Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF HEALTH CARE QUALITY

Statutory Authority: 16 Delaware Code, Section 1119C(a) and 29 Delaware Code, Section 7971(d)(19) (16 **Del.C.** §1119C(a) & 29 **Del.C.** §7971(d)(19))

FINAL

ORDER

3103 Division of Health Care Quality Temporary Staffing Agencies

NATURE OF THE PROCEEDINGS:
Pursuant to 16 Del.C. §1119C(a) and 29 Del.C. §7971(d)(19), the Delaware Department of Health and Social Services ("DHSS"), Division of Health Care Quality (Agency) published a proposed new regulation, 3103 Division of Health Care Quality Temporary Staffing Agencies, on April 1, 2026 (29 DE Reg. 837), announcing a public comment period of April 1, 2026 through May 1, 2026. The proposed regulation implements House Bill 204, and establishes standards for registration and renewal, reporting and recordkeeping, insurance coverage, personnel documentation, and Departmental oversight, including inspections.

SUMMARY OF EVIDENCE:
Written comments were accepted on the proposed regulation during the public comment period April 1, 2026 through May 1, 2026. Entities and individuals offering written comments included AMN Healthcare, the Governor's Advisory Council for Exceptional Citizens, the State Council for Persons with Disabilities, Annette Moore, and Tashauna Clarke.
Suggested changes addressed the scope of personnel and placements subject to registration, the inspection frequency under Section 3.6, personnel record and recordkeeping requirements under Sections 5.0 and 6.0, the placement fee provision in Section 5.5, clinical competency and orientation standards, and the availability of data on agency utilization in Delaware long-term care facilities.

IMPACT ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE:
Division of Health Care Quality Director Amanda Levering has reviewed the proposed regulation as required by 29 Del.C. §10118(b)(3) and has determined that if promulgated, the regulation would have a de minimis impact on the State's resiliency to climate change because neither implementation nor compliance with the regulation would reasonably involve an increase in greenhouse gas emissions.

FINDINGS OF FACT:
As a result of evidence review, two changes were made to the regulation since publication as proposed. In subsection 3.1.1.1, the date establishing which temporary staffing agencies must register within 6 months after publication of the final regulation has been changed from January 1, 2026 to October 1, 2026, extending that registration window to agencies that began operating between those dates. The second sentence of subsection 5.5 has been deleted in response to public comment. That sentence described a voluntary agreement by a long-term care facility to pay a placement fee upon permanently hiring an agency's personnel, which the regulation neither requires nor authorizes, and its inclusion created ambiguity. DHSS finds that the proposed regulation, with amendments as set forth in the attached copy, should be adopted in the best interest of the public of the State of Delaware. DHSS has determined that these changes are nonsubstantive pursuant to 29 Del.C. §10118(c), and that further public notice and comment is therefore not required.

THEREFORE, IT IS ORDERED that the proposed amendments to regulation 3103 Division of Health Care Quality Temporary Staffing Agencies shall become effective 10 days after publication of the final regulation in the Delaware Register of Regulations.

9/21/2026
Date of Signature

Christen Linke Young, Secretary, DHSS

3103 Division of Health Care Quality Temporary Staffing Agencies

1.0 Purpose

The Delaware Department of Health and Social Services adopts this regulation pursuant to the authority vested by 16 **Del.C.** §1119C(a) and 29 **Del.C.** §7971(d)(19). This regulation establishes standards with respect to oversight and monitoring of temporary staffing agencies, as defined under 16 **Del.C.** §1102.

2.0 Definitions

The following words and terms, when used in this regulation, have the following meaning:

"**Agency**" means a temporary staffing agency registered with the Department.

"**Department**" means the Delaware Department of Health and Social Services.

"**Governing body**" means the individual, partnership, agency, group, or corporation designated to assume full legal responsibility for the policy determination, management, operation and financial liability of the temporary staffing agency.

"**Long-term care facility**" means a facility licensed pursuant to 16 **Del.C.** §1102.

"**Majority interest**" means the largest percentage of ownership interest.

"**Minority interest**" means any percentage of ownership less than the majority interest.

"**Modification of ownership and control**" and **"MOC"** means the sale, purchase, transfer or re-organization of ownership rights.

"**Office**" means the physical location in which the business of the temporary staffing agency is conducted and in which the records of personnel of the agency are stored.

"**Owner**" means an individual or legal entity with ownership rights of the agency.

"**Ownership**" means the state or fact of exclusive possession and control of the agency.

"**Ownership interest**" means the percentage of ownership an individual or legal entity possesses.

"**Personnel**" means any individual assigned to a long-term care facility who provides services for the long-term care facility.

"**Temporary staffing agency**" means a business entity or subdivision that provides temporary staff to a long-term care facility within this State

3.0 Registration Requirements and Procedures

3.1 General Requirements

3.1.1 No person shall establish, conduct or maintain in this State any temporary staffing agency that provides direct care services to a long-term care facility without first registering with and obtaining approval from the Department.

3.1.1.1 Temporary staffing agencies operating as of **[~~January 1, 2026~~ October 11, 2026]**, must register with the Department within 6 months after publication of the final regulation in the *Delaware Register of Regulations*.

3.1.1.2 Temporary staffing agencies operating after this regulation goes into effect must register with the Department 30 days prior to the first day of operation.

3.1.2 A separate registration shall be required for each temporary staffing agency in Delaware. The registration is not transferable between office locations. An agency providing services in Delaware that does not maintain an office in Delaware shall file a single registration covering its operations in the state.

3.1.3 The temporary staffing agency shall advise the Department in writing at least 30 calendar days prior to any change in office location.

3.1.4 Any temporary staffing agency that undergoes a modification of ownership and control (MOC) is required to re-register as a new agency.

3.1.5 A registration is not transferable from person to person or from entity to entity.

3.1.6 The submission of a registration application form is in no way a guarantee that the completed application will be accepted or that a registration will be issued by the Department.

3.2 Registration Process

3.2.1 All persons or entities wanting to apply to open a temporary staffing agency shall submit to the Department the following information:

3.2.1.1 A completed registration application, including registration fee.

3.2.1.2 Identity of:

3.2.1.2.1 Each officer and director of the corporation, if the entity is organized as a corporation;

3.2.1.2.2 Each general partner or managing member, if the entity is organized as an unincorporated; and

3.2.1.2.3 The governing body.

3.2.1.3 The names and addresses of each person having an ownership interest in the temporary staffing agency.

3.2.1.4 The names, addresses, and types of agencies owned or managed by the applicant;

3.2.1.5 Disclosure of any officer, director, partner, employee, managing member, or member of the governing body with a felony criminal record;

3.2.1.6 Name of the individual who is responsible for the management of the temporary staffing agency.

3.2.1.7 Any other information required by the Department.

3.2.2 Applications not completed within 90 days of submission will be deemed incomplete and will be closed. Application fees are non-refundable.

3.3 Issuance of Registrations

3.3.1 A registration shall be granted for a period 1 calendar year to every agency that completes the application process consistent with this regulation and whose policies and procedures demonstrate compliance with this regulation. A temporary staffing agency shall renew the registration annually.

3.3.2 To renew a registration, the temporary staffing agency must submit a completed renewal application and any additional information requested by the Department.

3.3.3 A temporary staffing agency must apply for renewal of registration at least 30 calendar days prior to the expiration date of the registration.

3.4 Modification of Ownership and Control

3.4.1 Any proposed MOC must be reported to the Department a minimum of 30 calendar days prior to the change.

3.4.2 A MOC voids the current registration in possession of the agency.

3.4.3 A MOC may include:

3.4.3.1 Transfer of full ownership rights;

3.4.3.2 Transfer of the majority interest;

3.4.3.3 Transfer of ownership interests that result in the owner with the majority interest becoming a minority interest owner;

3.4.3.4 Transfer or re-organization that results in an additional majority interest that is equal in ownership rights; or

3.4.3.5 Transfer resulting in a measurable impact upon the operational control of the agency.

3.5 Fees

3.5.1 Fees shall be in accordance with 16 **Del.C.** §1119D(e).

3.5.2 The Department will evaluate the registration fees annually.

3.6 Inspection. A representative of the Department shall periodically inspect every temporary staffing agency for which a registration has been issued under this regulation. Inspections by authorized representatives of the Department may occur at any time and may be scheduled or unannounced.

3.7 Notice to long-term care facilities. The temporary staffing agency shall notify each long-term care facility at least 30 calendar days before the voluntary surrender of its registration, or as directed under an order of denial, revocation or suspension of registration issued by the Department.

4.0 General Requirements

4.1 All records maintained by the temporary staffing agency shall at all times be open to inspection by the authorized representatives of the Department.

4.2 The temporary staffing agency must permit photocopying, or electronic transfer, of any records or other information by, or on behalf of, authorized representatives of the Department, as necessary to determine or verify compliance with this regulation.

4.3 No policies shall be adopted by the temporary staffing agency which are in conflict with this regulation.

4.4 A temporary staffing agency may not require, as a condition of employment, assignment, or referral, that an employee of the temporary staffing agency or staff contracted to the temporary staffing agency recruit new employees for the temporary staffing agency from among the permanent employees of the long-term care facility to which the temporary staffing agency employees or contracted staff have been assigned or referred.

4.5 The temporary staffing agency shall be in compliance with federal, state and local laws and codes.

4.6 The temporary staffing agency shall:

4.6.1 Carry medical malpractice insurance of not less than $500,000 per incident to insure against loss, damages or expenses incident to a claim arising out of the death or injury of any individual as the result of negligence or malpractice in the provision of healthcare services by a temporary staffing agency employee, agent, or contractor; and

4.6.2 Carry for each employee a dishonesty bond in the amount of $10,000.

4.6.3 Maintain insurance coverage for workers' compensation for all personnel of the temporary staffing agency.

4.6.4 Provide, upon request, evidence of malpractice insurance to the long-term care facility.

5.0 Personnel Records

5.1 A temporary staffing agency shall ensure that each employee the staffing agency assigns or refers for a position at a long-term care facility meets state and federal qualification requirements and has the appropriate work experience for that position.

5.1.1 The personnel's required professional qualifications must be current in the state of Delaware and in good standing.

5.1.2 If the temporary staffing agency has been informed, or has reason to know, that a personnel's professional credentials are no longer in good standing, the temporary staffing agency must notify the long-term care facility.

5.2 A temporary staffing agency shall maintain a record for each employee that must include documented evidence of:

5.2.1 Credentials;

5.2.2 Required immunizations;

5.2.3 Orientation;
5.2.4 In-service education;
5.2.5 Completion of training or educational program required by law; and
5.2.6 All other pertinent requirements relating to the health and other qualifications of personnel employed in long-term care facilities.

5.3 A temporary staffing agency shall keep current the complete personnel record of each temporary staffing agency employee.

5.4 A temporary staffing agency shall provide, upon request, the complete personnel record to the long-term care facility where the employee is assigned and to authorized representatives of the Department.

5.5 The temporary staffing agency may not restrict in any manner the employment opportunities of health care personnel. **[~~This provision shall not be construed as prohibiting an agreement by a long-term care facility to pay an agency a placement fee if the facility hires the agency's personnel on a permanent basis.~~]**

6.0 Records

6.1 The temporary staffing agency must maintain the following records for at least 10 years, and make them available to the Department upon request:

6.1.1 Personnel applications for employment that include:

6.1.1.1 The name and address of the applicant;
6.1.1.2 The date of application;
6.1.1.3 A description of the types of employment the applicant is seeking;
6.1.1.4 A description of past work experience, and types of employment being sought, and, if necessary, proof of professional authorizations required to perform services;

6.1.2 Proof that the temporary staffing agency verified any professional credentials needed for personnel to perform services to be provided by the personnel;

6.1.3 All requests from long-term care facilities seeking to hire personnel that include:

6.1.3.1 The name and address of the long-term care facility;
6.1.3.2 The date of the request;
6.1.3.3 A description of the type of personnel being sought;
6.1.3.4 The type of professional credentials needed for the personnel to perform the services being sought; and
6.1.3.5 The address or location at which the work is being performed;

6.1.4 Copies of all contracts between personnel and the agency;
6.1.5 Copies of all contracts between the agency and the long-term care facility;
6.1.6 A record of fees charged, collected, and refunded, and the accounting record as may be necessary to verify fees charged, fees collected and refunds made;
6.1.7 All records related to employee competency evaluations and testing;
6.1.8 All records related to employee performance; and
6.1.9 All records related to the temporary staffing agencies policies related to personnel assignments.

7.0 Annual Report

7.1 Each temporary staffing agency must provide an annual report to the Department that includes all the following information:

7.1.1 The number of total employees placed, the long-term care facilities where they were placed, the average duration of the placements, and the state of licensure for those employees.

7.1.2 The total and average amounts charged during each quarter of the reporting period to a long-term care facility per employee providing services to the long-term care facility.

7.1.3 Documentation showing that the temporary staffing agency has records that each employee contracted to a long-term care facility during the reporting period had a current, unrestricted license or certification in good standing and met the training and continuing education standards required by state and federal law for the position with the long-term care facility throughout the entirety of the reporting period. An agency that documents that an employee holds a valid license or certification shall be deemed to have documented compliance with any training or continuing education required for license or certification.

7.1.4 Documentation showing that the temporary staffing agency has records that each employee contracted to a long-term care facility had satisfied all background checks required by federal and state law relating to the position and long-term care facility in which the employee was placed during the reporting period.

7.1.5 Failure to comply with statutory or regulatory reporting requirements may result in the imposition of corrective action by the Division.

8.0 Severability

In the event any clause or section of this regulation should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.