

Pennsylvania Department of Health

HEALTH CARE FACILITIES ACT - TEMPORARY HEALTH CARE SERVICES AGENCIES (THCSA)

Nov. 3, 2022 EFFECTIVE DATE

GENERAL PROVISIONS

Interpretive Guidelines are provided throughout this document

[ACT128 Link](#)

[ACT128 Website](#)

[Application](#)

[Instructions](#)

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Section 801-B. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Controlling person." Any of the following:

(1) A business entity, officer, program administrator or director whose responsibilities include the direction of the management of policies of a temporary health care services agency.

(2) An individual who, directly or indirectly, beneficially owns an interest in a corporation, partnership or other business association that is a controlling person. "Health care facility." Any of the following:

(1) A long-term care nursing facility as defined in section 802.1.

(2) A personal care home or an assisted living residence, licensed by the Department of Human Services under the act of June 13, 1967 (P.L.31, No.21), known as the Human Services Code.

"Health care personnel." Any of the following:

(1) A nurse aide as defined in section 2 of the act of June 9, 1997 (P.L.169, No.14), known as the Nurse Aide Resident Abuse Prevention Training Act.

(2) A registered nurse as defined in 49 Pa. Code§ 21.1 (relating to definitions).

(3) An LPN as defined in 49 Pa. Code§ 21.141 (relating to definitions).

(4) A direct care staff person as defined in 55 Pa. Code§ 2600.4 (relating to definitions).

"Person." Any of the following:

(1) An individual, firm, corporation, partnership or association.

(2) A controlling person.

"Registration." A registration issued by the department to a person that operates a temporary health care services agency under section 802-B.

"Temporary health care services agency." As follows:

(1) A person engaged for hire in the business of providing or procuring temporary employment in health care facilities for health care personnel.

Interpretive Guidelines

"Temporary Employment" means health care personnel provided, for any duration of time, to supplement a health care facility's regularly employed staff.

(2) The term does not include an individual who only engages on the individual's own to provide services on a temporary basis to health care facilities or a home health care agency licensed under 28 Pa. Code Ch. 601 (relating to home health care agencies).

Section 802-B. Registration generally.

(a) Requirement.--A person that owns or operates a temporary health care services agency shall register annually with the department and provide a list of each separate location.

Interpretive Guidelines

An owner or operator applies on behalf of agency each year.

(b) Forms.--The department shall establish forms and procedures for processing each application under subsection (a). The following apply:

(1) The application shall include at least the following:

(i) The names and addresses of each person having an ownership interest in the temporary health care services agency.

(ii) If the owner is a corporation, copies of the articles of incorporation or articles of association and current bylaws, together with the names and addresses of officers and directors.

(iii) Any other relevant information that the department determines necessary to properly evaluate the application.

(2) The application shall specify the policies and procedures regarding how the temporary health care services agency's records shall be immediately available at all times to the department upon request, except for those records subject to confidentiality protection under Federal and State law.

(c) Fees.--The department shall establish a registration fee for an application under subsection (a) of not less than \$500 annually. The department may, by regulation, increase the annual registration fee to meet the necessary expenses of the department for the administration of this chapter.

(d) Term of registration and voided registration.--A registration shall be effective for a period of one year from the date of its issuance unless the temporary health care services agency is sold or ownership is transferred, in which case the registration shall be voided. The new owner or operator of the temporary health care services agency shall apply and receive approval for a new registration before operating the temporary health care services agency.

Interpretive Guidelines

When a THCSA is sold, or ownership is otherwise transferred, the THCSA's registration does not transfer with the sale. The THCSA's new owner or operator must apply for a new registration from the Department.

Section 803-B. Conditions of registration.

(a) Requirements generally.--A temporary health care services agency:

(1) Shall provide to the health care facility to which any temporary health care personnel are supplied documentation that each temporary employee meets all licensing or certification, training and continuing education standards for the position in which the temporary employee will be working.

Interpretive Guidelines

A THCSA should provide documentation to a health care facility prior to any supplied health care personnel working in the facility.

(2) Shall comply with all pertinent requirements relating to the health and other qualifications of personnel employed in health care facilities.

(3) May not restrict in any manner the employment opportunities of health care personnel. This requirement shall also apply to a health care facility.

Interpretive Guidelines

THCSAs may not restrict the employment opportunities of health care personnel in any way. This includes explicit written or verbal restrictions or attempts to restrict health care personnel from seeking employment with a health care facility or other THCSA.

Restrictions include but are not limited to "buy-out clauses," non-compete clauses, or other manners that are intended to, or have the effect of, restricting employment. The Department recommends a THCSA

consult with its own attorney to determine compliance.

Restrictions include but are not limited to “buy-out clauses,” non-compete clauses, or any other manners that are intended to, or have the effect of, restricting any employment or employment opportunities for employees of THCSAs or health care facilities. The term “buy-out clause” includes, but is not limited to, conversion fees or fees charged for hiring an employee of a THCSA or health care facility. Non-compete clauses include, but are not limited to, clauses restricting employment or employment opportunities based on geographic limitations or time. The language utilized by the legislature in Act 128 of 2022 is exceptionally broad and prohibits any acts that “restrict in any manner the employment opportunities of health care personnel.”

(4) Shall carry medical malpractice insurance of not less than \$500,000 to insure against loss, damages or expenses incident to a claim arising out of the death or injury of any individual as the result of negligence or malpractice in the provision of health care services by the temporary health care services agency or an employee, agent or contractor of the temporary health care services agency.

(5) Shall carry for each employee a dishonesty bond in the amount of \$10,000.

Interpretive Guidelines

The Department requires that agencies registering as a temporary health care staffing agency (THCSA) provide documentation of employee dishonesty or fidelity bond coverage in the amount of \$10,000 per covered employee. We understand that while many agencies may already possess similar coverage through some form of a commercial crime insurance policy, the Pennsylvania legislature through Act 128 explicitly requires the provision of employee dishonesty or fidelity bond coverage as a condition of THCSA registration. As a result, the Department is without the authority or ability to review various insurance policies in order to determine whether certain coverage is appropriate under Act 128. Instead, a THCSA must provide documentation that plainly states it possesses adequate bond coverage. Please consult with your counsel or insurance provider if you have any additional questions.

(6) Shall maintain insurance coverage for workers' compensation for all health care personnel provided or procured by the temporary health care services agency.

(7) Shall comply with all Pennsylvania employer withholding requirements.

(8) Shall retain all records for 10 calendar years in a manner to allow the records to be immediately available to the department for inspection to determine compliance with this chapter.

(9) Shall provide health care facilities with proof of applicable criminal records checks for each temporary employee consistent with their regulatory requirements.

(b) Supplemental requirements.--The requirements under subsection (a) may be supplemented by rules or regulations promulgated by the department in accordance with this chapter.

(c) Compliance.--Failure of a temporary health care services agency to comply with this section shall subject the temporary health care services agency to the sanctions imposed under section 807-B.

Interpretive Guidelines

It is the agency's responsibility to ensure that independent contractors utilized by an agency for staffing meet the same requirements as agency employees (i.e. dishonesty bond, insurance, criminal record check, etc.).

Section 804-B. Oversight.

(a) Oversight by department.--The department shall provide oversight of temporary health care services agencies through complaint investigations and other actions necessary to ensure compliance with the provisions of this chapter and the regulations promulgated under section 808-B.

(b) Complaint process.--The department shall establish a system for reporting complaints against a temporary health care services agency or its employees. Complaints may be made by any member of the public.

Section 805-B. Reports.

The department shall report annually on the progress in implementing and administering this chapter. Each report shall be submitted to the chairperson and minority chairperson of the Health and Human Services Committee of the Senate and the chairperson and minority chairperson of the Health Committee of the House of Representatives.

Section 806-B. Remedies and plans of correction.

(a) Correction of violations.--Upon determining that a temporary health care services agency has violated the provisions of this chapter or the regulations promulgated under section 808- B, the department may issue a written notice to the person that owns or operates the temporary health care services agency stating that a violation has been committed by the temporary health care services agency. The following shall apply:

(1) The department shall state in the written notice under this subsection that the temporary health care services agency is required to take immediate action to remedy the violation or, if the temporary health care services agency is unable to immediately remedy the violation, submit a plan of correction to the department.

Interpretive Guidelines

A plan of correction shall provide any actions to be taken by the THCSA to correct the violations that will bring the THCSA into compliance with applicable law or regulations, and a timeframe for those corrective actions, unless directed to do so within a specified period of time by the Department pursuant to section 448.806-b(a)(2).

(2) If the temporary health care services agency is required to submit a plan of correction to the department under paragraph (1), the department may direct that the violation be remedied within a specified period of time. The temporary health care services agency must submit the plan of correction within 30 days of the department's issuance of the written notice under this subsection.

(3) If the department determines that the temporary health care services agency is required to take immediate corrective action, the department shall state in the written notice under this subsection that the temporary health care services agency is required to provide prompt confirmation to the department that the corrective action has been taken.

Interpretive Guidelines

Confirmation of compliance will be determined on a case-by-case basis and may require the THCSA to submit photographic or written evidence or other evidence as deemed appropriate by the Department.

(b) Contrary to public interest.--The department may not provide an opportunity for a temporary health care services agency to remediate a violation under subsection (a) without imposing sanctions under section 807-B(b) if the department determines that it is contrary to the public interest.

Section 807-B. Sanctions.

(a) Grounds for sanctions.--The department may sanction a temporary health care services agency or a controlling person of the temporary health care services agency or refuse to issue a registration to the person that owns or operates the temporary health care services agency, as applicable, for any of the following reasons:

(1) Violating the provisions of this chapter or the regulations promulgated under section 808-B.

(2) Failing to take immediate action to remedy a violation of the provisions of this chapter or the regulations promulgated under section 808-B in accordance with section 806- B (a) .

(3) Failing to submit a plan of correction to the department or failing to comply with a plan of correction in accordance with section 806-B(a).

(4) Engaging in fraud or deceit in obtaining or attempting to obtain a registration.

(5) Lending the temporary health care services agency's registration to another

person.

(6) Enabling another person to manage or operate the temporary health care services agency who is not subject to the temporary health care services agency's registration.

(7) Using the registration of another person or in any way knowingly aiding or abetting the improper granting of a registration.

(8) Violating an order previously issued by the department in a disciplinary matter.

(9) For a temporary health care services agency operating in this Commonwealth on the effective date of this section, continuing operations without complying with the provisions of this chapter on or after the date when the provisions of this chapter are applicable to the temporary health services agency.

(10) Any other reasons specified in the regulations promulgated by the department under section 808-B as necessary to implement this chapter or to protect the health and safety of health care personnel, health care facilities or the public.

(b) Types of sanctions.--The department may impose any of the following sanctions for a reason specified under subsection (a):

(1) Deny the application for registration or renewal of the registration.

(2) Revoke, suspend, limit or otherwise restrict the registration.

(3) Impose a civil penalty of no more than \$5,000 for each incident in which the temporary health care services agency engages in conduct prohibited under subsection (a). Each day when the temporary health care services agency engages in conduct prohibited under subsection (a) shall constitute a separate and distinct incident.

(4) Stay enforcement of any revocation, suspension, limitation or other restriction under paragraph (2) or any other discipline and place the temporary health care services agency on probation with the right to vacate the probationary order for noncompliance with the provisions of this chapter.

(c) Reinstatement of registration.--

(1) If a temporary health care services agency's registration has been revoked by the department, the person that owns or operates the temporary health care services agency may not apply for reinstatement of the registration.

(2) No earlier than five years after the date of the revocation of the registration, the person that owns or operates the temporary health care services agency may submit a petition to the department to apply for a new registration. The person that owns or operates the temporary health care services agency shall include an averment to facts to establish that the temporary health care services agency has been rehabilitated and the issuance of a new registration is not contrary to the public interest.

(3) The department may grant or deny the petition under paragraph (2) without conducting a hearing if the department accepts as true all facts averred in the petition, other than the conclusory averments regarding the temporary health care services agency's rehabilitation. If the department grants the petition under paragraph (2), the person that owns or operates the temporary health care services agency shall comply with the provisions of this chapter. If the department denies the petition under paragraph (2), the person that owns or operates the temporary health care services agency may not submit a new petition until one year has elapsed from the date of the denial.

(d) Administrative proceedings.--The department shall hold hearings and issue adjudications for proceedings conducted under this chapter in accordance with 2 Pa.C.S. (relating to administrative law and procedure) and shall conduct the proceedings in accordance with 1 Pa. Code Pt. II (relating to general rules of administrative practice and procedure).

(e) Judicial appeals.—Department adjudications issued under this chapter may be appealed to Commonwealth Court under 42 Pa.C.S. § 763 (relating to direct appeals from government agencies).

Section 808-B. Regulations.

Within two years of the effective date of this section, the department shall promulgate regulations necessary to implement the provisions of this chapter.

Section 2. This act shall apply as follows:

(1) For a temporary health care services agency that commences operations in this Commonwealth after the effective date of this section, the requirements in the addition of

Chapter 8-B of the act shall apply to the temporary health care services agency beginning 90 days after the effective date of this section.

(2) For a temporary health care services agency operating in this Commonwealth on the effective date of this section, the requirements in the addition of Chapter 8-B of the act shall apply to the temporary health care services agency beginning 180 days after the effective date of this section.

Section 3. This act shall take effect immediately.