

New Iowa Law Will Impact Health Care Staffing Agencies and Contracts with Health Care Entities

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On March 17, 2022, Iowa Governor Kim Reynolds signed into law House File 2521, “Relating to Health Care Employment Agencies, and Providing Penalties,” which will have its home in Chapter 135Q of the Iowa Code. In general, the law does three things. One, it requires health care employment agencies to annually register with the state Department of Inspections and Appeals (DIA) and pay a \$500 registration fee. Two, it details recordkeeping and other requirements related to agency employees, and prohibits the inclusion of certain terms in contracts with health care entities. Three, it imposes penalties for non-compliance.



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The law **broadly** defines a “health care employment agency” as “an agency that contracts with a health care entity in this state to provide agency workers for temporary, temporary-to-hire, direct hire, or other contract or employee placements.” Similarly, a “health care entity” is defined as “a licensed or certified facility, organization, or agency operated to provide services and supports to meet the health or personal care needs of consumers.”

Under the new law, health care employment agencies must do the following:

- Register each location of the health care employment agency on an annual basis with DIA, and pay a \$500 registration fee;
- Ensure that agency workers comply with all applicable requirements relating to the health requirements and qualifications of personnel in health care entity settings (i.e. licensing, certification, training, and health requirements and continuing education standards), and document that agency workers meet these requirements;
- Maintain records for each agency worker and report, file, or otherwise provide any required documentation to external parties or regulators which would otherwise be the responsibility of the health care entity if the agency worker worked directly for the health care entity;
- Maintain professional and general liability insurance coverage with minimum per occurrence coverage of \$1 million and aggregate coverage of \$3 million to insure against loss, damage, or expense incident to a claim arising out of death or injury as

the result of negligence or malpractice by health care employment agency or agency worker; and

- Submit quarterly financial reports to DIA regarding amounts charged to health care entities.

As previously discussed, the CMS Interim Final Rule requiring staff vaccination against COVID-19 extends to agency employees not directly employed by Medicare or Medicaid providers and suppliers (“Covered Healthcare Employers”). House File 2521 appears to codify such a vaccination requirement in mandating that health care employment agencies ensure that agency workers comply with all applicable requirements relating to the health requirements of personnel in health care entity and documenting that compliance.

Also under the new law, health care employment agencies are **prohibited** from placing any restrictions on “employment opportunities of an agency worker by including a non-compete clause in any contract with an agency worker or health care entity.” In addition, contracts between agencies and health care entities may not “require payment of liquidated damages, employment fees, or other compensation if the agency worker is subsequently hired as a permanent employee of the health care entity.” In other words, health care employment agencies may not require their employees to sign non-compete agreements as a condition of employment, and health care employment agencies may not require health care entities to pay any kind of “finder’s fee” for directly hiring an agency employee. Any contracts that violate new Iowa Code Chapter 135Q are **unenforceable**.

Several questions remained immediately after Governor Reynolds signed House File 2521, particularly regarding its scope of coverage. On May 24, 2022, the Iowa legislature attempted to address one of those questions in House File 2589 by clarifying that Iowa Code Chapter 135Q applies retroactively to **any contracts entered into on or after January 1, 2019**. While Governor Reynolds is yet to sign House File 2589, her signature is expected.

From a legal standpoint, we likely have not heard the last of Iowa Code Chapter 135Q and House File 2589. The DIA is tasked with implementing administrative rules to carry out the new law, and those rules may provide further clarification regarding scope of coverage, grace periods for penalties, and other clarifications.

For now, Iowa Code Chapter 135Q becomes effective July 1, 2022. At that point, any contracts between health care employment agencies and health care entities, entered into on or after January 1, 2019, that contain any of the prohibited provisions described above, are unenforceable. From a practical standpoint, that means health care entities should renegotiate their contracts with health care employment agencies. We recommend that in addition to ensuring compliance with Iowa Code Chapter 135Q, health care entities should ensure that the re-negotiated contracts include language requiring agency compliance with the CMS Interim Final Rule requiring staff vaccination against COVID-19.

