

BILL ANALYSIS

Senate Research Center

S.B. 401
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Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The COVID-19 public health emergency placed a strain on hospital and long-term care facilities. Since February 2020, nearly 1 in 5 health care workers have quit their jobs.

Burnout and fatigue have become problems, increasing shortages already plaguing the industry and creating higher demand for contract labor. Hospital staffing accounts for roughly 60% of hospital expenses, with labor costs per patient increasing 19.5% through November 2021 from pre-pandemic levels. The estimated cost for traveling healthcare staff doubled between 2020 and 2021.

During the various surges of COVID, Texas authorized federal funding to support hospitals and nursing homes with staffing needs. The influx of "surge staffing" funding to these facilities increased demand for nurses and other healthcare professionals from staffing agencies and may have inadvertently contributed to higher rates. Between FY 2020 and 2022, the Health and Human Services Commission's expenses doubled for contract nurses in state hospitals and state supported living centers.

Current law does not regulate contract staff pricing for healthcare facilities, and Texas statutes do not limit price gouging for medical staffing services during a declared disaster or emergency.

C.S.S.B. 401 would create a chapter in the Health and Safety Code to prohibit medical staffing agencies from charging hospitals and other healthcare facilities, including nursing homes, exorbitant fees during a declared disaster.

C.S.S.B. 401 makes four key changes to the original legislation. First, exorbitant pricing does not apply if: it is ten percent or less above the seller's price for that product immediately prior to the declaration of the state of emergency by the governor; it is ten percent or less above current prices for that product in any area outside the geographic scope of the declaration of the state of emergency or an adjoining state, tax-adjusted; it is ten percent or less above the sum of the seller's acquisition or replacement cost, whichever is higher, plus the markup customarily applied by the seller in the usual course of business immediately prior to the declaration of the state of emergency by the governor; it is attributable to fluctuations in applicable regional or national spot or commodity markets; or it is a contract price or price formula agreed to prior to the declaration of the state of emergency by the governor.

The second change adds nurse aides to the list of positions whom staffing agencies may be penalized for if they were to price gouge.

The third change allows the Attorney General to bring an injunction, which is common in the Health and Safety Code.

Finally, the assessed fee of \$1,000 is increased to \$10,000 per violation.

S.B. 401 amends current law relating to prices charged by a medical staffing services agency during certain designated public health disaster periods and provides a civil penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle D, Title 2, Health and Safety Code, by adding Chapter 81B, as follows:

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

Sec. 81B.001. DEFINITIONS. Defines "designated public health disaster period."

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

- (1) physician assistants licensed under Chapter 204 (Physician Assistants), Occupations Code;
- (2) surgical assistants licensed under Chapter 206 (Surgical Assistants), Occupations Code;
- (3) nurses licensed under Chapter 301 (Nurses), Occupations Code; or
- (4) nurse aides listed in the nurse aide registry under Chapter 250 (Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illnesses).

Sec. 81B.003. PROHIBITED PRICE GOUGING DURING DESIGNATED PUBLIC HEALTH DISASTER PERIOD. Prohibits a medical staffing services agency to which this chapter applies, during a designated public health disaster period, from, in an area subject to the declared state of disaster:

- (1) providing medical staffing services to a health care organization or other entity in this state at an exorbitant or excessive price; or
- (2) demanding or charging an exorbitant or excessive price to provide medical staffing services to a health care organization or other entity in this state.

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

- (b) Authorizes consumer protection division of the Office of the Attorney General (OAG) to bring an action in the name of the state to recover a civil penalty under this section or to temporarily or permanently restrain or enjoin the person from violating this chapter.
- (c) Authorizes the consumer protection division of OAG to recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, expert witness fees, deposition expenses, and investigatory costs.
- (d) Authorizes an action under this section to be brought:

(1) in a district court of the county in which:

(A) the defendant resides;

(B) the defendant's principal place of business is located;

(C) the defendant conducts business; or

(D) the transaction giving rise to the claim occurred; or

(2) on the consent of the parties, in a district court of Travis County.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2023.