

# American Staffing Association

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VIA ELECTRONIC SUBMISSION

March 7, 2022

Representative Dick Stein  
Chairman  
House Commerce and Labor Committee  
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Columbus, OH 43215

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Re: Opposition testimony to HB 466: An Act to amend the Revised Code to establish requirements for the registration and operation of health care staffing agencies.

Dear Chairman Stein:

The American Staffing Association (ASA) represents Ohio's healthcare staffing firms. I am writing to express ASA's deep concern regarding the impact that HB 466 would have on the supply of nurses and patient care in Ohio, especially as the state continues to deal with the impact that the Covid-19 pandemic has had on the state's healthcare system.

Temporary nurses assigned by staffing agencies play a vital role in meeting the nursing needs of hospitals, nursing homes, and other healthcare facilities. Temporary nursing is an attractive option for many nurses because staffing firms pay competitive market wages while providing greater scheduling flexibility—an advantage that keeps many in the profession who would otherwise leave. This helps to mitigate the nursing shortage.

The cost of nurse staffing services has risen because of the unprecedented demand and the unusually harsh working conditions caused by the pandemic. Stress and overwork, physical danger and, in the case of travel nurses, extended periods away from home, have led to burnout, long leaves of absence, and retirements that have significantly reduced the number of nurses available to work. This supply-demand imbalance required nurse staffing agencies to offer significantly higher wages to attract and retain nurses—which necessarily drove up the cost of the agencies' services.

Unfortunately, HB 466 will aggravate the shortage by capping what agencies can charge clients, effectively preventing them from covering worker's compensation and other attendant labor-related costs. This will drive agencies from Ohio—thus adversely affecting patient care in the state.

*Imposing Rate Caps on Agency Charges Will Hurt Workers*

Section 3724.09 (A) of HB 466 states that:

“The total amount a health care staffing agency charges a health care facility for any employee, including for all wages and any other fees or charges associated with that employee, when converted to an hourly rate for the employee based on the total hours worked for a given period, shall not be more than fifteen per cent above the hourly rate the agency pays to a

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health care professional for that same period. The hourly rate paid by a health care staffing agency to a health care professional shall be calculated based on the gross amount paid to a health care professional by the health care staffing agency for services provided in the given period divided by the total hours worked for that period.”

Converting staffing agency bill rates to an hourly rate and capping the rate at 15% over the employee’s base hourly wage rate would put every staffing agency out of business. Why? Because a price based on such a formula would not begin to cover all the costs that agencies incur in providing their services. In addition to wages, those costs include all other forms of compensation and benefits, plus other direct labor-related costs like payroll taxes, insurance (professional liability, workers’ compensation, and unemployment) travel, meal, and lodging costs for travel nurses, plus the indirect costs of providing the service like marketing, rent, computers, and other equipment—as well as interest, depreciation, taxes, and amortization costs.

Apart from the fact that the cap prescribed in HB 466 is totally divorced from economic reality, arbitrary caps, even if structured on a nominally more rational basis, are bad policy that are not only counterproductive but costly to administer. The sheer intrusiveness of a complicated cap formula would require ongoing government audits into the operations of staffing agencies to determine whether their markup on labor costs is being calculated correctly. This would be costly and burdensome, not only to staffing agencies but to the state agency charged with enforcement. It also will likely be a pointless effort to address cost issues that are necessarily transitory as the pandemic subsidies and the extraordinary demand for nurses abates.

History shows that price controls always distort markets, and caps on staffing agency bill rates would drive agencies from Ohio, to the detriment of patients.

*Section 3724.08 Would Not Allow Staffing Agencies to Protect Their Investment in Employees and Would Deny Employment to Potential Candidates*

We also have serious concerns with section 3724.08(B) of the bill which would bar agencies from requiring employees or health care facilities from paying “liquidated damages, employment fees, or other compensation related to an employee being hired as a permanent employee of a health care facility.”

Agencies sometimes charge facilities such fees (usually called “conversion fees”) to protect the agency from being used as a free placement service. This can occur when a facility uses the agency to find an employee and then hires the worker before the agency can recoup the substantial costs it incurred in recruiting, screening, and onboarding the person. The fees usually are paid on a sliding scale based on the hours the employee has worked on the agency’s payroll and are generally waived entirely if the employee is on the payroll for a minimal period (e.g., 90 days). Hence, the fees in no way impede the employee’s ability to be hired by the facility. Every state allows such fees to protect agencies from exploitation.

Further, Section 3724.08 would prevent health care staffing agency from “restrict[ing] the employment opportunities of its employees” and bar restrictive covenants for employees such

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as recruiters and account managers, for whom agencies devote significant training, time, and expense to develop their careers, and to whom agencies provide access to trade secrets and client lists. Finally, section 3724.08(C) would unwisely prohibit job advertisements that could attract client employees, thus eliminating potential jobs for health care professionals.

*Conclusion*

Nurse staffing agencies compete vigorously for clients and nurses. Hospitals and nursing homes should aggressively shop for the best price among the multiple agencies in the market. Instead of nurse staffing agency restrictions and arbitrary caps that will exacerbate the nursing shortage and harm patient care, states should take steps to address the long-term nursing shortage. Ohio should promptly implement the Nurse Licensure Compact as well as consider increasing Medicaid reimbursement rates so that facilities can afford to pay nurses the wages they deserve for the critical work that they do.

In light of the foregoing, we respectfully request that you oppose HB 466.

Very truly yours,



Toby Malara, Esq.  
Vice President, Government Relations  
American Staffing Association