

## **BILL ANALYSIS**

H.B. 4146  
By: Clardy  
Public Health  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

COVID-19 placed an unprecedented strain on our state's health care facilities, forcing health care providers to rely more on staffing agencies because of staffing shortages. With this increased demand, staffing agencies raised rates to attract nurses from health care facilities, such as hospitals and nursing facilities, with higher pay. Once hired, employees were restricted by the agencies from going back to their original employer, and employers that contract with the agencies are often prohibited from hiring an agency employee unless the employer pays the agency a fee. H.B. 4146 seeks to address these concerns by requiring a health care employment agency operating in Texas to annually register with the Health and Human Services Commission (HHSC). The bill sets out requirements relating to agency employees, including ensuring that the agency employee satisfies the personnel qualifications required for the position and reporting to HHSC required documentation regarding employability.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 of this bill.

### **ANALYSIS**

H.B. 4146 amends the Health and Safety Code to require a health care employment agency to annually register each place of business owned or operated by the agency with the Health and Human Services Commission (HHSC) in accordance with the bill and to prohibit an agency from establishing or operating such a place of business unless the person registers the place of business with HHSC. The bill defines the following terms for purposes of the bill:

- "health care employment agency" as 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;
- "agency employee" as 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;
- "direct health care service" as a health care service provided in person to a health care entity patient, excluding the practice of medicine, the practice of osteopathic medicine, or the practice of nursing by an advanced practice registered nurse;
- "nursing service" as a health care service that may only be provided by or under the supervision of a nurse licensed under the Nursing Practice Act and does not include the practice of nursing by an advanced practice registered nurse; and

- "health care entity" as the following:
  - a state-licensed ambulatory surgical center;
  - a state-licensed assisted living facility;
  - a state-licensed emergency medical services provider;
  - a health services district created under state law;
  - a state-licensed home and community support services agency;
  - a person licensed by the state to provide hospice services;
  - a state-licensed hospital;
  - a system of hospitals and other health care providers located in Texas that are under the common governance or control of a corporate parent;
  - a state-licensed intermediate care facility;
  - a home and community-based services waiver program for individuals with an intellectual disability adopted in accordance with federal law;
  - a state-licensed nursing home; or
  - a state-licensed end stage renal disease facility.

H.B. 4146 requires a health care employment agency to annually pay a separate \$500 registration fee for each place of business owned or operated by the agency at the time the agency registers with HHSC. The bill requires HHSC to issue a separate registration certificate to each place of business owned or operated by an agency that satisfies the bill's registration requirements.

H.B. 4146 requires a health care employment agency to do the following:

- ensure that each agency employee satisfies the personnel qualifications applicable to the position for which the employee is placed with a health care entity;
- maintain records documenting that each agency employee meets minimum licensing, certification, training, and continuing education requirements applicable to the position for which the employee is placed with a health care entity; and
- report, file, or otherwise provide to the applicable regulatory authority any required documentation of an agency employee that would otherwise be reported, filed, or provided by a health care entity on behalf of the entity's employees.

The bill prohibits an agency from restricting in any manner, by contract or otherwise, an agency employee's employment opportunities. The bill additionally prohibits an agency from placing an agency employee with a health care entity if the agency knows the employee illegally or fraudulently obtained or misrepresented that the employee was issued a diploma, registration, license, or certification or misrepresented that the employee passed a background check or presented false information to pass a background check.

H.B. 4146 requires HHSC, if a health care employment agency is found to have violated the bill or a rule adopted under the bill, to deny or revoke the agency's registration of each place of business owned or operated by the agency for a period of one year and to assess an administrative penalty against the agency in the amount of \$500 for the first violation and \$5,000 for each subsequent violation. However, the bill prohibits HHSC from assessing an administrative penalty for a violation of the bill's prohibition against an agency placing an agency employee with a health care entity if the agency knows the employee illegally or fraudulently obtained or misrepresented that the employee was issued a diploma, registration, license, or certification or illegally or fraudulently misrepresented that the employee passed a background check or presented false information to pass a background check. The bill requires HHSC to provide 30 days' notice before denying or revoking an agency's registration. The bill prohibits an agency that is subject to a registration denial or revocation from registering or renewing the registration of another place of business during the one-year period following the date of the denial or revocation.

H.B. 4146 requires HHSC to do the following:

- establish a system for the public to file complaints against a health care employment agency or agency employee;

- investigate those complaints; and
- report HHSC's findings to the person who filed the complaint and to the agency that is the subject of the complaint or that contracts with or employs the agency employee that is the subject of the complaint, as applicable.

H.B. 4146 requires the executive commissioner of HHSC to adopt rules to implement the bill's provisions as soon as practicable after the bill's effective date.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.