

Enrolled
House Bill 2665

Sponsored by Representative NOSSE, Senator LIEBER; Representative SMITH G, Senators CAMPOS, GELSER BLOUIN, PATTERSON (Presession filed.)

CHAPTER

AN ACT

Relating to temporary staffing agencies; creating new provisions; amending ORS 676.625 and sections 1, 5 and 7, chapter 92, Oregon Laws 2022; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2023 Act is added to and made a part of sections 1 to 7, chapter 92, Oregon Laws 2022.

SECTION 2. (1) The Health Licensing Office shall establish a process to receive and investigate complaints regarding a temporary staffing agency authorized under section 2, chapter 92, Oregon Laws 2022, or current or former personnel of a temporary staffing agency, including any current or former personnel employed by a temporary staffing agency or for whom a temporary staffing agency procured temporary employment or that the temporary staffing agency referred or assigned to temporary employment. The process established under this section must allow any person to submit a complaint. The office shall investigate a complaint received through the process established under this section and shall report its findings to the complainant and the temporary staffing agency to which the complaint relates.

(2) The office may impose civil penalties on a temporary staffing agency in addition to the civil penalties described in section 7, chapter 92, Oregon Laws 2022, or revoke, suspend or impose conditions on the authorization of a temporary staffing agency pursuant to criteria adopted by the Oregon Health Authority by rule, in circumstances including but not limited to the following:

(a) If personnel currently or formerly employed by a temporary staffing agency, or for whom a temporary staffing agency procures temporary employment or that the temporary staffing agency refers or assigns to temporary employment:

(A) Engages in abuse, neglect or exploitation of a patient, resident, client or consumer of the entity that engaged the temporary staffing agency;

(B) Engages in conduct that presents a threat to the health, safety or welfare of others, including but not limited to a patient, resident, client, consumer or employee of the entity that engaged the temporary staffing agency; or

(C) Does not meet the qualifications or requirements for the position in which the personnel is working, including but not limited to qualifications or requirements for knowledge, skills or experience or professional authorization; or

(b) If the temporary staffing agency is not in compliance with section 2, 4 or 5, chapter 92, Oregon Laws 2022, or rules adopted under section 2, 4 or 5, chapter 92, Oregon Laws 2022.

SECTION 3. Section 1, chapter 92, Oregon Laws 2022, is amended to read:

Sec. 1. As used in [sections 1 to 7 of this 2022 Act] **sections 1 to 7, chapter 92, Oregon Laws 2022:**

(1) **“Hospital” has the meaning given that term in ORS 442.015.**

(2) **“Personnel” means:**

[(a) An individual, regardless of whether the individual is licensed or otherwise authorized by the state to practice a health care occupation or profession, who provides health care services or assistance with activities of daily living to clients, patients or residents for or on behalf of an entity that engages the temporary staffing agency with which the individual is associated.]

(a) A registered nurse, licensed practical nurse, certified medical assistant, certified nursing assistant or direct caregiver who provides health care services or assistance with activities of daily living to clients, patients or residents for or on behalf of an in-home care agency as defined in ORS 443.305, a facility with a memory care endorsement as described in ORS 443.886, a residential care facility as defined in ORS 443.400 or a skilled nursing facility as defined in ORS 442.015 that engages the temporary staffing agency with which the registered nurse, licensed practical nurse, certified medical assistant, certified nursing assistant or direct caregiver is associated; or

(b) A registered nurse or certified nursing assistant who provides health care services to patients for or on behalf of a hospital that engages the temporary staffing agency with which the registered nurse or certified nursing assistant is associated.

[(2)(a)] **(3)(a) “Temporary staffing agency” means an entity that operates in this state for the purpose of providing temporary work to personnel providing health care services or assistance with activities of daily living for or on behalf of entities that engage the temporary staffing agency.**

(b) “Temporary staffing agency” does not include:

(A) A staff arrangement established by an entity solely for use by the entity, or by any entity associated with the entity, and in which the only costs are salaries paid to individuals who perform work;

(B) An individual who provides the individual’s services on a temporary basis;

(C) An employment agency as defined in ORS 658.005;

(D) Home health agencies licensed under ORS 443.015;

(E) In-home care agencies licensed under ORS 443.315; or

(F) Home care workers and personal support workers listed on the home care registry as defined in ORS 410.600.

SECTION 4. Section 5, chapter 92, Oregon Laws 2022, is amended to read:

Sec. 5. (1) A temporary staffing agency authorized under [section 2 of this 2022 Act] **section 2, chapter 92, Oregon Laws 2022,** shall:

(a) Ensure all personnel [for which] the temporary staffing agency employs or for whom the temporary staffing agency procures [or provides] temporary employment or that the temporary staffing agency refers or assigns to temporary employment, for the practice or performance of the services provided by the personnel:

(A) [Meet] Meets any professional authorization or qualification requirements established [for the practice or performance of the services provided by the personnel.];

(B) Has completed any state or nationwide criminal records check required for the position in which the personnel is employed or to which the personnel is assigned or referred;

(C) Has completed any required training and continuing education for the position in which the personnel is employed or to which the personnel is assigned or referred;

(D) Possesses the necessary skills, knowledge and experience and meet any other relevant requirements for the position in which the personnel is employed or to which the personnel is assigned or referred; and

(E) Complies with any relevant requirements related to the health of staff employed by the entity at which the personnel is employed or to which the personnel is assigned or referred.

(b) Assign personnel to settings for which the personnel *[have]* **has** the appropriate work experience and background to provide the services required by the specific setting.

(c) Retain records for at least 10 years in a manner that makes the records immediately available to the Health Licensing Office upon request of the office.

(d) Meet any other requirements established by the office by rule.

(2) A temporary staffing agency authorized under *[section 2 of this 2022 Act]* **section 2, chapter 92, Oregon Laws 2022**, may charge to an entity that engages the temporary staffing agency fees or other amounts related to or associated with the subsequent hiring of personnel by the entity, or pay to the entity such fees or amounts if the temporary staffing agency hires the entity's staff members, if:

(a) The entity or the temporary staffing agency directly solicits, or attempts to solicit, employment of the personnel or the entity's staff members; and

(b) An agreement between the temporary staffing agency and the entity allows each party to charge to or receive from the other party the fees or amounts described in this subsection.

SECTION 5. Section 7, chapter 92, Oregon Laws 2022, is amended to read:

Sec. 7. (1) The Health Licensing Office may impose on a temporary staffing agency a civil penalty not to exceed \$500 per day per violation of *[section 2, 4 or 5 of this 2022 Act]* **section 2 of this 2023 Act or section 2, 4 or 5, chapter 92, Oregon Laws 2022**. The office shall consider as a separate violation each assignment of an individual personnel member in violation of *[section 5 (1) of this 2022 Act]* **section 5 (1), chapter 92, Oregon Laws 2022**.

(2) Moneys from civil penalties imposed under this section shall be deposited in the Health Licensing Office Account established under ORS 676.625 for the administration of *[sections 1 to 7 of this 2022 Act]* **sections 1 to 7, chapter 92, Oregon Laws 2022**.

SECTION 6. ORS 676.625 is amended to read:

676.625. (1) The Health Licensing Office shall establish by rule and shall collect fees and charges to carry out the office's responsibilities under ORS 676.560 to 676.625, 676.850 and 676.992 and any responsibility imposed on the office pertaining to the boards, councils and programs administered and regulated by the office pursuant to ORS 676.565.

(2) The Health Licensing Office Account is established separate and distinct from the General Fund. The account shall consist of the moneys credited to the account by the Legislative Assembly. All moneys in the account are continuously appropriated to and shall be used by the office for payment of expenses of the office in carrying out the duties, functions and obligations of the office, and for payment of the expenses of the boards, councils and programs administered and regulated by the office pursuant to ORS 676.565. The office shall keep a record of all moneys credited to the account and report the source from which the moneys are derived and the activity of each board, council or program that generated the moneys.

(3) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to establishing fees and charges credited to the account, the fees and charges may not exceed the cost of administering the office and the boards, councils and programs within the office, as authorized by the Legislative Assembly within the office's budget, as the budget may be modified by the Emergency Board.

(4) All moneys credited to the account pursuant to ORS 676.576 and 676.806, and moneys credited to the account from other office and program fees established by the office by rule, are continuously appropriated to the office for carrying out the duties, functions and powers of the office under ORS 676.560 to 676.625, 676.806, 676.850 and 676.992.

(5) The moneys received from civil penalties assessed under ORS 676.992 **and section 2 of this 2023 Act** shall be deposited and accounted for as are other moneys received by the office and shall be for the administration and enforcement of the statutes governing the boards, councils and programs administered by the office.

SECTION 7. ORS 676.625, as amended by section 14, chapter 92, Oregon Laws 2022, is amended to read:

676.625. (1) The Health Licensing Office shall establish by rule and shall collect fees and charges to carry out the office's responsibilities under ORS 676.560 to 676.625, 676.850 and 676.992 and any responsibility imposed on the office pertaining to the boards, councils and programs administered and regulated by the office pursuant to ORS 676.565.

(2) The Health Licensing Office Account is established separate and distinct from the General Fund. The account shall consist of the moneys credited to the account by the Legislative Assembly. All moneys in the account are continuously appropriated to and shall be used by the office for payment of expenses of the office in carrying out the duties, functions and obligations of the office, and for payment of the expenses of the boards, councils and programs administered and regulated by the office pursuant to ORS 676.565. The office shall keep a record of all moneys credited to the account and report the source from which the moneys are derived and the activity of each board, council or program that generated the moneys.

(3) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to establishing fees and charges credited to the account, the fees and charges may not exceed the cost of administering the office and the boards, councils and programs within the office, as authorized by the Legislative Assembly within the office's budget, as the budget may be modified by the Emergency Board.

(4) All moneys credited to the account pursuant to ORS 676.576 and 676.806, and moneys credited to the account from other office and program fees established by the office by rule, are continuously appropriated to the office for carrying out the duties, functions and powers of the office under ORS 676.560 to 676.625, 676.806, 676.850 and 676.992.

(5) The moneys received from civil penalties assessed under ORS 676.992 and section 7, chapter 92, Oregon Laws 2022, **and section 2 of this 2023 Act** shall be deposited and accounted for as are other moneys received by the office and shall be for the administration and enforcement of the statutes governing the boards, councils and programs administered by the office.

SECTION 8. Sections 9 to 11 of this 2023 Act are added to and made a part of sections 1 to 7, chapter 92, Oregon Laws 2022.

SECTION 9. (1) The Oregon Health Authority shall adopt rules to establish the maximum rates that, except as provided in section 10 of this 2023 Act, a temporary staffing agency authorized under section 2, chapter 92, Oregon Laws 2022, may charge to or receive from an entity that engages the temporary staffing agency. The authority shall establish more than one maximum rate under this section. The maximum rates established under this section must, for the category of personnel for which the maximum rates are established:

(a) Be based on the most recently available wage data from the Employment Department and include any applicable fringe benefits, charges for administrative and contract fees and other special charges; and

(b) Bear a reasonable relationship to the wage data described in paragraph (a) of this subsection.

(2) The differences in the maximum rates established under this section must be based on factors including but not limited to the minimum wages in geographic regions of this state, shift differentials, holiday pay, type of licensed care setting, relevant state and federal regulatory requirements, personnel with specialty training and information obtained through the consultation described in subsection (3) of this section.

(3) The authority shall consult with at least the following in establishing the maximum rates under this section:

(a) Temporary staffing agencies authorized under section 2, chapter 92, Oregon Laws 2022, or representatives of temporary staffing agencies authorized under section 2, chapter 92, Oregon Laws 2022; and

(b) Providers of long term care services, acute care services and primary care services, or representatives of the providers described in this paragraph.

(4) The authority shall annually evaluate the maximum rates established under this section and may, based on changes in the labor market, the wage data described in subsection

(1) of this section and other factors the authority considers relevant, adjust the maximum rates established under this section. In evaluating and adjusting the maximum rates established under this section, the authority shall consult with the individuals and entities described in subsection (3) of this section.

(5) The authority may adopt rules to carry out this section.

SECTION 10. A temporary staffing agency that is engaged by a hospital may charge to and receive from the hospital rates that exceed the maximum rates established under section 9 of this 2023 Act if the rates apply to 25 or fewer personnel in a single licensed care setting.

SECTION 11. (1) The Oregon Health Authority shall establish a process through which a temporary staffing agency or an entity that engages a temporary staffing agency may apply to the authority for a waiver of the maximum rates described in section 9 of this 2023 Act in circumstances other than those described in subsection (2) of this section. The authority shall establish a period of time for which a waiver granted under this section is valid and a process through which a waiver may be renewed.

(2)(a) The authority shall establish a process through which an entity that intends to engage a temporary staffing agency authorized under section 2, chapter 92, Oregon Laws 2022, at a rate higher than a maximum rate established under section 9 of this 2023 Act, may request an emergency waiver of the maximum rates. The process must allow the entity to submit a written request for an emergency waiver if:

(A) There is an emergency, as defined in ORS 401.025, a state of emergency is declared pursuant to ORS 401.165 or a public health emergency is declared pursuant to ORS 433.441; and

(B) The entity intends to engage the temporary staffing agency in order to respond to the emergency or state of emergency.

(b) A request for an emergency waiver made pursuant to this subsection shall be automatically approved and issued upon submission to the authority.

(c) An emergency waiver issued under this subsection is valid for 90 days and may be renewed. The authority shall approve or deny a request to renew an emergency waiver within three business days after receiving the request.

(d) A temporary staffing agency engaged by an entity for which an emergency waiver is issued under this subsection may charge to or receive from the entity rates consistent with the emergency waiver.

(3) The authority may adopt rules to carry out this section.

SECTION 12. Section 2 of this 2023 Act is amended to read:

Sec. 2. (1) The Health Licensing Office shall establish a process to receive and investigate complaints regarding a temporary staffing agency authorized under section 2, chapter 92, Oregon Laws 2022, or current or former personnel of a temporary staffing agency, including any current or former personnel employed by a temporary staffing agency or for whom a temporary staffing agency procured temporary employment or that the temporary staffing agency referred or assigned to temporary employment. The process established under this section must allow any person to submit a complaint. The office shall investigate a complaint received through the process established under this section and shall report its findings to the complainant and the temporary staffing agency to which the complaint relates.

(2) The office may impose civil penalties on a temporary staffing agency in addition to the civil penalties described in section 7, chapter 92, Oregon Laws 2022, or revoke, suspend or impose conditions on the authorization of a temporary staffing agency pursuant to criteria adopted by the Oregon Health Authority by rule, and in circumstances including but not limited to the following:

(a) If personnel currently or formerly employed by a temporary staffing agency, or for whom a temporary staffing agency procures temporary employment or that the temporary staffing agency refers or assigns to temporary employment:

(A) Engages in abuse, neglect or exploitation of a patient, resident, client or consumer of the entity that engaged the temporary staffing agency;

(B) Engages in conduct that presents a threat to the health, safety or welfare of others, including but not limited to a patient, resident, client, consumer or employee of the entity that engaged the temporary staffing agency; or

(C) Does not meet the qualifications or requirements for the position in which the personnel is working, including but not limited to qualifications or requirements for knowledge, skills or experience or professional authorization; or

(b) If the temporary staffing agency is not in compliance with section 2, 4 or 5, chapter 92, Oregon Laws 2022, **or section 9, 10 or 11 of this 2023 Act**, or rules adopted under section 2, 4 or 5, chapter 92, Oregon Laws 2022, **or section 9, 10 or 11 of this 2023 Act**.

SECTION 13. Section 1, chapter 92, Oregon Laws 2022, as amended by section 3 of this 2023 Act, is amended to read:

Sec. 1. As used in sections 1 to 7, chapter 92, Oregon Laws 2022:

(1) “Hospital” has the meaning given that term in ORS 442.015.

(2) “Personnel” means:

(a) A registered nurse, licensed practical nurse, certified medical assistant, certified nursing assistant or direct caregiver who provides health care services or assistance with activities of daily living to clients, patients or residents for or on behalf of an in-home care agency as defined in ORS 443.305, a facility with a memory care endorsement as described in ORS 443.886, a residential care facility as defined in ORS 443.400 or a skilled nursing facility as defined in ORS 442.015 that engages the temporary staffing agency with which the registered nurse, licensed practical nurse, certified medical assistant, certified nursing assistant or direct caregiver is associated; or

(b) A registered nurse or certified nursing assistant who provides health care services to patients for or on behalf of a hospital that engages the temporary staffing agency with which the registered nurse or certified nursing assistant is associated.

(3) **“Rate” means the total amount that a temporary staffing agency may charge to or receive from an entity that engages the temporary staffing agency to assign personnel to the entity on a temporary basis.**

[3(a)] (4)(a) “Temporary staffing agency” means an entity that operates in this state for the purpose of providing temporary work to personnel providing health care services or assistance with activities of daily living for or on behalf of entities that engage the temporary staffing agency.

(b) “Temporary staffing agency” does not include:

(A) A staff arrangement established by an entity solely for use by the entity, or by any entity associated with the entity, and in which the only costs are salaries paid to individuals who perform work;

(B) An individual who provides the individual’s services on a temporary basis;

(C) An employment agency as defined in ORS 658.005;

(D) Home health agencies licensed under ORS 443.015;

(E) In-home care agencies licensed under ORS 443.315; or

(F) Home care workers and personal support workers listed on the home care registry as defined in ORS 410.600.

SECTION 14. Section 7, chapter 92, Oregon Laws 2022, as amended by section 5 of this 2023 Act, is amended to read:

Sec. 7. (1) The Health Licensing Office may impose on a temporary staffing agency a civil penalty not to exceed \$500 per day per violation of section 2, **9, 10 or 11** of this 2023 Act or section 2, 4 or 5, chapter 92, Oregon Laws 2022. The office shall consider as a separate violation each assignment of an individual personnel member in violation of section 5 (1), chapter 92, Oregon Laws 2022.

(2) Moneys from civil penalties imposed under this section shall be deposited in the Health Licensing Office Account established under ORS 676.625 for the administration of sections 1 to 7, chapter 92, Oregon Laws 2022.

SECTION 15. (1) Sections 9 to 11 of this 2023 Act, the amendments to sections 1 and 7, chapter 92, Oregon Laws 2022, by sections 13 and 14 of this 2023 Act and the amendments to section 2 of this 2023 Act by section 12 of this 2023 Act become operative on January 1, 2025.

(2) The Health Licensing Office and the Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the authority and the office to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the authority and the office by sections 9 to 11 of this 2023 Act, the amendments to sections 1 and 7, chapter 92, Oregon Laws 2022, by sections 13 and 14 of this 2023 Act and the amendments to section 2 of this 2023 Act by section 12 of this 2023 Act.

SECTION 16. In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Health Authority, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$2,000,717 for the purposes of carrying out the provisions of sections 9 to 11 of this 2023 Act, the amendments to sections 1 and 7, chapter 92, Oregon Laws 2022, by sections 13 and 14 of this 2023 Act and the amendments to section 2 of this 2023 Act by section 12 of this 2023 Act.

SECTION 17. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by House June 8, 2023

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

Passed by Senate June 22, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

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Secretary of State