

Know Your Business Partners: New Requirements for Temporary Health Care Staffing Agencies

The COVID-19 pandemic greatly increased the stress on health care personnel, causing burnout and high rates of staff turnover. As a result of staffing shortages, health care providers are increasingly turning to temporary health care service agencies. In an effort to regulate this burgeoning industry and hold agencies accountable for their practices, the 2023 NYS Budget Bill enacted a new Article 29-K of the New York Public Health Law. This law imposes minimum standards for agencies, including requirements for annual registration with the Department of Health (DOH), contract provisions, and the submission of detailed reports on their operations.

The new law applies to a person or entity “in the business of providing or procuring temporary employment of health care personnel for health care entities.” The personnel covered includes nurses, CNAs, and licensed or unlicensed direct care staff provided to administer temporary health care services in a health care entity. A direct care worker is one who is responsible for patient handling or assessment as a regular or incidental part of their services, which could encompass a broad array of individuals. The law applies to nurses’ registries and entities that use mobile applications or other technology-based platforms to provide temporary placement of health care personnel. Licensed home care agencies and individuals who only provide their own services on a temporary basis to health care entities are exempt from the new law’s requirements.

Contracts between health care entities and service agencies must include, at a minimum:

- The types and qualifications of health care personnel available for assignment
- The required minimum licensing, training, and continuing education requirements for each assigned health care personnel
- Any requirement for minimum advance notice in order to ensure prompt arrival of assigned health care personnel
- The maximum rates that can be billed or charged by the temporary health care services agency
- Procedures for the investigation and resolution of complaints about the performance of agency personnel
- Procedures for notice from health care entities of failure of medical personnel to report to assignments
- Procedures for notice of actual or suspected abuse, theft, tampering, or other diversion of controlled substances by medical personnel

The agency must submit to the DOH executed copies of all contracts with health care entities within five business days of the effective date of each contract (although these contracts are not subject to disclosure to the public under the Freedom of Information Act), as well as copies of all invoices to health care entities’ personnel. In addition, on a quarterly basis, agencies will be required to report to the DOH a full disclosure of charges and compensation, including a schedule of all hourly billing rates per category of health care personnel, a full description of administrative charges, and a schedule of rates of all compensation per category of health care personnel (including hourly regular pay rate, overtime, holiday pay, travel or mileage pay, shift differential, weekend differential, hazard pay, charge nurse add-on, and any health or other

fringe benefits provided) the percentage of health care entity dollars that the agency expended on temporary personnel wages and benefits compared to its profits and other administrative costs; a list of the states and zip codes of the primary residences of their health care personnel; the names of all health care entities with which they have contracted within New York State; and the number of agency personnel working at each entity. The DOH will publish the list of registered agencies on its website and will also publish a quarterly report containing aggregated and de-identified data.

Significantly, temporary staffing agencies are prohibited from restricting in any manner the employment opportunities of their health care personnel, such as by requiring personnel to enter into noncompete agreements, and from requiring the payment of liquidated damages, employment fees, or other compensation if the person is hired as a permanent employee of a health care entity where the individual was placed to work.

In the event of a failure to comply with the new law, the DOH may, after appropriate notice and hearing, suspend, revoke, or refuse to issue or renew an agency registration, issue penalties and fines, or both. Upon the request of the DOH, the New York Attorney General may also bring an action or an injunction against any individual or entity that violates these requirements.

Medical practices that do business with temporary staffing agencies should be aware of these new requirements and ensure that their contracts with business partners are compliant with the new law. Although this law was effective August 1, 2023, the DOH has no current means of accepting registration applications and has not yet published any forms. The [DOH website](#) currently indicates that more guidance and FAQs will follow. Questions may be submitted to TempAgencyRegistration@health.ny.gov.

If you have any questions regarding the content of this article, please contact Fran Ciardullo, special counsel, at fciardullo@barclaydamon.com, or another member of Barclay Damon's Health & Human Services Providers Team.

AUTHOR'S BIOGRAPHY

[Fran Ciardullo](#)

As special counsel at Barclay Damon LLP, Fran concentrates her legal practice on health care and risk-management issues. She counsels physicians, physician groups, dentists, hospitals and health systems, nursing homes, and other health care providers on matters involving professional misconduct, professional liability, medical-staff issues, scope of practice, mandated reporting, peer review, and regulatory compliance. Fran also handles consent for treatment and surrogate decision making, patient care, EMTALA, and health-information privacy issues.

A former Town of Schroepfel town justice, Fran is also trained in alternative dispute resolution and has mediated and arbitrated a variety of civil actions and disputes. She routinely publishes industry articles and presents educational programs on legal matters to hospitals, medical and dental practices, and trade associations.