

SENATE BILL REPORT

SB 5547

As Reported by Senate Committee On:
Health & Long Term Care, February 16, 2023

Title: An act relating to transparency for nursing pools that provide health care personnel to hospitals and long-term care facilities.

Brief Description: Concerning nursing pool transparency.

Sponsors: Senators Robinson, Muzzall, Hasegawa and Mullet.

Brief History:

Committee Activity: Health & Long Term Care: 2/10/23, 2/16/23 [DPS].

Brief Summary of First Substitute Bill

- Requires a person who operates a nursing pool that employs, procures, or refers health or long-term care personnel for temporary employment in a hospital, nursing home, assisted living facility, enhanced services facility, or an adult family home to complete an annual registration with Department of Health (DOH), and disclose corporate structure and ownership, if any.
- Establishes annual reporting requirements that certain nursing pools must submit to DOH that includes information on the average total hours worked and billed by nursing category, average amount charged and paid by nursing pools, the average amount of labor-related costs paid, the number of placements made within certain miles of the health or long-term care personnel's residence, and the total number of placements made.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5547 be substituted therefor, and the

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substitute bill do pass.

Signed by Senators Cleveland, Chair; Robinson, Vice Chair; Rivers, Ranking Member; Muzzall, Assistant Ranking Member; Conway, Dhingra, Holy, Padden, Randall and Van De Wege.

Staff: Julie Tran (786-7283)

Background: In 1988, the Legislature recognized the need to protect the public's right to high quality health care by assuring that nursing pools employ, procure or refer competent and qualified health care or long-term care personnel, and that such personnel are provided to health care facilities, agencies, or individuals in a way to meet the needs of residents and patients.

"Nursing pool" means any person engaged in the business of providing, procuring, or referring health care or long-term care personnel for temporary employment in health care facilities, such as licensed nurses or practical nurses, nursing assistants, and chore service providers. A nursing pool does not include an individual who only engages in providing his or her own services.

A person who operates a nursing pool shall register the pool with Department of Health (DOH). Each separate location of the business of a nursing pool shall have a separate registration. The secretary shall establish administrative procedures, administrative requirements, and fees.

No state agency shall allow reimbursement for the use of temporary health care personnel from nursing pools not registered in the state of Washington.

Nursing Pool Duties. Nursing pools are required to:

- document that each temporary employee or referred independent contractor provided or referred to health care facilities currently meets the applicable minimum state credentialing requirements;
- conduct a criminal background check on all employees and independent contractors prior to employment or referral of the employee or independent contractor; and
- carry professional and general liability insurance to insure against any loss or damage occurring, whether professional or otherwise, as the result of the negligence of its employees, agents or independent contractors for acts committed in the course of their employment with the nursing pool.

A nursing pool that only refers self-employed, independent contractors to health care facilities must carry professional and general liability insurance to cover its own liability as a nursing pool which refers self-employed, independent contractors to health care facilities.

A nursing pool, as a condition of referral, that self-employed, independent contractors carry professional and general liability insurance to insure against loss or damage resulting from

their own acts committed in the course of their own employment by a health care facility.

"Health care facility" means a nursing home, hospital, hospice care facility, home health care agency, hospice agency, assisted living facility, group home, or other entity for the delivery of health care or long-term care services, including chore services.

Long-Term Care Worker. A long-term care worker is defined as all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including individual providers of home care services, direct care workers employed by home care agencies or a consumer directed employer, and providers of home care services to persons with developmental disabilities.

Summary of Bill (First Substitute): The definition of "nursing pool" is amended to clarify that a nursing pool does not include a hospital, clinic, nursing home, assisted living facility, enhanced services facility, or an adult family home that provides temporary staffing to its own organization.

Nursing Pool Registration Requirement. A person who operates a nursing pool that employs, procures, or refers health or long-term care personnel for temporary employment in a hospital, nursing home, assisted living facility, enhanced services facility, or an adult family home must register the nursing pool annually with DOH, and disclose corporate structure and ownership, if any, which DOH must make publicly available, as part of the annual registration process.

The persons who operate nursing pools are responsible for all fees or assessments levied by the state to cover the associated costs.

Nursing Pool Reporting Requirements. Nursing pools operating in Washington State must submit an annual report to DOH with the following information, at a minimum, by county in which the health or long-term care personnel performed the work and by type of hospital, nursing home, assisted living facility, enhanced services facility, or adult family home:

- the average amount charged by the nursing pool for health or long-term care personnel by license type;
- the average amount paid by the nursing pool to health care or long-term personnel by license type;
- the average amount of labor-related costs paid by the nursing pool by health or long-term care personnel license type, such as payroll taxes, workers' compensation insurance, professional liability coverage, credentialing, and other employee-related costs;
- the number of placements made within 25 miles and 50 miles of the health or long-term care personnel's residence as identified in their employee tax information; and
- the total number of placements made by the nursing pool.

DOH must complete an annual report that is available on the agency's website. The report,

at minimum, must include the following information by county in which the health or long-term care personnel performed the work and by type of hospital, nursing home, assisted living facility, enhanced services facility, or adult family home:

- the average amount charged by nursing pools for health or long-term care personnel by license type;
- the average amount paid by the nursing pool to health or long-term care personnel by license type;
- the average amount of labor-related costs paid by the nursing pool by health or long-term care personnel license type, such as payroll taxes, workers' compensation insurance, professional liability coverage, credentialing, and other employee-related costs;
- the number of placements made within 25 miles and 50 miles of the health or long-term care personnel's residence as identified in their employee tax information; and
- the total number of placements made by each registered nursing pool.

Additional Requirements for Nursing Pools. Nursing pools must document that each health or long-term care personnel provided or referred to health care facilities meet the applicable minimum state credentialing requirements including, but not limited to: licensure, certification, training, health requirements, and continuing education standards for the health or long-term care personnel's position in the health care facility.

Nursing pools must provide the nursing home, assisted living facility, enhanced services facility, or adult family home written notice, at least 90 days in advance, of contract changes including, but not limited to, availability or charges for services, items, or activities.

Nursing pools may not require the payment of liquidated damages, employment fees, or other compensation 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, if the health or long-term care personnel is hired as a permanent employee by the nursing home, assisted living facility, enhanced services facility, or adult family home.

Nursing pools must provide an annual report to DOH with the average total hours worked and billed by nursing category and as aggregated by nursing home, assisted living facility, enhanced services facility, or adult family home facility type.

The long-term care workers background check requirement is added to the current background check requirements that nursing pools must conduct.

"Health care personnel" means a registered nurse or licensed practical nurse, a surgical technologist registered, a diagnostic radiologic technologist or cardiovascular invasive specialist certified, a respiratory care practitioner licensed, or a nursing assistant-certified who is licensed and certified in Washington State and is either a temporary employee or a referred independent contractor of a nursing pool.

"Long-term care personnel" means any person who qualifies as a long-term care worker.

EFFECT OF CHANGES MADE BY HEALTH & LONG TERM CARE COMMITTEE (First Substitute):

- Adds clinics to the list of facility types that would not be considered a nursing pool.
- Defines "long-term care personnel" as all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including individual providers of home care services, direct care workers employed by home care agencies or a consumer directed employer, and providers of home care services to persons with developmental disabilities.
- Replaces references of "health care personnel" and "employees and independent contractors" with "health care or long-term care personnel."
- Specifies the list of the applicable minimum state credentialing requirements that the nursing pool must document for each health care or long-term care personnel provided or referred to health care facilities to include, but not limited to: 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.
- Amends the current background check requirement that nursing pools must conduct to include the long-term care workers background check requirements.
- Corrects the reference to the federal Medicaid exclusion verification statute.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The use of travelers should be transparent and be as minimal as possible. This bill is a step toward that transparency since we don't really know anything about them right now. Hospitals and long-term care facilities rely on these nursing pools to provide contract travelers to fill the worker shortages and meet patient care needs. The number of travelers have grown in the past few years as hospitals and long-term care facilities have faced multiple surges. Price gouging stories have become more common as agencies have increased contract rates. The rate increases come with little to no advance notice and yet, providers have to pay the higher rates so they can safely staff their facilities. Agencies are hiring facility staff with offers for higher pay and more flexibility and then, the agencies send the worker back to the facility at a much higher cost. If the facilities want to hire an agency worker, the facilities are required to pay exorbitant fees to the staffing agency. This has created a challenging financial situation and for most providers, this is unaffordable but the providers are in desperate need of permanent

staff. Residents suffer the most in these situations as having temporary staff does not allow for continuity of care and no long-term care provider wants this to be their staffing model. The agencies need more oversight. Many travelers are from out of state and this bill will help understand more about the economic dynamic of the nurses who do have to travel from out of state.

Persons Testifying: PRO: Senator June Robinson, Prime Sponsor; Alyssa Odegaard, LeadingAge Washington; Katie Houck, Heron's Key; Lisa Thatcher, WSHA; Lindsey Grad, SEIU Healthcare 1199NW; Ian Goodhew, UW Medicine; Sean Graham, Washington State Medical Association.

Persons Signed In To Testify But Not Testifying: No one.