

OFFICE OF THE SECRETARY OF STATE

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 331
OREGON HEALTH AUTHORITY
HEALTH LICENSING OFFICE

FILED

04/24/2023 8:20 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Rules start the Temporary Staffing Agency Program mandated by 2022 Senate Bill 1549

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/31/2023 10:00 AM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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1430 Tandem Ave. NE Suite 180
Salem, OR 97301

Filed By:
Anne Thompson
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 05/31/2023

TIME: 9:00 AM - 10:00 AM

OFFICER: Anne Thompson

HEARING LOCATION

ADDRESS: Health Licensing Office, 1430 Tandem Ave. NE Suite 180, Salem, OR 97301

SPECIAL INSTRUCTIONS:

The hearing will be a teleconference; the number is 503-934-3605 and the pin is 704916

NEED FOR THE RULE(S)

Senate Bill 1549 (2022) created the program, which requires the Health Licensing Office to regulate temporary staffing agencies.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Senate Bill 1549 (2022), and the 2021 Oregon Revised Statutes; both are available from the Oregon Legislature and the Health Licensing Office.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The temporary staffing agency representatives on the rules advisory committee said that about 60 percent of their employees are people of color. The impact on the employees and the communities of color they serve is indeterminate as more states, including Oregon, add regulations to the temporary staffing agency businesses. The business owners at the RAC meeting said they will focus on states with more favorable regulations and employees will have to move to those states or find other work. How this impacts the employees and the communities they serve is indeterminate, therefore, the effect on racial equity in Oregon is indeterminate.

FISCAL AND ECONOMIC IMPACT:

The rules require temporary staffing agencies to make sure employees have appropriate credentialing and other record keeping requirements may force some businesses to take on additional staff or refocus existing staff, acquire additional software or software licenses This would have a negative fiscal impact on small businesses, but the amount is indeterminate.

These additional costs will have to be passed on to the hospitals, community-based care and long-term-care facilities, and other business that use temporary staffing agency personnel. This will have a negative fiscal impact on these businesses as well. But again, the amount is indeterminate.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

If members of the public own temporary staffing agencies, they will have to assume the costs associated with getting and renewing authorizations, additional recordkeeping, and administrative activities. As many of these companies are based outside of Oregon, there is no way of knowing the exact impact.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

There were small business owners on the rules advisory committee convened for the development of the proposed rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

331-960-0000, 331-960-0005, 331-960-0010, 331-960-0015, 331-965-0000, 331-965-0005, 331-965-0010, 331-965-0015, 331-965-0020, 331-970-0000, 331-970-0005, 331-970-0010, 331-975-0000, 331-975-0005

ADOPT: 331-960-0000

RULE SUMMARY: Definitions that are used in rules governing the Temporary Staffing Agency Program.

CHANGES TO RULE:

331-960-0000

DEFINITIONS

The following definitions apply to OAR 331-960-0000 to OAR 331-975-0005:

(1) "Authorization holder" means a temporary staffing agency that has been issued an authorization to operate in Oregon.

(2) "Client entity" means an entity that engages a temporary staffing agency to provide personnel to the client entity to provide health care services or assistance with activities of daily living to clients, patients or residents or the client entity.

(3) "Office" means the Health Licensing Office.

(4) "Personnel" means an individual assigned to a client entity by a temporary staffing agency who provides health care services or assistance with activities of daily living to clients, patients, or residents for on or behalf of a client entity.

(5) "Physical location" means any physical office location of a temporary staffing agency that provides personnel to an Oregon client entity. An office location is not a physical location when the work being performed at that office location does not involve providing personnel to an Oregon client entity.

(6) "Professional authorization" means any licensure, registration, authorization, or any other requirement needed for personnel to practice or perform the health care services or assistance with activities of daily living to clients,

patients, or residents on or behalf of client entities.[¶]

(7) "Temporary staffing agency" means an entity that operates in Oregon for the purpose of providing temporary work to personnel providing health care services or assistance with activities of daily living for or on behalf of client entities.

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625

ADOPT: 331-960-0005

RULE SUMMARY: Fees that applicants will pay for authorizations, renewals and other expenses associated with the Temporary Staffing Agency Program.

CHANGES TO RULE:

331-960-0005

FEES

(1) An applicant or authorization holder is subject to the provisions of OAR 331-010-0000, OAR 331-010-0010, and OAR 331-010-0020, regarding the payment of fees, penalties, and charges.

(2) Fees are as stated as follows or the amount approved by the Legislative Assembly as part of the approval of the budget for the TSA program:

(a) Application: \$250

(b) Authorization: \$2,000

(c) Renewal: \$1,500 - valid for one licensure year

(d) Fingerprints for each officer, director, persons with ownership, partnership, or similar interest in the temporary staffing agency: \$50

(e) Authorization replacement: \$25

(f) Late fee: \$500 for each year of inactive status up to three years

(g) Administrative fee: \$25

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625

ADOPT: 331-960-0010

RULE SUMMARY: The Health Licensing Office will put authorized TSAs into its database, which is available to the public.

CHANGES TO RULE:

331-960-0010

PUBLISHED LIST OF AUTHORIZED TSAS

The Office will enter all temporary staffing agencies that hold authorizations and their status into its licensure database, which is available to the public.

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625

ADOPT: 331-960-0015

RULE SUMMARY: Entities that do not have to get an authorization.

CHANGES TO RULE:

331-960-0015

EXEMPTIONS

Entities that are not considered temporary staffing agencies for the purposes of licensing by the Office are:

(1) A staff arrangement established by an entity solely for use by the entity, or by any entity associated with the entity, and in which the only costs are salaries paid to individuals who perform work.

(2) An individual who provides the individual's services on a temporary basis.

(3) An employment agency as defined in ORS 658.005.

(4) Home health agencies licensed under ORS 443.015.

(5) In-home care agencies licensed under ORS 443.315.

(6) Home care workers and personal support workers listed on the home care registry as defined in ORS 410.600.

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625

ADOPT: 331-965-0000

RULE SUMMARY: Requirements for temporary staffing agencies operating in Oregon.

CHANGES TO RULE:

331-965-0000

TEMPORARY STAFFING AGENCIES

(1) No temporary staffing agency may operate in Oregon without an authorization.¶

(2) A temporary staffing agency must:¶

(a) Obtain a separate authorization for each physical location.¶

(b) Register with the Oregon Secretary of State, Corporation Division, to conduct business in Oregon. ¶

(c) Ensure all personnel for which the temporary staffing agency procures or provides temporary employment meet any professional authorization requirements established for the practice or performance of the services provided by the personnel.¶

(d) Assign personnel to settings for which the personnel have the appropriate work experience and background to provide the services required by the setting.¶

(e) Retain records, as provided for in OAR 331-970-0010, for at least 10 years.¶

(f) Make records available to the Office immediately upon request.

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625

ADOPT: 331-965-0005

RULE SUMMARY: Temporary staffing agency authorization requirements

CHANGES TO RULE:

331-965-0005

AUTHORIZATION APPLICATION REQUIREMENTS

(1) Initial authorizations are subject to the provisions of OAR Chapter 331, Division 30 regarding the issuance of a license, provisions regarding identification, and requirements for issuance of a duplicate authorization.

(2) A temporary staffing agency applying for an authorization must:

(a) Meet the requirements of OAR 331, Division 30.

(b) Submit a completed application form as prescribed by the Office, that includes:

(A) The names and addresses of the applicant's officers and directors and any other person that has ownership, partnership, or a similar interest in the applicant.

(B) Copies of the applicant's organization documents, including articles of incorporation and other relevant filings.

(C) Proof of registration with Oregon Secretary of State, Corporation Division.

(D) Proof that all officers, directors, persons with ownership, partnership or similar interest in the temporary staffing agency pass a fingerprint-based nationwide criminal records check pursuant to OAR 331-030-0004.

(3) Submit any additional information requested by the Office.

(4) Pay all fees.

(5) Applications not completed within 90 days of submission will be deemed incomplete and will be closed.

Application fees are nonrefundable.

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625

ADOPT: 331-965-0010

RULE SUMMARY: Authorizaton issuance

CHANGES TO RULE:

331-965-0010

AUTHORIZATION ISSUANCE

(1) Authorizations become not current on the last day of the month, one year from the date of issuance, and are inactive.¶

(2) If a temporary staffing agency's authorization is in inactive status, the temporary staffing agency cannot operate in Oregon.¶

(3) An authorization that has been inactive for more than three years is expired and cannot be renewed. If a temporary staffing agency's authorization is expired, the temporary staffing agency must apply for an initial authorization and meet the current requirements.¶

(4) The authorization must be kept on file and made available upon request.

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625

ADOPT: 331-965-0015

RULE SUMMARY: How changes in information must be handled by temporary staffing agencies that have an authorization from the Health Licensing Office.

CHANGES TO RULE:

331-965-0015

NOTIFICATION REQUIREMENTS

(1) A temporary staffing agency with an authorization must notify the Office within 30 days of any change in:

(a) The officers, directors, persons with ownership, partnership, or similar interest in the temporary staffing agency; or

(b) The physical location of a temporary staffing agency.

(2) Any changes made under (1)(a) of this section must be accompanied by a fingerprint-based nationwide criminal records check pursuant to OAR 331-030-0004 and the \$50 fingerprint fee.

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625

ADOPT: 331-965-0020

RULE SUMMARY: Renewal process for temporary staffing agency authorizations.

CHANGES TO RULE:

331-965-0020

AUTHORIZATION RENEWAL

(1) Authorization renewals are subject to the provisions of OAR Chapter 331, Division 30 regarding the renewal of a license.¶

(2) To renew an authorization, an authorization holder must:¶

(a) Submit a completed renewal application form as prescribed by the Office.¶

(b) Submit any additional information or forms as requested by the Office.¶

(c) Provide changes to names or addresses of the temporary staffing agencies officers, directors, persons with ownership, partnership, or similar interest in the authorization.¶

(d) Provide changes in organizational structure and copies of any organizational documents relevant to that change.¶

(e) Pay all fees.¶

(3) Every two years after the issuance of an authorization, as a condition of authorization renewal, a temporary staffing agency must have all officers, directors, persons with ownership, partnership or similar interest in the authorization pass a fingerprint-based nationwide criminal records check pursuant to OAR 331-030-0004.¶

(4) Background checks related to (4) of this section must be submitted 60 days prior to authorization becoming not current - inactive status.

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625

ADOPT: 331-970-0000

RULE SUMMARY: Temporary staffing agencies must make sure that personnel have appropriate credentials.

CHANGES TO RULE:

331-970-0000

PROFESSIONAL AUTHORIZATION REQUIREMENTS

When a client entity is seeking personnel for a position that requires professional authorization, the authorization holder must verify:¶

(1) The personnel have the required professional authorization needed to perform the services the personnel are assigned to perform.¶

(2) The personnel's required professional authorization is current and in good standing.¶

(3) That if the authorization holder knows or had reason to know that a personnel's professional authorization is no longer in good standing, the authorization holder will terminate the personnel and notify the client entity of the termination.

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625

ADOPT: 331-970-0005

RULE SUMMARY: Temporary staffing agencies must make sure personnel have appropriate work experience.

CHANGES TO RULE:

331-970-0005

WORK EXPERIENCE FOR PERSONNEL

Every authorization holder must ensure that any personnel placed with a client entity has the appropriate work experience, training, and background needed to provide the services required by the client entity.

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625

ADOPT: 331-970-0010

RULE SUMMARY: Record retention requirements

CHANGES TO RULE:

331-970-0010

RECORDS

Authorization holders must maintain the following records for at least 10 years, and make them available to the Office upon request.¶

(1) Personnel applications for employment that include the name and address of the applicant, the date of application, a description of the types of employment the applicant is seeking, a description of past work experience in the types of employment being sought, and if necessary, proof of professional authorizations required to perform services.¶

(2) Proof that the authorization holder verified any professional authorization needed for personnel to perform the services to be provided by the personnel.¶

(3) All requests from client entities seeking to hire personnel that include the name and address of the client entity, the date of the request, a description of the type of personnel being sought, the type of professional authorization needed for the personnel to perform the services being sought and the address or location at which the work is being performed.¶

(4) Copies of all contracts between personnel and the authorization holder.¶

(5) Copies all contracts between the authorization holder and the client entity.¶

(6) A record of fees charged, collected, and refunded, and such accounting record as may be necessary to verify the record of fees charged, fees collected, and refunds made.¶

(7) All records related to employee competency evaluations and testing.¶

(8) All records related to employee performance.¶

(9) All records related to the authorization holder's policies related to personnel assignments.

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625

ADOPT: 331-975-0000

RULE SUMMARY: Discipline that can be imposed on an authorized temporary staffing agency

CHANGES TO RULE:

331-975-0000

DISCIPLINE

(1) In the manner prescribed in ORS Chapter 183, for contested cases, the Office may deny, revoke, suspend, or otherwise discipline a person for a violation of Section 2, 4, or 5 of Senate Bill 1549 (2022) or any administrative rule adopted thereunder.

(2) The Office may impose discipline as provided for in Section (1) of this rule when a person:

(a) Violates any provisions of Section 2, 4, or 5 of Senate Bill 1549 (2022) or any administrative rule or order issued by the Office.

(b) Provides false information or misrepresents any information on any application or form required by the Office.

(c) Fails to ensure that personnel have the correct professional authorization or work experience needed pursuant to 331-970-0000 and 331-970-0005.

(d) Fails to retain records as provided for in 331-970-0010.

(e) Fails to disclose to the Office any information or records requested.

(f) Fails to cooperate with an investigation by the Office or any other regulatory agency.

(g) Charges a fee in violation of Section 5 (2) of Senate Bill 1549 (2022).

(h) Has been disciplined by any other governmental agency or entity.

(i) Has been convicted of, or pleaded guilty or no contest to, any felony or misdemeanor involving dishonesty or misrepresentation.

(j) Fails to comply with any final order.

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625

ADOPT: 331-975-0005

RULE SUMMARY: Civil penalties that can be assessed if authorized temporary staffing agencies violate the laws and rules.

CHANGES TO RULE:

331-975-0005

CIVIL PENALTIES

(1) In addition to any discipline imposed, the Office may impose a civil penalty of \$500 per day per violation of any provision of Section 2, 4, or 5 of Senate Bill 1549 (2022).¶

(2) Each assignment of an individual personnel member is considered a separate violation.

Statutory/Other Authority: Senate Bill 1549 (2022), ORS 676.560-676.625

Statutes/Other Implemented: Senate Bill 1549 (2022), ORS 676.560-676.625