

I_134_2082-3

134th General Assembly
Regular Session
2021-2022

Sub. H. B. No. 466

A BILL

To amend section 3701.83 and to enact sections 1
3724.01, 3724.02, 3724.03, 3724.04, 3724.05, 2
3724.06, 3724.07, 3724.08, 3724.09, 3724.10, 3
3724.11, 3724.12, 3724.13, 3724.14, and 3724.99 4
of the Revised Code to establish requirements 5
for the registration and operation of health 6
care staffing agencies and to allow an extension 7
of time to begin a project under a certificate 8
of need granted during the COVID-19 pandemic, 9
and to amend the version of section 3701.83 of 10
the Revised Code that is scheduled to take 11
effect on September 30, 2024, to continue the 12
change on and after that date. 13

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3701.83 be amended and sections 14
3724.01, 3724.02, 3724.03, 3724.04, 3724.05, 3724.06, 3724.07, 15
3724.08, 3724.09, 3724.10, 3724.11, 3724.12, 3724.13, 3724.14, 16
and 3724.99 of the Revised Code be enacted to read as follows: 17

Sec. 3701.83. There is hereby created in the state 18



treasury the general operations fund. Moneys in the fund shall 19
be used for the purposes specified in sections 3701.04, 20
3701.344, 3702.20, 3711.16, 3717.45, 3718.06, 3721.02, 3721.022,
3724.14, 3729.07, 3733.43, 3748.04, 3748.05, 3748.07, 3748.12, 21
3748.13, 3749.04, 3749.07, 4736.06, and 4769.09 of the Revised 22
Code. 23
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Sec. 3724.01. As used in this chapter: 25

(A) "Controlling person" means either of the following: 26

(1) A business entity, officer, program administrator, or 27
director whose responsibilities include directing the management 28
or policies of a health care staffing agency; 29

(2) An individual who, directly or indirectly, owns an 30
interest in a business entity described in division (A) (1) of 31
this section. 32

(B) "Health care personnel" means any licensed health care 33
professional or unlicensed health care personnel who provides 34
care, support, or services directly to patients. 35

(C) "Health care provider" means any of the following: 36

(1) A home, as defined in section 3721.10 of the Revised 37
Code; 38

(2) A home health agency, as defined in section 3740.01 of 39
the Revised Code; 40

(3) A hospice care program, as defined in section 3712.01 41
of the Revised Code; 42

(4) A residential facility, as defined in section 5123.19 43
of the Revised Code; 44

(5) A residential facility, as defined in section 5119.34 45

of the Revised Code; 46

(6) A community addiction services provider, as defined in 47
section 5119.01 of the Revised Code; 48

(7) A community mental health services provider, as 49
defined in section 5119.01 of the Revised Code; 50

(8) A medicaid provider who provides medicaid waiver 51
component services, as defined in section 5166.01 of the Revised 52
Code. 53

(D) "Health care staffing agency" means a person that is 54
regularly engaged in the business of providing or procuring, for 55
a fee, health care personnel to serve as temporary staff for 56
health care providers. "Health care staffing agency" includes an 57
online health care staff matching service. "Health care staffing 58
agency" does not include either of the following: 59

(1) An individual who is engaged only in providing or 60
offering that individual's services to health care providers as 61
a temporary employee or contractor; 62

(2) A government entity. 63

(E) "Online health care staff matching service" means a 64
person that operates or offers an electronic platform on which 65
health care personnel may be listed as available to serve as 66
temporary staff for health care providers. 67

Sec. 3724.02. (A) Each health care staffing agency shall 68
annually register with the director of health. For purposes of 69
the registration requirement, each physical location of a health 70
care staffing agency shall separately register with the 71
director. 72

(B) The director shall establish registration application 73

forms and procedures. Each registration application shall be 74
accompanied by the fee set forth in division (C) of this section 75
and include at least the following: 76

(1) (a) The name and address of each owner with an interest 77
of five per cent or more in the health care staffing agency, 78
except that if that information does not result in a disclosure 79
of at least eighty-five per cent of the ownership of the agency, 80
all owners shall be disclosed; 81

(b) If an owner is not a natural person, the name and 82
address of each natural person with more than a five per cent 83
interest in that owner. 84

(2) If the health care staffing agency, or an owner, is a 85
corporation, a copy of the associated articles of incorporation 86
and current bylaws, and the name and address of each officer and 87
director; 88

(3) A copy of the health care staffing agency's policies 89
and procedures designed to ensure compliance with divisions (A) 90
(4) and (5) of section 3724.07 of the Revised Code, as well as 91
any other proof of compliance required by the director; 92

(4) A copy of the health care staffing agency's policies 93
and procedures regarding record retention and availability 94
designed to ensure compliance with divisions (A) (6) and (7) of 95
section 3724.07 of the Revised Code; 96

(5) Certification that the health care staffing agency has 97
not had a registration revoked under this chapter within the 98
three years immediately preceding the date of the application; 99

(6) Any other information or documentation required by the 100
director. 101

(C) Each applicant for registration of a health care staffing agency shall pay an application fee in the amount of two thousand dollars. The fee is nonrefundable. 102
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Sec. 3724.03. The director of health shall review each application received under section 3724.02 of the Revised Code for registration of a health care staffing agency. The director shall register a health care staffing agency if the applicant has submitted a complete application, paid the application fee, and demonstrated to the director's satisfaction that the requirements for registration as set forth in this chapter are met. 105
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Sec. 3724.04. A registration issued under this chapter to a health care staffing agency is valid for one year from the date of its issuance, unless one of the following is the case: 113
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(A) The agency's registration is earlier revoked or suspended. 116
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(B) The agency is sold. 118

(C) The agency's ownership or management is transferred such that forty per cent or more of the owners or managers of the agency were not previously registered under this chapter. 119
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Sec. 3724.05. (A) A health care staffing agency that has provided staffing services during the year preceding the agency's registration renewal date may renew the agency's registration by applying to the director of health using a registration renewal form established by the director and complying with any renewal application procedures established by the director. 122
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(B) The director of health shall establish forms and procedures for processing applications for the annual renewal of 129
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registrations issued under this chapter. The director shall 131
charge a fee of two thousand dollars for renewal. The fee is 132
nonrefundable. 133

(C) An application for renewal shall include all of the 134
following information: 135

(1) A description of any changes to the items described in 136
division (B) of section 3724.02 of the Revised Code; 137

(2) Documentation demonstrating that the agency provided 138
staffing services to health care providers during the calendar 139
year immediately preceding the registration renewal date. 140

(D) An applicant for registration renewal shall pay the 141
renewal fee during the month of the renewal date. If an 142
applicant fails to pay the renewal fee during that month, the 143
applicant shall pay a late fee of two hundred dollars in 144
addition to the renewal fee. If the renewal fee or any late fee 145
is not paid by the thirtieth day after the renewal date, the 146
director may, in accordance with Chapter 119. of the Revised 147
Code, revoke the agency's registration. 148

(E) The director shall review all applications received 149
for registration renewal. If an application is complete, the 150
renewal fee and any late fee have been paid, and the director 151
determines that the applicant meets all other eligibility 152
requirements, the director shall renew the applicant's 153
registration to operate a health care staffing agency. 154

(F) A health care staffing agency that has not provided 155
staffing services during the year preceding the agency's 156
registration renewal date is ineligible for renewal, but may 157
apply for a new registration under section 3724.02 of the 158
Revised Code. 159

Sec. 3724.06. (A) Except as provided in division (B) of 160
this section, no person shall knowingly operate a health care 161
staffing agency unless the person is registered under this 162
chapter. 163

(B) In the case of a health care staffing agency that is 164
operating on the effective date of this section, an application 165
for registration shall be submitted under section 3724.02 of the 166
Revised Code not later than thirty days after the effective date 167
of this section. If the application is submitted accordingly, 168
the agency may continue to operate without being registered 169
until the earlier of the following: 170

(1) The date a final decision is made by the director of 171
health to deny the registration; 172

(2) The date that is one hundred twenty days after the 173
effective date of this section. 174

Sec. 3724.07. (A) Each health care staffing agency 175
registered under this chapter shall do all of the following: 176

(1) Ensure that when the health care staffing agency 177
assigns or otherwise agrees to provide health care personnel to 178
a health care provider to work for a specific shift or other 179
time period, the assigned personnel or a substitute works for 180
the agreed time period at no additional charge to the provider; 181

(2) Establish and provide to health care providers a 182
schedule of fees and charges that shall not be modified except 183
after providing written notice at least thirty days in advance 184
of any change; 185

(3) Employ, as an employee of the health care staffing 186
agency, each individual that the agency provides to a health 187
care provider to serve as temporary health care personnel; 188

<u>(4) Verify, maintain, and, upon request of a health care</u>	189
<u>provider to which the agency provides health care personnel,</u>	190
<u>furnish supporting documentation that each individual provided</u>	191
<u>to the provider to serve as temporary health care personnel, at</u>	192
<u>the time of placement, meets all of the following:</u>	193
<u>(a) Minimum licensing, training, and continuing education</u>	194
<u>standards for the position in which the individual will be</u>	195
<u>working;</u>	196
<u>(b) Criminal records check requirements for employees of</u>	197
<u>the health care provider;</u>	198
<u>(c) Requirements for reviewing registries of persons with</u>	199
<u>findings of abuse or neglect;</u>	200
<u>(d) Requirements for determining whether exclusions from</u>	201
<u>medicare or medicaid exist;</u>	202
<u>(e) All of the health care provider's employee health</u>	203
<u>requirements, including requirements relating to testing for and</u>	204
<u>vaccination against infectious disease and requirements relating</u>	205
<u>to drug testing;</u>	206
<u>(f) Any other qualification or requirement maintained by</u>	207
<u>the health care provider for its employees.</u>	208
<u>(5) Prohibit all health care staffing agency employees</u>	209
<u>from recruiting employees of the health care provider with which</u>	210
<u>health care personnel are placed, and instruct all agency</u>	211
<u>employees regarding this prohibition;</u>	212
<u>(6) Make health care staffing agency records immediately</u>	213
<u>available to the director of health during normal business</u>	214
<u>hours;</u>	215
<u>(7) Retain health care staffing agency records for a</u>	216

minimum of five years or a longer period if required by state or 217
federal law; 218

(8) Carry professional liability insurance that covers at 219
least one million dollars per occurrence and three million 220
dollars aggregate to protect against loss, damage, or expense 221
incident to a claim arising out of the death or injury of any 222
person as the result of negligence or malpractice in the 223
provision of health care services by the health care staffing 224
agency or any of the agency's employees; 225

(9) Secure and maintain workers' compensation coverage in 226
accordance with Chapters 4121., 4123., 4127., and 4131. of the 227
Revised Code; 228

(10) Carry a surety bond for employee dishonesty that 229
provides coverage in an amount that is not less than one hundred 230
thousand dollars. 231

(B) A health care staffing agency shall not attempt to 232
require a health care provider, by contract or otherwise, to 233
waive any of the requirements of this chapter or the rules 234
adopted under it as a condition of supplying personnel to the 235
provider. Any waiver of the requirements that may result from 236
such an attempt is void and unenforceable. 237

Sec. 3724.08. A health care staffing agency shall not do 238
any of the following: 239

(A) Restrict the employment opportunities of its 240
employees, including by requiring any of the following: 241

(1) That an employee pay money to terminate employment or 242
otherwise cease to provide services; 243

(2) That an employee enter into a post-termination of 244

<u>services noncompete agreement;</u>	245
<u>(3) That an employee accept an employment buyout.</u>	246
<u>(B) Require, in any contract with an employee or health care provider, the payment of liquidated damages, employment fees, or other compensation related to an employee being hired as a permanent employee of the health care provider;</u>	247 248 249 250
<u>(C) Recruit, solicit, or entice an employee of a health care provider to leave employment with the provider;</u>	251 252
<u>(D) Pay or make a gift to any employee of a health care provider;</u>	253 254
<u>(E) Contract with individuals as independent contractors for use by the agency in providing temporary health care personnel to health care providers.</u>	255 256 257
<u>Sec. 3724.09. (A) (1) A health care staffing agency shall not bill or receive payments from an applicable health care provider for any category of health care personnel listed in the medicaid cost reports submitted under section 5124.10 or 5165.10 of the Revised Code at a rate that is higher than one hundred fifty per cent of the statewide direct care median hourly wage for that category of personnel, as that wage is determined by the department of medicaid from the cost reports for the most recent calendar year for which the department of medicaid has determined such a median wage, multiplied by the rate of inflation estimated under division (A) (3) of this section. The department of medicaid shall calculate and publish statewide direct care median hourly wages for all personnel categories reported on the cost reports as soon as practicable after receiving the reports.</u>	258 259 260 261 262 263 264 265 266 267 268 269 270 271 272
<u>(2) A maximum rate established under division (A) (1) of</u>	273

this section includes all charges for administrative fees, 274
contract fees, shift bonuses, or any other charges in addition 275
to the hourly rates for the health care personnel supplied to a 276
health care provider, except that the health care staffing 277
agency may charge the provider an additional hourly amount of 278
not more than ten per cent of the maximum rate for an individual 279
who directly provides care to patients with an infectious 280
disease for which a declared public health emergency is in 281
effect. 282

(3) The department of medicaid shall estimate the rate of 283
inflation for the twelve-month period beginning on the first day 284
of July of the cost report year and ending on the last day of 285
June of the calendar year for which the rate is determined, 286
using the following: 287

(a) Subject to division (A)(3)(b) of this section, the 288
employment cost index for total compensation, health care and 289
social assistance component, published by the United States 290
bureau of labor statistics; 291

(b) If the United States bureau of labor statistics ceases 292
to publish the index specified in division (A)(3)(a) of this 293
section, the index that is subsequently published by the bureau 294
and covers the staff costs of health care providers. 295

(B) The medicaid director may establish median hourly 296
wages for any category of personnel not reported on cost reports 297
submitted under section 5124.10 or 5165.10 of the Revised Code 298
based on data submitted by health care providers that utilize 299
that category of personnel or based on any other data that the 300
director considers appropriate. If the medicaid director 301
establishes a median hourly wage for a category of personnel 302
under this division, the wage that is established shall be used 303

to set a maximum rate for the category of personnel in the same 304
manner that a maximum rate applies under division (A) of this 305
section. 306

Sec. 3724.10. (A) An applicant for or holder of a 307
registration issued under this chapter is subject to 308
disciplinary actions by the director of health as specified in 309
divisions (B) and (C) of this section. 310

(B) The director may deny, refuse to renew, revoke, or 311
suspend a health care staffing agency registration for any of 312
the following reasons: 313

(1) Lack of financial solvency or suitability; 314

(2) Inadequate treatment and care or criminal activity by 315
personnel supplied by the agency or by any person managing the 316
agency; 317

(3) Interference with a survey or other inspection 318
conducted under section 3724.12 of the Revised Code; 319

(4) Failure to comply with the conditions or requirements 320
that must be met to obtain and retain a registration; 321

(5) Failure to comply with any other requirement of this 322
chapter or the rules adopted under it. 323

(C) The director shall revoke the registration of a health 324
care staffing agency that knowingly provides to a health care 325
provider a person with an illegally or fraudulently obtained or 326
issued diploma, registration, license, certificate, criminal 327
records check, or other item required for employment by a health 328
care provider. 329

(D) In addition to the disciplinary actions described in 330
divisions (B) and (C) of this section, the director shall fine a 331

health care staffing agency found to be in violation of section 332
3724.09 of the Revised Code in an amount that is equal to two 333
hundred per cent of the amount billed or received in excess of 334
the maximum permitted under that section. 335

A health care staffing agency may request a 336
reconsideration by the director of a fine imposed under this 337
division. The reconsideration process is not subject to Chapter 338
119. of the Revised Code. 339

(E) Except as provided in division (D) of this section, 340
all actions for imposing disciplinary actions and fines under 341
this section shall be taken in accordance with Chapter 119. of 342
the Revised Code. 343

(F) (1) The controlling person of a health care staffing 344
agency whose registration has not been renewed or has been 345
revoked is not eligible to apply for or to be granted a 346
registration for five years following the date that the 347
registration is terminated for failure to renew or the date of 348
the final order of revocation. 349

(2) The director shall not issue or renew a registration 350
to operate a health care staffing agency if a controlling person 351
of the agency includes any individual or entity that was a 352
controlling person of a health care staffing agency whose 353
registration was not renewed or was revoked during the five-year 354
period immediately preceding the date the application for 355
registration or renewal under consideration was submitted. 356

Sec. 3724.11. The director of health shall establish a 357
system for the reporting of complaints against a health care 358
staffing agency or its employees. Reports may be made by any 359
individual. The director shall investigate all complaints made 360

against a health care staffing agency. 361

Sec. 3724.12. In addition to administering the 362
registration requirements of this chapter and investigating 363
complaints under section 3724.11 of the Revised Code, the 364
director of health shall oversee the operation of health care 365
staffing agencies by doing both of the following: 366

(A) Conducting surveys or other inspections on an annual 367
or unannounced basis; 368

(B) Taking any other actions the director considers 369
necessary to ensure agency compliance with this chapter and the 370
rules adopted under it. 371

Sec. 3724.13. The director of health shall adopt rules as 372
the director considers necessary to implement this chapter. All 373
rules adopted under this section shall be adopted in accordance 374
with Chapter 119. of the Revised Code. 375

Sec. 3724.14. All registration application fees, 376
registration renewal fees, and fines collected under this 377
chapter, other than financial penalties imposed under section 378
3724.99 of the Revised Code, shall be deposited in the state 379
treasury to the credit of the general operations fund created 380
under section 3701.83 of the Revised Code. The amounts shall be 381
used solely for purposes of administering and enforcing this 382
chapter and the rules adopted under it. 383

Sec. 3724.99. Whoever violates section 3724.06 of the 384
Revised Code is guilty of a misdemeanor of the second degree on 385
a first offense; for each subsequent offense, the person is 386
guilty of a misdemeanor of the first degree. 387

Section 2. That existing section 3701.83 of the Revised 388
Code is hereby repealed. 389

Section 3. That the version of section 3701.83 of the Revised Code that is scheduled to take effect September 30, 2024, be amended to read as follows:

Sec. 3701.83. There is hereby created in the state treasury the general operations fund. Moneys in the fund shall be used for the purposes specified in sections 3701.04, 3701.344, 3711.16, 3717.45, 3718.06, 3721.02, 3721.022, 3724.14, 3729.07, 3733.43, 3748.04, 3748.05, 3748.07, 3748.12, 3748.13, 3749.04, 3749.07, 4736.06, and 4769.09 of the Revised Code.

Section 4. That existing section 3701.83 of the Revised Code that is scheduled to take effect September 30, 2024, is hereby repealed.

Section 5. Sections 3 and 4 of this act take effect September 30, 2024.

Section 6. The Director of Health may begin implementing Chapter 3724. of the Revised Code, including issuing registrations, prior to adopting rules under section 3724.13 of the Revised Code.

Section 7. Notwithstanding division (A) of section 3702.523 and division (B) of section 3702.524 of the Revised Code, or any other conflicting provision in sections 3702.51 to 3702.62 of the Revised Code, all of the following apply in the case of a certificate of need granted during the period beginning March 9, 2020, and ending June 18, 2021:

(A) The Director of Health shall grant the holder of a certificate of need a twenty-four-month extension to obligate capital expenditures for the proposed project. The extension shall be effective during the twenty-four-month period immediately following the expiration date of the twenty-four-

month period that otherwise would apply, as described in 419
division (A) of section 3702.524 of the Revised Code. The 420
Director shall notify the holder of the certificate of need of 421
the date on which the twenty-four-month extension expires. 422

(B) (1) Subject to division (B) (2) of this section, the 423
owner of an entity for which a certificate of need was granted 424
may sell its ownership in the entity without voiding the 425
certificate of need held by the owner. 426

(2) In the event of a sale as described in division (B) (1) 427
of this section, the Director shall transfer the certificate of 428
need to the new owner, unless granting a certificate of need to 429
the new owner would cause any of the circumstances specified in 430
division (B) of section 3702.59 of the Revised Code to occur. 431