

SESSION OF 2022

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2524**

As Amended by House Committee on Children  
and Seniors

**Brief\***

HB 2524, as amended, would require the Secretary for Aging and Disability Services (Secretary) to regulate supplemental nursing services agencies (nursing agency), establish requirements for nursing agency registration in the state, create the Supplemental Nursing Services Agency Regulation Fund (Fund), and place certain prohibitions on nursing agency billing.

***Definitions***

The bill would define certain terms, including “controlling person,” which would mean:

- A business entity, officer, program administrator, or director whose responsibilities include the direction of the management or policies of a nursing agency; or
- An individual who, directly or indirectly, beneficially owns an interest in a corporation, partnership, or other business association that is a “controlling person.”

***Secretary Oversight***

The bill would provide that the Secretary is responsible for the oversight of supplemental nursing services agencies

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

through unannounced surveys, complaint investigations, and other necessary actions. The bill would require the Secretary to establish a system for the reporting of complaints against supplemental nursing services agencies and against the employees of supplemental nursing services agencies. The bill also would specify complaints may be made by any member of the public.

The bill would require the Secretary to adopt rules and regulations as necessary to implement the provisions of the bill.

### ***Nursing Agency Registration and Fund***

The bill would require a person who operates a supplemental nursing services agency to register each business location annually with the Secretary.

The bill would require the Secretary to establish forms and procedures for processing each supplemental nursing agency registration application, which would include, but not be limited to:

- The names and addresses of the owner or owners of the nursing agency;
- If the owner is a corporation, copies of its article of incorporation and current bylaws, together with the names and addresses of its officers and directors;
- Satisfactory proof of compliance with the below-listed conditions of registration;
- Any other relevant information the Secretary determines is necessary to properly evaluate an application for registration;

- A policy and procedure that describes how the nursing agency's records would be immediately available at all times to the Secretary; and
- A registration fee of \$2,035.

The bill would require the Secretary to immediately deny the nursing agency's registration if a nursing agency fails to provide the above-listed items. The bill would allow the nursing agency to appeal the Secretary's findings in accordance with the provisions of the Kansas Administrative Procedure Act, except the hearing would be conducted by an administrative law judge within 60 calendar days of the Secretary receiving any such request for a hearing.

The bill would specify a registration issued by the Secretary to a nursing agency would be effective for a period of one year from the issue date, unless the registration is revoked or unless the nursing agency is sold or ownership or management of the agency is transferred, in which case the registration would be voided, and the new owner or operator would be allowed to apply for a new registration.

The bill would create in the State Treasury the Fund, which would be administered by the Secretary. The bill would require all moneys received from fees collected under this provision to be credited to the Fund.

### ***Conditions of Registration***

The bill would provide the Secretary require, as a condition of registration, that the nursing agency:

- Document that each temporary employee provided to health care facilities currently meets the minimum licensing, training, and continuing education standards for the position in which the employee would work;

- Comply with all applicable legal requirements relating to the qualifications of personnel employed in health care facilities, including the performance of criminal history record checks in accordance with KSA 39-970, and amendments thereto;
- Not restrict, in any manner, the employment opportunities of its employees;
- Carry medical malpractice insurance coverage for the loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in the provision of health care services by the nursing agency or by any employee of the agency;
- Carry a fidelity bond or fidelity insurance in the amount of at least \$10,000;
- Maintain insurance coverage for workers compensation for all nurses and nurse aides provided or procured by the agency;
- Comply with the applicable requirements of the Kansas Withholding and Declaration of Estimated Tax Act;
- In any contract with any employee or health care facility, not require the payment of liquidated damages, employment fees, or other compensation if any such employee is hired as a permanent employee of a health care facility;
- Document that each temporary employee provided to health care facilities is an employee of the agency and is not an independent contractor;
- Retain all records for five calendar years and organize such records so they can be made

immediately available to the Secretary upon request; and

- Annually report the percentage of health care facility dollars the nursing agency expended on temporary employee wages and benefits compared to the nursing agency's profits and other administrative costs to the Secretary, who would be required to make such report available to the public.

The bill would require the nursing agency, in order to retain registration, to provide services to a health care facility during the year preceding the nursing agency's registration renewal date.

The bill would provide that failure to comply with the provisions of the bill would subject the nursing agency to revocation or non-renewal of its registration. The bill would specify the nursing agency's registration or renewal registration application not be revoked or denied without a hearing held in accordance with the provisions of the Kansas Administrative Procedure Act, except the hearing would be conducted by an administrative law judge within 60 calendar days after the Secretary receives a request for any such hearing.

The bill would provide that when a nursing agency knowingly supplies to a health care facility an employee with an illegally or fraudulently obtained or issued diploma, registration, license, certificate, or background study, such agency's registration would be revoked by the Secretary. The bill would require the Secretary to notify the nursing agency 15 calendar days in advance of the revocation date.

The bill would prohibit the controlling person of a nursing agency whose registration has not been renewed or has been revoked because of noncompliance with the provisions of the bill from being eligible to apply for or be granted a registration

for five years following the effective date or such non-renewal or revocation.

The bill would prohibit the Secretary from issuing or renewing a registration to a nursing agency if the controlling person of such agency includes any individual or entity who was a controlling person of a nursing agency whose registration was not renewed or was revoked under the bill's provisions for five years following the effective date of non-renewal or revocation.

### ***Billing Prohibition***

The bill would prohibit a nursing agency from billing or receiving payments from an adult care home or a hospital long-term care unit at a rate higher than 200 percent of the sum of the weighted average wage rate, plus a factor determined by the Secretary to incorporate payroll taxes for the applicable employee classification for the geographic group. The bill would require the Secretary to determine the weighted average wage rates on an annual basis.

For the purposes of the bill, "wages" would mean an hourly rate of pay and shift differential, including weekend shift differential and overtime. The bill would require adult care homes and long-term care units to provide information necessary to determine weighted average wage rates in a format requested by the Secretary. The bill would require the maximum rate to include all charges for administrative fees, contract fees, or other special charges in addition to the hourly rates for the temporary nursing personnel supplied to an adult care home or a hospital long-term care unit. The bill would specify that an adult care home or a hospital long-term care unit that pays for the actual travel and housing costs for nursing agency staff working at the facility and that pays these costs to the employee, the nursing agency, or another vendor would not violate the limitation on charges described in this section.

The bill would provide that violations of the billing prohibition provisions would be subject to a fine equal to 200 percent of the amount billed or received in excess of the maximum amount permitted. The bill would require all fines assessed and collected under the billing limit provisions to be credited to the Fund.

The bill would provide that the billing prohibition provisions expire on July 1, 2023.

## **Background**

The bill was introduced by the House Committee on Children and Seniors at the request of a representative of LeadingAge Kansas.

### ***House Committee on Children and Seniors***

In the House Committee hearing on February 1, 2022, representatives of Kansas Adult Care Executives, Kansas Health Care Association and Kansas Center for Assisted Living, Kansas Hospital Association, LeadingAge Kansas, Locust Grove Village, Midwest Health, and Recover-Care provided **proponent** testimony. The proponents stated the bill would provide necessary oversight of supplemental nursing agencies and help address the high costs of those agency staff. Proponents also stated the bill would remove restrictions on employment opportunities for agency staff, who are commonly prohibited from taking a permanent position with any health care provider they serve for at least a year.

Written-only proponent testimony was provided by representatives of Bethany Village, Evergreen Community of Johnson County, Logan Manor Community Health Services, Pioneer Lodge, Sunshine Meadows, and Village Manor of Heritage Village.

A certified nursing assistant (CNA), a licensed practical nurse (LPN), three registered nurses (RN), a private citizen, and representatives of the American Staffing Association, Kansas State Nurses Association, Trinity Nursing Staff, Walden Medical Staffing, and the Wichita Regional Chamber of Commerce provided **opponent** testimony. Opponents stated the bill would limit wage competition among staffing agencies and reduce the availability of nurses in the state.

Written-only opponent testimony was provided by two private citizens, thirty supplemental nursing agency staffers, and representatives of TLC Advanced Nursing, LLC, and Trinity Nursing Staff.

No neutral testimony was provided.

The House Committee amended the bill to:

- Add to the conditions of registration for a nursing agency that the nursing agency shall annually report the percentage of health care facility dollars that the supplemental nursing services agency expended on temporary employee wages and benefits compared to the supplemental nursing services agency's profits and other administrative costs to the Secretary, who would be required to make such report available to the public;
- Change from 150 percent to 200 percent of the sum of the weighted average wage rate, plus a factor determined by the Secretary, the prohibition on what a nursing agency would bill or receive payments from an adult care home or a hospital long-term care unit; and
- Add an expiration date of July 1, 2023, on the billing prohibition provisions.



## **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Kansas Department for Aging and Disability Services (KDADS) indicates enactment of the bill would require an additional 4.00 full-time equivalent (FTE) positions at KDADS to support the monitoring and review of additional regulation requirements of nursing agencies in the state. KDADS indicates positions would include a licensing reviewer, complaint line support position, attorney, and auditor. KDADS estimates expenditures of \$389,438 from the State General Fund (SGF) for these positions. Costs would include salary, benefits, and other operating expenses.

KDADS estimates contractual service costs of \$309,625, including \$258,750 from SGF. KDADS states these contractual service costs would be anticipated to cover contracted work for analytics, information technology system development and maintenance, and Office of Administrative Hearings costs.

KDADS estimates it would collect \$50,875 of supplemental nursing registration fees to be deposited into the Fund. KDADS states the revenue is based on assumed collection of 25 supplemental nursing registration fees of \$2,035 annually.

KDADS indicates that, in the long-term, setting a price ceiling for an industry that is competing nationwide could find the state's health care system with a lack of RNs, LPNs, and CNAs in both private, public, and not-for-profit settings, including state agencies that employ licensed/certified staff. KDADS states enactment of the bill could potentially result in a wage disparity between direct care staff in adult care homes, versus any other health care setting, as CNA requirements are only in adult care homes.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2023 Governor's Budget Report*.

Supplemental nursing services agency; nurse; nurse aide; long-term care