

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2293 Session of 2022

INTRODUCED BY BONNER, RAPP, EMRICK, B. MILLER, THOMAS, ZIMMERMAN, MENTZER, STRUZZI, GAYDOS AND BOYLE, JANUARY 27, 2022

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 30, 2022

AN ACT

1 Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An
2 act relating to health care; prescribing the powers and
3 duties of the Department of Health; establishing and
4 providing the powers and duties of the State Health
5 Coordinating Council, health systems agencies and Health Care
6 Policy Board in the Department of Health, and State Health
7 Facility Hearing Board in the Department of Justice;
8 providing for certification of need of health care providers
9 and prescribing penalties," providing for temporary health
10 care services agencies.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. The act of July 19, 1979 (P.L.130, No.48), known
14 as the Health Care Facilities Act, is amended by adding a
15 chapter to read:

CHAPTER 8-A

TEMPORARY HEALTH CARE SERVICES AGENCIES

18 Section 801-A. Definitions.

19 The following words and phrases when used in this chapter
20 shall have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

1 "Controlling person." Any of the following:

2 (1) A business entity, officer, program administrator or
3 director whose responsibilities include the direction of the
4 management of policies of a temporary health care services
5 agency.

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

9 "Health care facility." Any of the following:

10 (1) A long-term care nursing facility as defined in
11 section 802.1.

12 (2) A personal care home or an assisted living
13 residence, licensed by the Department of Human Services under
14 the act of June 13, 1967 (P.L.31, No.21), known as the Human
15 Services Code.

16 "Health care personnel." Any of the following:

17 (1) A nurse aide as defined in section 2 of the act of
18 June 9, 1997 (P.L.169, No.14), known as the Nurse Aide
19 Resident Abuse Prevention Training Act.

20 (2) A registered nurse as defined in 49 Pa. Code § 21.1
21 (relating to definitions).

22 (3) An LPN as defined in 49 Pa. Code § 21.141 (relating
23 to definitions).

24 (4) A direct care staff person as defined in 55 Pa. Code
25 § 2600.4 (relating to definitions).

26 "Person." Any of the following:

27 (1) An individual, firm, corporation, partnership or
28 association.

29 (2) A controlling person.

30 "Registration." A registration issued by the department to a

1 person that operates a temporary health care services agency
2 under section 802-A.

3 "Temporary health care services agency." As follows:

4 (1) A person engaged for hire in the business of
5 providing or procuring temporary employment in health care
6 facilities for health care personnel.

7 (2) The term does not include an individual who only
8 engages on the individual's own to provide services on a
9 temporary basis to health care facilities or a home health
10 care agency licensed under 28 Pa. Code Ch. 601 (relating to
11 home health care agencies).

12 Section 802-A. Registration generally.

13 (a) Requirement.--A person that owns or operates a temporary
14 health care services agency shall register annually with the
15 department and provide a list of each separate location.

16 (b) Forms.--The department shall establish forms and
17 procedures for processing each application under subsection (a).

18 The following apply:

19 (1) The application shall include at least the
20 following:

21 (i) The names and addresses of each person having an
22 ownership interest in the temporary health care services
23 agency.

24 (ii) If the owner is a corporation, copies of the
25 articles of incorporation or articles of association and
26 current bylaws, together with the names and addresses of
27 officers and directors.

28 (iii) Any other relevant information that the
29 department determines necessary to properly evaluate the
30 application.

1 (2) The application shall specify the policies and
2 procedures regarding how the temporary health care services
3 agency's records shall be immediately available at all times
4 to the department upon request, except for those records
5 subject to confidentiality protection under Federal and State
6 law.

7 (c) Fees.--The department shall establish a registration fee
8 for an application under subsection (a) of not less than \$1,000 <--
9 \$500 annually. The department may, by regulation, increase the <--
10 annual registration fee to meet the necessary expenses of the
11 department for the administration of this chapter.

12 (d) Term of registration and voided registration.--A
13 registration shall be effective for a period of one year from
14 the date of its issuance unless the temporary health care
15 services agency is sold or ownership is transferred, in which
16 case the registration shall be voided. The new owner or operator
17 of the temporary health care services agency shall apply and
18 receive approval for a new registration before operating the
19 temporary health care services agency.

20 Section 803-A. Conditions of registration.

21 (a) Requirements generally.--A temporary health care
22 services agency:

23 (1) Shall provide to the health care facility to which
24 any temporary health care personnel are supplied
25 documentation that each temporary employee meets all
26 licensing or certification, training and continuing education
27 standards for the position in which the temporary employee
28 will be working.

29 (2) Shall comply with all pertinent requirements
30 relating to the health and other qualifications of personnel

1 employed in health care facilities.

2 (3) May not restrict in any manner the employment
3 opportunities of ~~its employees~~ HEALTH CARE PERSONNEL. This <--
4 requirement shall also apply to a health care facility.

5 (4) Shall carry medical malpractice insurance of not
6 less than \$500,000 to insure against loss, damages or
7 expenses incident to a claim arising out of the death or
8 injury of any individual as the result of negligence or
9 malpractice in the provision of health care services by the
10 temporary health care services agency or an employee, agent
11 or contractor of the temporary health care services agency.

12 (5) Shall carry for each employee a dishonesty bond in
13 the amount of \$10,000.

14 (6) Shall maintain insurance coverage for workers'
15 compensation for all health care personnel provided or
16 procured by the temporary health care services agency.

17 ~~(7) Shall file with the Department of Revenue the name~~ <--
18 ~~and address of the bank, savings bank or savings association~~
19 ~~in which the temporary health care services agency deposits~~
20 ~~all employee income tax withholdings or, if the temporary~~
21 ~~health care services agency purports that the income is not~~
22 ~~subject to withholding, the name and address of any health~~
23 ~~care personnel whose income is derived from the placement by~~
24 ~~the temporary health care services agency.~~

25 (7) SHALL COMPLY WITH ALL PENNSYLVANIA EMPLOYER <--
26 WITHHOLDING REQUIREMENTS.

27 (8) Shall retain all records for 10 calendar years in a
28 manner to allow the records to be immediately available to
29 the department for inspection to determine compliance with
30 this chapter.

1 (9) Shall provide health care facilities with proof of
2 applicable criminal records checks for each temporary
3 employee consistent with their regulatory requirements.

4 (b) Supplemental requirements.--The requirements under
5 subsection (a) may be supplemented by rules or regulations
6 promulgated by the department in accordance with this chapter.

7 (c) Compliance.--Failure of a temporary health care services
8 agency to comply with this section shall subject the temporary
9 health care services agency to the sanctions imposed under
10 section 807-A.

11 Section 804-A. Oversight.

12 (a) Oversight by department.--The department shall provide
13 oversight of temporary health care services agencies through
14 complaint investigations and other actions necessary to ensure
15 compliance with the provisions of this chapter and the
16 regulations promulgated under section 808-A.

17 (b) Complaint process.--The department shall establish a
18 system for reporting complaints against a temporary health care
19 services agency or its employees. Complaints may be made by any
20 member of the public.

21 Section 805-A. Reports.

22 The department shall report annually on the progress in
23 implementing and administering this chapter. Each report shall
24 be submitted to the chairperson and minority chairperson of the
25 Health and Human Services Committee of the Senate and the
26 chairperson and minority chairperson of the Health Committee of
27 the House of Representatives.

28 Section 806-A. Remedies and plans of correction.

29 (a) Correction of violations.--Upon determining that a
30 temporary health care services agency has violated the

1 provisions of this chapter or the regulations promulgated under
2 section 808-A, the department may issue a written notice to the
3 person that owns or operates the temporary health care services
4 agency stating that a violation has been committed by the
5 temporary health care services agency. The following shall
6 apply:

7 (1) The department shall state in the written notice
8 under this subsection that the temporary health care services
9 agency is required to take immediate action to remedy the
10 violation or, if the temporary health care services agency is
11 unable to immediately remedy the violation, submit a plan of
12 correction to the department.

13 (2) If the temporary health care services agency is
14 required to submit a plan of correction to the department
15 under paragraph (1), the department may direct that the
16 violation be remedied within a specified period of time. The
17 temporary health care services agency must submit the plan of
18 correction within 30 days of the department's issuance of the
19 written notice under this subsection.

20 (3) If the department determines that the temporary
21 health care services agency is required to take immediate
22 corrective action, the department shall state in the written
23 notice under this subsection that the temporary health care
24 services agency is required to provide prompt confirmation to
25 the department that the corrective action has been taken.

26 (b) Contrary to public interest.--The department may not
27 provide an opportunity for a temporary health care services
28 agency to remediate a violation under subsection (a) without
29 imposing sanctions under section 807-A(b) if the department
30 determines that it is contrary to the public interest.

1 Section 807-A. Sanctions.

2 (a) Grounds for sanctions.--The department may sanction a
3 temporary health care services agency or a controlling person of
4 the temporary health care services agency or refuse to issue a
5 registration to the person that owns or operates the temporary
6 health care services agency, as applicable, for any of the
7 following reasons:

8 (1) Violating the provisions of this chapter or the
9 regulations promulgated under section 808-A.

10 (2) Failing to take immediate action to remedy a
11 violation of the provisions of this chapter or the
12 regulations promulgated under section 808-A in accordance
13 with section 806-A(a).

14 (3) Failing to submit a plan of correction to the
15 department or failing to comply with a plan of correction in
16 accordance with section 806-A(a).

17 (4) Engaging in fraud or deceit in obtaining or
18 attempting to obtain a registration.

19 (5) Lending the temporary health care services agency's
20 registration to another person.

21 (6) Enabling another person to manage or operate the
22 temporary health care services agency who is not subject to
23 the temporary health care services agency's registration.

24 (7) Using the registration of another person or in any
25 way knowingly aiding or abetting the improper granting of a
26 registration.

27 (8) Violating an order previously issued by the
28 department in a disciplinary matter.

29 (9) For a temporary health care services agency
30 operating in this Commonwealth on the effective date of this

1 section, continuing operations without complying with the
2 provisions of this chapter on or after the date when the
3 provisions of this chapter are applicable to the temporary
4 health services agency.

5 (10) Any other reasons specified in the regulations
6 promulgated by the department under section 808-A as
7 necessary to implement this chapter or to protect the health
8 and safety of health care personnel, health care facilities
9 or the public.

10 (b) Types of sanctions.--The department may impose any of
11 the following sanctions for a reason specified under subsection

12 (a):

13 (1) Deny the application for registration or renewal of
14 the registration.

15 (2) Revoke, suspend, limit or otherwise restrict the
16 registration.

17 (3) Impose a civil penalty of no more than \$5,000 for
18 each incident in which the temporary health care services
19 agency engages in conduct prohibited under subsection (a).
20 Each day when the temporary health care services agency
21 engages in conduct prohibited under subsection (a) shall
22 constitute a separate and distinct incident.

23 (4) Stay enforcement of any revocation, suspension,
24 limitation or other restriction under paragraph (2) or any
25 other discipline and place the temporary health care services
26 agency on probation with the right to vacate the probationary
27 order for noncompliance with the provisions of this chapter.

28 (c) Reinstatement of registration.--

29 (1) If a temporary health care services agency's
30 registration has been revoked by the department, the person

1 that owns or operates the temporary health care services
2 agency may not apply for reinstatement of the registration.

3 (2) No earlier than five years after the date of the
4 revocation of the registration, the person that owns or
5 operates the temporary health care services agency may submit
6 a petition to the department to apply for a new registration.
7 The person that owns or operates the temporary health care
8 services agency shall include an averment to facts to
9 establish that the temporary health care services agency has
10 been rehabilitated and the issuance of a new registration is
11 not contrary to the public interest.

12 (3) The department may grant or deny the petition under
13 paragraph (2) without conducting a hearing if department
14 accepts as true all facts averred in the petition, other than
15 the conclusory averments regarding the temporary health care
16 services agency's rehabilitation. If the department grants
17 the petition under paragraph (2), the person that owns or
18 operates the temporary health care services agency shall
19 comply with the provisions of this chapter. If the department
20 denies the petition under paragraph (2), the person that owns
21 or operates the temporary health care services agency may not
22 submit a new petition until one year has elapsed from the
23 date of the denial.

24 (d) Administrative proceedings.--The department shall hold
25 hearings and issue adjudications for proceedings conducted under
26 this chapter in accordance with 2 Pa.C.S. (relating to
27 administrative law and procedure) and shall conduct the
28 proceedings in accordance with 1 Pa. Code Pt. II (relating to
29 general rules of administrative practice and procedure).

30 (e) Judicial appeals.--Department adjudications issued under

1 this chapter may be appealed to Commonwealth Court under 42
2 Pa.C.S. § 763 (relating to direct appeals from government
3 agencies).

4 Section 808-A. Regulations.

5 Within two years of the effective date of this section, the
6 department shall promulgate regulations necessary to implement
7 the provisions of this chapter.

8 Section 2. This act shall apply as follows:

9 (1) For a temporary health care services agency that
10 commences operations in this Commonwealth after the effective
11 date of this section, the requirements in the addition of
12 Chapter 8-A of the act shall apply to the temporary health
13 care services agency beginning 90 days after the effective
14 date of this section.

15 (2) For a temporary health care services agency
16 operating in this Commonwealth on the effective date of this
17 section, the requirements in the addition of Chapter 8-A of
18 the act shall apply to the temporary health care services
19 agency beginning 180 days after the effective date of this
20 section.

21 Section 3. This act shall take effect immediately.