

LEGISLATURE OF NEBRASKA
ONE HUNDRED NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 308

Introduced by Ibach, 44.

Read first time January 15, 2025

Committee:

- 1 A BILL FOR AN ACT relating to health care; to amend section 81-401,
- 2 Reissue Revised Statutes of Nebraska; to adopt the Health Care
- 3 Staffing Agency Registration Act; to provide an operative date; and
- 4 to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 **Section 1.** Sections 1 to 9 of this act shall be known and may be
2 cited as the Health Care Staffing Agency Registration Act.

3 **Sec. 2.** For purposes of the Health Care Staffing Agency
4 Registration Act:

5 (1) Commissioner means the Commissioner of Labor;

6 (2) Department means the Department of Labor;

7 (3)(a) Direct services means services provided to consumers through
8 person-to-person contact; and

9 (b) Direct services does not mean:

10 (i) Services performed by an individual in a health care entity that
11 do not involve the provision of any direct service or treatment to a
12 consumer of a health care entity;

13 (ii) The practice of medicine and surgery or osteopathic medicine
14 and surgery by an individual licensed under the Medicine and Surgery
15 Practice Act; or

16 (iii) The practice of nursing by a nurse practitioner licensed under
17 the Nurse Practitioner Practice Act;

18 (4) Health care entity means a health care facility or a health care
19 service;

20 (5) Health care facility has the same meaning as in section 71-413;

21 (6) Health care service has the same meaning as in section 71-415;

22 (7) Health care staffing agency means an individual, a trust, a
23 partnership, a corporation, a limited liability partnership, a limited
24 liability company, or any other business entity that provides one or more
25 temporary staff workers to a separate, third-party health care entity.
26 Health care staffing agency includes a health care technology platform;

27 (8) Health care technology platform means an individual, a trust, a
28 partnership, a corporation, a limited liability partnership, a limited
29 liability company, or any other business entity that developed and
30 operates, offers, or maintains a system or technology that provides a
31 marketplace, by means of the Internet or a software application, which

1 allows (a) a staff worker, as an independent contractor and in the sole
2 discretion of such staff worker, to choose when and how often to utilize
3 the platform to bid on or select an open shift posted by a health care
4 entity and (b) a health care entity to set rates with the platform that
5 can only be changed by a contractual amendment between the parties;

6 (9)(a) Nursing services means services that may be provided only by
7 or under the supervision of a nurse; and

8 (b) Nursing services does not mean the practice of nursing by a
9 nurse practitioner licensed under the Nurse Practitioner Practice Act;
10 and

11 (10) Staff worker means an individual who contracts with or is
12 employed by a health care staffing agency to provide direct services or
13 nursing services for a health care entity.

14 **Sec. 3.** (1) A health care staffing agency operating in the state
15 shall register annually with the department. As a condition of
16 eligibility for registration, the applicant shall certify that the health
17 care staffing agency will not enforce any noncompete clause in any
18 contract existing prior to registration with any health care entity or
19 staff worker that restricts in any manner the employment opportunities of
20 a staff worker.

21 (2) An applicant for registration and renewal of registration shall,
22 for each separate location at which the applicant intends to operate as a
23 health care staffing agency in Nebraska, file an application in a form
24 prescribed by the department and pay an annual registration fee of one
25 thousand five hundred dollars to the department, except that if the
26 applicant is a health care technology platform operating in Nebraska that
27 does not maintain a physical location in Nebraska, the application shall
28 be for the state generally and the annual registration fee shall be one
29 thousand five hundred dollars for such application. An application for
30 the renewal of a registration shall be made at least sixty days prior to
31 the expiration of the then-current registration period. The department

1 shall issue the applicant a separate certification of registration for
2 each location at which the applicant intends to operate as a health care
3 staffing agency in Nebraska upon approval of registration and payment of
4 the fee, except that if the applicant is a health care technology
5 platform operating in Nebraska that does not maintain a physical location
6 in Nebraska, the department shall issue one certificate of registration
7 to the applicant for the state generally. The application shall include
8 appropriate evidence of ability to comply with the requirements of
9 section 4 of this act. The department shall remit the fees to the State
10 Treasurer for credit to the General Fund.

11 (3) If the commissioner denies an application for registration or
12 renewal of registration of a health care staffing agency, the
13 commissioner shall issue a notice of denial. The health care staffing
14 agency may file an appeal with the commissioner within twenty days after
15 the date of mailing of the notice of denial. Except as otherwise provided
16 in the Health Care Staffing Agency Registration Act, an appeal under this
17 section shall be governed by the Administrative Procedure Act.

18 **Sec. 4. (1) A health care staffing agency shall:**

19 (a) Ensure that each staff worker complies with all applicable
20 requirements relating to the health requirements and qualifications for
21 personnel providing direct services or nursing services in a health care
22 entity;

23 (b) Document that each staff worker meets the minimum licensing,
24 certification, and health requirements as applicable for the staff
25 worker's position in the health care entity;

26 (c) Maintain a record for each staff worker and report, file, or
27 otherwise provide any required documentation to any external party or
28 regulator if such duties would otherwise be the responsibility of the
29 health care entity if the staff worker was an employee of the health care
30 entity. A health care technology platform shall make available records
31 stored on the platform for all staff workers, including documents

1 required pursuant to subdivisions (1)(b) and (d) and subsections (2) and
2 (3) of this section; and

3 (d) Maintain or require each staff worker to maintain professional
4 and general liability insurance coverage with minimum per occurrence
5 coverage of one million dollars and aggregate coverage of three million
6 dollars to insure against loss, damage, or expense incident to a claim
7 arising out of the death or injury of any individual as the result of
8 negligence or malpractice in the provision of services by the health care
9 staffing agency or a staff worker of the agency.

10 (2) A health care staffing agency shall submit a report to the
11 department on a quarterly basis, in the form and manner prescribed by the
12 commissioner, for each health care entity participating in medicare or
13 medicaid and contracting with the agency, that includes the following
14 information by provider type:

15 (a) A detailed list of the average amount charged to the health care
16 entity for each category of staff worker in Nebraska, including any
17 ancillary charges or fees; and

18 (b) A detailed list by licensing category of the average amount paid
19 by the agency to staff workers in Nebraska.

20 (3) A health care staffing agency shall provide the department with
21 (a) proof of a certificate or policy of insurance written by an insurance
22 carrier duly authorized to do business in this state which gives the
23 effective dates of workers' compensation insurance coverage indicating
24 that it is in force, (b) proof of a certificate evidencing approval of
25 self-insurance privileges as provided by the Nebraska Workers'
26 Compensation Court pursuant to section 48-145, or (c) a signed statement
27 indicating that the health care staffing agency is not required to carry
28 workers' compensation insurance pursuant to the Nebraska Workers'
29 Compensation Act.

30 (4) A health care staffing agency that ceases to engage in the
31 business of or act as a health care staffing agency shall notify the

1 department of such fact and maintain all files and other records relating
2 to its business as a health care staffing agency in Nebraska for a period
3 of two years. Such files and records shall be made available to the
4 department within seven calendar days after such files and records are
5 requested by the department.

6 **Sec. 5. (1) A health care staffing agency shall not:**

7 (a) Include in any contract with a staff worker or a health care
8 entity a noncompete clause restricting in any manner the employment
9 opportunities of a staff worker; or

10 (b) In any contract with a staff worker or a health care entity,
11 require payment of liquidated damages, employment fees, or other
12 compensation if the staff worker is subsequently hired as a permanent
13 employee of the health care entity.

14 (2) Any clause of a contract that violates this section is void.

15 **Sec. 6. (1) If the commissioner determines that a health care**
16 staffing agency (a) failed to register as required by the Health Care
17 Staffing Agency Registration Act, (b) violated section 4 or 5 of this
18 act, (c) failed to provide documentation pursuant to section 7 of this
19 act, or (d) knowingly provided to a health care entity a staff worker who
20 has an illegally or fraudulently obtained or issued diploma,
21 registration, license, certification, or background check, the
22 commissioner may take one or more of the following actions:

23 (i) Assess a civil penalty of not more than five hundred dollars for
24 a first offense and five thousand dollars for each offense thereafter; or

25 (ii) Revoke the registration for a period of one calendar year. This
26 revocation shall apply to all locations of the health care staffing
27 agency.

28 (2) If the commissioner determines that a civil penalty or
29 revocation is warranted under this section, the commissioner shall issue
30 a notice of citation that notifies the health care staffing agency of the
31 proposed civil penalty or revocation. The notice of citation shall be

1 sent by certified mail or any other manner of delivery by which the
2 United States Postal Service can verify delivery.

3 (3) A health care staffing agency may appeal any notice of citation
4 by filing an appeal with the commissioner within twenty days after the
5 date of mailing of the notice of citation. Except as otherwise provided
6 in the Health Care Staffing Agency Registration Act, an appeal under this
7 subsection shall be governed by the Administrative Procedure Act.

8 (4) No penalty or revocation shall become effective until the later
9 of the day following expiration of the appeal period or thirty days after
10 a decision on appeal has become final. Once a revocation becomes
11 effective, it is effective for one calendar year and applies to revoke
12 any then-current registration for all locations of the health care
13 staffing agency and to preclude the health care staffing agency for
14 applying for a new registration for any location during the revocation
15 period. A health care staffing agency that has substantially common
16 ownership or management as a health care staffing agency whose
17 registration has been revoked under this section shall not be eligible
18 for registration during the revocation period.

19 (5) In any civil action to enforce the Health Care Staffing Agency
20 Registration Act, the commissioner and the state may be represented by
21 any qualified attorney who is employed by the commissioner and is
22 designated by the commissioner for this purpose or, at the commissioner's
23 request, by the Attorney General.

24 **Sec. 7.** (1) The commissioner shall establish a system for the
25 public to report complaints against a health care staffing agency or
26 staff worker regarding compliance with the Health Care Staffing Agency
27 Registration Act. The commissioner shall investigate any complaint
28 received.

29 (2) The commissioner may investigate to determine if a health care
30 staffing agency is in compliance with the Health Care Staffing Agency
31 Registration Act and shall conduct random audits of health care staffing

1 agencies with staff workers in Nebraska. Any investigation or audit shall
2 take place at such times and places as the commissioner directs, with no
3 fewer than three business days' prior notice.

4 (3) For purposes of any investigation or audit under this section,
5 the commissioner or any officer designated by the commissioner may
6 administer oaths and affirmations, subpoena witnesses, compel their
7 attendance, take evidence, and require the production of any books,
8 papers, correspondence, memoranda, agreements, or other documents or
9 records that the commissioner deems relevant or material to the
10 investigation.

11 (4) In case of contumacy by or refusal to obey a subpoena issued to
12 any person, any court of competent jurisdiction, upon application by the
13 commissioner and determination that such refusal was not based on a
14 reasonable interpretation of applicable law, may issue to such person an
15 order requiring such person to appear before the commissioner or the
16 officer designated by the commissioner and produce documentary evidence,
17 if so ordered, or give evidence affecting the matter under investigation
18 or in question. Such person shall be afforded an opportunity to provide
19 the commissioner and, if an application is made to a court of competent
20 jurisdiction by the commissioner to enforce the subpoena, the court with
21 an analysis or argument as to why such contumacy or refusal is based on a
22 reasonable interpretation of applicable law. Any failure to obey the
23 order of the court may be punished by the court as contempt.

24 **Sec. 8.** (1) The department shall create a database of health care
25 staffing agencies registered under the Health Care Staffing Agency
26 Registration Act. The department shall make the database accessible to
27 the public on its website.

28 (2) The database shall include, but not be limited to, the following
29 information:

30 (a) The date of registration approval for the health care staffing
31 agency; and

1 (b) The date of expiration or revocation of the registration of the
2 health care staffing agency.

3 **Sec. 9.** The department may adopt and promulgate rules and
4 regulations to carry out the Health Care Staffing Agency Registration
5 Act.

6 **Sec. 10.** Section 81-401, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 81-401 The Governor, through the agency of the Department of Labor
9 created by section 81-101, shall have power:

- 10 (1) To foster, promote, and develop the welfare of wage earners;
- 11 (2) To improve working conditions;
- 12 (3) To advance opportunities for profitable employment;
- 13 (4) To collect, collate, assort, systematize, and report statistical
14 details relating to all departments of labor, especially in its relation
15 to commercial, industrial, social, economic, and educational conditions
16 and to the permanent prosperity of the manufacturing and productive
17 industries;
- 18 (5) To acquire and distribute useful information on subjects
19 connected with labor in the most general and comprehensive sense of the
20 word;
- 21 (6) To acquire and distribute useful information concerning the
22 means of promoting the material, social, intellectual, and moral
23 prosperity of laboring men and women;
- 24 (7) To acquire and distribute information as to the conditions of
25 employment and such other facts as may be deemed of value to the
26 industrial interests of the state;
- 27 (8) To acquire and distribute information in relation to the
28 prevention of accidents, occupational diseases, and other related
29 subjects;
- 30 (9) To acquire and distribute useful information regarding the role
31 of the part-time labor force and the manner in which such labor force

1 affects the economy and citizens of the state; and

2 (10) To administer and enforce all of the provisions of the
3 Employment Security Law, the Farm Labor Contractors Act, the Health Care
4 Staffing Agency Registration Act, and the Wage and Hour Act and Chapter
5 48, articles 2, 3, 4, and 5, and for that purpose there is imposed upon
6 the Commissioner of Labor the duty of executing all of the provisions of
7 such acts, law, and articles.

8 **Sec. 11.** This act becomes operative on January 1, 2026.

9 **Sec. 12.** Original section 81-401, Reissue Revised Statutes of
10 Nebraska, is repealed.