

Testimony on Contract Nursing Study
Healthcare Committee
January 30, 2024

Good afternoon, Chairman Davison and members of the Healthcare Committee. My name is Nikki Wegner, President of the North Dakota Long Term Care Association. We represent 188 assisted living, basic care, and skilled nursing facilities in North Dakota. Thank you for the opportunity to testify regarding the contract nursing study.

Many of our member facilities continue to rely on contract nursing to maintain the hours per resident day that meets the current federal regulation that states we must have sufficient staff to allow each resident to function at their highest practical level. Long-term care residents are more dependent on staff here in North Dakota than the national average for all their activities of daily living such as bathing, dressing, toileting and transferring from sit to stand. North Dakota nursing facilities have always been one of the top three states in staffing ratios. Unfortunately, there are simply not enough nursing staff within our state to meet the demand for these positions to provide the care important to our communities. Without contract agencies, many facilities would need to downsize or close. In good conscience they cannot stay open if they are not able to meet the staffing needs of residents. Since the pandemic, we have had 5 skilled nursing facilities and 2 basic care facilities close. We have never had this number of closures in this short period of time in our state's history.

Nationally, our industry has recovered 100,000 nursing jobs, however we have 140,000 more to fill to reach pre-pandemic numbers. We will have North Dakota specific numbers later this fall. With the Center of Medicare and Medicaid Service’s proposed minimum staffing rule looming, we will likely continue to need contract nursing in years to come. Our latest data shows that 1 out of every 5 dollars we spend on nursing is spent on contract staff. Contract nursing costs as a percentage of Direct Costs was 20.8% in 2023 compared to 7.7% in 2020.

NDLTCA LTC Cost Analysis 2020 to 2023 Cost Report Years

	2023	2022	2021	2020
Contracted nursing costs	\$73,489,180	\$63,814,506	\$27,676,565	\$24,200,946

Contract Nursing % Change	2022 to 2023	2021 to 2022	2020 to 2021
	14.4%	176.6%	28.7%

There were 7,224,073 nursing employee hours in 2023 compared to 9,437,394 hours in 2021. This shows the magnitude of our “lost” staff. “Contracted” nursing hours were 618,442 hours in 2021 versus 1,374,000 in 2023. Contracted nursing hours have more than doubled in the last two years.

We have been actively discussing the issue of contract nursing since 2011 when we started tracking the dollars nursing facilities were spending on contract nursing. In 2015 we asked Representative Dick Anderson to introduce legislation on contract nursing. The 2015 legislation proposed

oversight and standards for all contract nursing agencies operating in North Dakota to help address some quality issues that our members were experiencing. Eventually the 2015 legislation was amended into a study, with the legislative council not selecting it for the study. We are excited that the Healthcare Committee is now studying contract nursing.

One of our association's committees consisting of administrators and nurse leaders convened to begin studying our current issues and needs with contract nursing. I'd like to share the committee's initial thoughts and concerns today. Please keep in mind, we are in the beginning phases and are open to hearing the Healthcare Committee's thoughts and feedback as well.

A few of the most common issues expressed are:

- a) the agency and contract staff indicate that the contract staff is competent, and the facility may find the contract staff is not competent, most concerning with assisting with bathing and using mechanical lifts;
- b) contract staff are temporary and the facility is paying high fees for someone who they feel should be able to "hit the ground running" and the facility is needing to take a lot of time training and supporting;
- c) there is no liability or accountability if the contract staff does not call or show up for their shift; and
- d) they would like to improve the speed of the process for reporting safety concerns with nursing staff as it can take up to months before a concern is listed on the registry or action is taken by the nursing board. In the meantime, they may have been in multiple buildings across the state.

As a place to start, our association's committee reviewed the proposed bill from 2015 and studied its relevancy for today. In this beginning phase, the committee suggested some edits, see Attachment A. During our initial meeting, committee members conceded that licensing and standards of contract nursing agencies may be a beneficial direction to improve resident safety. In addition, it was felt it could help new business owners know what they need to do to be successful.

In the past we had considered seeking price controls, like Minnesota, however we are concerned about how that could impact our access to these agencies that we are reliant on. We are in the process of reviewing how other states have addressed this issue. See the summary, Attachment B.

We are looking forward to working with you on this important issue. I would be happy to answer any questions you may have.

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Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1455

Introduced by

Representatives D. Anderson, B. Anderson, Hofstad, Kreidt, J. Nelson

Senator O'Connell

1 A BILL for an Act to create and enact a new chapter to title 23 of the North Dakota Century
2 Code, relating to nurse staffing agencies.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 23 of the North Dakota Century Code is created and
5 enacted as follows:

6 **Nurse staffing agencies - Generally.**

7 A nurse staffing agency operates with the purpose of rendering temporary nursing services
8 or related nurse aide services within this state. A person may not operate, or hold themselves
9 out to operate a nurse staffing agency unless licensed under this chapter.

10 **License required - Licensing of nurse staffing agencies.**

11 The state department of health shall license nurse staffing agencies. A nurse staffing
12 agency must develop and implement policies and procedures in accordance with this chapter. A
13 nurse staffing agency shall comply with all state and federal laws regarding employee
14 compensation, taxes, overtime, and workers compensation. A person or entity operating as a
15 nurse staffing agency must submit an application for licensure with the ~~state department of~~
16 ~~health~~ Health Response and Licensure Section of ND Department of Health and Human Services or
cease operation. An applicant for licensure must submit:

- 17 1. An annual fee of ~~two thousand dollars;~~ (to be determined by legislature.)
- 18 2. A completed application as determined by the state department ~~of health;~~
- 19 3. The name and address of the person or entity applying for licensure;
- 20 4. The names and addresses of all supervisors and managers of the nurse staffing
21 agency;
- 22 5. Proof of professional malpractice insurance in the amount of:
 - 23 a. At least one million dollars per occurrence; and
 - 24 b. At least three million dollars in the aggregate.

- 1 6. Proof of general liability insurance covering personal property damages and bodily
2 injury in the amount of:
3 a. At least one million dollars per occurrence; and
4 b. At least three million dollars in the aggregate.
5 7. A list of all other states in which the nurse staffing agency operates;
6 8. Any additional information deemed necessary by the state department of health; and
7 9. In addition to the requirements in this section, a corporate applicant must submit the
8 following:
9 a. A copy of the articles of incorporation;
10 b. A copy of the corporate bylaws; and
11 c. The names and addresses of current officers, directors, and shareholders who
12 own more than ten percent of corporation.

13 **Standards for operation.**

- 14 1. A nurse staffing agency within this state may not operate unless the operation is
15 licensed in accordance with this chapter and rules adopted by the state department of
16 health. The rules must include:
17 a. Personnel:
18 (1) Each nurse and nurse assistant placed by the agency must be an employee
19 of the nurse staffing agency;
20 ~~(2) Each nurse and nurse assistant must undergo an annual evaluation by a~~
21 ~~licensed and registered nurse who is an employee of the nurse staffing~~
22 ~~agency, and who must submit the evaluation to the state department of~~
23 ~~health;~~
24 ~~(3) Each nurse staffing agency must have a written personnel policy that is~~
25 ~~provided to each employee;~~
26 (4) Each nurse staffing agency policy must include provisions for orientation,
27 training on an annual basis, and competency evaluations on an annual
28 basis;
29 (5) Each nurse staffing agency shall maintain personnel records which include:
30 (a) The current or previous name, address, and social security number of
31 each employee;

Add

A copy of photo identification;

- 1 (b) A copy of the current license of each employee including a
2 certification or registration number for all states in which the employee
3 is currently or was previously licensed;
4 (c) A copy of current CPRcardio-pulmonary resuscitation certification;
5 (d) A current resume or application including employment history, prior-
~~6 employment history with~~
~~7 verification, training certificates acquired, references with verification,~~
~~8 and proof of attendance at orientation, training, and seminars;~~
9 (e) Criminal background check of each employee;
10 (f) Results of all competency testing;
11 (g) A position description for each employee;
12 (h) Copies of performance evaluations for each employee;
13 (i) Copies of any disciplinary action taken against an employee;
14 (j) Documentation of immunizations by each employee; and
15 (k) Documentation of all drug testing results.
16 (6) Each nurse staffing agency shall ensure that each individual under its
17 employ meets licensing, training, and orientation standards.
18 b. Each nurse staffing agency must develop and implement policies and procedure
19 for complaint, incident, and disciplinary reporting including:
20 ~~(1) Receiving, recording, and investigating complaints and incidents;~~
21 ~~(2) Informing the individual facility of any complaints filed against it; and~~
22 ~~(3) Reporting information to the state department of health which may be~~
~~23 grounds for action under the nurse practice act or nurse aide registry.~~
24 2. A nurse staffing agency shall permit officials of the state department of health to enter
25 the premises upon the presentation of proper identification. The state department of
26 health may conduct an investigation and take the following action to determine
27 whether an applicant or licensee is in compliance with this chapter:
28 a. Inspection of a nurse staffing agency, including a review of all records;
29 b. Interviews with an applicant, licensee, or employee of a nurse staffing agency;
30 and
 c. Any other action deemed necessary by the state department of health.

1 3. The state department of health may refuse to issue, refuse to renew, revoke, or
2 suspend the license of a nurse staffing agency which refuses to allow an official of the
3 state department of health to enter the premises or conduct a full investigation.

4 **Enforcement by the state department of health.**

5 The state department of health may refuse to issue, refuse to renew, revoke, or suspend a
6 nurse staffing agency license for the following reasons:

7 1. Willful submission or use of false or misleading information in connection with an
8 application for or with the use of a license;

9 2. Violation of any provisions of this chapter, the rules as determined by the state
10 department of health, or any state or federal law applicable to nurse staffing agencies
11 operating in this state;

12 3. Failure to meet or maintain the standards of operation as determined by this chapter
13 or the state department of health;

14 4. Failure to allow inspection or access to records by officials of the state department of
15 health as provided by this chapter;

16 5. Failure to comply with any lawful order of the state department of health pursuant to
17 this chapter;

18 6. Any act that constitutes a threat to the health or safety of the general public;

19 7. A felony conviction by the nurse staffing agency ~~or one of its employees; or~~

20 8. Insufficient financial or other resources required to operate a nurse staffing agency in
21 accordance with this chapter. ~~or~~

Add 9. Listed on Office of Inspector General's exclusion database.

22 **Complaint System.**

23 The state department ~~of health~~ shall establish a system for reporting complaints against a
24 nurse staffing agency or its employees.

25 ~~**Restriction of Employment.**~~

26 ~~1. A nurse staffing agency may not restrict the employment opportunities of its~~
27 ~~employees.~~

28 ~~2. A nurse staffing agency may not require any payment or employment fee from a health~~
29 ~~care facility which decides to permanently hire an employee of the nurse staffing~~
30 ~~agency.~~

1 ~~3. An employee of a nurse staffing agency who is placed with a health care facility is an~~
2 ~~employee of the nurse staffing agency and is not an independent contractor.~~

3 **Responsibilities of health care facility.**

4 A health care facility is responsible for orientating and supervising any nurse staffing agency
5 employee assigned to its facility. The health care facility shall report any concerns regarding the
6 competency of a nurse staffing agency employee. ~~to the supervising registered nurse or owner~~
7 ~~of the nurse staffing agency.~~

8 **Notification by staffing agency.**

9 A nurse staffing agency shall notify the health care facility in advance of the names and
10 qualifications of the employees assigned to the health care facility.

11 **Fees to health care facility.**

12 The nurse staffing agency shall provide the health care facility with a written copy of all fees
13 owed within thirty days of the billing period.

Attachment B

Summary of Staffing Agency Statutes, Regulations, and Legislation

PROPOSED STATE LEGISLATION:

Colorado

HB 23-1030 will prohibit staffing agencies from charging “separation fees” to providers when we hire temporary staff to become fulltime team members. There would be a 30-day window during which they would still be allowed to charge the fees, but after 30 days, they would be disallowed from charging. It has passed both Houses but picked up an amendment in the second House. It should be passed again and sent to the Governor in the next couple of weeks.

- A link is here: https://leg.colorado.gov/sites/default/files/documents/2023A/bills/2023a_1030_rer.pdf

Kansas

Did not advance due to state level politics.

Kentucky

House Bill 282: Create new sections of KRS Chapter 216 to define and establish registration of health care services agencies.

- Bill Page: <https://apps.legislature.ky.gov/record/22rs/hb282.html>
- Bill Text: https://apps.legislature.ky.gov/recorddocuments/bill/22RS/hb282/orig_bill.pdf

Maine

LD 451: An Act to Ensure Transparent and Accountable Temporary Nurse Agencies

- Bill Page: <https://legislature.maine.gov/LawMakerWeb/summary.asp?ID=280085805>
- Bill Text: <http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=SP0205&item=1&snum=131>
- This bill requires temporary nurse agencies to renew registration annually and to update the registration if a temporary nurse agency changes ownership, operation or location. The bill increases the cost of registration for a temporary nurse agency from \$25 to \$1,000. The bill requires that temporary nurse agencies ensure that each employee it refers to a provider for a position meets the state and federal qualification requirements for that

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position, and maintains records to that effect. This bill prohibits agencies from requiring employees to recruit other employees. The bill requires temporary nurse agencies to submit an annual report to the Department of Health and Human Services, which is then required to submit a summary report to the Joint Standing Committee on Health and Human Services.

Michigan

Bill introduced at the end of 2022 and ran out of time for legislative action. We will be re-introducing again in the next few weeks. We have the support of the hospital association and SEIU.

- <http://legislature.mi.gov/doc.aspx?2022-HB-6364>

Nebraska

LB 335 introduced. Bill would require agencies to register annually with a registration fee. Bill very similar to Iowa's.

- https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=49999
-

Ohio

The bill in its last form at the end of the previous session

- https://search-prod.lis.state.oh.us/solarapi/v1/general_assembly_134/bills/hb466/RCH/02/hb466_02_RCH?format=pdf

Oregon

Oregon passed regulatory requirements in 2022 and is pursuing caps this session.

- The bill is House Bill 2665,
<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB2665/Introduced>

Washington

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The bill unanimously passed the Senate and was subject to the first hearing in the House recently.

SB 5547, Concerning nursing pool transparency. This legislation aims to ensure that nursing pools (staffing agencies) are registered with the Department of Health. The bill also establishes reporting requirements related to provided services. Here are key provisions for long term care providers:

- A nursing pool is required to document that each health care or long-term care personnel provided to health care facilities meets the applicable minimum credentialing requirements, which are specified to include licensure, certification, training, health requirements, and continuing education standards, for the health care or long-term care personnel's position in the health care facility
- A nursing pool is required to provide a nursing home, assisted living facility, enhanced services facility, or adult family home written notice of contract changes, including but not limited to, availability or charges for services, items, or activities, at least 90 days in advance.
- A nursing pool may not, in any contract with health care personnel or a nursing home, assisted living facility, enhanced services facility, or adult family home that lasts longer than 13 weeks, require the payment of liquidated damages, employment fees, or other compensation if health care or long-term care personnel are hired as permanent employees by the nursing home, assisted living facility, enhanced services facility, or adult family home.
- See the [Bill Report](#) for details.

Wisconsin

- Draft Bill Text: <https://www.ahcancal.org/Workspaces/ashcae/Documents/WI%20draft.pdf>

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NEWLY ENACTED LAWS AND REGULATIONS

Colorado

- Governor Polis has signed Senate Bill 22-210: <https://leg.colorado.gov/bills/sb22-210>

Connecticut

Bill passed and signed into law:

- <https://www.cga.ct.gov/2022/ACT/PA/PDF/2022PA-00057-R00HB-05313-PA.PDF>

Illinois

Passed HB4666 and it has been signed into law. Final bill did not include caps rather removed conversion/placement fees, brought transparency to contracts with state and healthcare providers, guaranteed 100% of reported wages were given to the employee, removed the ability for non-compete clauses between agencies and nurses, updated liability requirements, included an attestation detailing number of contracted shifts vs. missed shifts, established a system to report complaints against an agency, prohibited recruiting potential employees on the premises of a health care facility, and created a page on the Department of Labor's website that providers can look at to see the average wage agencies are charging for Licensed Nurses and CNAs based on county.

- Bill Number [HB4666](#) and now [PA 102-0946](#)

Indiana

We created a registry with our department of health, added a complaint process investigated by our state attorney general, and prohibited conversion fees.

- Bill Page: <https://iga.in.gov/legislative/2023/bills/house/1461#document-d02d96e5>

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Iowa

Bill passed and signed into law.

House File 2521: <https://www.legis.iowa.gov/legislation/BillBook?ba=HF2521&ga=89>

Louisiana

Bill passed and signed into law.

- <https://legis.la.gov/legis/ViewDocument.aspx?d=1289785>

Missouri

- Missouri Governor signed staffing agency legislation that can be found on pages 65 to 72 here: <https://www.senate.mo.gov/22info/pdf-bill/tat/SB710.pdf>, and will go into effect in August of 2022.

New Hampshire

Senate Bill 149 was signed into law on 8/8/23 and will require registration of nurse staffing agencies and prohibit certain bad acts:

- Nurse agencies shall not commit the services of a single nurse or licensed nursing assistant to more than one health care facility for the same time period or shift and cancel a commitment to a facility or compel that facility to bid again for services already promised it.
- Nurse agencies shall not recruit potential employees on the premises of a health care facility.
- Nurse agencies may not charge a health care facility a higher amount based upon the presence in that facility of a communicable virus, except in the case of a state or local declaration of a public health emergency.
- Nurse agencies may not facilitate the placement of any licensed professional with a license that is suspended.

Link: https://www.gencourt.state.nh.us/bill_status/pdf.aspx?id=13485&q=billVersion.

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North Dakota

Passed HB 1476

- Bill calls for a study of contract nursing agencies.
- Bills adopted in 2023 session: <https://sos.nd.gov/legislative-bills-and-information/bills-and-resolutions-adopted-2023-68th-legislative-assembly.html>

Oregon

- Senate Bill 1549: <https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureDocument/SB1549/Enrolled>
- Bill Summary: <https://olis.oregonlegislature.gov/liz/2022R1/Downloads/MeasureAnalysisDocument/64137>

Pennsylvania

[HB 2293](#) was signed by Governor on 11/13/2022

- The new law requires registration of and establishes operating requirements for health care staffing agencies.

Rhode Island

Establishes a cap on the rates that nursing service agencies can charge; protects clients from having their staff recruited/hired by a nursing service agency while providing services to them; updates training, report and other administrative details.

- House Bill 5870 - <https://legiscan.com/RI/text/H5870/2023>

Tennessee

- TN language that passed the General Assembly and awaits signature by the TN Governor: <http://www.capitol.tn.gov/Bills/113/Amend/SA0455.pdf>

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EXISTING LAWS AND REGULATIONS:

Massachusetts

[General Laws: Part I – Title XVI-Chapter 111 - Section 72Y: Nursing pool registrations](#)

[General Laws: Part I – Title XVII-Chapter 118E - Section 13D: Duties of ratemaking authority; criteria for establishing rates](#)

Regulations: 105 CMR: DEPARTMENT OF PUBLIC HEALTH

[105 CMR 157.000: The Registration and Operation of Temporary Nursing Service Agencies](#)

Minnesota

SUPPLEMENTAL NURSING SERVICES AGENCY

[144A.70](#) Registration of Supplemental Nursing Services Agencies.

[144A.71](#) Supplemental Nursing Services Agency Registration.

[144A.72](#) Registration Requirements; Penalties.

[144A.73](#) Complaint System.

[144A.74](#) Maximum Charges.

Supplemental Nursing Services Agency Registration Page:

<https://www.health.state.mn.us/facilities/regulation/snsa/index.html>