

## **BILL ANALYSIS**

Senate Research Center  
88R229 SRA-D

S.B. 401  
By: Kolkhorst  
Health & Human Services  
3/13/2023  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The COVID-19 public health emergency placed an excessive 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 significant problems, increasing previous shortages already plaguing the industry and creating higher demand for contract labor. Hospital staffing accounts for roughly 60 percent of hospital expenses, with labor costs per patient increasing 19.5 percent through November 2021 from pre-pandemic levels. The estimated cost for traveling healthcare staff doubled between 2020 and 2021.

During the various "surges" of SARS-CoV-2 variants, Texas authorized federal funding to support hospitals and nursing homes with staffing needs. The influx of "surge staffing" funding to hospitals and nursing homes increased demand for nurses and other healthcare professionals from various staffing agencies and may have inadvertently contributed to higher rates. Additionally, between FY 2020 and 2022, the amount of money that the Health and Human Services Commission spent on contract nurses for state hospitals and state supported living centers nearly doubled.

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.

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

Medical staffing agencies found to violate the updated Health and Safety Code will be subject to a civil penalty that does not exceed \$1,000 per violation.

Currently, firms such as the Texas Health Care Association, Texas Hospital Association, and LeadingAge Texas support this legislation.

As proposed, S.B. 401 amends current law relating to prices charged by a medical staffing services agency during a declared state of disaster 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 DECLARED STATE OF DISASTER**

Sec. 81B.001. DEFINITION. Defines "designated 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 disaster period:

- (1) physician assistants licensed under Chapter 204 (Physician Assistants), Occupations Code;
- (2) surgical assistants licensed under Chapter 206 (Surgical Assistants), Occupations Code; or
- (3) nurses licensed under Chapter 301 (Nurses), Occupations Code.

Sec. 81B.003. PROHIBITED PRICE GOUGING DURING DECLARED STATE OF DISASTER. Prohibits a medical staffing services agency to which this chapter applies, during a designated disaster period, from charging an exorbitant or excessive price to provide medical staffing services to a health care organization or other entity in this state in an area subject to a declared state of disaster.

Sec. 81B.004. CIVIL PENALTY. (a) Provides that a medical staffing services agency that violates this chapter is subject to a civil penalty in an amount not to exceed \$1,000 for each violation.

(b) Authorizes the attorney general to bring an action in the name of the state to recover a civil penalty under this section.

(c) Authorizes the attorney general 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.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2023.