

By: Clardy

H.B. No. 4146

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of health care employment agencies;
authorizing a fee; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle G, Title 2, Health and Safety Code, is
amended by adding Chapter 148 to read as follows:

CHAPTER 148. HEALTH CARE EMPLOYMENT AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 148.001. DEFINITIONS. In this chapter:

(1) "Agency employee" means an individual who contracts with or is employed by a health care employment agency to provide a direct health care service or nursing service to health care entity patients.

(2) "Direct health care service" means a health care service provided in person to a health care entity patient. The term does not include the practice of medicine, the practice of osteopathic medicine, or the practice of nursing by an advanced practice registered nurse.

(3) "Health care employment agency" means an agency that contracts with a health care entity to provide to a person, firm, corporation, partnership, or association agency employees for temporary employment, temporary-to-hire employment, direct-hire employment, or any other contract or employee placement type.

- 1 (4) "Health care entity" means:
- 2 (A) an ambulatory surgical center licensed under
3 Chapter 243;
- 4 (B) an assisted living facility licensed under
5 Chapter 247;
- 6 (C) an emergency medical services provider
7 licensed under Chapter 773;
- 8 (D) a health services district created under
9 Chapter 287;
- 10 (E) a home and community support services agency
11 licensed under Chapter 142;
- 12 (F) a person licensed under Chapter 142 to
13 provide hospice services, as defined by Section 142.001;
- 14 (G) a hospital licensed under Chapter 241;
- 15 (H) a system of hospitals and other health care
16 providers located in this state that are under the common
17 governance or control of a corporate parent;
- 18 (I) an intermediate care facility licensed under
19 Chapter 252;
- 20 (J) a home and community-based services waiver
21 program for individuals with an intellectual disability adopted in
22 accordance with Section 1915(c) of the federal Social Security Act
23 (42 U.S.C. Section 1396n(c)), as amended;
- 24 (K) a nursing home licensed under Chapter 242; or
25 (L) an end stage renal disease facility licensed
26 under Chapter 251.
- 27 (5) "Nursing service" means a health care service that

1 may only be provided by or under the supervision of a nurse licensed
2 under Chapter 301, Occupations Code. The term does not include the
3 practice of nursing by an advanced practice registered nurse.

4 Sec. 148.002. RULES. The executive commissioner shall
5 adopt rules to implement this chapter.

6 SUBCHAPTER B. REGISTRATION REQUIREMENTS

7 Sec. 148.051. ANNUAL REGISTRATION REQUIRED. A health care
8 employment agency:

9 (1) shall annually register each place of business
10 owned or operated by the agency with the commission in accordance
11 with this subchapter; and

12 (2) may not establish or operate a place of business
13 described by Subdivision (1) unless the person registers the place
14 of business with the commission in accordance with this subchapter.

15 Sec. 148.052. REGISTRATION FEE. A health care employment
16 agency shall annually pay a separate \$500 registration fee for each
17 place of business owned or operated by the agency at the time the
18 agency registers with the commission under Section 148.051.

19 Sec. 148.053. REGISTRATION CERTIFICATE. The commission
20 shall issue a separate registration certificate to each place of
21 business owned or operated by a health care employment agency that
22 satisfies the registration requirements under this subchapter.

23 SUBCHAPTER C. GENERAL DUTIES

24 Sec. 148.101. HEALTH CARE EMPLOYMENT AGENCY DUTIES RELATED
25 TO AGENCY EMPLOYEES. (a) A health care employment agency:

26 (1) shall ensure that each agency employee satisfies
27 the personnel qualifications applicable to the position for which

1 the employee is placed with a health care entity;

2 (2) shall maintain records documenting that each
3 agency employee meets minimum licensing, certification, training,
4 and continuing education requirements applicable to the position
5 for which the employee is placed with a health care entity;

6 (3) shall report, file, or otherwise provide to the
7 applicable regulatory authority any required documentation of an
8 agency employee that would otherwise be reported, filed, or
9 provided by a health care entity on behalf of the entity's
10 employees; and

11 (4) may not restrict in any manner, by contract or
12 otherwise, an agency employee's employment opportunities.

13 (b) A health care employment agency may not place an agency
14 employee with a health care entity if the agency knows the employee
15 illegally or fraudulently:

16 (1) obtained or misrepresented that the employee was
17 issued a diploma, registration, license, or certification; or

18 (2) misrepresented that the employee passed a
19 background check or presented false information to pass a
20 background check.

21 SUBCHAPTER D. ENFORCEMENT

22 Sec. 148.151. REGISTRATION DENIAL OR REVOCATION;
23 ADMINISTRATIVE PENALTY. (a) Except as provided by Subsection (b),
24 if a health care employment agency is found to have violated this
25 chapter or a rule adopted under this chapter, the commission shall:

26 (1) deny or revoke the agency's registration of each
27 place of business owned or operated by the health care employment

1 agency for a period of one year; and

2 (2) assess an administrative penalty against the
3 agency in the amount of:

4 (A) \$500 for the first violation; and

5 (B) \$5,000 for each subsequent violation.

6 (b) The commission may not assess an administrative penalty
7 against a health care employment agency under Subsection (a)(2) for
8 a violation of Section 148.101(b).

9 (c) The commission must provide 30 days' notice before
10 denying or revoking a health care employment agency's registration
11 under this section.

12 Sec. 148.152. HEALTH CARE EMPLOYMENT AGENCY PROHIBITED FROM
13 REGISTRATION. A health care employment agency that is subject to a
14 registration denial or revocation under this subchapter may not
15 register or renew the registration of another place of business
16 under Section 148.051 during the one-year period following the date
17 of the denial or revocation.

18 Sec. 148.153. COMPLAINT PROCESS. The commission shall:

19 (1) establish a system for the public to file
20 complaints against a health care employment agency or agency
21 employee;

22 (2) investigate complaints described by Subdivision
23 (1); and

24 (3) report the commission's findings to:

25 (A) the person who filed the complaint; and

26 (B) the health care employment agency that is the
27 subject of the complaint or that contracts with or employs the

1 agency employee that is the subject of the complaint, as
2 applicable.

3 SECTION 2. As soon as practicable after the effective date
4 of this Act, the executive commissioner of the Health and Human
5 Services Commission shall adopt rules as necessary to implement
6 Chapter 148, Health and Safety Code, as added by this Act.

7 SECTION 3. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2023.