

AN ACT concerning regulation.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Nurse Agency Licensing Act is amended by changing Sections 3, 13, 14, and 14.3 as follows:

(225 ILCS 510/3) (from Ch. 111, par. 953)

Sec. 3. Definitions. As used in this Act:

"Certified nurse aide" means an individual certified as defined in Section 3-206 of the Nursing Home Care Act, Section 3-206 of the ID/DD Community Care Act, or Section 3-206 of the MC/DD Act, as now or hereafter amended.

"Covenant not to compete" means an agreement between a nurse agency and an employee that restricts the employee from performing:

(1) any work for another employer for a specified period of time;

(2) any work in a specified geographic area; or

(3) any work for another employer that is similar to the work the employee performs for the employer that is a party to the agreement.

"Department" means the Department of Labor.

"Director" means the Director of Labor.

"Employee" means a nurse or a certified nurse aide.

"Health care facility" is defined as in Section 3 of the Illinois Health Facilities Planning Act, as now or hereafter amended. "Health care facility" also includes any facility licensed, certified, or approved by any State agency and subject to regulation under the Assisted Living and Shared Housing Act or the Illinois Public Aid Code.

"Licensee" means any nurse ~~nursing~~ agency which is properly licensed under this Act.

"Long-term basis" means the placement of a nurse or a certified nurse aide at a health care facility for an initial employment, assignment, or referral term of more than 24 continuous months by a nurse agency that incurs the following expenses to place the nurse or certified nurse aide at the health care facility: (i) educational material expenses, if required; (ii) expenses for credentialing, licensure, or certification; or (iii) expenses for airline travel, lodging, meals, and ground transportation provided to a nurse or certified nurse aide. "Long-term basis" does not include the placement of a nurse or a certified nurse aide at a health care facility for an initial employment, assignment, or referral term of an undefined duration.

"Nurse" means a registered nurse, a licensed practical nurse, an advanced practice registered nurse, or any individual licensed under the Nurse Practice Act.

"Nurse agency" means any individual, firm, corporation, partnership, or other legal entity that employs, assigns, or

refers nurses or certified nurse aides to a health care facility for a fee. The term "nurse agency" includes nurses registries. The term "nurse agency" does not include services provided by home health agencies licensed and operated under the Home Health, Home Services, and Home Nursing Agency Licensing Act or a licensed or certified individual who provides his or her own services as a regular employee of a health care facility, nor does it apply to a health care facility's organizing nonsalaried employees to provide services only in that facility.

"Temporary basis" means an initial employment, assignment, or referral term of an undefined duration or a duration of 24 continuous months or less exclusive of any extension.

(Source: P.A. 102-946, eff. 7-1-22.)

(225 ILCS 510/13) (from Ch. 111, par. 963)

Sec. 13. Application for employment.

(a) Every nurse agency shall cause each applicant for employment, assignment, or referral, as a nurse to complete an application form including the following information:

(1) name and address of the applicant;

(2) whether or not such applicant is a nurse currently licensed by the Department of Financial and Professional Regulation;

(3) if so licensed, the number and date of such license; and

(4) references and dates and places of previous employment.

Prior to employing, assigning, or referring a nurse, the agency shall contact the Department of Financial and Professional Regulation to determine whether the nurse's license is valid and in good standing. Written verification shall be sent by the Department of Financial and Professional Regulation within 20 working days. At least biennially thereafter, the nurse agency shall contact the Department of Financial and Professional Regulation to verify this information in writing. The nurse agency shall review the disciplinary report published by the Department of Financial and Professional Regulation on a monthly basis to determine whether the nurse's license is valid and in good standing.

(b) Every nurse agency shall cause each applicant for employment, assignment, or referral, as a certified nurse aide to complete an application form including the following information:

(1) name and address of the applicant;

(2) whether or not the nurse aide is registered as having completed a certified course as approved by the Department of Public Health; and

(3) references and dates and places of previous employment.

Prior to employing, assigning, or referring a certified nurse aide, the agency shall review the information provided

on the Health Care Worker Registry to verify that the certification is valid. Prior to employing, assigning, or referring a certified nurse aide to a position at a health care employer or long-term facility as defined in the Health Care Worker Background Check Act, the nurse agency shall review the information provided on the Health Care Worker Registry to verify that the certified nurse aide is not ineligible for the position pursuant to Section 25 of the Health Care Worker Background Check Act.

(c) Every nurse agency shall check at least 2 recent references and the dates of employment provided by the applicant, unless the applicant has not had 2 previous employers.

(d) Knowingly employing, assigning, or referring to a health care facility a nurse or certified nurse aide with an illegally or fraudulently obtained or issued diploma, registration, license, certificate, or background study constitutes negligent hiring by a nurse agency and is a violation of this Act.

(e) Nurses or certified nurses aides employed, assigned, or referred to a health care facility by a nurse agency shall be deemed to be employees of the nurse agency while working for the nurse agency or on nurse agency employment, assignment, or referral and may only be terminated by the nurse agency for cause.

(Source: P.A. 102-946, eff. 7-1-22; revised 8-22-22.)

(225 ILCS 510/14) (from Ch. 111, par. 964)

Sec. 14. Minimum Standards.

(a) The Department, by rule, shall establish minimum standards for the operation of nurse agencies. Those standards shall include, but are not limited to:

(1) the maintenance of written policies and procedures;

(2) the maintenance and submission to the Department of copies of all contracts between the nurse agency and health care facility to which it assigns or refers nurses or certified nurse aides and copies of all invoices to health care facilities personnel. Executed contracts must be sent to the Department within 5 business days of their effective date; and

(3) the development of personnel policies for nurses or certified nurse aides employed, assigned, or referred to health care facilities, including a personal interview, a reference check, an annual evaluation of each employee (which may be based in part upon information provided by health care facilities utilizing nurse agency personnel), and periodic health examinations. Executed contracts must be sent to the Department within 5 business days of their effective date and are not subject to disclosure under the Freedom of Information Act.

No less than 100% of the nurse or certified nurse aide

hourly rate shall be paid to the nurse or certified nurse aide employee.

(b) Each nurse agency shall have a nurse serving as a manager or supervisor of all nurses and certified nurses aides.

(c) Each nurse agency shall ensure that its employees meet the minimum licensing, training, continuing education, and orientation standards for which those employees are licensed or certified.

(d) A nurse agency shall not employ, assign, or refer for use in an Illinois health care facility a nurse or certified nurse aide unless certified or licensed under applicable provisions of State and federal law or regulations. Each certified nurse aide shall comply with all pertinent regulations of the Illinois Department of Public Health relating to the health and other qualifications of personnel employed in health care facilities.

(e) The Department may adopt rules to monitor the usage of nurse agency services to determine their impact.

(f) Nurse agencies are prohibited from recruiting potential employees on the premises of a health care facility or requiring, as a condition of employment, assignment, or referral, that their employees recruit new employees for the nurse agency from among the permanent employees of the health care facility to which the nurse agency employees have been employed, assigned, or referred, and the health care facility

to which such employees are employed, assigned, or referred is prohibited from requiring, as a condition of employment, that their employees recruit new employees from these nurse agency employees. Violation of this provision is a business offense.

(g) Nurse agencies are prohibited from entering into covenants not to compete with nurses and certified nurse aides if the nurse is employed, assigned, or referred by a nurse agency to a health care facility on a temporary basis or the certified nurse aide is employed, assigned, or referred by a nurse agency to a health care facility on a temporary basis. A covenant not to compete entered into on or after July 1, 2022 (the effective date of Public Act 102-946) ~~this amendatory Act of the 102nd General Assembly~~ between a nurse agency and a nurse or a certified nurse aide is illegal and void if (i) the nurse is employed, assigned, or referred by a nurse agency to a health care facility on a temporary basis or (ii) the certified nurse aide is employed, assigned, or referred by a nurse agency to a health care facility on a temporary basis is illegal and void. In ~~The nursing agency shall not, in any contract on a temporary basis with any nurse, certified nurse aide, employee or health care facility, a nurse agency is prohibited from requiring~~ ~~require~~ the payment of liquidated damages, conversion fees, employment fees, buy-out fees, placement fees, or other compensation if the nurse or certified nurse aide ~~employee~~ is hired as a permanent employee of a health care facility.

(g-5) Beginning on the effective date of this amendatory Act of the 102nd General Assembly and ending on December 31, 2027, a nurse agency may enter into a covenant not to compete with a nurse or a certified nurse aide if (i) the nurse is employed, assigned, or referred by a nurse agency to a health care facility on a long-term basis or (ii) the certified nurse aide is employed, assigned, or referred by a nurse agency to a health care facility on a long-term basis. However, if a covenant not to compete that was entered into on or before December 31, 2027 expires on or after January 1, 2028, the covenant not to compete shall remain in effect until its expiration date. To be enforceable, the term of a covenant not to compete entered into under this subsection must be concurrent with the term of the initial employment, assignment, or referral of the nurse or certified nurse aide to a health care facility. A contract on a long-term basis between any nurse, certified nurse aide, or health care facility and a nurse agency may provide for the payment of actual damages, conversion fees, employment fees, buy-out fees, placement fees, or other reasonable expenses resulting from a violation of the contract that occurred during the initial employment, assignment, or referral term.

(h) A nurse agency shall submit a report quarterly to the Department for each health care entity with whom the agency contracts that includes all of the following by provider type and county in which the work was performed:

(1) A list of the average amount charged to the health care facility for each individual employee category.

(2) A list of the average amount paid by the agency to employees in each individual employee category.

(3) A list of the average amount of labor-related costs paid by the agency for each employee category, including payroll taxes, workers' compensation insurance, professional liability coverage, credentialing and testing, and other employee related costs.

The Department shall publish by county in which the work was performed the average amount charged to the health care facilities by nurse agencies for each individual worker category and the average amount paid by the agency to each individual worker category.

(i) The Department shall publish on its website the reports yearly by county.

(j) The Department of Labor shall compel production of the maintained records, as required under this Section, by the nurse agencies.

(Source: P.A. 102-946, eff. 7-1-22.)

(225 ILCS 510/14.3)

Sec. 14.3. Contracts between nurse agencies and health care facilities.

(a) A contract entered into on or after the effective date of this amendatory Act of the 102nd General Assembly between

the nurse agency and health care facility must contain the following provisions:

(1) A full disclosure of charges and compensation. The disclosure shall include a schedule of all hourly bill rates per category of employee, a full description of administrative charges, and a schedule of rates of all compensation per category of employee, including, but not limited to, hourly regular pay rate, shift differential, weekend differential, hazard pay, charge nurse add-on, overtime, holiday pay, and travel or mileage pay.

(2) A commitment that nurses or certified nurse aides employed, assigned, or referred to a health care facility by the nurse agency perform any and all duties called for within the full scope of practice for which the nurse or certified nurse aide is licensed or certified.

(3) No less than 100% of the nurse or certified nurse aide hourly rate shall be paid to the nurse or certified nurse aide employee.

(b) A party's failure to comply with the requirements of subsection (a) shall be a defense to the enforcement of a contract between a nurse agency and a health care facility. Any health care facility or nurse agency aggrieved by a violation of subsection (a) shall have a right of action in a State court against the offending party. A prevailing party may recover for each violation:

(1) liquidated damages of \$1,500 or actual damages,

whichever is greater;

(2) reasonable attorney's fees and costs, including expert witness fees and other litigation expenses; and

(3) other relief, including an injunction, as the court may deem appropriate.

(c) This Section does not apply to contracts on a long-term basis between a nurse agency and a health care facility providing for the employment, assignment, or referral of nurses or certified nurse aides to the health care facility.

(Source: P.A. 102-946, eff. 7-1-22.)

Section 99. Effective date. This Act takes effect upon becoming law.