

House Study Bill 638 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
HUMAN RESOURCES BILL BY
CHAIRPERSON MEYER)

A BILL FOR

1 An Act relating to health care employment agencies, and
2 providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 135Q.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Department*" means the department of inspections and
5 appeals.

6 2. "*Direct services*" means services provided to consumers
7 through person-to-person contact. "*Direct services*" excludes
8 services performed by persons in a health care entity setting
9 that do not involve the provision of any service or treatment
10 to a consumer of a health care entity.

11 3. "*Health care employment agency*" or "*agency*" means an
12 agency that contracts with a health care entity in this state
13 to provide agency workers for temporary, temporary-to-hire,
14 direct hire, or other contract or employee placements.

15 4. "*Health care employment agency worker*" or "*agency worker*"
16 means an individual who contracts with or is employed by a
17 health care employment agency to provide direct services or
18 nursing services to health care entity consumers.

19 5. "*Health care entity*" means a licensed or certified
20 facility, organization, or agency operated to provide services
21 and supports to meet the health or personal care needs of
22 consumers.

23 6. "*Managing entity*" means a business entity, owner,
24 ownership group, chief executive officer, program
25 administrator, director, or other decision maker whose
26 responsibilities include directing the management or policies
27 of a health care employment agency. "*Managing entity*" includes
28 an individual who, directly or indirectly, holds a beneficial
29 interest in a corporation, partnership, or other business
30 entity that constitutes a managing entity.

31 7. "*Nursing services*" means those services which may be
32 provided only by or under the supervision of a nurse.

33 Sec. 2. NEW SECTION. 135Q.2 Health care employment agency
34 requirements — registration — liability — penalties.

35 1. A health care employment agency operating in the state

1 shall register annually with the department. Each separate
2 location of a health care employment agency shall register
3 annually with and pay an annual registration fee of five
4 hundred dollars to the department. The department shall issue
5 each location a separate certification of registration upon
6 approval of registration and payment of the fee.

7 2. A health care employment agency shall do all of the
8 following:

9 a. Ensure that agency workers comply with all applicable
10 requirements relating to the health requirements and
11 qualifications of personnel in health care entity settings.

12 b. Document that each agency worker meets the minimum
13 licensing, certification, training, and health requirements
14 and the continuing education standards for the agency worker's
15 position in the health care entity setting.

16 c. Maintain records for each agency worker and report,
17 file, or otherwise provide any required documentation to
18 external parties or regulators which would otherwise be the
19 responsibility of the health care entity if the agency worker
20 was employed by the health care entity.

21 d. Maintain professional and general liability insurance
22 coverage with minimum per occurrence coverage of one million
23 dollars and aggregate coverage of three million dollars to
24 insure against loss, damage, or expense incident to a claim
25 arising out of the death or injury of any person as the result
26 of negligence or malpractice in the provision of services by
27 the agency or an agency worker.

28 3. a. A health care employment agency shall not do any of
29 the following:

30 (1) Restrict in any manner the employment opportunities
31 of an agency worker by including a non-compete clause in any
32 contract with an agency worker or health care entity.

33 (2) In any contract with an agency worker or health care
34 entity, require payment of liquidated damages, employment fees,
35 or other compensation if the agency worker is subsequently

1 hired as a permanent employee of the health care entity.

2 *b.* Any contract that violates this subsection shall be
3 unenforceable in court.

4 4. A health care employment agency shall submit a report to
5 the department on a quarterly basis for each health care entity
6 participating in Medicare or Medicaid with whom the agency
7 contracts that includes all of the following by provider type:

8 *a.* A detailed list of the average amount charged to the
9 health care entity for each individual agency worker category.

10 *b.* A detailed list of the average amount paid by the agency
11 to agency workers in each individual agency worker category.

12 5. *a.* A health care employment agency that violates
13 subsection 1 or subsection 2 is subject to denial or revocation
14 of registration for a period of one year and a monetary penalty
15 of five hundred dollars for a first offense and five thousand
16 dollars for each offense thereafter.

17 *b.* A health care employment agency that violates subsection
18 3 or that knowingly provides an agency worker who has an
19 illegally or fraudulently obtained or issued diploma,
20 registration, license, certification, or background check to
21 a health care entity is subject to immediate revocation of
22 registration. The department shall notify the agency thirty
23 days in advance of the date of such revocation.

24 *c.* (1) The managing entity of an agency for which
25 registration has been denied or revoked under this subsection
26 shall not be eligible to apply for or be granted registration
27 for another agency during the two-year period following the
28 date of the denial or revocation.

29 (2) The department shall not approve a new registration
30 or renew an existing registration for any agency for which
31 the managing entity is also the managing entity of an agency
32 for which registration has been denied or revoked during the
33 two-year period in which registration of the violating agency
34 is denied or revoked.

35 6. The department shall establish a system for members of

1 the public to report complaints against an agency or agency
2 worker. The department shall investigate any complaint
3 received and shall report the department's findings to the
4 complaining party and the agency involved.

5 EXPLANATION

6 The inclusion of this explanation does not constitute agreement with
7 the explanation's substance by the members of the general assembly.

8 This bill relates to health care employment agencies. The
9 bill defines a health care employment agency (agency) as an
10 agency that contracts with a health care entity in this state
11 to provide agency workers for temporary, temporary-to-hire,
12 direct hire, or other contract or employee placements. The
13 bill also defines "department", "direct services", "health care
14 employment agency" or "agency", "health care employment agency
15 worker" or "agency worker", "health care entity", "managing
16 entity", and "nursing services" for purposes of the bill.

17 The bill requires an agency operating in the state to
18 register annually with the department of inspections and
19 appeals (DIA). Each separate location of an agency is required
20 to register annually with and pay an annual registration fee
21 of \$500 to DIA, and DIA shall issue each location a separate
22 certification of registration upon approval of registration and
23 payment of the fee.

24 An agency is required to ensure that agency workers comply
25 with all applicable requirements relating to the health
26 requirements and qualifications of personnel in health care
27 entity settings; document that each agency worker meets
28 the minimum licensing, certification, training, and health
29 requirements and the continuing education standards for the
30 agency worker's position in the health care entity setting;
31 maintain records for each agency worker and report, file,
32 or otherwise provide any required documentation to external
33 parties or regulators which would otherwise be required of
34 the health care entity if the agency worker was employed by
35 the health care entity; and maintain professional and general

1 liability insurance coverage in minimum per occurrence and
2 aggregate amounts to insure against loss, damage, or expense
3 incident to a claim arising out of the death or injury of
4 any person as the result of negligence or malpractice in the
5 provision of services by the agency or an agency worker.

6 An agency shall not restrict in any manner the employment
7 opportunities of any agency worker by requiring agreement to
8 a non-compete clause in any contract with an agency worker or
9 health care entity; or require payment of liquidated damages,
10 employment fees, or other compensation if the agency worker
11 is hired as a permanent employee of the health care entity in
12 any contract with an agency worker or health care entity. Any
13 contract that violates these provisions is unenforceable in
14 court.

15 An agency shall submit a report to DIA on a quarterly
16 basis for each health care entity participating in Medicare
17 or Medicaid with whom the agency contracts that includes, by
18 health care entity type, a detailed list of the average amount
19 charged to the health care entity for each individual agency
20 worker category and a detailed list of the average amount paid
21 by the agency to agency workers in each individual agency
22 worker category.

23 An agency that fails to register in accordance with the bill
24 or does not comply with the requirements relating to agency
25 worker health and qualification requirements and standards,
26 maintenance of records and the provision of documents, or
27 maintenance of liability insurance is subject to denial or
28 revocation of registration for a period of one year and a
29 monetary penalty of \$500 for a first offense and \$5,000 for
30 each offense thereafter. An agency that violates prohibited
31 contract provisions or knowingly provides an agency worker who
32 has an illegally or fraudulently obtained or issued diploma,
33 registration, license, certification, or background check to
34 a health care entity is subject to immediate revocation of
35 registration. Additionally, the managing entity of an agency

1 for which registration has been denied or revoked under the
2 bill shall not be eligible to apply for or to be granted
3 registration for another agency during the two-year period
4 following the date of the denial or revocation; DIA shall not
5 approve a new registration or renew the existing registration
6 for any agency for which the managing entity is also the
7 managing entity of an agency for which registration has been
8 denied or revoked during the two-year period during which
9 registration of the violating agency is denied or revoked.

10 DIA shall establish a system for members of the public to
11 report complaints against an agency or agency worker. DIA
12 shall investigate all complaints received and shall report DIA
13 findings to the complaining party and the agency involved.