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SENATE BILL NO. 1458

Offered January 13, 2023

A BILL to direct the Department of Health Professions to review and adopt regulations regulating the use of supplemental nursing services in assisted living facilities.

Patron—Ebbin

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. § 1. That the Department of Health Professions (the Department) shall adopt regulations regulating the use of supplemental nursing services in assisted living facilities. As used in this act, "supplemental nursing services" means the provision of temporary employees by a supplemental nursing services agency to an assisted living facility to supplement the current workforce or the regular practice of using contract health care staff in such facilities.

§ 2. The Department shall adopt the following regulations:

1. As a condition of certification, the supplemental nursing services agency shall document that each temporary employee provided to assisted living facilities currently meets the minimum licensing, training, and continuing education standards for the position in which the employee will be working;

2. As a condition of certification, the supplemental nursing services agency shall comply with all pertinent requirements relating to the health and other qualifications of personnel employed in assisted living facilities;

3. As a condition of certification, the supplemental nursing services agency shall not restrict in any manner the employment opportunities of its employees;

4. As a condition of certification, the supplemental nursing services agency shall carry medical malpractice insurance to insure against 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 supplemental nursing services agency or by any employee of the agency;

5. As a condition of certification, the supplemental nursing services agency shall carry an employee dishonesty insurance policy in the amount of \$10,000;

6. As a condition of certification, the supplemental nursing services agency shall maintain workers' compensation insurance coverage for all nurses, nursing assistants, nurse aides, and orderlies provided or procured by the agency;

7. As a condition of certification, the supplemental nursing services agency shall file with the commissioner of revenue where the agency is located (i) the name and address of the bank, savings bank, or savings association in which the supplemental nursing services agency deposits all employee income tax withholdings and (ii) the name and address of any nurse, nursing assistant, nurse aide, or orderly whose income is derived from placement by the agency, if the agency purports that the income is not subject to withholding;

8. As a condition of certification, the supplemental nursing services agency shall not, in any contract with any employee or assisted living facility, require the payment of liquidated damages, employment fees, or other compensation should the employee be hired as a permanent employee of an assisted living facility;

9. As a condition of certification, the supplemental nursing services agency shall document that each temporary employee provided to assisted living facilities is an employee of the agency and is not an independent contractor;

10. As a condition of certification, the supplemental nursing services agency shall retain all records for five calendar years. All records of the supplemental nursing services agency shall be immediately available to the Department;

11. In order to retain certification, the supplemental nursing services agency shall provide services to an assisted living facility during the year preceding the supplemental nursing services agency's certification renewal date;

12. Failure to comply with the regulations shall subject the supplemental nursing services agency to revocation or nonrenewal of its certification. Violations of this section are subject to a fine equal to 200 percent of the amount billed or received;

13. The certification of a supplemental nursing services agency that knowingly supplies to an assisted living facility a person with an illegally or fraudulently obtained or issued diploma, registration, license, certificate, or background study shall be revoked by the Department. The Department shall notify the supplemental nursing services agency 15 days in advance of the date of revocation;

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59 14. No supplemental nursing services agency's certification may be revoked without a hearing in
60 accordance with § 63.2-1709 of the Code of Virginia;

61 15. If a controlling person has been notified by the Department that the supplemental nursing
62 services agency will not receive an initial certification or that a renewal of the certification has been
63 denied, the controlling person or a legal representative on behalf of the supplemental nursing services
64 agency may request and receive a hearing in accordance with § 63.2-1709 of the Code of Virginia;

65 16. The controlling person of a supplemental nursing services agency whose certification has not
66 been renewed or has been revoked because of noncompliance with the provisions of § 63.2-1732 of the
67 Code of Virginia shall not be eligible to apply for nor will be granted a certification for five years
68 following the effective date of the nonrenewal or revocation; and

69 17. The Department shall not issue or renew a certification to a supplemental nursing services
70 agency if a controlling person includes any individual or entity who was a controlling person of a
71 supplemental nursing services agency whose certification was not renewed or was revoked as described
72 in subdivision 16 for five years following the effective date of nonrenewal or revocation.