

FIRST REGULAR SESSION

SENATE BILL NO. 478

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUGH.

2115S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To amend chapter 198, RSMo, by adding thereto five new sections relating to supplemental health care services agencies, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 198, RSMo, is amended by adding thereto
2 five new sections, to be known as sections 198.640, 198.642,
3 198.644, 198.646, and 198.648, to read as follows:

198.640. As used in sections 198.640 to 198.648, the
2 **following terms shall mean:**

3 (1) "Department", the department of health and senior
4 services;

5 (2) "Controlling person", a business entity, officer,
6 program administrator, or director whose responsibilities
7 include the direction of the management or policies of a
8 supplemental health care services agency. Controlling
9 person also means an individual who, directly or indirectly,
10 beneficially owns an interest in a corporation, partnership,
11 or other business association that is a controlling person;

12 (3) "Health care facility", a licensed entity defined
13 under subdivisions (6), (14), (22), or (23) of section
14 198.006;

15 (4) "Health care personnel", a person licensed under
16 chapter 335, a certified nurse assistant, or a certified
17 medical technician;

(5) "Person", an individual, firm, corporation, partnership, or association;

(6) "Supplemental health care services agency" or "agency", a person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for health care personnel. A supplemental health care services agency does not include an individual who only engages on his or her own to provide that individual's services on a temporary basis to health care facilities or a home health agency licensed under section 197.415.

198.642. 1. A person who operates a supplemental health care services agency shall register annually with the department. Each separate location of the agency shall have a registration with the department. Fees collected under this section shall be deposited in the state treasury and credited to the state general revenue fund.

2. The department shall establish forms and procedures for processing each supplemental health care services agency registration application. An application for agency registration shall include at least the following:

(1) The names and addresses of each person having an ownership interest in an agency;

(2) If the owner is a corporation, copies of the articles of incorporation or article of association and current bylaws, together with the names and addresses of officers and directors;

(3) Satisfactory proof of compliance with the provisions of sections 198.640 to 198.648;

(4) Any other relevant information that the department determines is necessary to properly evaluate an application for registration;

22 (5) Policies and procedures that describes how the
23 agency's records will be immediately available at all times
24 to the department upon request; and

25 (6) A registration fee established in rule by the
26 department as determined to be necessary to meet the
27 expenses of the department for the administration of the
28 provisions of sections 198.640 to 198.648, but in no case
29 shall such fee be less than one thousand dollars.

30 If an agency fails to provide the items required in this
31 subsection to the department, the department shall
32 immediately suspend or refuse to issue the supplemental
33 health care services agency registration. An agency may
34 appeal the department's decision to the administrative
35 hearing commission pursuant to chapter 621.

36 3. A registration issued by the department according
37 to this section shall be effective for a period of one year
38 from the date of its issuance, unless the registration has
39 been revoked or suspended, pursuant to the provisions of
40 this section, or unless the agency is sold or ownership or
41 management is transferred. When an agency is sold or
42 ownership or management is transferred, the registration of
43 the agency shall be void, and the new owner or operator may
44 apply for a new registration.

45 4. The department shall be responsible for the
46 oversight of supplemental health care services agencies
47 through annual unannounced surveys, complaint
48 investigations, and other actions necessary to ensure
49 compliance with sections 198.640 to 198.648.

198.644. 1. Each registered supplemental health care
2 services agency shall be required, as a condition of

3 registration, to meet the following minimum criteria, which
4 may be supplemented by rules promulgated by the department:

5 (1) Provide to the health care facility to which any
6 temporary health care personnel are supplied documentation
7 that each temporary employee meets all licensing or
8 certification, training, and continuing education standards
9 for the position in which the employee will be working;

10 (2) Comply with all pertinent requirements relating to
11 the health and other qualifications of personnel employed in
12 health care facilities;

13 (3) Not restrict in any manner the employment
14 opportunities of its employees;

15 (4) Carry medical malpractice insurance to insure
16 against loss, damages, or expenses incident to a claim
17 arising out of the death or injury of any person as the
18 result of negligence or malpractice in the provision of
19 health care services by the agency or by any employee of the
20 agency;

21 (5) Carry for each employee a dishonesty bond in the
22 amount of ten thousand dollars;

23 (6) Maintain insurance coverage for workers'
24 compensation for all health care personnel provided or
25 procured by the agency;

26 (7) File with the department of revenue:

27 (a) The name and address of the bank, savings bank, or
28 savings association in which the agency deposits all
29 employee income tax withholdings; and

30 (b) The name and address of any health care personnel
31 whose income is derived from placement by the agency, if the
32 agency purports the income is not subject to withholding;

33 (8) Refrain in any contract with any employee or
34 health care facility from requiring the payment of

35 liquidated damages, employment fees, or other compensation
36 should the employee be hired as a permanent employee of a
37 health care facility;

38 (9) Document that each temporary employee provided to
39 health care facilities is an employee of the agency and is
40 not an independent contractor;

41 (10) Retain all records for ten calendar years in a
42 manner to allow them to be immediately available to the
43 department for inspection for compliance with the provisions
44 of sections 198.640 to 198.648; and

45 (11) Provide services to a health care facility during
46 the year preceding the agency's registration renewal date.

47 2. Failure to comply with this section shall subject
48 the supplemental health care services agency to revocation
49 or nonrenewal of its registration. Any agency that has
50 violated section 198.648 shall be subject to a fine equal to
51 two hundred percent of the amount billed or received in
52 excess of the maximum permitted under that section.

53 3. The registration of a supplemental health care
54 services agency that knowingly supplies to a health care
55 facility a person with an illegally or fraudulently obtained
56 or issued diploma, registration, license, certificate, or
57 background study shall be revoked by the department upon
58 fifteen days advance written notice.

59 4. (1) No supplemental health care services agency's
60 registration may be revoked without a hearing held as a
61 contested case before the administrative hearing commission
62 pursuant to the provisions of chapter 621.

63 (2) If a controlling person has been notified by the
64 department that the supplemental health care services agency
65 will not receive an initial registration or that a renewal
66 of the registration has been denied, the controlling person,

67 or a legal representative on behalf of the agency, may
68 request and receive a hearing on the denial before the
69 administrative hearing commission pursuant to the provisions
70 of chapter 621.

71 5. (1) The controlling person of a supplemental
72 health care services agency whose registration has not been
73 renewed or has been revoked because of noncompliance with
74 the provisions of sections 198.640 to 198.648 shall not be
75 eligible to apply for nor be granted a registration for five
76 years following the effective date of the nonrenewal or
77 revocation.

78 (2) The department shall not issue or renew a
79 registration to a supplemental health care services agency
80 if a controlling person includes any individual or entity
81 who was a controlling person of an agency whose registration
82 was not renewed or was revoked as described in subdivision
83 (1) of this subsection for five years following the
84 effective date of nonrenewal or revocation.

198.646. The department shall establish a system for
2 reporting complaints against a supplemental health care
3 services agency or its employees. Complaints may be made by
4 any member of the public.

198.648. 1. A supplemental health care services
2 agency shall not bill or receive payments from a health care
3 facility at a rate higher than one hundred fifty percent of
4 the sum of the average wage rate, plus a factor to
5 incorporate payroll taxes for the applicable employee, if
6 necessary. The average wage rates shall be determined by
7 the department on an annual basis from the labor costs
8 reported on the prior three years' Title XIX cost reports
9 for all Medicaid participating facilities. "Wages" shall be
10 defined as the hourly rate of pay calculated, including

11 weekend shift differential and overtime, for the respective
12 employee nursing staff on Schedule K of the Title XIX cost
13 report form. The department shall also determine an average
14 payroll tax factor to apply to the average wage rate based
15 on the prior three years' average payroll tax expense as a
16 percentage of average total salaries from the Supplement to
17 Schedule B of the Title XIX cost report. The maximum rate
18 shall include all charges for administrative fees, contract
19 fees, or other special charges, in addition to the hourly
20 rates for the health care personnel supplied to a health
21 care facility. A health care facility that pays for the
22 actual travel and housing costs for health care personnel at
23 the facility and that pays these costs to the agency
24 employee, the agency, or another vendor, shall not be
25 considered in violation of the limitation on charges
26 described in this subsection.

27 2. The department shall promulgate rules to implement
28 the provisions of sections 198.640 to 198.648. Any rule or
29 portion of a rule, as that term is defined in section
30 536.010, that is created under the authority delegated in
31 this section shall become effective only if it complies with
32 and is subject to all of the provisions of chapter 536 and,
33 if applicable, section 536.028. This section and chapter
34 536 are nonseverable and if any of the powers vested with
35 the general assembly pursuant to chapter 536 to review, to
36 delay the effective date, or to disapprove and annul a rule
37 are subsequently held unconstitutional, then the grant of
38 rulemaking authority and any rule proposed or adopted after
39 August 28, 2021, shall be invalid and void.

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