

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1394

STATE OF NEW JERSEY

ADOPTED JUNE 20, 1996

Sponsored by Assemblywomen VANDERVALK, WEINBERG
and Assemblyman GREEN

1 AN ACT concerning health care services temporary agencies and
2 supplementing Titles 26 and 34 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in sections 1 through 3 of this act:

8 "Director" means the Director of the Division of Consumer Affairs
9 in the Department of Law and Public Safety.

10 "Health care service" means a preventive, diagnostic or therapeutic
11 health service provided in the recipient's residence, or to a patient in
12 a health care facility under a contractual agreement between the
13 facility and a health care services temporary agency, including, but not
14 limited to, nursing, nutritional and personal care services and physical,
15 speech, occupational, respiratory, intravenous and related therapies.

16 "Health care services temporary agency" means a person,
17 partnership, corporation, company, trust or other business entity,
18 whether for-profit or nonprofit, who arranges or provides one or more
19 health care services, or who is engaged in the business of procuring or
20 offering to procure employment for persons to provide one or more
21 health care services, where a fee is exacted, charged or received
22 directly or indirectly for procuring or offering to procure that
23 employment. A health care services temporary agency does not
24 include a home health care agency licensed pursuant to P.L.1971,
25 c.136 (C.26:2H-1 et seq.).

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27 2. a. (1) Except as provided in paragraph (2) of this subsection,
28 the operator of a health care services temporary agency who procures
29 or offers to procure employment for an employee of that agency which
30 would require the employee to perform duties for which the employee
31 is not qualified by law is liable to a civil penalty of not less than \$2,000
32 and not more than \$5,000 for each offense, to be collected and
33 enforced by summary proceedings pursuant to "the penalty
34 enforcement law," N.J.S.2A:58-1 et seq. If the violation is of a

1 continuing nature, each day during which it continues shall constitute
2 a separate offense.

3 (2) An operator of a health care services temporary agency who
4 demonstrates to the satisfaction of the director that his procurement
5 of employment, or offer to procure employment, for an employee of
6 that agency was based upon fraudulent information submitted by the
7 employee with respect to the employee's qualifications to perform the
8 duties attendant to that employment, notwithstanding the operator's
9 good faith effort to comply with the provisions of this act, is exempt
10 from civil liability as provided in paragraph (1) of this subsection.

11 b. An employee of a health care services temporary agency who
12 engages in employment which requires the employee to perform duties
13 for which the employee is not qualified by law is liable to a civil
14 penalty of not less than \$250 and not more than \$1,000 for each
15 offense, to be collected and enforced by summary proceedings
16 pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq. If
17 the violation is of a continuing nature, each day during which it
18 continues shall constitute a separate offense.

19
20 3. The director shall provide for an appropriate and timely right
21 of appeal for an operator or employee of a health care services
22 temporary agency which is determined by the director to have violated
23 a provision of this act or any rule or regulation adopted pursuant
24 thereto.

25
26 4. The director, pursuant to the "Administrative Procedure Act,"
27 P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations
28 to effectuate the purposes of sections 1 through 3 of this act.

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30 5. As used in sections 5 through 7 of this act:

31 "Commissioner" means the Commissioner of Health.

32 "Health care facility" means a health care facility licensed pursuant
33 to P.L.1971, c.136 (C.26:2H-1 et seq.).

34 "Health care service" means a preventive, diagnostic or therapeutic
35 health service provided in the recipient's residence, or to a patient in
36 a health care facility under a contractual agreement between the
37 facility and a health care services temporary agency, including, but not
38 limited to, nursing, nutritional and personal care services and physical,
39 speech, occupational, respiratory, intravenous and related therapies.

40 "Health care services temporary agency" means a person,
41 partnership, corporation, company, trust or other business entity,
42 whether for-profit or nonprofit, who arranges or provides one or more
43 health care services, or who is engaged in the business of procuring or
44 offering to procure employment for persons to provide one or more
45 health care services, where a fee is exacted, charged or received
46 directly or indirectly for procuring or offering to procure that

1 employment. A health care services temporary agency does not
2 include a home health care agency licensed pursuant to P.L.1971,
3 c.136 (C.26:2H-1 et seq.).

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5 6. a. Except as provided in subsection b. of this section, a health
6 care facility which utilizes the services of an employee of a health care
7 services temporary agency who does not meet the statutory
8 requirements for licensure, certification or registration to perform the
9 duties assigned to that person by the health care facility, is liable to a
10 civil penalty of not less than \$1,000 or more than \$3,000 for each
11 offense, to be collected and enforced by summary proceedings
12 pursuant to "the penalty enforcement law," N.J.S.2A:58-1 et seq. If
13 the violation is of a continuing nature, each day during which it
14 continues shall constitute a separate offense.

15 b. A health care facility which demonstrates to the satisfaction of
16 the commissioner that its utilization of the services of an employee of
17 a health care services temporary agency was based upon fraudulent
18 information submitted by the employee with respect to the employee's
19 qualifications to perform the duties assigned to that person by the
20 health care facility, notwithstanding the facility's good faith effort to
21 comply with the provisions of this act, is exempt from civil liability as
22 provided in subsection a. of this section.

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24 7. The commissioner shall provide for an appropriate and timely
25 right of appeal for a health care facility which is determined by the
26 commissioner to have violated a provision of this act or any rule or
27 regulation adopted pursuant thereto.

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29 8. The commissioner, pursuant to the "Administrative Procedure
30 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
31 regulations to effectuate the purposes of sections 5 through 7 of this
32 act.

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34 9. This act shall take effect immediately.

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40 Penalizes health care facilities and health care services temporary
agencies for utilizing temporary health care personnel improperly.