

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 22-1013.01 Brita Darling x2241

SENATE BILL 22-210

SENATE SPONSORSHIP

Zenzinger and Cooke, Ginal, Pettersen, Smallwood

HOUSE SPONSORSHIP

Lontine,

Health & Human Services
Finance
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE REGULATION OF SUPPLEMENTAL HEALTH-CARE**
102 **STAFFING AGENCIES BY THE DEPARTMENT OF PUBLIC HEALTH**
103 **AND ENVIRONMENT, AND, IN CONNECTION THEREWITH,**
104 **REQUIRING SUPPLEMENTAL HEALTH-CARE STAFFING AGENCIES**
105 **TO REPORT DATA TO THE DEPARTMENT OF LABOR AND**
106 **EMPLOYMENT, AND REQUIRING THE DEPARTMENT OF PUBLIC**
107 **HEALTH AND ENVIRONMENT TO REPORT TO THE GENERAL**
108 **ASSEMBLY, THE GOVERNOR, AND THE ATTORNEY GENERAL'S**
109 **OFFICE CONCERNING CAPS OR OTHER METHODS OF REGULATING**
110 **SERVICE RATES AND RATES CHARGED TO HEALTH-CARE**
111 **FACILITIES AND MAKING AN APPROPRIATION.**

Bill Summary

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
May 3, 2022

SENATE
Amended 2nd Reading
May 2, 2022

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires the department of public health and environment (department) to license supplemental health-care staffing agencies (staffing agencies) that employ nurses, nurse aids, physical and occupational therapists, and physical therapist and occupational therapy assistants (health-care workers). A staffing agency is defined as an entity that employs health-care workers and, for a fee, assigns them to temporary placements in nursing care facilities or assisted living residences (health-care facilities) on a temporary basis for a fee. The bill differentiates a staffing agency from a health-care worker platform where health-care workers can be listed for hire by a health-care facility.

The bill includes qualifications for a license; criteria for applying for a license and the related fee; and provisions for the issuance, renewal, suspension, or revocation of the license.

On and after April 1, 2023, a person operating an unlicensed staffing agency is guilty of a civil infraction and is subject to a fine and may be subject to civil penalties.

The bill specifies minimum standards for staffing agencies as established by the state board of health (state board) by rule. In part, the minimum standards:

- Require that a staffing agency maintain professional liability insurance, workers' compensation insurance, and a surety bond; and
- Prohibit a staffing agency from restricting employment opportunities of its health-care worker employees, including a prohibition against requiring liquidated damages, employment fees, or other compensation from health-care workers, if the staffing agency employee is hired as a permanent employee by the health-care facility.

A staffing agency shall check the credentials of health-care worker employees and require a background check and a check of the Colorado adult protective services (CAPS) database for employees.

The bill requires each staffing agency to report quarterly to the department concerning the average amount charged for services to health-care facilities and the average amount paid for those services. A staffing agency that fails to report is subject to civil fines and suspension or nonrenewal of its license.

By December 31, 2023, the department shall submit a report to certain committees of the general assembly and to the governor concerning the department's recommendations for caps or other

limitations on service rates and amounts charged to health-care facilities for services provided by a staffing agency's health-care workers. In formulating its recommendations, the department shall conduct a stakeholder process with affected providers and agencies.

The bill requires the department to maintain a current list of licensed staffing agencies and make the list publicly available on the department's website.

The bill creates a cash fund for licensing fees and penalties.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 SECTION 1. In Colorado Revised Statutes, add 25-1.5-118 as
3 follows:

4 25-1.5-118. Regulation of supplemental health-care staffing
5 agencies - report - stakeholder process - definitions - repeal. (1) AS
6 USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 (a) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH
8 AND ENVIRONMENT.

9 (b) "HEALTH-CARE FACILITY" MEANS A FACILITY LICENSED BY THE
10 DEPARTMENT PURSUANT TO SECTION 25-1.5-103 (1)(a).

11 (c) "HEALTH-CARE WORKER" MEANS A PERSON EMPLOYED BY A
12 SUPPLEMENTAL HEALTH-CARE STAFFING AGENCY FOR TEMPORARY
13 PLACEMENT IN A HEALTH-CARE FACILITY.

14 (d) "HEALTH-CARE WORKER PLATFORM" OR "PLATFORM" MEANS
15 ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, OR ASSOCIATION THAT
16 MAINTAINS A SYSTEM OR TECHNOLOGY THAT PROVIDES A MEDIA OR
17 INTERNET PLATFORM FOR A HEALTH-CARE WORKER TO BE LISTED AND
18 IDENTIFIED AS AVAILABLE FOR HIRE BY HEALTH-CARE FACILITIES SEEKING
19 HEALTH-CARE WORKERS. UNDER A PLATFORM, THE HEALTH-CARE
20 FACILITY SETS THE HOURLY RATES AND OTHER TERMS OF HIRE AND THE
21 HEALTH-CARE WORKER, AS AN INDEPENDENT CONTRACTOR AND NOT AS

1 AN EMPLOYEE OR AGENT OF THE ENTITY THAT MAINTAINS THE PLATFORM,
2 DECIDES WHETHER TO AGREE TO THE HOURLY RATES AND OTHER TERMS
3 OF HIRE.

4 (e) (I) "SUPPLEMENTAL HEALTH-CARE STAFFING AGENCY" OR
5 "STAFFING AGENCY" MEANS AN INDIVIDUAL OR TYPE OF ORGANIZATION,
6 INCLUDING ANY PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED
7 LIABILITY COMPANY, LIMITED LIABILITY LIMITED PARTNERSHIP,
8 ASSOCIATION, TRUST, JOINT STOCK COMPANY, INSURANCE COMPANY, OR
9 CORPORATION, WHETHER DOMESTIC OR FOREIGN, ENGAGED IN THE
10 BUSINESS OF PROVIDING HEALTH-CARE WORKERS WHO ARE EMPLOYEES OF
11 THE STAFFING AGENCY, AND, FOR A FEE, ASSIGNING THEM TO TEMPORARY
12 PLACEMENTS IN HEALTH-CARE FACILITIES.

13 (II) "SUPPLEMENTAL HEALTH-CARE STAFFING AGENCY" DOES NOT
14 INCLUDE:

15 (A) AN INDIVIDUAL ACTING AS AN INDEPENDENT CONTRACTOR
16 WHO IS ONLY ENGAGED IN PROVIDING THE INDIVIDUAL'S SERVICES ON A
17 TEMPORARY BASIS TO HEALTH-CARE FACILITIES; OR

18 (B) A HEALTH-CARE WORKER PLATFORM.

19 (2) NO LATER THAN NOVEMBER 30, 2023, THE DEPARTMENT, IN
20 CONSULTATION WITH THE DEPARTMENT OF HEALTH CARE POLICY AND
21 FINANCING, SHALL SUBMIT A REPORT DESCRIBED IN SUBSECTION (3) OF
22 THIS SECTION TO THE GOVERNOR'S OFFICE, THE ATTORNEY GENERAL'S
23 OFFICE, THE JOINT BUDGET COMMITTEE, THE HEALTH AND INSURANCE
24 COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE HEALTH AND
25 HUMAN SERVICES COMMITTEE OF THE SENATE, OR THEIR SUCCESSOR
26 COMMITTEES.

27 (3) AT A MINIMUM, THE DEPARTMENT'S REPORT MUST INCLUDE:

1 (a) SYNTHESIZED FINDINGS FROM INFORMATION REPORTED BY
2 SUPPLEMENTAL HEALTH-CARE STAFFING AGENCIES TO THE DEPARTMENT
3 OF LABOR AND EMPLOYMENT PURSUANT TO SECTION 8-4-125;

4 (b) INFORMATION REGARDING THE IMPACT OF SUPPLEMENTAL
5 HEALTH-CARE STAFFING AGENCIES ON HEALTH-CARE FACILITIES AND
6 RECOMMENDATIONS SPECIFIC TO HEALTH-CARE FACILITIES;

7 (c) AN OVERVIEW OF SUPPLEMENTAL HEALTH-CARE STAFFING
8 AGENCIES IN THE STATE AND THE USE OF STAFFING AGENCIES BY
9 HEALTH-CARE FACILITIES;

10 (d) INFORMATION REGARDING ANY FEDERAL GOVERNMENT
11 INITIATIVES THAT SEEK TO ADDRESS ISSUES RELATING TO SUPPLEMENTAL
12 HEALTH-CARE STAFFING AGENCIES AND HEALTH-CARE FACILITIES;

13 (e) RECOMMENDATIONS FOR THE CONTINUATION OR REPEAL OF
14 REQUIRED STATUTORY REPORTING BY SUPPLEMENTAL HEALTH-CARE
15 STAFFING AGENCIES PURSUANT TO SECTION 8-4-125; AND

16 (f) RECOMMENDATIONS FOR DETERMINING CAPS AND OTHER
17 LIMITATIONS ON SERVICE RATES AND THE AMOUNT THAT SUPPLEMENTAL
18 HEALTH-CARE STAFFING AGENCIES MAY CHARGE FOR EACH CATEGORY OF
19 HEALTH-CARE WORKER PROVIDING SERVICES TO HEALTH-CARE FACILITIES.

20 (4) IN FORMULATING RECOMMENDATIONS PURSUANT TO
21 SUBSECTION (3) OF THIS SECTION, THE DEPARTMENT SHALL CONDUCT A
22 STAKEHOLDER PROCESS THAT INCLUDES REPRESENTATIVES FROM
23 LONG-TERM, ACUTE, AND PRIMARY CARE SERVICE PROVIDERS,
24 SUPPLEMENTAL HEALTH-CARE STAFFING AGENCIES, AN EMPLOYEE
25 ORGANIZATION THAT REPRESENTS EMPLOYEES IN THE HEALTH-CARE
26 INDUSTRY, THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING,
27 AND THE DEPARTMENT OF LABOR AND EMPLOYMENT.

1 SECTION 2. In Colorado Revised Statutes, add 8-4-125 as
2 follows:

3 8-4-125. Supplemental health-care staffing agencies - annual
4 certification - reporting - definitions. (1) AS USED IN THIS SECTION,
5 UNLESS THE CONTEXT OTHERWISE REQUIRES:

6 (a) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND
7 EMPLOYMENT.

8 (b) "HEALTH-CARE FACILITY" MEANS A FACILITY LICENSED BY THE
9 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO
10 SECTION 25-1.5-103 (1)(a).

11 (c) "HEALTH-CARE WORKER" HAS THE MEANING SET FORTH IN
12 SECTION 25-1.5-118 (1).

13 (d) "HEALTH-CARE WORKER PLATFORM" OR "PLATFORM" HAS THE
14 MEANING SET FORTH IN SECTION 25-1.5-118 (1).

15 (e) "SUPPLEMENTAL HEALTH-CARE STAFFING AGENCY" OR
16 "STAFFING AGENCY" HAS THE MEANING SET FORTH IN SECTION 25-1.5-118
17 (1).

18 (2) (a) IT IS UNLAWFUL FOR ANY PERSON TO OPERATE A
19 SUPPLEMENTAL HEALTH-CARE STAFFING AGENCY IN THIS STATE WITHOUT
20 COMPLETING THE STAFFING AGENCY'S INITIAL CERTIFICATION AND
21 REQUIRED ANNUAL CERTIFICATION WITH THE DEPARTMENT PURSUANT TO
22 SECTION 8-70-114.

23 (b) ANY PERSON WHO VIOLATES THIS SECTION COMMITS A CIVIL
24 INFRACTION AND MAY BE SUBJECT TO FINES DETERMINED BY THE
25 DEPARTMENT.

26 (c) ON OR BEFORE SEPTEMBER 1, 2022, AND SEPTEMBER 1, EACH
27 YEAR THEREAFTER, THE DEPARTMENT OF PUBLIC HEALTH AND

1 ENVIRONMENT AND THE DEPARTMENT OF HEALTH CARE POLICY AND
2 FINANCING SHALL PROVIDE THE DEPARTMENT WITH A LIST OF ALL KNOWN
3 NAMES AND CONTACT INFORMATION FOR SUPPLEMENTAL HEALTH-CARE
4 STAFFING AGENCIES OPERATING IN THE STATE.

5 (3) (a) ON OR BEFORE APRIL 30, 2023, EACH SUPPLEMENTAL
6 HEALTH-CARE STAFFING AGENCY OPERATING IN THE STATE SHALL
7 PROVIDE TO THE DEPARTMENT A QUARTERLY REPORT CONTAINING THE
8 INFORMATION AND CERTIFICATIONS SET FORTH IN SUBSECTION (3)(b) OF
9 THIS SECTION FOR THE FIRST QUARTER OF 2023. THE STAFFING AGENCY
10 SHALL CONTINUE TO FILE QUARTERLY REPORTS CONTAINING THE
11 INFORMATION AND CERTIFICATIONS DESCRIBED IN SUBSECTION (3)(b) OF
12 THIS SECTION NO LATER THAN THE LAST DAY OF THE MONTH IMMEDIATELY
13 FOLLOWING THE END OF THE APPLICABLE QUARTER.

14 (b) AT A MINIMUM, A STAFFING AGENCY'S QUARTERLY REPORTS
15 REQUIRED PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION MUST
16 INCLUDE:

17 (I) THE NAME OF EACH DIRECT AND INDIRECT OWNER OF THE
18 STAFFING AGENCY;

19 (II) IF THE STAFFING AGENCY'S DIRECT OWNER IS A CORPORATION,
20 COPIES OF THE ARTICLES OF INCORPORATION AND CURRENT BYLAWS;

21 (III) A DETAILED LISTING OF THE AVERAGE AMOUNT CHARGED
22 DURING THE REPORTING PERIOD TO A HEALTH-CARE FACILITY FOR EACH
23 CATEGORY OF HEALTH-CARE WORKER PROVIDING SERVICES TO THE
24 HEALTH-CARE FACILITY;

25 (IV) A DETAILED LISTING OF THE AVERAGE AMOUNT PAID DURING
26 THE REPORTING PERIOD TO HEALTH-CARE WORKERS FOR THEIR SERVICES
27 FOR EACH CATEGORY OF HEALTH-CARE WORKER PROVIDING SERVICES;

1 (V) THE STAFFING AGENCY'S CERTIFICATION THAT EACH
2 HEALTH-CARE WORKER CONTRACTED TO A HEALTH-CARE FACILITY
3 DURING THE REPORTING PERIOD HAD A CURRENT, UNRESTRICTED LICENSE
4 OR CERTIFICATION IN GOOD STANDING AND MET THE TRAINING AND
5 CONTINUING EDUCATION STANDARDS FOR THE POSITION WITH THE
6 HEALTH-CARE FACILITY THROUGHOUT THE ENTIRETY OF THE REPORTING
7 PERIOD;

8 (VI) THE STAFFING AGENCY'S CERTIFICATION THAT EACH
9 HEALTH-CARE WORKER CONTRACTED TO A HEALTH-CARE FACILITY HAD
10 SUCCESSFULLY COMPLETED ALL BACKGROUND CHECKS REQUIRED BY
11 FEDERAL AND STATE LAW, RULE, AND REGULATION RELATING TO THE
12 HEALTH-CARE POSITION AND HEALTH-CARE FACILITY IN WHICH THE
13 HEALTH-CARE WORKER WAS PLACED DURING THE REPORTING PERIOD; AND

14 (VII) THE STAFFING AGENCY'S CERTIFICATION THAT THE STAFFING
15 AGENCY MAINTAINED PROFESSIONAL LIABILITY INSURANCE THROUGHOUT
16 THE ENTIRETY OF THE REPORTING PERIOD FOR EACH HEALTH-CARE
17 WORKER CONTRACTED TO A HEALTH-CARE FACILITY DURING THE
18 REPORTING PERIOD.

19 (c) THE DEPARTMENT SHALL ESTABLISH THE MANNER AND FORM
20 OF REPORTING PURSUANT TO THIS SUBSECTION (3).

21 (4) (a) (I) THE DEPARTMENT SHALL IMPOSE A FINE IN THE AMOUNT
22 OF FIVE HUNDRED DOLLARS FOR A REPORT REQUIRED PURSUANT TO
23 SUBSECTION (3) OF THIS SECTION THAT:

24 (A) IS NOT SUBMITTED WITHIN THIRTY DAYS AFTER THE
25 REPORTING DEADLINE; OR

26 (B) THE DEPARTMENT DEEMS NONCOMPLIANT WITH THE
27 REQUIREMENTS OF SUBSECTION (3) OF THIS SECTION.

1 (II) THE DEPARTMENT MAY WAIVE THE FINE IF THE STAFFING
2 AGENCY IS ABLE TO SHOW GOOD CAUSE FOR THE DELAY IN SUBMITTING
3 THE REPORT OR FOR SUBMITTING A NONCOMPLIANT REPORT.

4 (b) THE DEPARTMENT SHALL SEND NOTICE TO EACH STAFFING
5 AGENCY THAT:

6 (I) HAS NOT SUBMITTED THE REQUIRED QUARTERLY REPORT ON OR
7 BEFORE THE DEADLINE; OR

8 (II) HAS NOT SUBMITTED A COMPLIANT REPORT.

9 (c) IF THE STAFFING AGENCY DOES NOT SUBMIT A COMPLIANT
10 REPORT WITHIN THIRTY DAYS AFTER THE DATE OF THE DEPARTMENT'S
11 NOTICE OF NONCOMPLIANCE, THE DEPARTMENT SHALL IMPOSE A FINE OF
12 TEN THOUSAND DOLLARS, AND FOR A FAILURE IN ANY SUBSEQUENT
13 QUARTER TO TIMELY SUBMIT A COMPLIANT REPORT WITHIN THIRTY DAYS
14 AFTER THE DEPARTMENT'S NOTICE OF NONCOMPLIANCE, A FINE OF TWENTY
15 THOUSAND DOLLARS. THE DEPARTMENT MAY WAIVE OR REDUCE THE
16 STAFFING AGENCY'S FINE IF THE STAFFING AGENCY IS ABLE TO SHOW GOOD
17 CAUSE FOR DELAYING THE SUBMISSION OF THE REPORT.

18 (d) THE DEPARTMENT SHALL TRANSMIT ANY PENALTIES IMPOSED
19 AND COLLECTED PURSUANT TO THIS SUBSECTION (4) TO THE STATE
20 TREASURER, WHO SHALL CREDIT THE MONEY TO THE WAGE THEFT
21 ENFORCEMENT FUND CREATED IN SECTION 8-4-113 (3).

22 (5) THE DEPARTMENT SHALL PROVIDE COPIES OF THE QUARTERLY
23 REPORTS REQUIRED PURSUANT TO SUBSECTION (3) OF THIS SECTION TO THE
24 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND TO THE
25 DEPARTMENT OF HEALTH CARE POLICY AND FINANCING FOR PURPOSES OF
26 ANALYZING THE INFORMATION PROVIDED BY THE STAFFING AGENCIES TO
27 MAKE RECOMMENDATIONS TO THE GENERAL ASSEMBLY AND THE

1 GOVERNOR PURSUANT TO SECTION 25-1.5-118 CONCERNING THE
2 REGULATION OF STAFFING AGENCY SERVICE RATES AND RATES CHARGED
3 TO HEALTH-CARE FACILITIES.

4 **SECTION 3. Appropriation.** (1) For the 2022-23 state fiscal
5 year, \$688,613 is appropriated to the department of labor and employment
6 for use by the division of labor standards and statistics. This appropriation
7 is from the general fund. To implement this act, the division may use this
8 appropriation for program costs, which amount is based on an assumption
9 that the division will require an additional 1.1 FTE.

10 (2) For the 2022-23 state fiscal year, \$39,358 is appropriated to
11 the department of public health and environment for use by the health
12 facilities and emergency medical services division. This appropriation is
13 from the general fund, and is based on an assumption that the division
14 will require an additional 0.5 FTE. To implement this act, the division
15 may use this appropriation for administration and operations.

16 **SECTION 4. Act subject to petition - effective date.** This act
17 takes effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly; except
19 that, if a referendum petition is filed pursuant to section 1 (3) of article V
20 of the state constitution against this act or an item, section, or part of this
21 act within such period, then the act, item, section, or part will not take
22 effect unless approved by the people at the general election to be held in
23 November 2022 and, in such case, will take effect on the date of the
24 official declaration of the vote thereon by the governor.