482 AMQ 37405 a

1 AMENDMENT TO SENATE BILL 3775

2 AMENDMENT NO. _____. Amend Senate Bill 3775 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Nurse Agency Licensing Act is amended by
5 changing Sections 3, 5, 7, 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 "Add-on charges" means any amount, excluding the
9 administrative fee, that the nurse agency charges the health
10 care facility in addition to the employee hourly pay rate,
11 including, but not limited to, shift differential, weekend
12 differential, hazard pay, charge nurse add-on, overtime,
13 holiday pay, and travel or mileage pay.

14 "Administrative fee" means any amount that the nurse
15 agency charges the health care facility in addition to amounts
16 paid to the employee by the nurse agency.

1 ~~(a)~~ "Certified nurse aide" means an individual certified
2 as defined in Section 3-206 of the Nursing Home Care Act,
3 Section 3-206 of the ID/DD Community Care Act, or Section
4 3-206 of the MC/DD Act, as now or hereafter amended.

5 "Covenant not to compete" means an agreement between an
6 employer and an employee that restricts the employee from
7 performing:

8 (1) any work for another employer for a specified
9 period of time;

10 (2) any work in a specified geographic area; or

11 (3) work for another employer that is similar to the
12 employee's work for the employer included as a party to
13 the agreement.

14 ~~(b)~~ "Department" means the Department of Labor.

15 ~~(c)~~ "Director" means the Director of Labor.

16 ~~(d)~~ "Health care facility" is defined as in Section 3 of
17 the Illinois Health Facilities Planning Act, as now or
18 hereafter amended. "Health care facility" also includes any
19 facility licensed, certified, or approved by any State agency
20 and covered by the Assisted Living and Shared Housing Act or
21 the Illinois Public Aid Code.

22 ~~(e)~~ "Licensee" means any nursing agency which is properly
23 licensed under this Act.

24 ~~(f)~~ "Nurse" means a registered nurse, ~~or~~ a licensed
25 practical nurse, an advanced practice registered nurse, or any
26 individual licensed under ~~as defined in~~ the Nurse Practice

1 Act.

2 ~~(g)~~ "Nurse agency" means any individual, firm,
3 corporation, partnership or other legal entity that employs,
4 assigns or refers nurses or certified nurse aides to a health
5 care facility for a fee. The term "nurse agency" includes
6 nurses registries. The term "nurse agency" does not include
7 services provided by home health agencies licensed and
8 operated under the Home Health, Home Services, and Home
9 Nursing Agency Licensing Act or a licensed or certified
10 individual who provides his or her own services as a regular
11 employee of a health care facility, nor does it apply to a
12 health care facility's organizing nonsalaried employees to
13 provide services only in that facility.

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

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 limited liability
6 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;

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

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

10 (10) an application fee of \$2,000. Fees collected under
11 this paragraph shall be used by the Department for the
12 enforcement of this Act.

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

14 (225 ILCS 510/7) (from Ch. 111, par. 957)

15 Sec. 7. Renewal of license. At least 90 days prior to
16 license expiration, the licensee shall submit an attestation
17 detailing the number of contracted shifts, number of shifts
18 missed, number of shifts fulfilled for the 3 quarters
19 preceding the application date, and an application which meets
20 the requirements of Section 5 of this Act for renewal of the
21 license. If the application is approved pursuant to Section 6,
22 the license shall be renewed for an additional one-year
23 period.

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

1 (225 ILCS 510/13) (from Ch. 111, par. 963)

2 Sec. 13. Application for employment.

3 (a) Every nurse agency shall cause each applicant for
4 employment, assignment, or referral, as a nurse to complete an
5 application form including the following information:

6 (1) name and address of the applicant;

7 (2) whether or not such applicant is a nurse currently
8 licensed by the Department of Professional Regulation;

9 (3) if so licensed, the number and date of such
10 license; and

11 (4) references and dates and places of previous
12 employment.

13 Prior to employing, assigning, or referring a nurse, the
14 agency shall contact the Department of Professional Regulation
15 to determine whether the nurse's license is valid and in good
16 standing. Written verification shall be sent by the Department
17 of Financial and Professional Regulation within 20 working
18 days. At least biennially thereafter, the nurse agency shall
19 contact the Department of Financial and Professional
20 Regulation to verify this information in writing. The nurse
21 agency shall review the disciplinary report published by the
22 Department of Financial and Professional Regulation on a
23 monthly basis to determine whether the nurse's license is
24 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; and

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. Prior to employing, assigning, or
13 referring a certified nurse aide to a position at a health care
14 employer or long-term facility as defined in the Health Care
15 Worker Background Check Act, the nurse agency shall review the
16 information provided on the Health Care Worker Registry to
17 verify and that the certified nurse aide is not ineligible for
18 the position to be hired by health care employers or long-term
19 care facilities pursuant to Section 25 of the Health Care
20 Worker Background Check Act.

21 (c) Every nurse agency shall check at least 2 recent
22 references and the dates of employment provided by the
23 applicant, unless the applicant has not had 2 previous
24 employers.

25 (d) Knowingly employing, assigning, or referring to a
26 health care facility a nurse or certified nurse aide with an

1 illegally or fraudulently obtained or issued diploma,
2 registration, license, certificate, or background study
3 constitutes negligent hiring by a nurse agency and is grounds
4 for suspension, revocation, or refusal to issue or renew a
5 license under Section 9.

6 (e) ~~(d)~~ Nurses or certified nurses aides employed,
7 assigned, or referred to a health care facility by a nurse
8 agency shall be deemed to be employees of the nurse agency
9 while working for the nurse agency or on nurse agency
10 employment, assignment or referral.

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

12 (225 ILCS 510/14) (from Ch. 111, par. 964)

13 Sec. 14. Minimum Standards.

14 (a) The Department, by rule, shall establish minimum
15 standards for the operation of nurse agencies. Those standards
16 shall include, but are not limited to: (1) the maintenance of
17 written policies, procedures, and contracts between nurse
18 agencies and health care facilities to which it assigns or
19 refers nurses or certified nurse aides itemizing rates,
20 including, but not limited to, specifying employee hourly pay
21 rates, any and all add-on charges, and the nurse agency's
22 administrative fees and procedures; and (2) the development of
23 personnel policies which include payroll records, including
24 for nurses or certified nurse aides employed, assigned, or
25 referred to health care facilities, a personal interview, a

1 reference check, an annual evaluation of each employee (which
2 may be based in part upon information provided by health care
3 facilities utilizing nurse agency personnel) and periodic
4 health examinations.

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

8 (c) Each nurse agency shall ensure that its employees meet
9 the minimum licensing, training, continuing education, and
10 orientation standards for which those employees are licensed
11 or certified. Each nurse agency shall also ensure that its
12 employees perform any and all duties called for within the
13 full scope of practice for which the individual is licensed or
14 certified.

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

23 (e) The Department shall ~~may~~ adopt rules to monitor the
24 usage of nurse agency services to determine their impact. In
25 the development of such rules, the Department may consult with
26 the Department of Public Health to ensure the rules will

1 determine the quality of care and public health impacts of the
2 usage of nurse agency services.

3 (f) Nurse agencies are prohibited from recruiting
4 potential employees on the premises of a health care facility
5 or requiring, as a condition of employment, assignment, or
6 referral, that their employees recruit new employees for the
7 nurse agency from among the permanent employees of the health
8 care facility to which the nurse agency employees have been
9 employed, assigned, or referred, and the health care facility
10 to which such employees are employed, assigned, or referred is
11 prohibited from requiring, as a condition of employment, that
12 their employees recruit new employees from these nurse agency
13 employees. Violation of this provision is a business offense.

14 (g) Nurse agencies are prohibited from entering into
15 covenants not to compete with nurses and certified nurse
16 aides. A covenant not to compete entered into after the
17 effective date of this amendatory Act of the 102nd General
18 Assembly between a nurse agency and a nurse or certified nurse
19 aide is illegal and void. The nursing agency shall not, in any
20 contract with any employee or health care facility, require
21 the payment of liquidated damages, conversion fees, employment
22 fees, buy-out fees, placement fees, or other compensation if
23 the employee is hired as a permanent employee of a health care
24 facility.

25 (h) A nurse agency's administrative fee shall not exceed
26 50% of the hourly wage and any add-ons paid to the employee.

1 (i) No less than 100% of the employee hourly pay rate and
2 any add-on charges shall be passed on to the employee.

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

4 (225 ILCS 510/14.1)

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

6 (a) The Department may at any time, and shall upon
7 receiving a complaint from any interested person, investigate
8 any person licensed or applying for a license under this Act.
9 The Department shall investigate any person who operates or
10 advertises a nurse agency without being licensed under this
11 Act. The Department shall establish a system of reporting
12 complaints against a health care staffing agency. Complaints
13 may be made by any member of the public. Complaints against a
14 nurse agency shall be investigated by the Department of Labor.
15 The investigations shall take into consideration the
16 responsibility of health care facilities under Section 12 for
17 supervising nurse agency employees assigned or referred to the
18 facilities.

19 The Director or his or her authorized representative may
20 examine the premises of any nurse agency, may compel by
21 subpoena, for examination or inspection, the attendance and
22 testimony of witnesses and the production of books, payrolls,
23 records, papers and other evidence in any investigation or
24 hearing, and may administer oaths or affirmations to
25 witnesses.

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

6 Whenever it appears that any person has violated a valid
7 order of the Department issued under this Act, the Director
8 may commence an action and obtain from the court an order
9 directing the person to obey the order of the Department or be
10 subject to punishment for contempt of court.

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

13 (c) Any licensee or applicant who violates any provision
14 of this Act or the rules adopted under this Act shall be
15 subject to a civil penalty of \$10,000 per occurrence ~~\$1,000~~
16 ~~per day for each violation~~. Civil penalties may be assessed by
17 the Department in an administrative action and may, if
18 necessary, be recovered in a civil action brought by the
19 Director through the Attorney General of the State of Illinois
20 or the State's attorney of any county in which the violation
21 occurred. The court may order that the civil penalties
22 assessed for violation of this Act, together with any costs or
23 attorney's fees arising out of the action to collect the
24 penalties, be paid to the Department. The fact that the
25 violation has ceased does not excuse any person from liability
26 for civil penalties arising from the violation.

1 (Source: P.A. 88-230.)".