

As Introduced

**134th General Assembly
Regular Session
2021-2022**

H. B. No. 466

Representative Edwards

A BILL

To amend section 3701.83 and to enact sections 1
3724.01, 3724.02, 3724.03, 3724.04, 3724.05, 2
3724.06, 3724.07, 3724.08, 3724.09, 3724.10, 3
3724.11, 3724.12, 3724.13, 3724.14, and 3724.99 4
of the Revised Code to establish requirements 5
for the registration and operation of health 6
care staffing agencies. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3701.83 be amended and sections 8
3724.01, 3724.02, 3724.03, 3724.04, 3724.05, 3724.06, 3724.07, 9
3724.08, 3724.09, 3724.10, 3724.11, 3724.12, 3724.13, 3724.14, 10
and 3724.99 of the Revised Code be enacted to read as follows: 11

Sec. 3701.83. There is hereby created in the state 12
treasury the general operations fund. Moneys in the fund shall 13
be used for the purposes specified in sections 3701.04, 14
3701.344, 3711.16, 3717.45, 3718.06, 3721.02, 3721.022, 3724.13, 15
3729.07, 3733.43, 3748.04, 3748.05, 3748.07, 3748.12, 3748.13, 16
3749.04, 3749.07, 4736.06, and 4769.09 of the Revised Code. 17

Sec. 3724.01. (A) "Health care staffing agency" means a 18
person that is regularly engaged in the business of providing or 19

procuring, for a fee, health care professionals to serve as 20
temporary staff for health care facilities. "Health care 21
staffing agency" does not include any of the following: 22

(1) A person who provides staffing of health care 23
professionals for health care facilities on a basis that is only 24
occasional or periodic; 25

(2) A government agency; 26

(3) A professional association of licensed individuals. 27

(B) "Health care facility" means any of the following: 28

(1) A hospital that is or will be licensed under Chapter 29
3722. of the Revised Code; 30

(2) A nursing home or residential care facility licensed 31
under Chapter 3721. of the Revised Code; 32

(3) A residential facility licensed under Chapter 5123. of 33
the Revised Code. 34

(C) "Health care professional" means any of the following: 35

(1) A registered nurse or licensed practical nurse 36
licensed under Chapter 4723. of the Revised Code; 37

(2) A nurse aide, as defined in section 3721.21 of the 38
Revised Code; 39

(3) A speech-language pathologist or audiologist licensed 40
under Chapter 4753. of the Revised Code. 41

Sec. 3724.02. (A) Each health care staffing agency shall 42
annually register with the director of health. For purposes of 43
the registration requirement, each physical location of a health 44
care staffing agency shall separately register with the 45
director. 46

(B) The director shall establish registration application forms and procedures in rules adopted under section 3724.12 of the Revised Code. Each registration application shall be accompanied by the fee set forth in division (C) of this section and include at least the following: 47
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(1) (a) The name and address of each owner with an interest of five per cent or more in the health care staffing agency, except that if that information does not result in a disclosure of at least eighty-five per cent of the ownership of the agency, all owners shall be disclosed; 52
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(b) If an owner is not a natural person, the name and address of each natural person with more than a five per cent interest in that owner. 57
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(2) If the health care staffing agency, or an owner, is a corporation, a copy of the associated articles of incorporation and current bylaws, and the name and address of each officer and director; 60
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(3) A copy of the health care staffing agency's policies and procedures designed to ensure compliance with divisions (F) and (G) of section 3724.07 of the Revised Code, as well as any other proof of compliance required by the director; 64
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(4) A copy of the health care staffing agency's policies and procedures regarding record retention and availability designed to ensure compliance with division (H) of section 3724.07 of the Revised Code; 68
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(5) Certification that the health care staffing agency has not had an Ohio registration revoked by the director within the three years immediately preceding the date of the application; 72
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(6) Any other information or documentation required by the 75

director in rules adopted under section 3724.12 of the Revised Code. 76
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(C) Each applicant for registration of a health care staffing agency shall pay an application fee in the amount of two hundred fifty dollars. The fee is nonrefundable. 78
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Sec. 3724.03. The director of health shall review each application received under section 3724.02 of the Revised Code for registration of a health care staffing agency. The director shall register a health care staffing agency if the applicant has submitted a complete application, paid the application fee, and demonstrated to the director's satisfaction that the requirements for registration as set forth in this chapter are met. 81
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Sec. 3724.04. (A) A registration issued under this chapter to a health care staffing agency is valid for one year from the date of its issuance, unless earlier revoked or suspended, or unless the health care staffing agency is sold, or ownership or management is transferred, as described in division (B) of this section. 89
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(B) When a health care staffing agency is sold, leased, or otherwise transferred, including a transfer of ownership or management such that forty per cent or more of the owners or management of the agency was not previously registered with the director of health, the new owner or management shall apply for a new registration within a time period established by the director in rules adopted under section 3724.12 of the Revised Code. A new owner or management may operate under the prior health care staffing agency registration until the new registration is issued only if both of the following apply: 95
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(1) The director receives acknowledgement from the prior 105
and new owners and management that each is jointly and severally 106
liable for compliance with this chapter and the rules adopted 107
under it. 108

(2) The new owners and managers provide a surety bond or 109
otherwise demonstrate to the satisfaction of the director that 110
the new owner and management has sufficient capital to operate 111
and meet its obligations. 112

Sec. 3724.05. A health care staffing agency that has 113
provided staffing services during the year preceding the 114
agency's registration renewal date may renew the agency's 115
registration by applying to the director of health using a 116
registration renewal form established by the director and 117
complying with any renewal application procedures established in 118
rules adopted under section 3724.12 of the Revised Code. The 119
director shall review each application for registration renewal 120
and shall renew the registration for one year if the applicant 121
has paid the renewal fee, which is two hundred and fifty 122
dollars, and demonstrated to the director's satisfaction that 123
the applicant has provided staffing services during the year 124
preceding the agency's registration renewal date and continues 125
to meet the requirements for registration as set forth in this 126
chapter. 127

A health care staffing agency that has not provided 128
staffing services during the year preceding the agency's 129
registration renewal date is ineligible for renewal, but may 130
apply for a registration under section 3724.02 of the Revised 131
Code. 132

Sec. 3724.06. Beginning one year after the effective date 133
of this section, no health care staffing agency shall knowingly 134

operate as such unless the agency is registered under this 135
chapter. 136

Sec. 3724.07. Each health care staffing agency registered 137
under this chapter shall do all of the following: 138

(A) Require a criminal records check for each individual 139
with an ownership interest in the agency to determine that each 140
owner has not been convicted of a felony or a crime involving 141
moral turpitude, and keep a copy of those criminal records 142
checks on file with the agency; 143

(B) Require a criminal records check as a condition of 144
hire and continued employment for each manager, officer, 145
director, or member of administrative staff to determine that 146
each manager, officer, director, or administrative staff member 147
has not been convicted of a felony or a crime involving moral 148
turpitude, and keep a copy of those criminal records checks on 149
file with the agency; 150

(C) Require employees to behave in conformance with the 151
requirements established under "The Drug-Free Workplace Act of 152
1988," 41 U.S.C. 701; 153

(D) Establish and provide to health care facilities a 154
schedule of fees and charges that shall not be modified except 155
after providing written notice at least thirty days in advance 156
of any change; 157

(E) Employ as an employee of the health care staffing 158
agency each health care professional that the agency provides to 159
a health care facility; 160

(F) Verify and maintain supporting documentation that each 161
temporary employee provided to a health care facility, at the 162
time of placement, meets all of the following: 163

<u>(1) Minimum licensing, training, and continuing education standards for the position in which the employee will be working;</u>	164 165 166
<u>(2) Criminal records check requirements of the facility;</u>	167
<u>(3) Any health requirement or other facility qualification or requirement.</u>	168 169
<u>(G) Prohibit all health care staffing agency staff from recruiting employees of the health care facility at which the staff is placed and instruct all staff on this prohibition;</u>	170 171 172
<u>(H) Make health care staffing agency records immediately available to the director of health during normal business hours;</u>	173 174 175
<u>(I) Retain health care staffing agency records for a minimum of five years or a longer period if required by state or federal law;</u>	176 177 178
<u>(J) Carry professional malpractice and general liability insurance related to the provision of health care staffing services by the health care staffing agency and the provision of health care services by the agency's employees, in an amount not less than one million dollars;</u>	179 180 181 182 183
<u>(K) Secure and maintain workers' compensation coverage in accordance with Chapters 4121., 4123., 4127., and 4131. of the Revised Code;</u>	184 185 186
<u>(L) Carry an employee dishonesty bond in the amount of one hundred thousand dollars.</u>	187 188
<u>Sec. 3724.08.</u> A health care staffing agency shall not do any of the following:	189 190

<u>(A) Restrict the employment opportunities of its</u>	191
<u>employees, including by requiring any of the following:</u>	192
<u>(1) That an employee pay money to terminate employment or</u>	193
<u>otherwise cease to provide services;</u>	194
<u>(2) That an employee enter into a post-termination of</u>	195
<u>services noncompete agreement;</u>	196
<u>(3) That an employee accept an employment buyout.</u>	197
<u>(B) Require in any contract with an employee or health</u>	198
<u>care facility the payment of liquidated damages, employment</u>	199
<u>fees, or other compensation related to an employee being hired</u>	200
<u>as a permanent employee of the health care facility;</u>	201
<u>(C) Recruit, solicit, or entice an employee of a health</u>	202
<u>care facility to leave the employee's employment;</u>	203
<u>(D) Pay or make a gift to any staff of a health care</u>	204
<u>facility;</u>	205
<u>(E) Contract with health care professionals as independent</u>	206
<u>contractors.</u>	207
Sec. 3724.09. <u>(A) The total amount a health care staffing</u>	208
<u>agency charges a health care facility for any employee,</u>	209
<u>including for all wages and any other fees or charges associated</u>	210
<u>with that employee, when converted to an hourly rate for the</u>	211
<u>employee based on the total hours worked for a given period,</u>	212
<u>shall not be more than fifteen per cent above the hourly rate</u>	213
<u>the agency pays to a health care professional for that same</u>	214
<u>period. The hourly rate paid by a health care staffing agency to</u>	215
<u>a health care professional shall be calculated based on the</u>	216
<u>gross amount paid to a health care professional by the health</u>	217
<u>care staffing agency for services provided in the given period</u>	218

<u>divided by the total hours worked for that period.</u>	219
<u>(B) Regarding employee income tax withholdings, a health care staffing agency shall notify the director of health of both of the following:</u>	220
<u>(1) The name and address of the bank or financial institution in which the health care staffing agency deposits all employee income tax withholdings;</u>	222
<u>(2) The name and address of any employee of the health care staffing agency whose income is derived from placement by the agency if the individual's income is not subject to income tax withholding.</u>	223
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<u>Sec. 3724.10. (A) Except as provided in division (B) of this section, the director of health, for reasons specified in rules adopted under section 3724.12 of the Revised Code, may revoke a registration for violations of this chapter, refuse to issue a registration, refuse to renew or reinstate a registration, impose limitations on a registration, suspend a registration, place a registration holder on probation with regard to the registration, or otherwise reprimand a registration holder.</u>	230
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<u>(B) The director shall impose disciplinary actions, as follows:</u>	239
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<u>(1) If a health care staffing agency is found to have violated any provision of this chapter more than three times in a registration period, the director shall revoke the agency's registration.</u>	241
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<u>(2) If a health care staffing agency fails upon a request made during regular business hours to make the agency's records immediately available to the director, the director shall</u>	245
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suspend the agency's registration or refuse to issue a 248
registration. 249

(C) All actions taken under this section shall be taken in 250
accordance with Chapter 119. of the Revised Code. 251

Sec. 3724.11. (A) The director of health shall establish a 252
system for the reporting of complaints against a health care 253
staffing agency or its employees. Reports may be made by any 254
individual. The director shall investigate all complaints made 255
against a health care staffing agency. 256

(B) Any health care staffing agency found to be in 257
violation of this chapter shall be fined one thousand dollars 258
for each day that the offense continues. Each instance of an 259
employee of a health care staffing agency engaging in conduct 260
that results in a violation of this chapter is a separate 261
offense. 262

(C) In addition to being subject to the fines set forth in 263
division (B) of this section, a health care staffing agency 264
found to be in violation of division (A) of section 3724.09 of 265
the Revised Code shall refund to a health care facility all 266
charges incurred for the health care staffing agency's employees 267
during the period of the violation. 268

Sec. 3724.12. (A) The director of health shall adopt rules 269
as the director considers necessary to implement this chapter, 270
including rules regarding all of the following: 271

(1) Registration application forms and procedures; 272

(2) The time period within which a new owner or management 273
must apply for a registration when a health care staffing agency 274
is sold, leased, or otherwise transferred; 275

<u>(3) Registration renewal forms and procedures;</u>	276
<u>(4) Reasons for which the director may impose disciplinary actions under section 3724.10 of the Revised Code.</u>	277 278
<u>(B) All rules adopted under this section shall be adopted in accordance with Chapter 119. of the Revised Code.</u>	279 280
<u>Sec. 3724.13. All registration fees and fines collected under this chapter shall be deposited in the state treasury to the credit of the general operations fund created under section 3701.83 of the Revised Code. The amounts shall be used solely for purposes of administering and enforcing this chapter and the rules adopted under it.</u>	281 282 283 284 285 286
<u>Sec. 3724.14. An employee of a health care staffing agency or any health care facility may assert a cause of action against a health care staffing agency for a violation of this chapter in a court of common pleas in the county where the violation has occurred. If the court finds a violation, it shall award the plaintiff actual damages, costs, and reasonable attorney's fees. If the plaintiff cannot prove actual damages, the court shall award punitive damages, in an amount not less than ten thousand dollars, plus costs and reasonable attorney's fees.</u>	287 288 289 290 291 292 293 294 295
<u>Sec. 3724.99. Whoever violates section 3724.06 of the Revised Code is guilty of a misdemeanor of the second degree on a first offense; for each subsequent offense, the person is guilty of a misdemeanor of the first degree.</u>	296 297 298 299
Section 2. That existing section 3701.83 of the Revised Code is hereby repealed.	300 301