Testimony of Bob Livonius
on behalf of the
American Staffing Association
before the
Kansas Legislature
House Committee on Children and Seniors
RE: HB 2524
February 1, 2022

Good afternoon, I am Bob Livonius. I'm testifying today on behalf of the American Staffing Association which represents staffing agencies, including nurse staffing, throughout the United States.

Nurse staffing plays a critical role in ensuring that patient care is available in every geographical region of the country when and where it is most needed. At no time in history have as the need for those services been more vividly demonstrated than during the Covid-19 pandemic.

I've been in the industry for 30 years. I've headed three large nurse staffing agencies and have intimate knowledge of how agencies operate. I've also played a leading role in policy issues affecting the industry as a member of the board of directors and chairman of the American Staffing Association.

Our industry recognizes the need for reasonable regulations, and we have no objection to the provisions of HB 2524 that would require nurse agencies to register with the state, that would provide oversight, and would establish a system for reporting complaints against agencies or their employees. Fourteen states plus the District of Columbia have similar provisions.

While reasonable regulations are appropriate, we have serious concerns with two provisions of HB 2524—Section 5 that would artificially cap nurse agency bill rates, and Section 4, which would bar staffing agencies from charging health care facilities a reasonable fee to recoup the agency's investment in recruiting, screening, and onboarding workers.

Let me first address the proposed rate cap, which is unnecessary and will do far more harm than good.

The premise of Section 5 is that there is widespread overcharging by nurse staffing agencies. That is simply not the case. As in every sector of the economy, there may be a few bad actors, but it is far from the norm in our industry as I'll discuss in a moment.

As policymakers, it is critical that you have the full picture. The anecdotal complaints about agency bill rates are not the whole story. The exclusive focus on rates ignores how rates are determined; specifically, the myriad costs agencies necessarily must incur to provide their services, and that they must recoup in the rates. The focus on rates also ignores the extraordinary inflationary forces and supply shortages caused by the pandemic that have driven up costs in every sector of the economy.

It's also critical to keep in mind that agency nurses make up a small fraction (less than 2%) of the 3.6 million nurses employed in the U.S. and that only 6% work in long-term care. Similarly, by my calculation, only about 3-5% of certified nursing assistants working in nursing homes are employed by agencies. Most nurses and CNAs work full time for the nursing home and supplement their income by working through agencies. Thus, agency costs are a small portion of the overall cost of those services.

Unique factors affecting the supply of nurses during the pandemic

We all know that the pandemic created unprecedented demand for nurses and other health care professionals, which has caused the costs to rise. But that's only part of the story.

Nurse staffing costs have risen not only because of the unprecedented demand but because the supply of nurses has suffered due to the unusually harsh working conditions caused by Covid. Stress and overwork, physical danger, extended periods away from home in the case of travel nurses, all have led to burnout, long leaves of absence, and retirements which have reduced the number of nurses available to work. This supply-demand imbalance forced staffing agencies to offer much higher wages to attract and retain nurses—which necessarily drove up the cost of the agencies' services.

Of course, the costs have not risen uniformly in every market, or at all times, as the demand for services ebbed and flowed as the pandemic coursed erratically and unpredictably through the nation. Costs also varied based on the resident supply of nurses in particular geographic regions, with higher concentrations of nurses in urban versus rural locations. Areas of lower concentration required more supplemental help, usually in the form of agency travel nurses and often at higher costs, especially in remote locations.

Nurse staffing agency profit margins were stable during the pandemic

It may seem counterintuitive, but despite the increase in demand for nursing services during the pandemic, agency bottom-line profits were relatively stable. According to a 2021 survey of travel nurse agencies by an independent research firm, agency net profit margins averaged only 12.4% in 2020, which was only slightly higher than the 11.1% pre-pandemic profits in 2019.[1]

Agencies realize those bottom-line profits only after deducting all the costs of providing services, including employee wages and labor-related costs like payroll taxes, unemployment insurance, workers' compensation and professional liability insurance, skills testing, and screening for licensing and credentialing. Travel nurses get lodging and meal allowances. Then there are the agency's general overhead expenses like marketing, rent, and office administration. Agencies must pay all those costs before realizing a profit.

Even more remarkable, the survey showed that agency *gross profits* (revenue minus only the direct costs of providing the services) *actually declined* in the chaotic first year of the pandemic, from 25.0% of revenue in 2019 to 24.6% in 2020. Why did gross profit margins decline? Because agencies had to pay higher nurse wages, which rose from 39% to 42% of revenue. The bottom line is that agencies paid out 75 cents of every dollar of revenue in wages and employee-related costs.

You should also know that over 70% of travel nurse revenue in 2020 was generated through third-party buying arrangements, which health care facilities use to lower their staffing costs.

Rate caps are unnecessary and will reduce the availability of nurses

Rate caps would aggravate the nursing shortage. History shows that price controls always distort markets and caps on staffing agency bill rates would mean that agencies could not economically afford to pay market wages—forcing Kansas nurses to seek in work in other states or leave the profession entirely. In Oregon, where a cap also is being considered, one major hospital already has come out in opposition due to concerns that it would drive nurses away. Massachusetts—one of only two states

[1] Travel Nurse Benchmarking Survey, Staffing Industry Analysts; National Association of Travel Healthcare Organizations (2021 Update)

with nurse rate caps—had to raise its cap during Covid to keep nurses from fleeing and the other state, Minnesota, waived its cap entirely during Covid. Caps just don't work.

So, what can be done to address high prices? Competition is a key answer. Nurse staffing agencies compete vigorously for business and nurses and nursing home administrators should aggressively shop for the best price among the multiple agencies in the market. Of course, we also need to increase Medicaid and Medicare reimbursement rates to relieve pressure on health care facilities. And if some agencies are thought to be price gouging, or colluding with competitors, such abuses should be investigated and vigorously addressed.

But industry-wide rate caps are not an answer to isolated abuses. Caps are a crude, blunt instrument that will only lead to market distortions and aggravate the nurse shortage. If agencies cannot pay what nurses want in a particular market, or provide the workforce flexibility they desire, nurses will seek work elsewhere or leave the profession entirely, as many already have, to the detriment of patients. Caps are only counterproductive but would be costly for the state to administer. We urge you not to impose them.

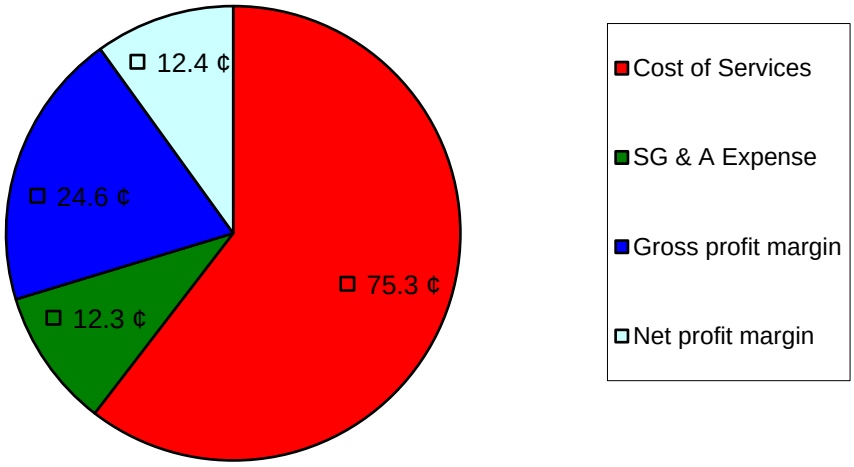
Liquidated Damages

Lastly, we urge you not to adopt the provision in Section 4 of the bill that would bar agencies from charging healthcare facilities a fee if they hire the agency's employee. Agencies sometimes charge facilities a "conversion fee" to protect against their being used as a free placement service. That can occur when a facility uses the agency to find an employee and then hires the worker before the agency can recoup the costs it incurred in recruiting, screening, and onboarding the person. Such fees generally are waived if the employee is on the agency's payroll for a minimal period (e.g., 90 days) so it does not impede the employee's ability to be hired by the facility. Every state allows such fees to protect agencies from exploitation. We urge you to delete this harmful provision.

Thank you for your time and for all you do to help take care of the elderly and disabled in Kansas.

American Staffing Association

Makeup of Nurse Staffing Agency Bill Rates in Year One of Pandemic



In 2020, approxiamately 75¢ of every dollar in revenue went to wages and employee costs

Cost of Services - direct costs of employing temporary nurses: includes wages, benefits (e.g., vacation and holiday pay and retirement and health plans), FICA, FUTA, SUTA, workers' compensation, drug testing, background checking, etc., and state mandates (e.g., state disability programs)

SG & A (selling, general & administrative) expenss - indirect costs of finding workers and placing them in jobs; includes advertising, recruiting, interviewing, testing, training, and placement of temporary workers; payroll check production; H.R. and benefits administration; salaries and benefits of full-time home office and branch office staff; tax and regulatory compliance; insurance coverages; office rent and equipment, etc.

Gross Profit - revenue minus Cost of Services

Net Profit - earnings before interest, taxes, depreciation, and amortization (EBIDTA)

* Source: Travel Nurse Benchmarking Survey, Staffing Industry Analysts; National Association of Travel Healthcare Organizations (2021 Update)