

CHAPTER 92

AN ACT

SB 1549

Relating to health care temporary staffing agencies; creating new provisions; amending ORS 658.015, 676.565, 676.579, 676.590, 676.613, 676.622 and 676.625; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 7 of this 2022 Act:

(1) "Personnel" means an individual, regardless of whether the individual is licensed or otherwise authorized by the state to practice a health care occupation or profession, who provides health care services or assistance with activities of daily living to clients, patients or residents for or on behalf of an entity that engages the temporary staffing agency with which the individual is associated.

(2)(a) "Temporary staffing agency" means an entity that operates in this state for the purpose of providing temporary work to personnel providing health care services or assistance with activities of daily living for or on behalf of entities that engage the temporary staffing agency.

(b) "Temporary staffing agency" does not include:

(A) A staff arrangement established by an entity solely for use by the entity, or by any entity associated with the entity, and in which the only costs are salaries paid to individuals who perform work;

(B) An individual who provides the individual's services on a temporary basis;

(C) An employment agency as defined in ORS 658.005;

(D) Home health agencies licensed under ORS 443.015;

(E) In-home care agencies licensed under ORS 443.315; or

(F) Home care workers and personal support workers listed on the home care registry as defined in ORS 410.600.

SECTION 2. (1) Subject to subsection (4) of this section, the Health Licensing Office shall issue a temporary staffing agency authorization to an applicant that submits to the office:

(a) An application that includes the names and addresses of the applicant's officers and directors and any other person that has ownership, partnership or a similar interest in the applicant;

(b) For the purposes of conducting a state or nationwide criminal records check under ORS 181A.195, the fingerprints of all individuals described in paragraph (a) of this subsection;

(c) Copies of the applicant's organizational documents, including but not limited to articles of incorporation and other relevant filings;

(d) Any other information requested by the office; and

(e) The applicable fee established under ORS 676.576.

(2) An authorization issued under this section is subject to ORS 676.572. In order to renew an authorization issued under this section, a temporary staffing agency shall submit to the office a renewal application that includes:

(a) Any changes to the information described in subsection (1)(a) or (c) of this section;

(b) Any other information requested by the office; and

(c) The applicable fee established under ORS 676.576.

(3) Every two years after the issuance of an authorization under subsection (1) of this section, as a condition of authorization renewal, the office shall require a temporary staffing agency to provide to the office the fingerprints described in subsection (1)(b) of this section for the purpose of conducting updated state and national criminal records checks under ORS 181A.195.

(4) The office may refuse to issue or renew an authorization under this section if the office is not satisfied with the results of a state or nationwide criminal records check conducted under ORS 181A.195 using the fingerprints described in subsection (1)(b) of this section.

SECTION 3. The Health Licensing Office shall publish and maintain on a publicly available website operated by or on behalf of the office a list of temporary staffing agencies authorized under section 2 of this 2022 Act.

SECTION 4. (1) A temporary staffing agency may not operate in this state without an authorization issued or renewed under section 2 of this 2022 Act.

(2) Each separate physical location of a temporary staffing agency must obtain an authorization under section 2 of this 2022 Act.

SECTION 5. (1) A temporary staffing agency authorized under section 2 of this 2022 Act shall:

(a) Ensure all personnel for which the temporary staffing agency procures or provides temporary employment meet any professional authorization requirements established for the practice or performance of the services provided by the personnel.

(b) Assign personnel to settings for which the personnel have the appropriate work experience and background to provide the services required by the specific setting.

(c) Retain records for at least 10 years in a manner that makes the records immediately available to the Health Licensing Office upon request of the office.

(d) Meet any other requirements established by the office by rule.

(2) A temporary staffing agency authorized under section 2 of this 2022 Act may charge to an entity that engages the temporary staffing agency fees or other amounts related to or associated with the subsequent hiring of personnel by the entity, or pay to the entity such fees or amounts if the temporary staffing agency hires the entity's staff members, if:

(a) The entity or the temporary staffing agency directly solicits, or attempts to solicit, employment of the personnel or the entity's staff members; and

(b) An agreement between the temporary staffing agency and the entity allows each party to charge to or receive from the other party the fees or amounts described in this subsection.

SECTION 6. In the manner prescribed in ORS chapter 183 for contested cases, the Health Licensing Office may impose a form of discipline against a temporary staffing agency authorized under section 2 of this 2022 Act for a violation of section 2, 4 or 5 of this 2022 Act or a rule adopted under sections 1 to 7 of this 2022 Act.

SECTION 7. (1) The Health Licensing Office may impose on a temporary staffing agency a civil penalty not to exceed \$500 per day per violation of section 2, 4 or 5 of this 2022 Act. The office shall consider as a separate violation each assignment of an individual personnel member in violation of section 5 (1) of this 2022 Act.

(2) Moneys from civil penalties imposed under this section shall be deposited in the Health Licensing Office Account established under ORS 676.625 for the administration of sections 1 to 7 of this 2022 Act.

SECTION 8. ORS 658.015 is amended to read: 658.015. (1) ORS 658.005 to 658.245 do not apply to:

(a) Labor contractors subject to ORS 658.405 to 658.511; or

(b) A temporary staffing agency as defined in section 1 of this 2022 Act.

(2) ORS 658.005 to 658.245 do not apply to any nonprofit organization or corporation organized for the purpose of economic adjustment, civic betterment and the giving of professional guidance and placement to its members, when all of the following requirements are met:

(a) None of its directors, officers or employees are deriving any profit beyond a nominal salary for services performed on its behalf.

(b) Membership dues and fees are used solely for the maintenance of the organization or corporation.

(c) No fee is charged for employment services.

(d) On request of the Commissioner of the Bureau of Labor and Industries, the organization or corporation files with the commissioner, on or before the first day of April of each year, a copy of its constitution or articles of incorporation and its by-laws, together with a sworn statement setting forth

its place of business; the names and addresses of its officers, directors and employees, the salaries they receive and the services they actually perform; and the various benefits furnished to its members.

(3) As used in subsection (2) of this section:

(a) "Civic betterment" means the promotion of the common good and general welfare of the people of this state or any political subdivision therein.

(b) "Economic adjustment" means the promotion of a program by which individuals are helped to acquire new professional skills, add to their existing professional skills or change their type of profession.

(4) ORS 658.005 to 658.245 do not apply to a bona fide labor organization of workers or a nonprofit organization or corporation that has been formed in good faith for the regulation, promotion and advancement of the general professional interests of its members and that incidentally maintains a placement service principally engaged in securing employment for such members.

SECTION 9. ORS 676.565 is amended to read:

676.565. Pursuant to ORS 676.568, the Health Licensing Office shall provide administrative and regulatory oversight and centralized service for the following boards, councils and programs:

(1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;

(2) Board of Cosmetology, as provided in ORS 690.005 to 690.225;

(3) State Board of Denture Technology, as provided in ORS 680.500 to 680.565;

(4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;

(5) Respiratory Therapist and Polysomnographic Technologist Licensing Board, as provided in ORS 688.800 to 688.840;

(6) Environmental Health Registration Board, as provided in ORS chapter 700;

(7) Board of Electrologists and Body Art Practitioners, as provided in ORS 690.350 to 690.410;

(8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.170;

(9) Sexual Offense Treatment Board, as provided in ORS 675.365 to 675.410;

(10) Long Term Care Administrators Board, as provided in ORS 678.710 to 678.820;

(11) Board of Licensed Dietitians, as provided in ORS 691.405 to 691.485;

(12) Behavior Analysis Regulatory Board, as provided in ORS 676.806;

(13) Board of Certified Advanced Estheticians, as provided in ORS 676.630 to 676.660;

(14) Art therapy, as provided in ORS 681.740 to 681.758;

(15) Lactation consultation, as provided in ORS 676.665 to 676.689;

(16) Music therapy, as provided in ORS 681.700 to 681.730; [and]

(17) Genetic counseling, as provided in ORS 676.730 to 676.748; and

(18) Temporary staffing agencies, as provided in sections 1 to 7 of this 2022 Act.

SECTION 10. ORS 676.579 is amended to read:

676.579. (1)(a) The Health Licensing Office is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers and for the organization of the office.

(b) The Director of the Oregon Health Authority shall establish the qualifications for and appoint the Director of the Health Licensing Office, who holds office at the pleasure of the Director of the Oregon Health Authority.

(c) The Director of the Health Licensing Office shall receive a salary as provided by law or, if not so provided, as prescribed by the Director of the Oregon Health Authority.

(d) The Director of the Health Licensing Office is in the unclassified service.

(2) The Director of the Health Licensing Office shall provide the boards, councils and programs administered by the office with any services and employees as the office requires to carry out the office's duties. Subject to any applicable provisions of the State Personnel Relations Law, the Director of the Health Licensing Office shall appoint all subordinate officers and employees of the office, prescribe their duties and fix their compensation.

(3) The Director of the Health Licensing Office is responsible for carrying out the duties, functions and powers under ORS 675.365 to 675.410, 676.560 to 676.625, 676.630 to 676.660, 676.665 to 676.689, 676.730 to 676.748, 676.810, 676.815, 676.825, 676.992, 678.710 to 678.820, 680.500 to 680.565, 681.700 to 681.730, 681.740 to 681.758, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700 **and sections 1 to 7 of this 2022 Act.**

(4) The enumeration of duties, functions and powers in subsection (3) of this section is not intended to be exclusive or to limit the duties, functions and powers imposed on or vested in the office by other statutes.

SECTION 11. ORS 676.590 is amended to read:

676.590. (1) Information obtained by the Health Licensing Office as part of an investigation conducted under the following laws and any reports issued by an investigator are exempt from public disclosure:

(a) ORS 676.630 to 676.660, 676.665 to 676.689, 676.730 to 676.748, 681.700 to 681.730, 681.740 to 681.758, 690.005 to 690.225, 690.350 to 690.410 or 694.015 to 694.170 **and sections 1 to 7 of this 2022 Act.**

(b) ORS 676.560 to 676.625 if the investigation is related to the regulation of:

(A) Advanced nonablative esthetics under ORS 676.630 to 676.660;

(B) Lactation consultation under ORS 676.665 to 676.689;

(C) Music therapy under ORS 681.700 to 681.730;

(D) Art therapy under ORS 681.740 to 681.758;

(E) Barbering, hair design, esthetics, nail technology or natural hair care under ORS 690.005 to 690.225;

(F) Electrologists and body art practitioners under ORS 690.350 to 690.410;

(G) Dealing in hearing aids under ORS 694.015 to 694.170; [or]

(H) Genetic counseling under ORS 676.730 to 676.748; **or**

(I) Temporary staffing agencies under sections 1 to 7 of this 2022 Act.

(2) The office shall disclose information obtained as part of an investigation described in subsection (1) of this section to a person who demonstrates by clear and convincing evidence that the public interest in disclosure outweighs other interests in non-disclosure, including the public interest in nondisclosure.

(3) A complaint that forms the basis for an investigation described in subsection (1) of this section shall not be considered information obtained as part of an investigation and is not exempt from public disclosure.

(4) Upon request, the office shall disclose to a person against whom disciplinary action is sought any information obtained as part of an investigation described in section (1) of this section, if the information is not otherwise privileged or confidential under state or federal law.

SECTION 12. ORS 676.613 is amended to read:

676.613. (1) In addition to all other remedies, when it appears to the Health Licensing Office that a person is engaged in, has engaged in or is about to engage in any act, practice or transaction that violates any provision of ORS 675.365 to 675.410, 676.630 to 676.660, 676.665 to 676.689, 676.730 to 676.748, 676.810, 676.815, 678.710 to 678.820, 680.500 to 680.565, 681.700 to 681.730, 681.740 to 681.758, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 or 694.015 to 694.170 or ORS chapter 700 **or sections 1 to 7 of this 2022 Act**, the office may, through the Attorney General or the district attorney of the county in which the act, practice or transaction occurs or will occur, apply to the court for an injunction restraining the person from the act, practice or transaction.

(2) A court may issue an injunction under this section without proof of actual damages. An injunction issued under this section does not relieve a person from any other prosecution or enforcement action taken for violation of statutes listed in subsection (1) of this section.

SECTION 13. ORS 676.622 is amended to read:

676.622. (1) A transaction conducted through a state or local system or network that provides electronic access to the Health Licensing Office information and services is exempt from any requirement under ORS 675.365 to 675.410, 676.560 to 676.625, 676.630 to 676.660, 676.665 to 676.689, 676.730 to 676.748, 676.810, 676.815, 676.992, 680.500 to 680.565,

681.700 to 681.730, 681.740 to 681.758, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700 and sections 1 to 7 of this 2022 Act, and rules adopted thereunder, requiring an original signature or the submission of handwritten materials.

(2) Electronic signatures subject to ORS 84.001 to 84.061 and facsimile signatures are acceptable and have the same force as original signatures.

SECTION 14. ORS 676.625 is amended to read:

676.625. (1) The Health Licensing Office shall establish by rule and shall collect fees and charges to carry out the office's responsibilities under ORS 676.560 to 676.625, 676.850 and 676.992 and any responsibility imposed on the office pertaining to the boards, councils and programs administered and regulated by the office pursuant to ORS 676.565.

(2) The Health Licensing Office Account is established separate and distinct from the General Fund. The account shall consist of the moneys credited to the account by the Legislative Assembly. All moneys in the account are continuously appropriated to and shall be used by the office for payment of expenses of the office in carrying out the duties, functions and obligations of the office, and for payment of the expenses of the boards, councils and programs administered and regulated by the office pursuant to ORS 676.565. The office shall keep a record of all moneys credited to the account and report the source from which the moneys are derived and the activity of each board, council or program that generated the moneys.

(3) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to establishing fees and charges credited to the account, the fees and charges may not exceed the cost of administering the office and the boards, councils and programs within the office, as authorized by the Legislative Assembly within the office's budget, as the budget may be modified by the Emergency Board.

(4) All moneys credited to the account pursuant to ORS 676.576 and 676.806, and moneys credited to the account from other office and program fees established by the office by rule, are continuously appropriated to the office for carrying out the duties, functions and powers of the office under ORS 676.560 to 676.625, 676.806, 676.850 and 676.992.

(5) The moneys received from civil penalties assessed under ORS 676.992 and section 7 of this 2022 Act shall be deposited and accounted for as are other moneys received by the office and shall be for the administration and enforcement of the statutes governing the boards, councils and programs administered by the office.

SECTION 15. (1) As used in this section:

(a) "Personnel" means an individual, regardless of whether the individual is licensed or otherwise authorized by the state to practice a health care occupation or profession, who pro-

vides health care services or assistance with activities of daily living to clients, patients or residents for or on behalf of an entity that engages the temporary staffing agency with which the individual is associated.

(b) "Rate" means the total amount that a temporary staffing agency charges to or receives from an entity that engages the temporary staffing agency to assign personnel to the entity on a temporary basis.

(c)(A) "Temporary staffing agency" means an entity that operates in this state for the purpose of providing temporary work to personnel providing health care services or assistance with activities of daily living for or on behalf of entities that engage the temporary staffing agency.

(B) "Temporary staffing agency" does not include:

(i) A staff arrangement established by an entity solely for use by the entity, or by any entity associated with the entity, and in which the only costs are salaries paid to individuals who perform work;

(ii) An individual who provides the individual's services on a temporary basis;

(iii) An employment agency as defined in ORS 658.005;

(iv) Home health agencies licensed under ORS 443.015;

(v) In-home care agencies licensed under ORS 443.315; or

(vi) Home care workers and personal support workers listed on the home care registry as defined in ORS 410.600.

(2) Not later than December 31, 2022, the Oregon Health Authority shall, in collaboration with the stakeholders described in subsection (3) of this section, create and submit a report in the manner provided in ORS 192.245 to an interim committee of the Legislative Assembly related to health care. The report must include:

(a) A policy proposal and recommendations to establish a process to determine annual rates that a temporary staffing agency may charge to or receive from an entity that engages the temporary staffing agency; and

(b) Prioritization of the compensation of personnel, quality care outcomes for clients, patients and residents of an entity that engages a temporary staffing agency and the fiscal viability of care providers based in this state.

(3) The stakeholders must include, but are not limited to:

(a) Providers of long-term care, acute care services and primary care services, or representatives of the providers;

(b) Personnel;

(c) A representative of the Department of Human Services; and

(d) A representative of the Office of the Governor.

SECTION 16. Section 15 of this 2022 Act is repealed on January 2, 2023.

SECTION 17. Notwithstanding any other provision of law, the General Fund appropriation made to the Oregon Health Authority by section 1 (1), chapter 668, Oregon Laws 2021, for the biennium ending June 30, 2023, for health systems, health policy and analytics, and public health, is increased by \$690,947, for the purpose of implementing this 2022 Act.

SECTION 18. (1) Sections 1 to 7 of this 2022 Act and the amendments to ORS 658.015, 676.565, 676.579, 676.590, 676.613, 676.622 and 676.625 by sections 8 to 14 of this 2022 Act become operative on July 1, 2023.

(2) The Health Licensing Office may take any action before the operative date specified in

subsection (1) of this section that is necessary to enable the office to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the office by sections 1 to 7 of this 2022 Act and the amendments to ORS 658.015, 676.565, 676.579, 676.590, 676.613, 676.622 and 676.625 by sections 8 to 14 of this 2022 Act.

SECTION 19. This 2022 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect on its passage.

Approved by the Governor March 23, 2022

Filed in the office of Secretary of State March 30, 2022

Effective date March 23, 2022