



## 102ND GENERAL ASSEMBLY

### State of Illinois

2021 and 2022

SB3775

Introduced 1/21/2022, by Sen. Omar Aquino

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Nurse Agency Licensing Act. Defines "covenant not to compete". Changes the definition of "Department" to the Department of Public Health (rather than the Department of Labor). Changes the definitions of "health care facility" and "nurse". Provides that in an application for licensure under the Act, a limited liability company can apply, evidence of general professional liability insurance in the amount of at least \$1,000,000 (instead of \$500,000) is required per incident and \$3,000,000 (instead of \$1,000,000) in the aggregate is required for workers' compensation coverage, and there is an application fee of \$2,000. Provides that collected fees shall be deposited in the state treasury and credited to the Nursing Dedicated and Professional Fund. Provides that for renewal of licensure, the licensee shall submit an attestation detailing the number of contracted shifts, number of shifts missed, and number of shifts fulfilled for the 3 quarters preceding the application. Provides that an application for a license may be denied for failure to develop and implement contingency staffing plans to minimize missed shifts. Provides that nurse agencies who knowingly employ, assign, or refer to a health care facility a nurse or certified nurse aid with an illegally or fraudulently obtained or issued diploma, registration, license, certificate, or background study constitutes negligent hiring and are grounds for suspension, revocation, or refusal to issue or renew a license. Provides that the Department shall establish updated minimum standards. Provides that nurse agencies are prohibited from entering into covenants not to compete with nurses and certified nurse aides. Provides that a nurse agency's maximum rate for services provided to a health care facility by a nurse or certified nurse aide may not exceed 130% of the regional average hourly wage for each staffing position. Provides that the Department shall establish a system of reporting complaints against a health care staffing agency or its employees. Increases the civil penalty for violation of the Act to \$10,000 per occurrence (currently \$1,000 per day for each violation). Makes other changes.

LRB102 24482 AMQ 33716 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Nurse Agency Licensing Act is amended by  
5 changing Sections 3, 4, 5, 7, 8, 13, 14, and 14.1 as follows:

6 (225 ILCS 510/3) (from Ch. 111, par. 953)

7 Sec. 3. Definitions. As used in this Act:

8 (a) "Certified nurse aide" means an individual certified  
9 as defined in Section 3-206 of the Nursing Home Care Act,  
10 Section 3-206 of the ID/DD Community Care Act, or Section  
11 3-206 of the MC/DD Act, as now or hereafter amended.

12 (a-5) "Covenant not to compete" means an agreement between  
13 an employer and an employee that restricts such employee from  
14 performing:

15 (1) any work for another employer for a specified  
16 period of time;

17 (2) any work for a specified geographic area; or

18 (3) work for another employer that is similar to such  
19 employee's work for the employer included as a party to  
20 the agreement.

21 (b) "Department" means the Department of Public Health  
22 ~~Labor~~.

23 (c) "Director" means the Director of Public Health ~~Labor~~.

1 (d) "Health care facility" is defined as in Section 3 of  
2 the Illinois Health Facilities Planning Act, as now or  
3 hereafter amended, and includes any facility licensed,  
4 certified, or approved by any State agency and covered by the  
5 Assisted Living and Shared Housing Act or subsection (a) of  
6 Section 5-5.01 of the Illinois Public Aid Code.

7 (e) "Licensee" means any nursing agency which is properly  
8 licensed under this Act.

9 (f) "Nurse" means a registered nurse, ~~or~~ a licensed  
10 practical nurse, an advanced practice registered nurse, or any  
11 individual licensed under ~~as defined in~~ the Nurse Practice  
12 Act.

13 (g) "Nurse agency" means any individual, firm,  
14 corporation, partnership or other legal entity that employs,  
15 assigns or refers nurses or certified nurse aides to a health  
16 care facility for a fee. The term "nurse agency" includes  
17 nurses registries. The term "nurse agency" does not include  
18 services provided by home health agencies licensed and  
19 operated under the Home Health, Home Services, and Home  
20 Nursing Agency Licensing Act or a licensed or certified  
21 individual who provides his or her own services as a regular  
22 employee of a health care facility, nor does it apply to a  
23 health care facility's organizing nonsalaried employees to  
24 provide services only in that facility.

25 (Source: P.A. 98-104, eff. 7-22-13; 99-180, eff. 7-29-15.)

1 (225 ILCS 510/4) (from Ch. 111, par. 954)

2 Sec. 4. Licensing. The Department shall license nurse  
3 agencies in accordance with this Act for the protection of the  
4 health, welfare and safety of patients and residents. No  
5 person may establish, operate, maintain, or advertise as a  
6 nurse agency in the State of Illinois unless the person is  
7 licensed under this Act by the Department of Public Health  
8 ~~Labor~~. Being licensed under the Home Health, Home Services,  
9 and Home Nursing Agency Licensing Act does not relieve home  
10 health agencies that provide nurse agency services from the  
11 requirement of obtaining licensure under this Act. No health  
12 care facility shall use the services of an unlicensed nurse  
13 agency.

14 (Source: P.A. 94-379, eff. 1-1-06.)

15 (225 ILCS 510/5) (from Ch. 111, par. 955)

16 Sec. 5. Application for license. An application to operate  
17 a nurse agency shall be made to the Department on forms  
18 provided by the Department. A separate application shall be  
19 submitted for each additional location from which a nurse  
20 agency is operated. All applications must be under oath and  
21 must be accompanied by an equitable application fee which will  
22 be set by the Department by rule. A separate license must be  
23 obtained for each location from which a nurse agency is  
24 operated unless the nurse agency is owned and managed by the  
25 same person or persons. Submission of false or misleading

1 information is a petty offense punishable by a fine of \$500.

2 The application shall contain the following information:

3 (1) name and address of the person, partnership,  
4 corporation or other entity that is the applicant;

5 (2) if the applicant is a corporation or a limited  
6 liability company, a copy of its articles of incorporation or  
7 organization, a copy of its current bylaws, and the names and  
8 addresses of its officers and directors and shareholders  
9 owning more than 5% of the corporation's stock or membership  
10 units;

11 (3) the name and location of premises from which the  
12 applicant will provide services;

13 (4) the names and addresses of the person or persons under  
14 whose management or supervision the nurse agency will be  
15 operated;

16 (5) a statement of financial solvency;

17 (6) a statement detailing the experience and  
18 qualifications of the applicant to operate a nurse agency,  
19 however, the failure of a nurse agency to demonstrate previous  
20 experience to operate an agency does not in and of itself  
21 constitute grounds for the denial of a license;

22 (7) evidence of compliance or intent to comply with State  
23 or federal law relating to employee compensation, including  
24 but not limited to, social security taxes, State and federal  
25 income taxes, workers' compensation, unemployment taxes, ~~and~~  
26 State and federal overtime compensation laws, and federal

1 occupational safety and health administration laws;

2 (8) evidence of general professional liability insurance  
3 in the amounts of at least \$1,000,000 ~~\$500,000~~ per incident  
4 and \$3,000,000 ~~\$1,000,000~~ in aggregate and workers'  
5 compensation coverage for all nurses or certified nursing  
6 aides employed, assigned, or referred by the nurse agency to a  
7 healthcare facility; and

8 (9) any other relevant information which the Department  
9 determines is necessary to properly evaluate the applicant and  
10 application as required by the Department by rule; and-

11 (10) an application fee of \$2,000.

12 Fees collected under this Section shall be deposited in  
13 the State treasury and credited to the Nursing Dedicated and  
14 Professional Fund. Funds deposited into the Fund shall be set  
15 aside for nursing scholarships awarded pursuant to the Nursing  
16 Education Scholarship Law and may not be transferred under  
17 Section 8h of the State Finance Act.

18 (Source: P.A. 86-817; 86-1043; 86-1472; 87-435.)

19 (225 ILCS 510/7) (from Ch. 111, par. 957)

20 Sec. 7. Renewal of license. At least 90 days prior to  
21 license expiration, the licensee shall submit an attestation  
22 detailing the number of contracted shifts, number of shifts  
23 missed, and number of shifts fulfilled for the 3 quarters  
24 preceding the application and an application which meets the  
25 requirements of Section 5 of this Act for renewal of the

1 license. If the application is approved pursuant to Section 6,  
2 the license shall be renewed for an additional one-year  
3 period.

4 (Source: P.A. 86-817; 86-1043.)

5 (225 ILCS 510/8) (from Ch. 111, par. 958)

6 Sec. 8. Grounds for denial of a license. An application  
7 for a license may be denied for any of the following reasons:

8 (a) failure to comply with the minimum standards set forth  
9 by this Act or its rules;

10 (b) conviction of the applicant of a felony;

11 (c) insufficient financial or other resources to operate  
12 the nurse agency in accordance with the requirements of this  
13 Act and the minimum standards, rules and regulations  
14 promulgated thereunder; or

15 (d) failure to establish appropriate personnel policies  
16 and procedures for selecting nurses and certified nurse aides  
17 for employment, assignment, ~~or~~ referral, or to develop and  
18 implement contingency staffing plans to minimize missed  
19 shifts.

20 (Source: P.A. 86-817.)

21 (225 ILCS 510/13) (from Ch. 111, par. 963)

22 Sec. 13. Application for employment.

23 (a) Every nurse agency shall cause each applicant for  
24 employment, assignment, or referral, as a nurse to complete an

1 application form including the following information:

2 (1) name and address of the applicant;

3 (2) whether or not such applicant is a nurse currently  
4 licensed by the Department of Financial and Professional  
5 Regulation;

6 (3) if so licensed, the number and date of such  
7 license; and

8 (4) references and dates and places of previous  
9 employment.

10 Prior to employing, assigning, or referring a nurse, the  
11 agency shall contact the Department of Financial and  
12 Professional Regulation to determine whether the nurse's  
13 license is valid and in good standing and that the nurse is not  
14 ineligible to be hired by health care employers or long-term  
15 care facilities pursuant to Section 25 of the Health Care  
16 Worker Background Check Act. Written verification shall be  
17 sent by the Department of Financial and Professional  
18 Regulation within 20 working days. At least biennially  
19 thereafter, the agency shall contact the Department of  
20 Financial and Professional Regulation to verify this  
21 information in writing. The nurse agency shall review the  
22 disciplinary report published by the Department of Financial  
23 and Professional Regulation on a monthly basis to determine  
24 whether the nurse's license is valid and in good standing.

25 (b) Every nurse agency shall cause each applicant for  
26 employment, assignment, or referral, as a certified nurse aide



1 to complete an application form including the following  
2 information:

3 (1) name and address of the applicant;

4 (2) whether or not the nurse aide is registered as  
5 having completed a certified course as approved by the  
6 Department of Public Health;

7 (3) references and dates and places of previous  
8 employment.

9 Prior to employing, assigning, or referring a certified  
10 nurse aide, the agency shall review the information provided  
11 on the Health Care Worker Registry to verify that the  
12 certification is valid and that the certified nurse aide is  
13 not ineligible to be hired by health care employers or  
14 long-term care facilities pursuant to Section 25 of the Health  
15 Care Worker Background Check Act.

16 (c) Every nurse agency shall check at least 2 recent  
17 references and the dates of employment provided by the  
18 applicant, unless the applicant has not had 2 previous  
19 employers.

20 (c-5) Nurse agencies who knowingly employ, assign, or  
21 refer to a health care facility a nurse or certified nurse aid  
22 with an illegally or fraudulently obtained or issued diploma,  
23 registration, license, certificate, or background study  
24 constitutes negligent hiring and are grounds for suspension,  
25 revocation, or refusal to issue or renew a license under  
26 Section 9 of this Act.

1 (d) Nurses or certified nurses aides employed, assigned,  
2 or referred to a health care facility by a nurse agency shall  
3 be deemed to be employees of the nurse agency while working for  
4 the nurse agency or on nurse agency employment, assignment or  
5 referral.

6 (Source: P.A. 99-652, eff. 1-1-17.)

7 (225 ILCS 510/14) (from Ch. 111, par. 964)

8 Sec. 14. Minimum Standards. (a) The Department, by rule,  
9 shall establish minimum standards for the operation of nurse  
10 agencies. Those standards shall include, but are not limited  
11 to: (1) the maintenance of written policies, ~~and~~ procedures,  
12 and documentation, including contracts with all health care  
13 facilities to which it assigns or refers nurses or certified  
14 nurse aides demonstrating that its employees' scope of work  
15 aligns with the appropriate scope of practices and contingency  
16 staff plans; and (2) the development of personnel policies  
17 which include payroll records, including for nurses or  
18 certified nurse aides employed, assigned, or referred to  
19 health care facilities, a personal interview, a reference  
20 check, an annual evaluation of each employee (which may be  
21 based in part upon information provided by health care  
22 facilities utilizing nurse agency personnel), documentation  
23 that nurses or certified nurse aides who will be assigned or  
24 referred to health care facilities meet the minimum licensing,  
25 training, and continuing education standards for the position

1 referred or assigned and comply with all pertinent  
2 requirements relating to personnel employed in health care  
3 facilities, and periodic health examinations.

4 (b) Each nurse agency shall have a nurse serving as a  
5 manager or supervisor of all nurses and certified nurses  
6 aides.

7 (c) Each nurse agency shall ensure that its employees meet  
8 the minimum licensing, training, and orientation standards for  
9 which those employees are licensed or certified.

10 (d) A nurse agency shall not employ, assign, or refer for  
11 use in an Illinois health care facility a nurse or certified  
12 nurse aide unless certified or licensed under applicable  
13 provisions of State and federal law or regulations. Each  
14 certified nurse aide shall comply with all pertinent  
15 regulations of the Illinois Department of Public Health  
16 relating to the health and other qualifications of personnel  
17 employed in health care facilities.

18 (e) The Department may adopt rules to monitor the usage of  
19 nurse agency services to determine their impact.

20 (f) Nurse agencies are prohibited from recruiting  
21 potential employees on the premises of a health care facility  
22 or requiring, as a condition of employment, assignment, or  
23 referral, that their employees recruit new employees for the  
24 nurse agency from among the permanent employees of the health  
25 care facility to which the nurse agency employees have been  
26 employed, assigned, or referred, and the health care facility

1 to which such employees are employed, assigned, or referred is  
2 prohibited from requiring, as a condition of employment, that  
3 their employees recruit new employees from these nurse agency  
4 employees. Violation of this provision is a business offense.

5 (g) Nurse agencies are prohibited from entering into  
6 covenants not to compete with nurses and certified nurse  
7 aides. After the effective date of this Act of the 102nd  
8 General Assembly, a covenant not to compete entered into  
9 between a nurse agency and a nurse or certified nurse aid is  
10 illegal and void. The nursing agency shall not, in any  
11 contract with any employee or health care facility, require  
12 the payment of liquidated damages, employment fees, buy out  
13 fees, placement fees, or other compensation should the  
14 employee be hired as a permanent employee of a health care  
15 facility.

16 (h) A nurse agency's maximum rate for services provided to  
17 a health care facility by a nurse or certified nurse aide may  
18 not exceed 130% of the regional average hourly wage for each  
19 staffing position. The Department shall use and publish the  
20 most current median hourly wage data reported by the United  
21 States Department of Labor Bureau of Labor Statistics (BLS) in  
22 the BLS' Occupational Employment Statistics metropolitan and  
23 nonmetropolitan Area Occupational Employment and Wage  
24 Estimates for the State. These positions shall include  
25 registered nurse, licensed practical nurse, certified nursing  
26 assistant, and orderlies, rehab, or therapy aides. The maximum

1 rate shall include all charges for administrative fees,  
2 contract fees, or other special charges in addition to the  
3 hourly rates for the temporary nursing pool personnel supplied  
4 to a health care facility. A health care facility that pays for  
5 the actual travel and housing costs for nurse or certified  
6 nurse aides working at the facility and that pays these costs  
7 to the employee, the agency, or another vendor, is not  
8 violating the limitation on charges described in this Section.

9 (i) No less than 80% of the rates charged to a health care  
10 facility shall be passed on to the employee.

11 (Source: P.A. 86-817.)

12 (225 ILCS 510/14.1)

13 Sec. 14.1. Investigations; orders; civil penalties.

14 (a) The Department may at any time, and shall upon  
15 receiving a complaint from any interested person, investigate  
16 any person licensed or applying for a license under this Act.  
17 The Department shall investigate any person who operates or  
18 advertises a nurse agency without being licensed under this  
19 Act. The Department shall establish a system of reporting  
20 complaints against a health care staffing agency or its  
21 employees. Complaints may be made by any member of the public.  
22 Complaints against a health care staffing agency shall be  
23 investigated by the Office of Health Care Regulation within  
24 the Department of Public Health.

25 The Director or his or her authorized representative may

1 examine the premises of any nurse agency, may compel by  
2 subpoena, for examination or inspection, the attendance and  
3 testimony of witnesses and the production of books, payrolls,  
4 records, papers and other evidence in any investigation or  
5 hearing, and may administer oaths or affirmations to  
6 witnesses.

7 (b) After appropriate notice and hearing, and if supported  
8 by the evidence, the Department may issue and cause to be  
9 served on any person an order to cease and desist from  
10 violation of this Act and to take any further action that is  
11 reasonable to eliminate the effect of the violation.

12 Whenever it appears that any person has violated a valid  
13 order of the Department issued under this Act, the Director  
14 may commence an action and obtain from the court an order  
15 directing the person to obey the order of the Department or be  
16 subject to punishment for contempt of court.

17 The Department may petition the court for an order  
18 enjoining any violation of this Act.

19 (c) Any licensee or applicant who violates any provision  
20 of this Act or the rules adopted under this Act shall be  
21 subject to a civil penalty of \$10,000 per occurrence ~~\$1,000~~  
22 ~~per day for each violation~~. Civil penalties may be assessed by  
23 the Department in an administrative action and may, if  
24 necessary, be recovered in a civil action brought by the  
25 Director through the Attorney General of the State of Illinois  
26 or the State's attorney of any county in which the violation

1 occurred. The court may order that the civil penalties  
2 assessed for violation of this Act, together with any costs or  
3 attorney's fees arising out of the action to collect the  
4 penalties, be paid to the Department. The fact that the  
5 violation has ceased does not excuse any person from liability  
6 for civil penalties arising from the violation.

7 (Source: P.A. 88-230.)

1 INDEX

2 Statutes amended in order of appearance

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6	225 ILCS 510/7	from Ch. 111, par. 957
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