

BILL ANALYSIS

C.S.S.B. 401
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The COVID-19 public health emergency has placed an excessive strain on hospitals' and long-term care facilities' resources and capacity. According to Morning Consult, nearly one in five health care workers have quit their jobs since 2020. Burnout and fatigue have become major problems, exacerbating the previous workforce shortages in the industry. To fill these vacancies, hospitals relied heavily on contracted staff. Both the Texas Hospital Association and the Health and Human Services Commission estimate that costs for traveling health care staff doubled during the pandemic. The influx of "surge staffing" funding going to hospitals and nursing homes increased demand for nurses and other health care professionals from various staffing agencies and may have contributed to higher rates according to ADASTAFF. The American Hospital Association reports that the median wage rate paid to contract staffing firms rose over 50 percent from 2019 to 2022 as organizations competed for a limited pool of qualified health care professionals.

Current law does not regulate contract staff pricing for health care facilities, nor are medical staffing services included in Texas statutes that limit price gouging during a declared disaster or emergency. C.S.S.B. 401 seeks to help prevent harmful price gouging practices during a public health disaster by prohibiting a medical staffing services agency from charging exorbitant or excessive prices to provide medical staffing services to health care organizations or other entities in the declared disaster area.

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

ANALYSIS

C.S.S.B. 401 amends the Health and Safety Code to prohibit an applicable medical staffing services agency, during a designated public health disaster period and in an area subject to the declared state of disaster, from providing medical staffing services to a health care organization or other entity in Texas at an exorbitant or excessive price or demanding or charging an exorbitant or excessive price to provide medical staffing services to a health care organization or other entity in Texas. The bill defines "designated public health disaster period" as a period:

- based on a threat to the public health, including a threat from a chemical, biological, explosive, nuclear, or radiological attack or incident or from a communicable disease, epidemic, or pandemic;

- beginning on the earlier of the date the governor issues a proclamation or executive order declaring a state of disaster for any area of Texas, the president of the United States declares a state of disaster that includes an area of Texas as part of the federally declared disaster area, or such a disaster occurs; and
- ending on the 30th day after the date the disaster declaration expires or is terminated.

C.S.S.B. 401 subjects a medical staffing services agency that violates the bill's provisions to a civil penalty capped at \$10,000 for each violation. The bill authorizes the consumer protection division of the office of the attorney general to bring an action in the name of the state to recover such a civil penalty or to temporarily or permanently restrain or enjoin the person from violating the bill's provisions. The bill authorizes the division to recover reasonable expenses incurred in obtaining a civil penalty, including court costs, reasonable attorney's fees, expert witness fees, deposition expenses, and investigatory costs. The bill authorizes an action to be brought in a district court of the county in which the defendant resides, the defendant's principal place of business is located, the defendant conducts business, or the transaction giving rise to the claim occurred or, on the consent of the parties, in a district court of Travis County.

C.S.S.B. 401 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:

- state-licensed physician assistants;
- state-licensed surgical assistants;
- state-licensed nurses; or
- nurse aides listed in the nurse aide registry.

C.S.S.B. 401 applies only to an act that occurs on or after the bill's effective date. An act that occurs before such date is governed by the law in effect on the date the act occurred, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 401 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute omits a provision from the engrossed defining "exorbitant or excessive price" as a price that, as follows:

- increases by more than 10 percent over the price charged for medical staffing services provided immediately before the designated public health disaster period;
- increases by more than 10 percent over the tax-adjusted price charged for medical staffing services provided in any area outside the geographic area subject to the designated public health disaster period;
- increases by more than 10 percent over the sum of the higher of acquisition or replacement cost for medical staffing services and the markup customarily applied by the medical staffing services agency for medical staffing services in the usual course of business immediately before the designated public health disaster period;
- is not attributable to fluctuations in applicable regional or national markets for medical staffing services; or
- is not a contract price or price formula for medical staffing services agreed to before the designated public health disaster period.

The substitute includes a provision that was not in the engrossed prohibiting a medical staffing services agency, during a designated public health disaster period, from providing medical staffing services to a health care organization or other entity in Texas at an exorbitant or excessive price in an area subject to the declared state of disaster.

With respect to an action brought under the bill to recover a civil penalty from a medical staffing services agency that violates the bill's provisions or to restrain or enjoin a person from violating the bill's provisions, the engrossed and the substitute differ in the following manner:

- whereas the engrossed authorized the attorney general to bring such an action and recover reasonable expenses incurred in obtaining a civil penalty, the substitute authorizes the consumer protection division of the office of the attorney general to bring the action and recover reasonable expenses incurred in obtaining a civil penalty;
- the substitute specifies that an injunction resulting from such an action may be temporary or permanent, whereas the engrossed did not; and
- the substitute includes provisions that were not in the engrossed specifying the district courts in which such an action may be brought.