



To: Chairwoman Concannon, Members, House Children and Seniors Committee
From: **Rachel Monger**, Vice President of Government Affairs, LeadingAge Kansas
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Testimony in Support of House Bill 2629

Thank you, Chairwoman Concannon, and Members of the Committee. I am Rachel Monger, Vice President of Government Affairs for LeadingAge Kansas, the state association for not-for-profit and faith-based aging services. We have 160 member organizations across Kansas, which include not-for-profit nursing homes, retirement communities, hospital long-term care units, assisted living, homes plus, senior housing, low-income housing, home health agencies, home and community-based service programs, PACE and Meals on Wheels. Our members serve more than 25,000 older Kansans each day and employ more than 20,000 people across the state.

LeadingAge Kansas strongly supports HB 2629 and its aim to create oversight for supplemental nursing services agencies in Kansas. Over the last decade, long term care has faced an ever-deepening workforce crisis, and a corresponding explosion in supplemental nursing services agencies – also known as temporary staffing agencies in health care. As we travel around the state visiting our members, workforce is the number one issue of concern. For many years we have heard the frustration from our nursing homes and hospital long term care units about the abusive practices of health care staffing agencies which restrict employment of nurses and nurse aides while adding sky high costs to residents, taxpayers and providers.

Kansas is not the first state to struggle with health care staffing agencies and their effect on the cost and quality of health care services. Minnesota is a largely rural state that faces many of the same demographic shifts and workforce challenges that we experience in Kansas. In 2001, the Minnesota legislature enacted a series of reforms for supplemental nursing services agencies that have successfully ensured proper licensing, training and background checks of temporary staff, removed all restrictions on employment for nurses and nurse aides, and protected providers, consumers and tax payers by capping the amount an agency can charge for health care employees. After learning about these well-tested Minnesota reforms, LeadingAge Kansas requested introduction of House Bill 2629 in order to adopt a similar model in Kansas.

Licensing, Training and Background Checks

Supplemental nursing services contracts often claim that they perform license verifications, trainings, and state-required background checks. However, our members often report serious difficulties in obtaining proof or documentation of these activities by staffing agencies. We have heard reports from our members of missing background checks, no proof of nursing competencies and a nurse aide with a

license that had been expired for more than a year. HB 2629 requires supplemental nursing services agencies to conduct minimum licensing verification, training and background checks on their employees as a condition of operating in our state. HB 2629 further directs agencies to have documentation readily available to prove these requirements have been satisfied.

Freedom of Employment

HB 2629 removes any restrictions on employment opportunities for supplemental nursing services agency staff. It also prevents the agency from requiring damages or other fees from a health care provider that wants to permanently employ a temporary staff person. In other words, HB 2629 bans the use of non-compete clauses and buy-out clauses for agency nurses and nurse aides.

Supplemental nursing service contracts commonly prohibit their employees from taking a permanent position with any of the health care providers they serve for at least a year. If a provider wants to hire that temporary worker before the year is up, they must pay thousands of dollars to the agency to buy the worker out of their contract. A nurse aide buy-out can range between \$3,000 - \$7,000 and a registered nurse buy-out can fall between \$10,000 and \$20,000.

Kansas is in the throes of a long term care workforce crisis. With the last of the baby boomers turning 65 this decade, this crisis is projected to get worse. We should not be allowing any companies to restrict employment of health care workers who are otherwise fit to serve patients and residents. We find it particularly unconscionable to impose non-compete and buy-out restrictions on low wage workers like certified nurse aides.

Nurses and nurse aides are free to go work for a temporary staffing agency any time they'd like. They should be equally free to seek permanent employment with any health care provider they choose. Our state cannot afford to have nurses and nurse aides held hostage so that staffing agencies can demand thousands of dollars more on top of the tripled wages they are already charging nursing homes and hospitals.

Prevailing Wage Cap

HB 2629 would impose a cap on the amount a supplemental nursing services agency can charge for a temporary worker. The cap is set at 150% of the average wage for each employee type. Average wages can be computed from the annual cost reports that nursing homes and hospital long term care units are required to submit to KDADS every year. The cap does not include actual travel and lodging costs incurred by temporary employees.

Medicaid pays for 53% of the nursing home care in Kansas. As a chronically underfunded Medicaid provider, nursing homes struggle to offer competitive wages to their employees. They often are paying less than nearby retail and fast food chains. Supplemental nursing agencies recruit existing long term care workers, and sell them back to the nursing home for double or triple the price. And as noted above, if the agency recruit wants to return to working for a nursing home, the agency extorts thousands more from the nursing home to buy out the employee's contract. The rise of staffing agencies in recent years has resulted in astronomical workforce costs in long term care. These inflated wages create a ripple effect for nursing home residents and Kansas taxpayers.

Nursing home residents suffer on a number of levels when nursing homes are forced to rely on inconsistent agency staffing at three times the cost. The money to pay for agency staffing has to come from somewhere in a very tight nursing home budget.

- If the nursing home does not have the financial means to pay for agency staff, they will burn out existing staff with overtime hours, or they will just go without needed staff altogether. Burned out or non-existent staff have a serious effect on the quality of care a nursing home resident receives.
- The artificially inflated staffing costs may be passed on directly to private pay residents at the nursing home. Adding to the already costly bill for their nursing home care
- Studies and experience show that consistent staffing leads to better quality of care and better quality of life for residents. Staffing agencies make it impossible to provide residents with consistent staff persons who form relationships with residents, and who know the resident's needs and preferences.
- Doubling and tripling wage costs diverts funds for many other needed resident services such as good quality food, medical supplies and activity programs. It also means putting off building maintenance and improvements.

Inflated staffing agency wages effect Kansas taxpayers via the Medicaid program. The formula for nursing home Medicaid reimbursement is cost-based. Nursing homes submit a "cost report" to KDADS every year documenting everything they spent in the last year, including nurse and nurse aide wages. Artificially inflated wages can cause artificially inflated costs in the nursing home's annual report. These costs are eventually paid for by taxpayers through our reimbursement formula.

Our state cannot afford the predatory pricing that supplemental nursing services agencies are demanding from under-staffed and under-funded nursing homes in Kansas. It hurts long term care, it hurts older Kansans, and it drains money from an already overburdened Medicaid program. We believe that a cap on agency staffing charges is both necessary and fair. We need to support our health care labor market through financial stability of health care providers, improved resident care and efficient use of taxpayer money. The 150% wage cap in HB 2629 will help us do that.

Insurance and Fidelity Bonds

HB 2629 requires supplemental nursing services agencies to carry medical malpractice insurance and workers compensation insurance on their employees, as well as a fidelity bond worth at least \$10,000.

Supplemental nursing services contracts often state that they are liable for any willful or negligent acts of their employees while caring for patients and residents. However, there is no way of knowing whether these agencies are carrying the malpractice insurance necessary to actually pay any claims made by those residents and patients. In Kansas, adult care homes and hospitals must carry a minimum amount of medical malpractice insurance as a way to protect residents and patients who suffer injuries while receiving care. It is important that potentially liable companies who are supplying the workers for resident care also carry malpractice insurance to protect those same residents and patients.

Health care is a physically demanding job, particularly for nurse aides. Workplace injuries are not uncommon. Before sending out temporary employees to care for others, it is imperative that the agency maintain worker's compensation insurance and provide the necessary time and medical care for an injured worker. Injured workers can in turn injure patients and residents.

Every nursing home in Kansas is required to have a fidelity or surety bond of at least \$10,000. This bond exists to protect residents in the case of stolen funds or property. It is possible that during their nursing duties, temporary employees may have access to resident cash or possessions. The \$10,000 fidelity bond for nursing agencies will protect residents no matter who is employing their nurse or nurse aide.

Conclusion

The continued growth and questionable business practices of many supplemental nursing services agencies have been left to flourish for too long. As health care providers who take care of a vulnerable population, we are expected to take the utmost care in vetting employees through licensure, training and background checks. We do not restrict employment opportunities for workers, and we are required to be insured and bonded. We require the utmost efficiency in the use of Medicaid dollars, and struggle every day to make sure we provide an adequate amount of staffing for our residents.

Companies that are buying up our workforce, and supplying services to residents all across the state need to be held to the same standard. They need to keep documented proof of licensure, training and criminal background checks. They must not be allowed to hold workers hostage with non-compete and buy-out contracts. And a cap on agency charges must be enforced to uphold the integrity of our Medicaid program and help support older Kansans in need of quality nursing home services.