

By: Kolkhorst

S.B. No. 401

A BILL TO BE ENTITLED

1 AN ACT
2 relating to prices charged by a medical staffing services agency
3 during certain designated public health disaster periods;
4 providing a civil penalty.

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

6 SECTION 1. Subtitle D, Title 2, Health and Safety Code, is
7 amended by adding Chapter 81B to read as follows:

8 CHAPTER 81B. PRICE GOUGING OF MEDICAL STAFFING SERVICES DURING
9 DESIGNATED PUBLIC HEALTH DISASTER PERIOD

10 Sec. 81B.001. DEFINITIONS. In this chapter:

11 (1) "Designated public health disaster period" means a
12 period:

13 (A) based on a threat to the public health,
14 including a threat from:

15 (i) a chemical, biological, explosive,
16 nuclear, or radiological attack or incident; or

17 (ii) a communicable disease, epidemic, or
18 pandemic;

19 (B) beginning on the earlier of the date:

20 (i) the governor issues a proclamation or
21 executive order declaring a state of disaster under Chapter 418,
22 Government Code, for any area of this state;

23 (ii) the president of the United States
24 declares a state of disaster that includes an area of this state as

1 part of the federally declared disaster area; or

2 (iii) a disaster described by Subparagraph
3 (i) or (ii) occurs; and

4 (C) ending on the 30th day after the date the
5 disaster declaration expires or is terminated.

6 (2) "Exorbitant or excessive price" means a price
7 that:

8 (A) increases by more than 10 percent over the
9 price charged for medical staffing services provided immediately
10 before the designated public health disaster period;

11 (B) increases by more than 10 percent over the
12 tax-adjusted price charged for medical staffing services provided
13 in any area outside the geographic area subject to the designated
14 public health disaster period;

15 (C) increases by more than 10 percent over the
16 sum of:

17 (i) the higher of acquisition or
18 replacement cost for medical staffing services; and

19 (ii) the markup customarily applied by the
20 medical staffing services agency for medical staffing services in
21 the usual course of business immediately before the designated
22 public health disaster period;

23 (D) is not attributable to fluctuations in
24 applicable regional or national markets for medical staffing
25 services; or

26 (E) is not a contract price or price formula for
27 medical staffing services agreed to before the designated public

1 health disaster period.

2 Sec. 81B.002. APPLICABILITY. This chapter applies only to
3 a medical staffing services agency that provides the following
4 health care professionals to fill vacancies or address temporary
5 staffing needs during a designated public health disaster period:

6 (1) physician assistants licensed under Chapter 204,
7 Occupations Code;

8 (2) surgical assistants licensed under Chapter 206,
9 Occupations Code;

10 (3) nurses licensed under Chapter 301, Occupations
11 Code; or

12 (4) nurse aides listed in the nurse aide registry
13 under Chapter 250.

14 Sec. 81B.003. PROHIBITED PRICE GOUGING DURING DESIGNATED
15 PUBLIC HEALTH DISASTER PERIOD. During a designated public health
16 disaster period, a medical staffing services agency to which this
17 chapter applies may not demand or charge an exorbitant or excessive
18 price to provide medical staffing services to a health care
19 organization or other entity in this state in an area subject to a
20 declared state of disaster.

21 Sec. 81B.004. CIVIL PENALTY; INJUNCTION. (a) A medical
22 staffing services agency that violates this chapter is subject to a
23 civil penalty in an amount not to exceed \$10,000 for each violation.

24 (b) The attorney general may bring an action in the name of
25 the state to:

26 (1) recover a civil penalty under this section; or

27 (2) restrain or enjoin the person from violating this

1 chapter.

2 (c) The attorney general may recover reasonable expenses
3 incurred in obtaining a civil penalty under this section, including
4 court costs, reasonable attorney's fees, expert witness fees,
5 deposition expenses, and investigatory costs.

6 SECTION 2. The changes in law made by this Act apply only to
7 an act that occurs on or after the effective date of this Act. An
8 act that occurs before the effective date of this Act is governed by
9 the law in effect on the date the act occurred, and the former law is
10 continued in effect for that purpose.

11 SECTION 3. This Act takes effect September 1, 2023.