SENATE DOCKET, NO. 2389 FILED ON: 1/20/2023

SENATE . . . . . No. 810

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act ensuring temporary nursing service agency quality.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bruce E. Tarr	*First Essex and Middlesex*

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SENATE . . . . . No. 810

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 810) of Bruce E. Tarr for legislation to ensure temporary nursing service agency quality. Health Care Financing.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act ensuring temporary nursing service agency quality.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 13D of Chapter 118E, as appearing in the Massachusetts General Laws 2020 Edition, is hereby amended by striking paragraph 7 and replacing it with the following new paragraph

In establishing rates for nursing pools under section 72Y of chapter 111, the executive office shall establish annually the limit for the rate for service provided by nursing pools to licensed facilities. The executive office shall establish industry-wide class rates for such services and shall establish separate class rates for services provided to nursing facilities and hospitals. The executive office shall establish separate rates for registered nurses, licensed practical nurses and certified nursing assistants. The executive office may establish rates by geographic region. The rates shall include an allowance for wages, payroll taxes and fringe benefits, which shall be based upon, and shall not exceed, median wages, payroll taxes and fringe benefits paid to permanent medical personnel of the same type at health care facilities in the same geographic region. The rates shall also include an allowance for reasonable administrative expenses and a

reasonable profit factor, as determined by the executive office. The executive office may exempt from the rates certain categories, as defined by the executive office, of fixed-term employees that work exclusively at a particular health care facility for a period of at least 90 days and for whose services there is a contract between a facility and a nursing pool registered with the department of public health. The maximum rates shall be no higher than 130% of the average hourly base rate for regular registered nurses, licensed practical nurses and certified nursing assistants. The executive office shall establish procedures by which nursing pools shall submit cost reports, which may be subject to audit, to the executive office to establish rates. The executive office shall determine the nursing pool rate contained in this paragraph by considering wage and benefit data collected from cost reports received from nursing pools and from health care facilities and other relevant information gathered through other collection tools or reasonable methodologies. For purposes of quality, accountability and transparency, the executive office shall annually ensure that temporary nursing service agencies are (1) meeting their obligation to provide temporary personal work consistent with the requirements of the Department of Public Health regulation at 105 CMR 157.00 and (2) assigning staff in conformance with Department of Public Health regulations, including CMR 105 CMR 157.00. The executive office shall establish a Temporary Nursing Service Agency Performance Report Card and make this information publicly available on the Internet as a means to increase the reliability of evaluating a temporary nursing services agency before a medical provider contracts for its services. The temporary nurse services agency shall be responsible for any employees scheduled to work and fail to work due by providing replacement staff to ensure that shifts are covered. The Department of Public Health shall subject temporary nursing services agency to periodic audits, surveys, and cost reports. Temporary nursing service agencies shall not have more than 5 percent in overhead costs

and shall not make more than 5% in profit. The Performance Report Card shall include, but not be limited to: (a) auditing whether the temporary nursing service agencies are adhering to the reporting standards of conduct for nurses set forth at 244 CMR 9.03, Standards of Conduct for Nurses, and (b) assessing performance of nursing pool personnel assigned to facilities including at a minimum: (i) review and response to facility complaints; (ii) record of staff reliability in fulfilling assignments; and (iii) policies to establish on-site assessments of staff placed in facilities on each assigned shift. The annual report shall also include, at a minimum, the following information by geographic area which the health care personnel performed the work by facility type of hospital and nursing: (a) The average amount charged by nursing pools for health care personnel by license type; (b) The average amount paid by the nursing pool to health care personnel by license type; (c) The average amount of labor-related costs paid by the nursing pool by health care personnel license type, such as payroll taxes, workers' compensation insurance, professional liability coverage, credentialling, and other employee-related costs.

SECTION 2. Nursing pools certified under section 72Y of chapter 111 of general laws, or any of their affiliated parties, shall be prohibited from soliciting and/or hiring nursing facility employees from nursing facilities in which the temporary nurse staffing agency has an active contract for the period of the contract plus 12 months. Operators shall under 101 CMR 206 provided annual reports on their use of temporary nursing service agencies.

SECTION 3. The Department of Public Health shall amend the "long term care facility operating regulations" (105 CMR 150) to require that temp nursing agency workers are compliant with all applicable qualifications, and training requirements now required of nursing care staff regularly employed in their position. In addition, require temporary nursing service agencies pay all fines as assessed by the Department of Public Health or other regulatory body

generated as a result of assigned agency staff and pertaining to quality of care or documentation issues.