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Nurse Staffing Rate Caps Will Harm Oregon Health Care Workers and Patients

Nurse staffing agencies play a major role in patient care by providing supplemental nursing services in every geographical region of the country when and where it is most needed. At no time in history has the need for those services been more vividly demonstrated than during the Covid-19 pandemic.

Unique factors affected the cost of nurse staffing during the pandemic

The pandemic created unprecedented spikes in demand for nurses which drove up the cost of nurse staffing. Some have questioned whether the increases were justified. Some even called for caps on bill rates, which are unnecessary and counterproductive—and no new caps have been adopted by any state.

Critical to sound policymaking is an understanding of the factors that drive nurse staffing costs—which are a matter of basic supply and demand. The pandemic caused demand for nurses to spike while at the same time driving nurses away due to stress, overwork, physical danger, and travel demands, thus aggravating already existing nursing shortages in many markets. This acute supply-demand imbalance forced health care facilities to offer, and nurse staffing agencies to pay, much higher wages to attract and retain nurses—which drove up the cost of supplemental staffing.

The erratic spikes in illnesses and hospitalizations created significant supply-demand fluctuation as the pandemic coursed unpredictably and disparately throughout the country causing variations in staffing costs. Costs also varied based on the structural supply of nurses in particular states, regions, and areas within states, with higher concentrations of nurses in urban versus rural locations. Areas of lower concentration required greater assistance in the form of agency travel nurses, often at higher cost, especially in remote locations.

Nurse staffing agency earnings as a percentage of revenue were stable during the pandemic

Despite sharply increased revenue driven by Covid-driven spikes in demand for agency nurses, agency pre-tax earnings as a percentage of revenue were essentially stable during the pandemic because agency markups over wages remained relatively constant.

A survey of travel nurse agencies by an independent research firm showed that earnings before interest, depreciation, taxes, and amortization (EBIDTA)—averaged only 12.4% in 2020. While revenues spiked, 2020 EBIDTA was only slightly higher than the 11.1% in 2019 because major overhead expenses, like rent, are fixed thus amplifying any dollar increases in revenue. See, Travel Nurse Benchmarking Survey, Staffing Industry Analysts; National Association of Travel Healthcare Organizations (2021 Update). Net after tax profits were even lower—a reflection of the inherently high volume, low profit nature of the staffing business.

Gross profit margins[1] actually *declined* slightly, according to the survey, from 25% of revenue in 2019 to 24.6% in 2020 because bill rate increases were offset by higher nurse wages, which rose from 39% to 42% of revenue. Thus, in 2020, the first year of the pandemic, 75¢ of every dollar in nurse staffing revenue went to nurse wages and the direct costs of employing them (see attached chart). Updated survey data showed that gross margin

[1] Gross profit = revenue minus cost of services, including wages, benefits, and other labor-related costs like payroll taxes; employee screening; professional liability, workers' compensation, and unemployment insurance; travel, meal, and housing costs, plus overhead expenses like marketing, rent, and office administration. Gross profit *margin* is gross profit expressed as a percentage of revenue.

was essentially flat in 2021 over 2020. And a recent Wall Street Journal Article noted a significant decline in the use of nurse staffing in 2022 which naturally has led to lower bill rates.

Another factor moderating agency earnings is that over 70% of travel nurse revenue, according to the survey, was generated through third-party buying arrangements, which health care facilities use to lower their staffing costs and help them focus on their core mission—patient care.

Alleged excess pricing should be addressed individually not through industry-wide price controls

The unprecedented spikes in demand for agency nurses during the pandemic has led to staff shortages and created patient care challenges. Rate caps would make things worse. History shows that price controls always distort markets and caps on bill rates would prevent them from paying market wages—forcing nurses to work in other states or leave the profession entirely, to the detriment of patients. Faced with those prospects, Massachusetts—one of only two states with nurse rate caps—was forced to increase its cap in 2020 and 2021. The other state, Minnesota, was forced to waive its caps during Covid.

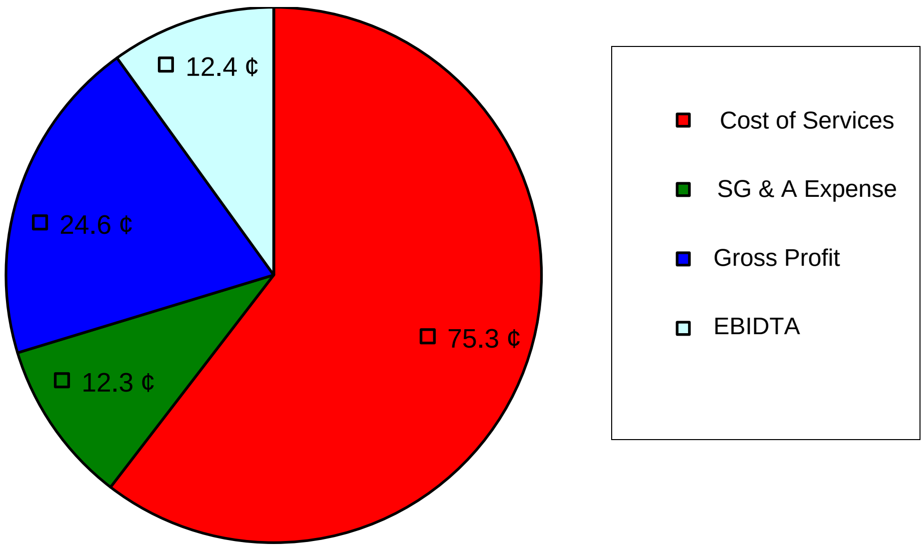
Nurse staffing is a highly competitive business, not just among staffing agencies but among the nurses themselves, and prices are sensitive to market conditions. Transitory spikes in demand such as public health emergencies can lead to price distortions and potential abuses. Industry-wide rate caps, however, are not the answer to isolated abuses because they would penalize the overwhelming majority of agencies that act responsibility and would aggravate the nurse shortage. Instead of punitive price controls, cases of large price increases that cannot be justified by increased costs should be addressed individually. **Attached** is a proposed method for addressing such cases based on existing Oregon law that covers price increases during “abnormal disruption” of markets.

Conclusion

Nurse staffing agency costs increased during the pandemic due to dramatic spikes in nurses’ wages—but the costs varied due to Covid’s erratic and unpredictable patterns and wide geographical disparities in the supply of nurses. Staffing agency gross profit margins and pre-tax earnings have been stable, belying assertions of price gouging. Nurse staffing rate caps, which are costly and burdensome to administer, are unnecessary and counterproductive because they will distort the nursing market and reduce the supply of nurses. Instead, policy makers should address excess pricing issues on an individual basis as in the **attached proposal**.

The American Staffing Association is the voice of the U.S. staffing industry. Health care staffing agencies serve small and large health care organizations throughout the country by quickly and efficiently providing high quality nurses, physicians, and other health care professionals in a wide range of skill categories on an as-needed basis.

Makeup of Bill Rates: Year One of Pandemic



In 2020, approximately 75¢ of every dollar in revenue went to wages and employee costs

Cost of Services - direct costs of employing temporary nurses; includes wages, benefits (e.g., vacation and holiday pay and retirement and health plans), FICA, FUTA, SUTA, workers' compensation, drug testing, background checking, etc., and state mandates (e.g., state disability programs)

SG&A (Selling and General & Administrative Expense - indirect costs of finding workers and placing them in jobs; includes advertising, recruiting, interviewing, testing, training, and placement of temporary nurses; payroll check production; H.R. and benefits administration; salaries and benefits of full-time home office and branch office staff; tax and regulatory compliance; insurance coverages; office rent and equipment, etc.

Gross Profit: - revenue minus Cost of Services

EBIDTA: - earnings before interest, taxes, depreciation, and amorization

* Source: Travel Nurse Benchmarking Survey, Staffing Industry Analysts: National Association of Travel Healthcare Organizations (2021 Update)

AMERICAN STAFFING ASSOCIATION
Proposed Amendment of Oregon Unfair Trade Practices Law to include Temporary Staffing Agencies

Oregon Revised Statutes
Volume 10, Title 32, Chapter 401

Emergency Management and Services

ORS 401.960

Definitions for ORS 401.960, 401.962, 401.965 and 401.970

For the purposes of this section and ORS 401.962 (Legislative findings), 401.965 (Abnormal disruption of market) and 401.970 (Applicability of remedies):

(1) "Abnormal disruption of the market" means any emergency that prevents ready availability of essential consumer goods or services.

(2) "Essential consumer goods or services" means goods or services that:

(a) Are or may be bought or acquired primarily for personal, family or household purposes, including but not limited to residential construction materials or labor, shelter for payment such as a hotel room, food, water and petroleum products such as gasoline or diesel fuel; and (b) Are necessary for the health, safety or welfare of consumers. [2009 c.718 §20]

(c) For purposes of this section, "essential consumer service" shall include services provided by a "temporary staffing agency" [as defined in Section 1.(2)(a) of SB 1549 (2022)] that employs temporary personnel to provide health care services or assistance with activities of daily living for or on behalf of entities that engage the temporary staffing agency.

ORS 401.962

Legislative findings

(1) The Legislative Assembly finds that during an abnormal disruption of the market, some merchants and wholesalers have taken unconscionable advantage of consumers by charging grossly excessive prices for essential consumer goods and services.

(2) To prevent merchants and wholesalers from taking unconscionable advantage of consumers during an abnormal disruption of the market, the Legislative Assembly declares that the public interest requires that charging unconscionably excessive prices be prohibited and made subject to regulation as an unlawful trade practice. [Formerly 401.106]

ORS 401.965

Abnormal disruption of market

(1) As used in subsections (1) to (4) of this section, the terms "merchant" and "wholesaler" do not include a public body as that term is defined in ORS 174.109 ("Public body" defined), a public utility as defined in ORS 757.005 (Definition of public utility) (1)(a)(A) or an electric utility as defined in ORS 757.600 (Definitions for ORS 757.600 to 757.689).

(2) A merchant, ~~or~~ wholesaler, or temporary staffing agency may not sell or offer to sell essential consumer goods or services for an amount that represents an unconscionably excessive price during a declaration of an abnormal disruption of the market under subsections (5) to (7) of this section.

(3) It is a question of law whether a price is unconscionably excessive. Proof that a price is unconscionably excessive may be shown by evidence that:

(a) The amount charged for essential consumer goods or services exceeds by 15 percent or more the price at which the goods or services were sold or offered for sale by the merchant, ~~or~~ wholesaler, or temporary staffing agency in the usual course of business immediately prior to or during a declaration of an abnormal disruption of the market; or

(b) The amount charged for the essential consumer goods or services exceeds by 15 percent or more the price at which the same or similar consumer goods or services were readily obtainable by other consumers in or near the geographical area covered by the declaration of an abnormal disruption of the market.

(4) Evidence described in subsection (3) of this section constitutes prima facie proof of a violation of subsections (1) to (4) of this section. Evidence described in subsection (3) of this section is not prima facie evidence of a violation of subsections (1) to (4) of this section if the amount charged by the merchant, ~~or~~ wholesaler, or temporary staffing agency is:

(a) Attributable to additional costs imposed by the merchant's, ~~or~~ wholesaler's, or temporary staffing agency's suppliers or necessarily incurred in procuring or providing the essential consumer goods or services immediately prior to or during the declaration of an abnormal disruption of the market; or

(b) The result of increased internal costs or expenses related to the declaration of an abnormal disruption of the market or the result of increased costs unrelated to the declaration of an abnormal disruption of the market.

(5) If the Governor determines that an abnormal disruption of the market has occurred, the Governor may declare an abnormal disruption of the market by a proclamation, as part of a state of emergency declared under ORS 401.165 (Declaration of state of emergency), or both.

(6) The Governor's declaration of an abnormal disruption of the market under subsection (5) of this section shall specify:

(a) The geographical area covered by the declaration. The area may be no larger than necessary to effectively respond to the abnormal disruption of the market.
(b) The date and time at which the abnormal disruption of the market commenced. The date of commencement of the abnormal disruption of the market may precede the date on which the declaration is made.
(c) That the declaration will terminate automatically 30 days after the date on which the Governor makes the declaration unless the Governor extends the declaration in accordance with paragraph (d) of this subsection or unless the Governor or the Legislative Assembly terminates the declaration sooner.
(d) That the Governor may extend the declaration for additional 30-day periods by subsequent declarations that the abnormal disruption of the market continues to exist.

(7) The Governor's declaration of an abnormal disruption of the market is subject to termination:

(a) By the Governor when the Governor determines that an abnormal disruption of the market no longer exists.
(b) At any time by joint resolution of the Legislative Assembly.
(c) Automatically 30 days after the date on which the Governor makes the declaration unless the Governor or the Legislative Assembly terminates the declaration sooner. The Governor may extend the declaration for subsequent 30-day periods by declaring for each such extension that the abnormal disruption of the market continues to exist. An extension the Governor declares in accordance with this paragraph also terminates 30 days after the date on which the Governor declared the extension unless the Governor declares another extension or unless the Governor or the Legislative Assembly terminates the extension sooner. [Formerly 401.107]

ORS 401.970

Applicability of remedies

The remedies provided in ORS 401.965 (Abnormal disruption of market) (1) to (4) and in the amendments to ORS 646.607 (Unlawful business, trade practices) by section 6, chapter 223, Oregon Laws 2007, are in addition to any other remedies that may exist under the law. [Formerly 401.108]