

SENATE BILL NO. 1011

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR O'LAUGHLIN.

4661S.011

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;

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

20 (6) "Supplemental health care services agency" or
21 "agency", a person, firm, corporation, partnership, or
22 association engaged for hire in the business of providing or
23 procuring temporary employment in health care facilities for
24 health care personnel, or that operates a digital website or
25 digital smartphone application that facilitates the
26 provision of the engagement of health care personnel and
27 accepts requests for health care personnel through its
28 digital website or digital smartphone application. A
29 supplemental health care services agency does not include an
30 individual who only engages on his or her own to provide
31 that individual's services on a temporary basis to health
32 care facilities or a home health agency licensed under
33 section 197.415.

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

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

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

14 (2) If the owner is a corporation, copies of the
15 articles of incorporation or article of association and

16 current bylaws, together with the names and addresses of
17 officers and directors;

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

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

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

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

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

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

46 4. The department shall be responsible for the
47 oversight of supplemental health care services agencies
48 through annual unannounced surveys, complaint
49 investigations, and other actions necessary to ensure
50 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:

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

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

(8) Refrain in any contract with any employee or health care facility from requiring the payment of liquidated damages, employment fees, or other compensation should the employee be hired as a permanent employee of a health care facility;

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

(10) Retain all records for ten calendar years in a manner to allow them to be immediately available to the department; and

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

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

3. The registration of a supplemental health care services agency that knowingly supplies to a health care facility a person with an illegally or fraudulently obtained or issued diploma, registration, license, certificate, or background study shall be revoked by the department upon 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, then the controlling
67 person 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. A supplemental health care services agency
2 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 section.

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