

Amendment No. 1 to HB1095

Terry
Signature of Sponsor

AMEND Senate Bill No. 702*

House Bill No. 1095

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 11, is amended by adding the following as a new part:

68-11-2201. Part definitions.

As used in this part:

(1) "Commission" means the health facilities commission;

(2) "Controlling person" means:

(A) A business entity, officer, program administrator, or director whose responsibilities include the direction of the management or policies of a temporary healthcare staffing agency; and

(B) An individual who, directly or indirectly, beneficially owns an interest in a corporation, partnership, or other business association that is a controlling person;

(3) "Direct care services":

(A) Means a service provided to a resident or patient in a healthcare facility by direct care staff; and

(B) Does not include:

(i) Services performed by persons in a healthcare facility that do not involve the provision of any service or treatment to a resident or patient of the healthcare facility;

(ii) The practice of medicine and surgery or osteopathic medicine and surgery by an individual licensed under title 63, chapter 6 or 9; or

(iii) The practice of nursing by a certified nurse practitioner or an advanced practice registered nurse certified or registered under title 63, chapter 7;

(4) "Direct care staff" means an individual who contracts with or is employed by a temporary healthcare staffing agency to provide direct care services to residents or patients in a healthcare facility;

(5) "Healthcare facility" means a nursing home or an assisted-care living facility as those terms are defined by § 68-11-201;

(6) "Person" means an individual, firm, corporation, partnership, or association; and

(7) "Temporary healthcare staffing agency" or "agency":

(A) Means a person, or other business entity:

(i) Engaged in whole or in part in the business of providing or procuring temporary employment in healthcare facilities for direct care staff; or

(ii) That operates a digital website or digital smartphone application that facilitates the provision of the engagement of direct care staff and accepts requests from healthcare facilities for direct care staff through its digital website or digital smartphone application; and

(B) Does not include:

(i) An individual who engages, only on the individual's own behalf, to provide the individual's services on a temporary basis to a healthcare facility; or

(ii) An agency operated by a hospital, assisted-care living facility, or nursing home as those terms are defined by § 68-11-201, or an affiliate of a hospital, assisted-care living facility, or nursing home, if the purpose of the agency is solely procuring, furnishing, or referring temporary or permanent direct care staff for employment at that healthcare provider, or any affiliates under common ownership.

68-11-2202. Requirement for registration and certification.

(a) A temporary healthcare staffing agency shall not be operated, maintained, or advertised in this state without registering with the commission. Each separate location of a temporary healthcare staffing agency shall register and obtain a separate registration.

(b) Each application to operate a temporary healthcare staffing agency must be made on forms adopted by the commission. The commission shall promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to establish the application process for temporary healthcare staffing agency registration. The application must include:

(1) The names and addresses of any controlling person;

(2) The names and addresses of any owner who does not meet the definition of a controlling person. If the owner is a corporation, then the application must include copies of the corporation's articles of incorporation and current bylaws, and the names and addresses of its officers and directors;

(3) The names and addresses of the person or persons under whose management or supervision the temporary healthcare staffing agency will be operated;

(4) Satisfactory proof that the temporary healthcare staffing agency will maintain compliance with this part;

(5) A policy and procedure that describes how the temporary healthcare staffing agency's records will be immediately available to the commission upon request; and

(6) Any other relevant information that the commission determines is necessary to properly evaluate an application for registration.

(c) The commission may establish a registration fee in an amount sufficient to fund the projected costs of administering registration of temporary healthcare staffing agencies, but in no case may such fee exceed five thousand dollars (\$5,000).

(d) The commission shall deny any application for temporary healthcare staffing agency registration for failure to provide the information required by this section.

(e) A registration issued by the commission to an agency is effective for a period of one (1) year from the date of its issuance unless the registration is revoked for noncompliance with this section. If a controlling person changes, the temporary healthcare staffing agency is sold, or management is transferred, then the registration of the agency is voided and the new controlling person, owner, or manager may apply for a new registration.

68-11-2203. Minimum requirements and record retention.

(a) A temporary healthcare staffing agency shall:

(1) Retain documentation that each direct care staff contracted with or employed by the agency meets all licensing, certification, training, and continuing education standards for the position in which the direct care staff will be working, in compliance with any federal, state, or local requirements;

(2) In response to a request by a healthcare facility to whom direct care staff are supplied to work, provide documentation that each direct care staff meets the requirements of subdivision (a)(1);

(3) Comply with all pertinent requirements relating to the health and other qualifications of personnel employed in a healthcare facility;

(4) Carry an employee dishonesty bond in an amount of not less than ten thousand dollars (\$10,000) per occurrence;

(5) Maintain coverage for workers' compensation for all direct care staff;
and

(6) Retain all records for five (5) calendar years and make all records immediately available to the commission upon request.

(b) A temporary healthcare staffing agency shall provide any records, unless otherwise privileged, pertinent to an investigation conducted by any of the following:

(1) A representative of adult protective services actively involved in the conduct of an investigation pursuant to title 71, chapter 6;

(2) The department of health or its representatives, designees, or employees under § 68-11-117, in the same manner that a healthcare provider must make records available;

(3) The health facilities commission if related to a violation of this part or any law or regulation of the board for licensing healthcare facilities relating to a healthcare facility with which the agency contracts; and

(4) Any law enforcement agency conducting a criminal investigation, including, but not limited to, the medicaid fraud control unit.

68-11-2204. Prohibited contractual provisions.

(a) A temporary healthcare staffing agency shall not:

(1) Restrict in any manner the employment opportunities of any direct care staff that is contracted with or employed by the agency, including, but not limited to, using contract buy-out provisions or contract non-compete clauses;

(2) Require the payment of liquidated damages, employment fees, or other compensation in any contract with direct care staff or a healthcare facility, if the direct care staff is hired as a permanent employee of the healthcare facility;

or

(3) Solicit or recruit the current staff of a healthcare facility, or require, as a condition of employment, assignment, or referral, that the agency direct care staff recruit new employees for the agency from among the current employees of the healthcare facility to which the agency direct care staff are employed, assigned, or referred.

(b) The provisions of a contract between a temporary healthcare staffing agency and either direct care staff or a healthcare facility that violate this part are void and unenforceable in any court of law.

68-11-2205. Reports.

(a) A temporary healthcare staffing agency shall submit biannual reports to the commission.

(b) The commission shall promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to establish requirements for temporary healthcare staffing agencies to submit biannual reports. The biannual reports must include, but are not limited to, the following:

(1) The name, professional licensure or certification, and assigned healthcare facility for each direct care staff;

(2) The length of time the direct care staff have been assigned to each healthcare facility and the total hours worked;

(3) A detailed listing of the average amount charged during each reporting period to a healthcare facility for each category of direct care staff providing services to the healthcare facility;

(4) A detailed listing of the average amount paid during each reporting period to direct care staff for their services for each category of direct care staff providing services to the healthcare facility;

(5) The agency's certification that each direct care staff contracted to a healthcare facility during the reporting period had a current, unrestricted license

or certification in good standing and met the training and continuing education standards for the position with the healthcare facility throughout the entirety of the reporting period; and

(6) The agency's certification that each direct care staff contracted to a healthcare facility had successfully completed all background checks required by federal and state law and rule relating to the position and healthcare facility in which the direct care staff was placed or assigned during the reporting period.

(c) Biannual reports required by this section are considered proprietary information that is confidential and not subject to public inspection pursuant to title 10, chapter 7, part 5. However, the commission shall annually prepare reports of aggregate data that does not identify any data specific to any temporary healthcare staffing agency.

68-11-2206. Penalties.

(a) The commission shall revoke the registration of a temporary healthcare staffing agency that knowingly provides to a healthcare facility a direct care staff with an illegally or fraudulently obtained or issued diploma, registration, license, certificate, criminal records check, or other item required for employment by a healthcare facility. The commission shall immediately notify the agency that its registration will be revoked in thirty (30) days.

(b) The commission shall not issue or renew a temporary healthcare staffing agency registration if a controlling person's registration has been revoked due to noncompliance with requirements in this section within five (5) years from the date of nonrenewal or revocation.

(c) If a temporary healthcare staffing agency fails to comply with the reporting requirements in § 68-11-2205, then the commission shall assess a penalty of one hundred dollars (\$100) for each day such agency is not in compliance. The commission may waive, in whole or in part, any penalty upon a determination that there is good cause for such a waiver.

(d) The commission may suspend or revoke the license of, or impose a fine not to exceed five thousand dollars (\$5,000) per violation, against any temporary healthcare staffing agency that fails to comply with this part or the rules promulgated by the commission in accordance with this part.

(e) A temporary healthcare staffing agency may request a hearing in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to appeal a denial of an application for registration, revocation of registration, or an imposed monetary penalty.

68-11-2207. Authority to promulgate rules.

The commission shall promulgate rules to effectuate this part no later than September 1, 2023. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and may be promulgated as emergency rules pursuant to § 4-5-208.

SECTION 2. Tennessee Code Annotated, Section 47-18-5103(a)(1), is amended by adding the following as a new subdivision:

(l) Temporary healthcare staffing provided by a temporary healthcare staffing agency as defined by § 68-11-2201.

SECTION 3. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4. This act takes effect upon becoming a law, the public welfare requiring it.