

Updates Regarding New Iowa Law That Impacts Health Care Staffing Agencies and Contracts with Health Care Entities

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On March 17, 2022, Iowa Governor Kim Reynolds signed House File 2521, “Relating to Health Care Employment Agencies, and Providing Penalties” into law. We previously discussed the new law on a June 10, 2022 blog post. At that time, a looming question was how Iowa’s administrative agencies would draft rules to clarify and implement the law. On November 30, 2022, the Iowa Department of Inspections and Appeals (DIA) submitted the final administrative rules to implement House File 2521 to final publication.

By way of brief background, administrative rules are the regulations that help to implement laws passed by the Iowa Legislature. After a bill is signed by the Governor, state agencies may propose rules to implement the statute the agencies are tasked with enforcing. Rules are first drafted within an agency, then reviewed by the agency head, and then published in the Iowa Administrative Bulletin. At that time, the public is allowed to comment on the proposed rules for a certain period of time. After the public comment period, the agency head adopts the rules (with additions as appropriate) and sends them for final publication. Even after final publication, the rules are subject to legislative review by the Administrative Rules Review Committee (ARRC). That committee can object to rules and delay effective dates.

So, what do the final rules for House File 2521 say?

First, the rules clarify the definition of a “health care employment agency” for the purpose of this law. House File 2521 broadly defined “health care employment agency” to mean “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.” The rules expressly provide that “a recruitment firm



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that contracts with a health care entity to identify and screen potential candidates for hire and does not provide agency workers for temporary, temporary-to-hire, direct hire, or other contract employee placements” are *not* covered by the statute.

The rules also carve out an exception for “physical therapists licensed under Iowa Code chapter 148A, occupational therapists licensed under chapter 148B, or speech pathologists or audiologists licensed under Iowa Code chapter 154F,” meaning those professions are not considered “health care employment agencies” under this law. Under these rules, it’s status quo for those professions: employers may still include certain covenants not to compete, finder’s fees, and other contract provisions that the law otherwise prohibits.

Second, the rules also confirm the language of House File 2521 in defining “direct services” to *exclude* the practice of “medicine and surgery or osteopathic medicine and surgery by an individual licensed under Iowa Code chapter 148 or 148C or the practice of nursing by an advanced registered nurse practitioner or an advanced practice registered nurse licensee under Iowa Code chapter 152 or 152E.” Again, for these positions, the pre-House File 2521 status quo appears to be the law going forward.

Finally, the rules provide some exceptions to the general prohibition against non-competes and other contract provisions in healthcare employment agency contracts. Specifically, these contracts can contain non-competes and finder’s fees when: (1) the health care worker has been sponsored by or is otherwise assisted in obtaining work authorization in the United States by the employment agency, (2) the contract contains an initial term of “no less than 24 months and has a total duration, including any renewals or extensions, of no longer than 36 months,” and (3) the contract requires the agency worker to work at a single health care entity for the duration of the contract.

At first glance, the rules appear to narrow the scope of the statute considerably. It remains to be seen how the ARRC will respond (e.g. whether the rules change the House File too significantly). The next meeting of the ARRC on December 12, 2022 may provide some insight into what concerns, if any, legislators have with the final rule. As always, we will be closely monitoring the upcoming 2023 session of the Iowa General Assembly for further action on health care staffing issues.