

**HOUSE BILL No. 2629**

By Committee on Children and Seniors

2-11

1 AN ACT concerning health and healthcare; relating to the Kansas  
2 department for aging and disability services; regulation of supplemental  
3 nursing services agencies.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. As used in this act:

7 (a) "Act" means section 1 et seq., and amendments thereto.

8 (b) "Controlling person" means:

9 (1) A business entity, officer, program administrator or director whose  
10 responsibilities include the direction of the management or policies of a  
11 supplemental nursing services agency; or

12 (2) an individual who, directly or indirectly, beneficially owns an  
13 interest in a corporation, partnership or other business association that is a  
14 "controlling person."

15 (c) "Healthcare facility" includes any:

16 (1) Medical care facility, as defined in K.S.A. 65-425, and  
17 amendments thereto; or

18 (2) adult care home, as defined in K.S.A. 39-923, and amendments  
19 thereto.

20 (d) "Hospital long-term care unit" means a nursing facility, as defined  
21 in K.S.A. 39-923, and amendments thereto, that is owned and operated by  
22 and a part of a hospital, as defined in K.S.A. 65-425, and amendments  
23 thereto.

24 (e) "Nurse" means a practical nurse or professional nurse, as those  
25 terms are defined in K.S.A. 65-1113, and amendments thereto.

26 (f) "Nurse aide" means an individual who has a nurse aide certificate  
27 issued in accordance with rules and regulations adopted by the secretary.

28 (g) "Person" means any natural or artificial person, including, but not  
29 limited to, individuals, partnerships, associations, trusts or corporations.

30 (h) "Secretary" means the secretary for aging and disability services.

31 (i) (1) "Supplemental nursing services agency" means a person  
32 engaged for hire in the business of providing or procuring temporary  
33 employment in healthcare facilities for nurses and nurse aides.

34 (2) "Supplemental nursing services agency" does not include any  
35 individual who only engages in providing such individual's services on a  
36 temporary basis to healthcare facilities.

1       Sec. 2. (a) The secretary shall adopt rules and regulations as  
2 necessary to implement the provisions of this act.

3       (b) The secretary shall be responsible for the oversight of  
4 supplemental nursing services agencies through unannounced surveys,  
5 complaint investigations and other actions necessary to ensure compliance  
6 with this act.

7       (c) The secretary shall establish a system for the reporting of  
8 complaints against supplemental nursing services agencies and against the  
9 employees of supplemental nursing services agencies. Complaints may be  
10 made by any member of the public.

11       Sec. 3. (a) A person who operates a supplemental nursing services  
12 agency shall register annually with the secretary. If such supplemental  
13 nursing services agency has more than one business location, each such  
14 location shall be individually registered with the secretary.

15       (b) (1) The secretary shall establish forms and procedures for  
16 processing each supplemental nursing services agency registration  
17 application. An application for a supplemental nursing services agency  
18 registration shall include, but not be limited to:

19       (A) The names and addresses of the owner or owners of the  
20 supplemental nursing services agency;

21       (B) if the owner is a corporation, copies of its articles of  
22 incorporation and current bylaws, together with the names and addresses  
23 of its officers and directors;

24       (C) satisfactory proof of compliance with section 4(a)(1)(E) through  
25 (G), and amendments thereto;

26       (D) any other relevant information that the secretary determines is  
27 necessary to properly evaluate an application for registration;

28       (E) a policy and procedure that describes how the supplemental  
29 nursing services agency's records will be immediately available at all times  
30 to the secretary; and

31       (F) a registration fee of \$2,035.

32       (c) If a supplemental nursing services agency fails to provide the  
33 items required by this section to the department, the secretary shall  
34 immediately deny the supplemental nursing services agency's registration.  
35 The supplemental nursing services agency may appeal the secretary's  
36 findings in accordance with the provisions of the Kansas administrative  
37 procedure act, K.S.A. 77-501 et seq., and amendments thereto, except that  
38 the hearing must be conducted by an administrative law judge within 60  
39 calendar days after the secretary receives any such request for a hearing.

40       (d) A registration issued by the secretary according to this section is  
41 effective for a period of one year from the date of its issuance unless the  
42 registration is revoked under section 4, and amendments thereto, or unless  
43 the supplemental nursing services agency is sold or ownership or

1 management of the agency is transferred. If a supplemental nursing  
2 services agency is sold or ownership or management of the agency is  
3 transferred, the registration of the agency shall be voided and the new  
4 owner or operator may apply for a new registration.

5 (e) There is hereby created in the state treasury the supplemental  
6 nursing services agency regulation fund. The fund shall be administered by  
7 the secretary. All expenditures from the supplemental nursing services  
8 agency regulation fund shall be made in accordance with appropriation  
9 acts upon warrants of the director of accounts and reports issued pursuant  
10 to vouchers signed by the secretary.

11 (f) The secretary shall remit all moneys received from fees collected  
12 under this section to the state treasurer in accordance with the provisions  
13 of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such  
14 remittance, the state treasurer shall deposit the entire amount in the state  
15 treasury to the credit of the supplemental nursing services agency  
16 regulation fund.

17 Sec. 4. (a) (1) The secretary shall require, as a condition of  
18 registration, that the supplemental nursing services agency shall:

19 (A) Document that each temporary employee provided to healthcare  
20 facilities currently meets the minimum licensing, training and continuing  
21 education standards for the position in which the employee will be  
22 working;

23 (B) comply with all applicable legal requirements relating to the  
24 qualifications of personnel employed in healthcare facilities, including the  
25 performance of criminal history record checks in accordance with K.S.A.  
26 39-970, and amendments thereto;

27 (C) not restrict, in any manner, the employment opportunities of its  
28 employees;

29 (D) carry medical malpractice insurance coverage for the loss,  
30 damage or expense incident to a claim arising out of the death or injury of  
31 any person as the result of negligence or malpractice in the provision of  
32 healthcare services by the supplemental nursing services agency or by any  
33 employee of the agency;

34 (E) carry a fidelity bond or fidelity insurance in the amount of at least  
35 \$10,000;

36 (F) maintain insurance coverage for workers compensation for all  
37 nurses and nurse aides provided or procured by the agency;

38 (G) comply with the applicable requirements of the Kansas  
39 withholding and declaration of estimated tax act, K.S.A. 79-3294 et seq.,  
40 and amendments thereto;

41 (H) in any contract with any employee or healthcare facility, not  
42 require the payment of liquidated damages, employment fees or other  
43 compensation if any such employee is hired as a permanent employee of a

1 healthcare facility;

2 (I) document that each temporary employee provided to healthcare  
3 facilities is an employee of the agency and is not an independent  
4 contractor; and

5 (J) retain all records for five calendar years and organize such records  
6 so that they can be made immediately available to the secretary upon  
7 request.

8 (2) In order to retain registration, the supplemental nursing services  
9 agency shall provide services to a healthcare facility during the year  
10 preceding the supplemental nursing services agency's registration renewal  
11 date.

12 (b) Failure to comply with this section shall subject the supplemental  
13 nursing services agency to revocation or nonrenewal of its registration. A  
14 supplemental nursing services agency's registration or renewal registration  
15 application may not be revoked or denied without a hearing held in  
16 accordance with the provisions of the Kansas administrative procedure act,  
17 K.S.A. 77-501 et seq., and amendments thereto, except that any such  
18 hearing shall be conducted by an administrative law judge within 60  
19 calendar days after the secretary receives a request for any such hearing.

20 (c) Notwithstanding subsection (b), when a supplemental nursing  
21 services agency that knowingly supplies to a healthcare facility an  
22 employee with an illegally or fraudulently obtained or issued diploma,  
23 registration, license, certificate or background study, such agency's  
24 registration shall be revoked by the secretary. The secretary shall notify the  
25 supplemental nursing services agency 15 calendar days in advance of the  
26 date of revocation.

27 (d) Violations of section 5, and amendments thereto, shall be subject  
28 to a fine equal to 200% of the amount billed or received in excess of the  
29 maximum amount permitted under that section.

30 (e) (1) The controlling person of a supplemental nursing services  
31 agency whose registration has not been renewed or has been revoked  
32 because of noncompliance with the provisions of this act shall not be  
33 eligible to apply for or be granted a registration for five years following  
34 the effective date of such nonrenewal or revocation.

35 (2) The secretary shall not issue or renew a registration to a  
36 supplemental nursing services agency if the controlling person of such  
37 agency includes any individual or entity who was a controlling person of a  
38 supplemental nursing services agency whose registration was not renewed  
39 or was revoked under this subsection for five years following the effective  
40 date of such nonrenewal or revocation.

41 Sec. 5. A supplemental nursing services agency shall not bill or  
42 receive payments from an adult care home or a hospital long-term care  
43 unit at a rate higher than 150% of the sum of the weighted average wage

1 rate, plus a factor determined by the secretary to incorporate payroll taxes  
2 for the applicable employee classification for the geographic group. The  
3 weighted average wage rates shall be determined by the secretary on an  
4 annual basis. For the purposes of this section, "wages" means an hourly  
5 rate of pay and shift differential, including weekend shift differential and  
6 overtime. Adult care homes and long-term care units shall provide  
7 information necessary to determine weighted average wage rates in a  
8 format requested by the secretary. The maximum rate shall include all  
9 charges for administrative fees, contract fees or other special charges in  
10 addition to the hourly rates for the temporary nursing personnel supplied to  
11 an adult care home or a hospital long-term care unit. An adult care home or  
12 a hospital long-term care unit that pays for the actual travel and housing  
13 costs for supplemental nursing services agency staff working at the facility  
14 and that pays these costs to the employee, the agency or another vendor, is  
15 not violating the limitation on charges described in this section.

16 Sec. 6. This act shall take effect and be in force from and after its  
17 publication in the statute book.