

As Passed by the House

134th General Assembly

Regular Session

2021-2022

Sub. S. B. No. 110

Senators O'Brien, Wilson

Cosponsors: Senators Blessing, Dolan, Schuring, Manning, Hottinger, Antonio, Brenner, Cirino, Craig, Fedor, Gavarone, Hackett, Hoagland, Huffman, S., Johnson, Kunze, Maharath, Peterson, Reineke, Romanchuk, Rulli, Schaffer, Sykes, Thomas, Williams, Yuko Representatives Abrams, Baldrige, Carruthers, Creech, Cross, Edwards, Fraizer, Ginter, Hall, Hoops, Johnson, Jones, Koehler, LaRe, Loychik, Manning, Oelslager, Patton, Pavliga, Riedel, Roemer, Rogers, Schmidt, Seitz, Stein, West, Wilkin, Young, T., Speaker Cupp

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, 3724.10, 3724.11, 3
3724.12, 3724.13, 3724.14, and 3724.99 of the 4
Revised Code to establish requirements for the 5
registration and operation of health care 6
staffing agencies, to require the Department of 7
Medicaid to complete a report on the inventory 8
of private rooms in nursing facilities, to 9
provide funds for immediate relief payments to 10
nursing facilities, to amend the version of 11
section 3701.83 of the Revised Code that is 12
scheduled to take effect on September 30, 2024, 13
to continue the change on and after that date, 14
and to make an appropriation. 15

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

Section 1. That section 3701.83 be amended and sections 16
3724.01, 3724.02, 3724.03, 3724.04, 3724.05, 3724.06, 3724.07, 17
3724.08, 3724.10, 3724.11, 3724.12, 3724.13, 3724.14, and 18
3724.99 of the Revised Code be enacted to read as follows: 19

Sec. 3701.83. There is hereby created in the state 20
treasury the general operations fund. Moneys in the fund shall 21
be used for the purposes specified in sections 3701.04, 22
3701.344, 3702.20, 3711.16, 3717.45, 3718.06, 3721.02, 3721.022, 23
3724.14, 3729.07, 3733.43, 3748.04, 3748.05, 3748.07, 3748.12, 24
3748.13, 3749.04, 3749.07, 4736.06, and 4769.09 of the Revised 25
Code. 26

Sec. 3724.01. As used in this chapter: 27

(A) "Controlling person" means either of the following: 28

(1) A business entity, officer, program administrator, or 29
director whose responsibilities include directing the management 30
or policies of a health care staffing agency; 31

(2) An individual who, directly or indirectly, owns an 32
interest in a business entity described in division (A) (1) of 33
this section. 34

(B) "Health care personnel" means any licensed health care 35
professional or unlicensed health care personnel who provides 36
care, support, or services directly to patients. 37

(C) "Health care provider" means any of the following: 38

(1) A home, as defined in section 3721.10 of the Revised 39
Code; 40

(2) A home health agency, as defined in section 3740.01 of 41
the Revised Code; 42

(3) A hospice care program, as defined in section 3712.01 43
of the Revised Code; 44

(4) A residential facility, as defined in section 5123.19 45
of the Revised Code; 46

(5) A residential facility, as defined in section 5119.34 47
of the Revised Code; 48

(6) A community addiction services provider, as defined in 49
section 5119.01 of the Revised Code; 50

(7) A community mental health services provider, as 51
defined in section 5119.01 of the Revised Code; 52

(8) A medicaid provider who provides medicaid waiver 53
component services, as defined in section 5166.01 of the Revised 54
Code. 55

(D) "Health care staffing agency" means a person that is 56
regularly engaged in the business of providing or procuring, for 57
a fee, health care personnel to serve as temporary staff for 58
health care providers. "Health care staffing agency" includes an 59
online health care staff matching service. "Health care staffing 60
agency" does not include either of the following: 61

(1) An individual who is engaged only in providing or 62
offering that individual's services to health care providers as 63
a temporary employee or contractor; 64

(2) A government entity. 65

(E) "Online health care staff matching service" means a 66
person that operates or offers an electronic platform on which 67
health care personnel may be listed as available to serve as 68
temporary staff for health care providers. 69

Sec. 3724.02. (A) Each health care staffing agency shall 70
annually register with the director of health. For purposes of 71
the registration requirement, each physical location of a health 72
care staffing agency shall separately register with the 73
director. 74

(B) The director shall establish registration application 75
forms and procedures. Each registration application shall be 76
accompanied by the fee set forth in division (C) of this section 77
and include at least the following: 78

(1) (a) The name and address of each owner with an interest 79
of five per cent or more in the health care staffing agency, 80
except that if that information does not result in a disclosure 81
of at least eighty-five per cent of the ownership of the agency, 82
all owners shall be disclosed; 83

(b) If an owner is not a natural person, the name and 84
address of each natural person with more than a five per cent 85
interest in that owner. 86

(2) If the health care staffing agency, or an owner, is a 87
corporation, a copy of the associated articles of incorporation 88
and current bylaws, and the name and address of each officer and 89
director; 90

(3) A copy of the health care staffing agency's policies 91
and procedures designed to ensure compliance with divisions (A) 92
(4) and (5) of section 3724.07 of the Revised Code, as well as 93
any other proof of compliance required by the director; 94

(4) A copy of the health care staffing agency's policies 95
and procedures regarding record retention and availability 96
designed to ensure compliance with divisions (A) (6) and (7) of 97
section 3724.07 of the Revised Code; 98

(5) Certification that the health care staffing agency has not had a registration revoked under this chapter within the three years immediately preceding the date of the application; 99
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(6) Any other information or documentation required by the director. 102
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(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. 104
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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. 107
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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: 115
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(A) The agency's registration is earlier revoked or suspended. 118
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(B) The agency is sold. 120

(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. 121
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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 124
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registration by applying to the director of health using a 127
registration renewal form established by the director and 128
complying with any renewal application procedures established by 129
the director. 130

(B) The director of health shall establish forms and 131
procedures for processing applications for the annual renewal of 132
registrations issued under this chapter. The director shall 133
charge a fee of two thousand dollars for renewal. The fee is 134
nonrefundable. 135

(C) An application for renewal shall include all of the 136
following information: 137

(1) A description of any changes to the items described in 138
division (B) of section 3724.02 of the Revised Code; 139

(2) Documentation demonstrating that the agency provided 140
staffing services to health care providers during the calendar 141
year immediately preceding the registration renewal date. 142

(D) An applicant for registration renewal shall pay the 143
renewal fee during the month of the renewal date. If an 144
applicant fails to pay the renewal fee during that month, the 145
applicant shall pay a late fee of two hundred dollars in 146
addition to the renewal fee. If the renewal fee or any late fee 147
is not paid by the thirtieth day after the renewal date, the 148
director may, in accordance with Chapter 119. of the Revised 149
Code, revoke the agency's registration. 150

(E) The director shall review all applications received 151
for registration renewal. If an application is complete, the 152
renewal fee and any late fee have been paid, and the director 153
determines that the applicant meets all other eligibility 154
requirements, the director shall renew the applicant's 155

registration to operate a health care staffing agency. 156

(F) A health care staffing agency that has not provided 157
staffing services during the year preceding the agency's 158
registration renewal date is ineligible for renewal, but may 159
apply for a new registration under section 3724.02 of the 160
Revised Code. 161

Sec. 3724.06. (A) Except as provided in division (B) of 162
this section, no person shall knowingly operate a health care 163
staffing agency unless the person is registered under this 164
chapter. 165

(B) In the case of a health care staffing agency that is 166
operating on the effective date of this section, an application 167
for registration shall be submitted under section 3724.02 of the 168
Revised Code not later than thirty days after the effective date 169
of this section. If the application is submitted accordingly, 170
the agency may continue to operate without being registered 171
until the earlier of the following: 172

(1) The date a final decision is made by the director of 173
health to deny the registration; 174

(2) The date that is one hundred twenty days after the 175
effective date of this section. 176

Sec. 3724.07. (A) Each health care staffing agency 177
registered under this chapter shall do all of the following: 178

(1) Ensure that when the health care staffing agency 179
assigns or otherwise agrees to provide health care personnel to 180
a health care provider to work for a specific shift or other 181
time period, the assigned personnel or a substitute works for 182
the agreed time period at no additional charge to the provider; 183

(2) Establish and provide to health care providers a schedule of fees and charges that shall not be modified except after providing written notice at least thirty days in advance of any change; 184
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(3) Employ, as an employee of the health care staffing agency, each individual that the agency provides to a health care provider to serve as temporary health care personnel; 188
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(4) Verify, maintain, and, upon request of a health care provider to which the agency provides health care personnel, furnish supporting documentation that each individual provided to the provider to serve as temporary health care personnel, at the time of placement, meets all of the following: 191
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(a) Minimum licensing, training, and continuing education standards for the position in which the individual will be working; 196
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(b) Criminal records check requirements for employees of the health care provider; 199
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(c) Requirements for reviewing registries of persons with findings of abuse or neglect; 201
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(d) Requirements for determining whether exclusions from medicare or medicaid exist; 203
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(e) All of the health care provider's employee health requirements, including requirements relating to testing for and vaccination against infectious disease and requirements relating to drug testing; 205
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(f) Any other qualification or requirement maintained by the health care provider for its employees. 209
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(5) Prohibit all health care staffing agency employees 211

from recruiting employees of the health care provider with which 212
health care personnel are placed, and instruct all agency 213
employees regarding this prohibition; 214

(6) Make health care staffing agency records immediately 215
available to the director of health during normal business 216
hours; 217

(7) Retain health care staffing agency records for a 218
minimum of five years or a longer period if required by state or 219
federal law; 220

(8) Carry professional liability insurance that covers at 221
least one million dollars per occurrence and three million 222
dollars aggregate to protect against loss, damage, or expense 223
incident to a claim arising out of the death or injury of any 224
person as the result of negligence or malpractice in the 225
provision of health care services by the health care staffing 226
agency or any of the agency's employees; 227

(9) Secure and maintain workers' compensation coverage in 228
accordance with Chapters 4121., 4123., 4127., and 4131. of the 229
Revised Code; 230

(10) Carry a surety bond for employee dishonesty that 231
provides coverage in an amount that is not less than one hundred 232
thousand dollars. 233

(B) A health care staffing agency shall not attempt to 234
require a health care provider, by contract or otherwise, to 235
waive any of the requirements of this chapter or the rules 236
adopted under it as a condition of supplying personnel to the 237
provider. Any waiver of the requirements that may result from 238
such an attempt is void and unenforceable. 239

Sec. 3724.08. In addition to other activities prohibited 240

<u>by this chapter, a health care staffing agency is subject to all</u>	241
<u>of the following:</u>	242
<u>(A) The agency shall not restrict the employment</u>	243
<u>opportunities of its employees, including by requiring any of</u>	244
<u>the following:</u>	245
<u>(1) That an employee pay money to terminate employment or</u>	246
<u>otherwise cease to provide services;</u>	247
<u>(2) That an employee enter into a post-termination of</u>	248
<u>services noncompete agreement;</u>	249
<u>(3) That an employee accept an employment buyout.</u>	250
<u>(B) The agency shall not require, in any contract with an</u>	251
<u>employee or health care provider, the payment of liquidated</u>	252
<u>damages, employment fees, or other compensation related to an</u>	253
<u>employee being hired as a permanent employee of the health care</u>	254
<u>provider.</u>	255
<u>(C) (1) Except as provided in division (C) (2) of this</u>	256
<u>section, the agency shall not recruit, solicit, or entice an</u>	257
<u>employee of a health care provider to leave employment with the</u>	258
<u>provider.</u>	259
<u>(2) Division (C) (1) of this section does not prohibit a</u>	260
<u>health care staffing agency from generally advertising to the</u>	261
<u>public that the staffing agency may pay a signing bonus, or from</u>	262
<u>offering or paying a signing bonus to an individual who was or</u>	263
<u>is an employee of a health care provider so long as the staffing</u>	264
<u>agency did not initiate contact related to employment while the</u>	265
<u>individual was actively employed by a health care provider.</u>	266
<u>(D) The agency shall not pay or make a gift to any</u>	267
<u>employee of a health care provider.</u>	268

(E) The agency shall not contract with individuals as independent contractors for use by the agency in providing temporary health care personnel to health care providers. 269
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Sec. 3724.10. (A) An applicant for or holder of a registration issued under this chapter is subject to disciplinary actions by the director of health as specified in divisions (B) and (C) of this section. 272
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(B) The director may deny, refuse to renew, revoke, or suspend a health care staffing agency registration for any of the following reasons: 276
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(1) Lack of financial solvency or suitability; 279

(2) Inadequate treatment and care or criminal activity by personnel supplied by the agency or by any person managing the agency; 280
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(3) Interference with a survey or other inspection conducted under section 3724.12 of the Revised Code; 283
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(4) Failure to comply with the conditions or requirements that must be met to obtain and retain a registration; 285
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(5) Failure to comply with any other requirement of this chapter or the rules adopted under it. 287
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(C) The director shall revoke the registration of a health care staffing agency that knowingly provides to a health care provider a person with an illegally or fraudulently obtained or issued diploma, registration, license, certificate, criminal records check, or other item required for employment by a health care provider. 289
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(D) All actions for imposing disciplinary actions and fines under this section shall be taken in accordance with 295
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<u>Chapter 119. of the Revised Code.</u>	297
<u>(E) (1) The controlling person of a health care staffing agency whose registration has not been renewed or has been revoked is not eligible to apply for or to be granted a registration for five years following the date that the registration is terminated for failure to renew or the date of the final order of revocation.</u>	298 299 300 301 302 303
<u>(2) The director shall not issue or renew a registration to operate a health care staffing agency if a controlling person of the agency includes any individual or entity that was a controlling person of a health care staffing agency whose registration was not renewed or was revoked during the five-year period immediately preceding the date the application for registration or renewal under consideration was submitted.</u>	304 305 306 307 308 309 310
<u>Sec. 3724.11. The director of health shall establish a system for the reporting of complaints against a health care staffing agency or its employees. Reports may be made by any individual. The director shall investigate all complaints made against a health care staffing agency.</u>	311 312 313 314 315
<u>Sec. 3724.12. In addition to administering the registration requirements of this chapter and investigating complaints under section 3724.11 of the Revised Code, the director of health shall oversee the operation of health care staffing agencies by doing both of the following:</u>	316 317 318 319 320
<u>(A) Conducting surveys or other inspections on an annual or unannounced basis;</u>	321 322
<u>(B) Taking any other actions the director considers necessary to ensure agency compliance with this chapter and the rules adopted under it.</u>	323 324 325

Sec. 3724.13. The director of health shall adopt rules as 326
the director considers necessary to implement this chapter. All 327
rules adopted under this section shall be adopted in accordance 328
with Chapter 119. of the Revised Code. 329

Sec. 3724.14. All registration application fees, 330
registration renewal fees, and fines collected under this 331
chapter, other than financial penalties imposed under section 332
3724.99 of the Revised Code, shall be deposited in the state 333
treasury to the credit of the general operations fund created 334
under section 3701.83 of the Revised Code. The amounts shall be 335
used solely for purposes of administering and enforcing this 336
chapter and the rules adopted under it. 337

Sec. 3724.99. Whoever violates section 3724.06 of the 338
Revised Code is guilty of a misdemeanor of the second degree on 339
a first offense; for each subsequent offense, the person is 340
guilty of a misdemeanor of the first degree. 341

Section 2. That existing section 3701.83 of the Revised 342
Code is hereby repealed. 343

Section 3. That the version of section 3701.83 of the 344
Revised Code that is scheduled to take effect September 30, 345
2024, be amended to read as follows: 346

Sec. 3701.83. There is hereby created in the state 347
treasury the general operations fund. Moneys in the fund shall 348
be used for the purposes specified in sections 3701.04, 349
3701.344, 3711.16, 3717.45, 3718.06, 3721.02, 3721.022, 3724.14, 350
3729.07, 3733.43, 3748.04, 3748.05, 3748.07, 3748.12, 3748.13, 351
3749.04, 3749.07, 4736.06, and 4769.09 of the Revised Code. 352

Section 4. That the version of section 3701.83 of the 353
Revised Code that is scheduled to take effect September 30, 354

2024, is hereby repealed.	355
Section 5. Sections 3 and 4 of this act take effect	356
September 30, 2024.	357
Section 6. The Director of Health may begin implementing	358
Chapter 3724. of the Revised Code, including issuing	359
registrations, prior to adopting rules under section 3724.13 of	360
the Revised Code.	361
Section 7. As used in this section, "nursing facility" has	362
the same meaning as in section 5165.01 of the Revised Code.	363
The Department of Medicaid shall prepare a report	364
detailing the private room inventory in all nursing facilities	365
in this state. In preparing the report, the Department of	366
Medicaid shall consult with the Department of Health and any	367
other stakeholders as the Department of Medicaid determines to	368
be necessary. The Department of Medicaid shall submit the report	369
to the General Assembly, in accordance with section 101.68 of	370
the Revised Code, not later than April 1, 2023.	371
Section 8. All items in this act are hereby appropriated	372
as designated out of any moneys in the state treasury to the	373
credit of the designated fund. For all operating appropriations	374
made in this act, those in the first column are for fiscal year	375
2022 and those in the second column are for fiscal year 2023.	376
The operating appropriations made in this act are in addition to	377
any other operating appropriations made for the FY 2022-FY 2023	378
biennium.	379
Section 9.	380
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A		MCD DEPARTMENT OF MEDICAID		
B	General Revenue Fund			
C	GRF 651525 Medicaid Health Care Services - State		\$0	\$204,000,000
D		Medicaid Health Care Services - Federal	\$0	\$411,000,000
E		Medicaid Health Care Services - Total	\$0	\$615,000,000
F	TOTAL GRF General Revenue Fund			
G	State		\$0	\$204,000,000
H	Federal		\$0	\$411,000,000
I	GRF Total		\$0	\$615,000,000
J	TOTAL ALL BUDGET FUND GROUPS		\$0	\$615,000,000

(A) The foregoing supplemental appropriations in 382
 appropriation item 651525, Medicaid Health Care Services, shall 383
 be used by the Ohio Department of Medicaid to conduct a nursing 384
 facility rebasing to provide immediate relief to nursing 385
 facilities, as those terms are defined in section 5165.01 of the 386
 Revised Code. 387

(B) Notwithstanding the rebasing requirements of section 388
 5165.36 of the Revised Code, the Department shall conduct the 389
 rebasing in fiscal year 2023 for all four cost centers, using 390
 2021 cost reports. After the rebasing, the Department shall 391
 distribute the appropriated funds in nursing facility Medicaid 392
 payments as follows: 393

(1) Forty per cent of the funds shall be used for enhanced nursing facility base rates, as defined in section 5165.26 of the Revised Code, to be calculated using data from the rebasing.

(2) Sixty per cent of the funds shall be used for enhanced quality incentive payments under section 5165.26 of the Revised Code, to be calculated using data from the rebasing and the enhanced base rates determined under division (B)(1) of this section.

Section 10. Within the limits set forth in this act, the Director of Budget and Management shall establish accounts indicating the source and amount of funds for each appropriation made in this act, and shall determine the form and manner in which appropriation accounts shall be maintained. Expenditures from operating appropriations contained in this act shall be accounted for as though made in H.B. 110 of the 134th General Assembly. The operating appropriations made in this act are subject to all provisions of H.B. 110 of the 134th General Assembly that are generally applicable to such appropriations.