

HOUSE BILL NO. 2605

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GREGORY (51).

5417H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 198, RSMo, by adding thereto five new sections relating to supplemental health care services agencies, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 198, RSMo, is amended by adding thereto five new sections, to be
2 known as sections 198.640, 198.642, 198.644, 198.646, and 198.648, to read as follows:

198.640. As used in sections 198.640 to 198.648, the following terms shall mean:

- 2 **(1) "Controlling person", a business entity, officer, program administrator, or**
3 **director whose responsibilities include the direction of the management or policies of a**
4 **supplemental health care services agency. The term "controlling person" also means an**
5 **individual who, directly or indirectly, beneficially owns an interest in a corporation,**
6 **partnership, or other business association that is a controlling person;**
7 **(2) "Department", the department of health and senior services;**
8 **(3) "Health care facility", a licensed hospital defined under section 197.020 or a**
9 **licensed entity defined under subdivision (6), (14), (22), or (23) of section 198.006;**
10 **(4) "Health care personnel", any individual licensed, accredited, or certified by**
11 **the state of Missouri to perform specified health services consistent with state law;**
12 **(5) "Person", an individual, firm, corporation, partnership, or association;**
13 **(6) "Supplemental health care services agency" or "agency", a person, firm,**
14 **corporation, partnership, or association engaged for hire in the business of providing or**
15 **procuring temporary employment in health care facilities for health care personnel,**
16 **including a temporary nursing staffing agency as defined in section 383.130, or that**
17 **operates a digital website or digital smartphone application that facilitates the provision**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 of the engagement of health care personnel and accepts requests for health care
19 personnel through its digital website or digital smartphone application. The term
20 "supplemental health care services agency" or "agency" shall not include an individual
21 who engages, only on his or her own behalf, to provide the individual's services on a
22 temporary basis to health care facilities or a home health agency licensed under section
23 197.415.

198.642. 1. A person who operates a supplemental health care services agency
2 shall register annually with the department. Each separate business location of the
3 agency shall have a separate registration with the department. Fees collected under this
4 section shall be deposited in the state treasury and credited to the state general revenue
5 fund.

6 2. The department shall establish forms and procedures for processing each
7 supplemental health care services agency registration application. An application for
8 agency registration shall include at least the following:

9 (1) The names and addresses of each person having an ownership interest in the
10 agency;

11 (2) If the owner is a corporation, copies of the articles of incorporation or
12 articles of association and current bylaws, together with the names and addresses of
13 officers and directors;

14 (3) Satisfactory proof of compliance with the provisions of sections 198.640 to
15 198.648;

16 (4) Any other relevant information that the department determines is necessary
17 to properly evaluate an application for registration;

18 (5) Policies and procedures that describe how the agency's records will be
19 immediately available at all times to the department upon request; and

20 (6) A registration fee established in rule by the department as determined to be
21 necessary to meet the expenses of the department for the administration of the
22 provisions of sections 198.640 to 198.648, but in no case shall such fee be less than one
23 thousand dollars.

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25 If an agency fails to provide the items required in this subsection to the department, the
26 department shall immediately suspend or refuse to issue the supplemental health care
27 services agency registration. An agency may appeal the department's decision to the
28 administrative hearing commission under chapter 621.

29 3. A registration issued by the department according to this section shall be
30 effective for a period of one year from the date of its issuance, unless the registration has
31 been revoked or suspended under the provisions of this section or unless the agency is

32 sold or ownership or management is transferred. If an agency is sold or ownership or
33 management is transferred, the registration of the agency shall be void, and the new
34 owner or operator may apply for a new registration.

35 4. The department shall be responsible for the oversight of supplemental health
36 care services agencies through annual unannounced surveys, complaint investigations,
37 and other actions necessary to ensure compliance with sections 198.640 to 198.648.

198.644. 1. Each registered supplemental health care services agency shall be
2 required, as a condition of registration, to meet the following minimum criteria, which
3 may be supplemented by rules promulgated by the department:

4 (1) Provide to the health care facility to which any temporary health care
5 personnel are supplied documentation that each temporary employee meets all licensing
6 or certification, training, and continuing education standards for the position in which
7 the employee will be working;

8 (2) Comply with all pertinent requirements relating to the health and other
9 qualifications of personnel employed in health care facilities, including requirements
10 related to background checks in sections 192.2490 and 192.2495;

11 (3) Not restrict in any manner the employment opportunities of its employees;

12 (4) Carry medical malpractice insurance to insure against loss, damages, or
13 expenses incident to a claim arising out of the death or injury of any person as the result
14 of negligence or malpractice in the provision of health care services by the agency or by
15 any employee of the agency;

16 (5) Carry for each employee a dishonesty bond in the amount of ten thousand
17 dollars;

18 (6) Maintain insurance coverage for workers' compensation for all health care
19 personnel provided or procured by the agency;

20 (7) File with the department of revenue:

21 (a) The name and address of the bank, savings bank, or savings association in
22 which the agency deposits all employee income tax withholdings; and

23 (b) The name and address of any health care personnel whose income is derived
24 from placement by the agency, if the agency purports the income is not subject to
25 withholding;

26 (8) Refrain in any contract with any employee or health care facility from
27 requiring the payment of liquidated damages, employment fees, or other compensation
28 should the employee be hired as a permanent employee of a health care facility;

29 (9) Document that each temporary employee provided to health care facilities is
30 an employee of the agency and is not an independent contractor;

31 **(10) Retain all records for ten calendar years in a manner to allow them to be**
32 **immediately available to the department; and**

33 **(11) Provide services to a health care facility during the year preceding the**
34 **agency's registration renewal date.**

35 **2. Failure to comply with the provisions of this section shall subject the**
36 **supplemental health care services agency to revocation or nonrenewal of its registration.**
37 **Any agency that has violated section 198.648 shall be subject to a fine equal to two**
38 **hundred percent of the amount billed or received in excess of the maximum permitted**
39 **under section 198.648.**

40 **3. The registration of a supplemental health care services agency that knowingly**
41 **supplies to a health care facility a person with an illegally or fraudulently obtained or**
42 **issued diploma, registration, license, certificate, or background study shall be revoked**
43 **by the department upon fifteen days' advance written notice.**

44 **4. (1) Any supplemental health care services agency's registration that has been**
45 **suspended or revoked may appeal the department's decision to the administrative**
46 **hearing commission under the provisions of chapter 621.**

47 **(2) If a controlling person has been notified by the department that the**
48 **supplemental health care services agency will not receive an initial registration or that a**
49 **renewal of the registration has been denied, the controlling person or a legal**
50 **representative on behalf of the agency may request and receive a hearing on the**
51 **denial before the administrative hearing commission under the provisions of chapter**
52 **621.**

53 **5. (1) The controlling person of a supplemental health care services agency**
54 **whose registration has not been renewed or has been revoked because of noncompliance**
55 **with the provisions of sections 198.640 to 198.648 shall not be eligible to apply for or**
56 **receive a registration for five years following the effective date of the nonrenewal or**
57 **revocation.**

58 **(2) The department shall not issue or renew a registration to a supplemental**
59 **health care services agency if a controlling person includes any individual or entity that**
60 **was a controlling person of an agency whose registration was not renewed or was**
61 **revoked as described in subdivision (1) of this subsection for five years following the**
62 **effective date of nonrenewal or revocation.**

198.646. The department shall establish a system for reporting complaints
2 **against a supplemental health care services agency or its employees. Complaints may be**
3 **made by any member of the public.**

198.648. 1. A supplemental health care services agency shall not bill or receive
2 **payments from a health care facility at a rate higher than one hundred fifty percent of**

3 the sum of the average wage rate, plus a factor to incorporate payroll taxes for the
4 applicable employee, if necessary. The average wage rates shall be determined by the
5 department on an annual basis from the labor costs reported on the prior three years'
6 Title XIX cost reports for all Medicaid participating facilities. "Wages" shall be defined
7 as the hourly rate of pay calculated, including weekend shift differential and overtime,
8 for the respective employee nursing staff on Schedule K of the Title XIX cost report
9 form. The department shall also determine an average payroll tax factor to apply to the
10 average wage rate based on the prior three years' average payroll tax expense as a
11 percentage of average total salaries from the Supplement to Schedule B of the Title XIX
12 cost report. The maximum rate shall include all charges for administrative fees,
13 contract fees, or other special charges, in addition to the hourly rates for the health care
14 personnel supplied to a health care facility. A health care facility that pays for the
15 actual travel and housing costs for health care personnel at the facility and that pays
16 these costs to the agency employee, the agency, or another vendor shall not be
17 considered in violation of the limitation on charges described in this subsection.

18 2. The department shall promulgates rules to implement the provisions of
19 sections 198.640 to 198.648. Any rule or portion of a rule, as that term is defined in
20 section 536.010, that is created under the authority delegated in this section shall
21 become effective only if it complies with and is subject to all of the provisions of chapter
22 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable,
23 and if any of the powers vested with the general assembly pursuant to chapter 536 to
24 review, to delay the effective date, or to disapprove and annul a rule are subsequently
25 held unconstitutional, then the grant of rulemaking authority and any rule proposed or
26 adopted after August 28, 2022, shall be invalid and void.

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