By:  Kolkhorst S.B. No. 401

(In the Senate - Filed January 12, 2023; February 15, 2023, read first time and referred to Committee on Health & Human Services; March 20, 2023, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; March 20, 2023, sent to printer.)

COMMITTEE VOTE

                 Yea Nay Absent  PNV

Kolkhorst         X

Perry             X

Blanco            X

Hall              X

Hancock           X

Hughes            X

LaMantia          X

Miles             X

Sparks            X

COMMITTEE SUBSTITUTE FOR S.B. No. 401 By:  Blanco

A BILL TO BE ENTITLED

AN ACT

relating to prices charged by a medical staffing services agency during certain designated public health disaster periods; providing a civil penalty.

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

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

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

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

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

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

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

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

(B)  beginning on the earlier of the date:

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

(ii)  the president of the United States declares a state of disaster that includes an area of this state as part of the federally declared disaster area; or

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

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

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

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

(B)  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;

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

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

(ii)  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;

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

(E)  is not a contract price or price formula for medical staffing services agreed to before the designated public health disaster period.

Sec. 81B.002.  APPLICABILITY. 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, Occupations Code;

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

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

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

Sec. 81B.003.  PROHIBITED PRICE GOUGING DURING DESIGNATED PUBLIC HEALTH DISASTER PERIOD. During a designated public health disaster period, a medical staffing services agency to which this chapter applies may not demand or charge 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; INJUNCTION. (a) 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)  The attorney general may bring an action in the name of the state to:

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

(2)  restrain or enjoin the person from violating this chapter.

(c)  The attorney general may 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.  The changes in law made by this Act apply only to an act that occurs on or after the effective date of this Act.  An act that occurs before the effective date of this Act is governed by the law in effect on the date the act occurred, and the former law is continued in effect for that purpose.

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

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