

House File 2199 - Introduced

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A BILL FOR

1 An Act relating to health care employment agencies, including
2 the statewide maximum allowable charges schedule applicable
3 to nursing services provided by health care employment
4 agency workers, providing penalties, and including effective
5 date and retroactive applicability provisions.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 135Q.1, Code 2024, is amended to read as
2 follows:

3 **135Q.1 Definitions.**

4 As used in [this chapter](#), unless the context otherwise
5 requires:

6 1. *“Department”* means the department of inspections,
7 appeals, and licensing.

8 2. *“Health care employment agency”* or *“agency”* means an any
9 of the following:

10 a. An agency that contracts with a health care entity
11 in this state to provide agency workers for temporary or
12 temporary-to-hire employee placements.

13 b. A health care technology platform.

14 3. *“Health care employment agency worker”* or *“agency worker”*
15 means an individual who contracts with or is employed by a
16 health care employment agency to provide nursing services to
17 health care entity consumers.

18 4. *“Health care entity”* means a facility, agency, or program
19 licensed or certified by the department or by the centers for
20 Medicare and Medicaid services of the United States department
21 of health and human services.

22 5. “Health care technology platform” or “platform” includes
23 an individual, a trust, a partnership, a corporation, a limited
24 liability partnership or company, or any other business entity
25 that develops and operates, offers, or maintains a system or
26 technology that provides an internet-based or application-based
27 marketplace through which an individual as an independent
28 contractor, and in the individual’s sole discretion, chooses
29 when and how often to utilize the platform to bid on or select
30 open shifts posted by a health care entity to provide nursing
31 services to a health care entity.

32 6. “Individual agency worker category” includes registered
33 nurses, licensed practical nurses, certified nurse aides,
34 certified medication aides, home health aides, medication
35 managers, and noncertified or nonlicensed staff providing

1 personal care as defined in section 231C.2 who are health care
2 employment agency workers.

3 ~~5.~~ 7. *"Managing entity"* means a business entity,
4 owner, ownership group, chief executive officer, program
5 administrator, director, or other decision maker whose
6 responsibilities include directing the management or policies
7 of a health care employment agency. *"Managing entity"* includes
8 an individual who, directly or indirectly, holds a beneficial
9 interest in a corporation, partnership, or other business
10 entity that constitutes a managing entity.

11 ~~6.~~ 8. *"Nursing services"* means those services which may be
12 provided only by or under the supervision of a nurse. *"Nursing*
13 *services"* includes services performed by a registered nurse, a
14 licensed practical nurse, a certified nurse aide, a certified
15 medication aide, a home health aide, a medication manager, or
16 by noncertified or nonlicensed staff providing personal care
17 as defined in [section 231C.2](#). *"Nursing services"* does not
18 include the practice of nursing by an advanced registered nurse
19 practitioner or an advanced practice registered nurse licensed
20 under [chapter 152](#) or [152E](#).

21 9. *"Nursing services professionals"* includes registered
22 nurses, licensed practical nurses, certified nurse aides,
23 certified medication aides, home health aides, medication
24 managers, and noncertified or nonlicensed staff providing
25 personal care as defined in section 231C.2 who are not health
26 care employment agency workers but instead are employed
27 directly by or contract directly with a health care entity.

28 Sec. 2. Section 135Q.2, Code 2024, is amended to read as
29 follows:

30 **135Q.2 Health care employment agency requirements —**
31 **registration — liability — penalties.**

32 1. a. A health care employment agency operating in the
33 state shall register annually with the department. Each
34 separate location of a health care employment agency shall
35 register annually with and pay an annual registration fee of

1 five hundred dollars to the department. The department shall
2 issue each location a separate certification of registration
3 upon approval of registration and payment of the fee. The
4 annual registration fees shall be retained by the department as
5 repayment receipts as defined in [section 8.2](#).

6 b. A health care employment agency that fails to register
7 with the department as required under this section is
8 prohibited from contracting with a health care entity in this
9 state.

10 2. A health care employment agency shall do all of the
11 following:

12 a. Ensure that agency workers comply with all applicable
13 requirements relating to the health requirements and
14 qualifications of personnel in health care entity settings.

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

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

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

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

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

1 (2) In any contract with an agency worker or health care
2 entity, require payment of liquidated damages, employment fees,
3 or other compensation if the agency worker is subsequently
4 hired as a permanent employee of the health care entity.

5 (3) Use the establishment of, or the required applicability
6 of, the statewide maximum allowable charges schedule as a basis
7 for prohibiting or otherwise interfering with a wage increase
8 for any agency worker.

9 b. **This subsection** shall not apply to a contract between
10 a health care employment agency and an agency worker or a
11 health care entity if the contract meets all of the following
12 criteria:

13 (1) The contract is entered into for the purpose of placing
14 an agency worker the health care employment agency assisted in
15 obtaining authorization to work in the United States.

16 (2) The contract contains an initial duration term of
17 not less than twenty-four months and a total duration term,
18 including any renewals or extensions, of not more than
19 thirty-six months.

20 (3) The contract requires the agency worker to work for
21 a single health care entity for the entire duration of the
22 contract.

23 c. Any contract that violates **this subsection** shall be
24 unenforceable in court.

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

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

31 b. A detailed list of the average amount paid by the agency
32 to agency workers in each individual agency worker category.

33 ~~5. a. A health care employment agency that violates~~
34 ~~subsection 1 or subsection 2 is subject to denial or revocation~~
35 ~~of registration for a period of one year and a monetary penalty~~

~~1 of five hundred dollars for a first offense and five thousand
2 dollars for each offense thereafter.~~

~~3 b. A health care employment agency that violates subsection
4 3 or that knowingly provides an agency worker who has an
5 illegally or fraudulently obtained or issued diploma,
6 registration, license, certification, or background check to
7 a health care entity is subject to immediate revocation of
8 registration. The department shall notify the agency thirty
9 days in advance of the date of such revocation.~~

~~10 c. (1) The managing entity of an agency for which
11 registration has been denied or revoked under this subsection
12 shall not be eligible to apply for or be granted registration
13 for another agency during the two-year period following the
14 date of the denial or revocation.~~

~~15 (2) The department shall not approve a new registration
16 or renew an existing registration for any agency for which
17 the managing entity is also the managing entity of an agency
18 for which registration has been denied or revoked during the
19 two-year period in which registration of the violating agency
20 is denied or revoked.~~

~~21 6. 5. The department shall establish a system for members
22 of the public to report complaints against an agency or
23 agency worker. The department shall investigate any complaint
24 received and shall report the department's findings to the
25 complaining party and the agency involved.~~

~~26 Sec. 3. NEW SECTION. 135Q.3 Statewide maximum allowable
27 charges schedule — establishment and annual revision — required
28 utilization and compliance — rules.~~

~~29 1. The department of health and human services shall
30 annually establish and publish by September 30, a statewide
31 maximum allowable charges schedule that shall be applicable
32 January 1 of the immediately following calendar year to nursing
33 services provided by a health care employment agency worker.
34 The department of health and human services shall utilize the
35 most recently preceding nursing facility cost report schedule~~

1 H to calculate the statewide maximum allowable charges. The
2 department of health and human services, in collaboration
3 with stakeholders, shall develop a process to periodically
4 obtain wage information from provider types other than nursing
5 facilities.

6 2. The amounts established in the statewide maximum
7 allowable charges schedule shall meet all of the following
8 requirements:

9 a. The amounts shall be no greater than one hundred fifty
10 percent of the statewide average wage paid in the most recently
11 preceding cost report year by a specific type of health care
12 entity to a nursing services professional, within a specific
13 nursing services professional category, and within the
14 applicable core-based statistical area of the state.

15 b. The amounts shall be inclusive of the hourly rate,
16 administrative fees, contract fees, transportation or travel
17 stipends, per diems, and any other costs a health care
18 employment agency is authorized to include in the charge to a
19 health care entity for nursing services provided by an agency
20 worker within an individual agency worker category.

21 3. Each separate location of a health care employment agency
22 registered under section 135Q.2 shall utilize and comply with
23 the statewide maximum allowable charges schedule established
24 under this section.

25 4. The department of health and human services, in
26 cooperation with the department, shall adopt rules pursuant to
27 chapter 17A to administer this section.

28 Sec. 4. NEW SECTION. 135Q.4 Penalties.

29 1. a. A health care employment agency that violates
30 section 135Q.2, subsection 1 or 4, is subject to an initial
31 monetary penalty of five thousand dollars and shall be provided
32 notification and given a thirty-day grace period in which to
33 comply.

34 b. A health care employment agency that fails to comply
35 following the notification and within the thirty-day grace

1 period under paragraph "a", shall be subject to a monetary
2 penalty of twenty-five thousand dollars.

3 c. If a health care employment agency fails to comply
4 with paragraph "b", the health care employment agency shall
5 be subject to an additional monetary penalty of twenty-five
6 thousand dollars, revocation of registration, and denial of
7 subsequent registration for up to three years.

8 2. a. A health care employment agency that violates section
9 135Q.2, subsection 2, or that knowingly provides an agency
10 worker who has an illegally or fraudulently obtained or issued
11 diploma, registration, license, certification, or background
12 check to a health care entity is subject to a monetary penalty
13 of five thousand dollars for each violation.

14 b. If a health care employment agency commits a second or
15 subsequent violation of section 135Q.2, subsection 2, within
16 any three-year period, the health care employment agency shall
17 be subject to immediate revocation of registration. The
18 department shall notify the agency thirty days in advance of
19 the date of such revocation.

20 3. A health care employment agency that violates section
21 135Q.2, subsection 3, is subject to a monetary penalty of
22 twenty-five thousand dollars for the first violation. If
23 a health care employment agency violates section 135Q.2,
24 subsection 3, a second or subsequent time, the health care
25 employment agency shall be subject to immediate revocation of
26 registration, and shall not be eligible to apply for or be
27 granted registration for the three-year period immediately
28 following the date of revocation.

29 4. A health care employment agency that violates section
30 135Q.3 shall be subject to a monetary penalty of five thousand
31 dollars for the first violation, and a monetary penalty of
32 twenty-five thousand dollars for each subsequent violation.

33 5. a. The managing entity of an agency for which
34 registration has been denied or revoked under this section
35 shall not be eligible to apply for or be granted registration

1 for another agency during the three-year period following the
2 date of the denial or revocation.

3 *b.* The department shall not approve a new registration
4 or renew an existing registration for any agency for which
5 the managing entity is also the managing entity of an agency
6 for which registration has been denied or revoked during the
7 three-year period in which registration of the violating agency
8 is denied or revoked.

9 6. Any monetary penalties collected under this section
10 shall be retained by the department as repayment receipts as
11 defined in section 8.2.

12 Sec. 5. NEW SECTION. 135Q.5 Department annual report.

13 The department shall submit an annual report to the general
14 assembly by January 15, for the immediately preceding fiscal
15 year, that includes a summary of the number of registrations
16 issued and the amount of registration fees collected, the
17 violations of this chapter, the amount of monetary penalties
18 collected, the number of health care employment agencies and
19 managing entities for whom a registration was revoked or
20 denied, the statewide maximum allowable charges schedule, and
21 any recommendations for changes to the chapter.

22 Sec. 6. EFFECTIVE DATE. This Act, being deemed of immediate
23 importance, takes effect upon enactment.

24 Sec. 7. RETROACTIVE APPLICABILITY. This Act applies
25 retroactively to any contract between a health care employment
26 agency and an agency worker or health care entity referred to
27 under this Act that was entered into or executed on or after
28 January 1, 2019.

29

EXPLANATION

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

32 This bill relates to health care employment agencies
33 (agency), including the maximum allowable charges an agency may
34 charge a health care entity for nursing services provided by a
35 health care employment agency worker (agency worker).

1 The bill defines terms used in the bill, including "health
2 care employment agency" which includes a "health care
3 technology platform" as defined in the bill; "individual agency
4 worker category" which includes specified health professionals
5 who are agency workers, and "nursing services professionals"
6 which includes the same specified health professionals who are
7 not agency workers but are instead employed directly by, or
8 contract directly with, a health care entity.

9 The bill requires the department of health and human
10 services (HHS) to annually establish and publish by September
11 30, a statewide maximum allowable charges schedule (charges
12 schedule) applicable January 1 of the following calendar year
13 to nursing services provided by agency workers. The amounts
14 established in the charges schedule must be no greater than
15 150 percent of the statewide average wage paid in the most
16 recently preceding cost report year by a specific type of
17 health care entity to a nursing services professional, within
18 a specific nursing services professional category, and within
19 the applicable core-based statistical area of the state; and
20 must be inclusive of the hourly rate, administrative fees,
21 contract fees, transportation or travel stipends, per diems,
22 and any other costs an agency is authorized to include in the
23 charge to a health care entity for nursing services provided by
24 an agency worker within an individual agency worker category.
25 The bill requires each separate location of an agency
26 registered in the state to utilize and comply with the charges
27 schedule established under the bill. The bill directs HHS in
28 cooperation with the department of inspections, appeals, and
29 licensing (DIAL) to adopt administrative rules to administer
30 these provisions of the bill. The bill prohibits an agency
31 from using the establishment of, or the required applicability
32 of, the charges schedule as a basis for prohibiting or
33 otherwise interfering with a wage increase for any agency
34 worker.

35 The bill amends current penalties under Code chapter

1 135Q and includes new penalties for violations of provisions
2 included in the bill.

3 The bill provides that an agency that violates Code
4 section 135Q.2(1) (relating to required registration and the
5 prohibition against contracting with a health care entity in
6 the state if the agency is not registered), or Code section
7 135Q.2(4) (relating to submitting quarterly reports to DIAL),
8 is subject to an initial monetary penalty of \$5,000 and shall
9 be provided notification and given a 30-day grace period in
10 which to comply. If the agency fails to comply following the
11 notification and within the 30-day grace period, the agency
12 shall be subject to a monetary penalty of \$25,000. If the
13 agency continues the noncompliance, the agency shall be subject
14 to an additional monetary penalty of \$25,000, revocation of
15 registration, and denial of subsequent registration for up
16 to three years. The bill also provides that an agency that
17 violates Code section 135Q.2(2) (relating to certain prohibited
18 restrictions on agency workers or health care entities and
19 contracting prohibitions), or that knowingly provides an agency
20 worker who has an illegally or fraudulently obtained or issued
21 diploma, registration, license, certification, or background
22 check to a health care entity is subject to a monetary penalty
23 of \$5,000 for each violation, and to immediate revocation of
24 registration. If the agency commits a second or subsequent
25 violation within any three-year period, the health care
26 employment agency shall be subject to immediate revocation of
27 registration. Under the bill, an agency that violates Code
28 section 135Q.2(3) (relating to contracting with agency workers
29 and health care entities) is subject to a monetary penalty of
30 \$25,000 for a first offense, and to immediate revocation of
31 registration and denial of registration for the three-year
32 period following revocation for a second or subsequent
33 violation.

34 An agency that violates Code section 135Q.3 (relating
35 to requirements regarding the statewide allowable charges

1 schedule), shall be subject to a monetary penalty of \$5,000 for
2 the first violation and a monetary penalty of \$25,000 for each
3 subsequent violation.

4 The bill also provides that the managing entity of an agency
5 for which registration has been denied or revoked shall not be
6 eligible to apply for or be granted registration for another
7 agency during the three-year period following the date of
8 the denial or revocation; and DIAL shall not approve a new
9 registration or renew an existing registration for any agency
10 for which the managing entity is also the managing entity of
11 an agency for which registration has been denied or revoked
12 during the three-year period in which registration of the
13 violating agency is denied or revoked. The bill provides that
14 any monetary penalties collected shall be retained by DIAL as
15 repayment receipts as defined in Code section 8.2.

16 The bill requires DIAL to submit an annual report to
17 the general assembly by January 15, for the immediately
18 preceding fiscal year, that includes a summary of the number
19 of registrations issued and the amount of registration
20 fees collected, the violations of the chapter, the amount
21 of monetary penalties collected, the number of health
22 care employment agencies and managing entities for whom a
23 registration was revoked or denied, the charges schedule, and
24 any recommendations for changes to the Code chapter. The bill
25 takes effect upon enactment and applies retroactively to any
26 contract between a health care employment agency and an agency
27 worker or health care entity referred to under the bill that
28 was entered into or executed on or after January 1, 2019.