AN ACT

Amending the act of July 19, 1979 (P.L.130, No.48), entitled "An act relating to health care; prescribing the powers and duties of the Department of Health; establishing and providing the powers and duties of the State Health Coordinating Council, health systems agencies and Health Care Policy Board in the Department of Health, and State Health Facility Hearing Board in the Department of Justice; providing for certification of need of health care providers and prescribing penalties," providing for temporary health care services agencies.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of July 19, 1979 (P.L.130, No.48), known as the Health Care Facilities Act, is amended by adding a chapter to read:

CHAPTER 8-A

TEMPORARY HEALTH CARE SERVICES AGENCIES

Section 801-A. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Controlling person." Any of the following:
(1) A business entity, officer, program administrator or
director whose responsibilities include the direction of the
management of policies of a temporary health care services
agency.

(2) An individual who, directly or indirectly,
beneficially owns an interest in a corporation, partnership,
or other business association that is a controlling person.

"Health care facility." Any of the following:

(1) A long-term care nursing facility as defined in
section 802.1.

(2) A personal care home or an assisted living
residence, licensed by the Department of Human Services under
the act of June 13, 1967 (P.L.31, No.21), known as the Human
Services Code.

"Health care personnel." Any of the following:

(1) A nurse aide as defined in section 2 of the act of
June 9, 1997 (P.L.169, No.14), known as the Nurse Aide
Resident Abuse Prevention Training Act.

(2) A registered nurse as defined in 49 Pa. Code § 21.1
(relating to definitions).

(3) An LPN as defined in 49 Pa. Code § 21.141 (relating
to definitions).

(4) A direct care staff person as defined in 55 Pa. Code
§ 2600.4 (relating to definitions).

"Person." An individual, firm, corporation, partnership, or
association.

"Rate." The hourly rate of pay calculated, including weekend
shift differential and overtime, for the respective health care
personnel.

"Temporary health care services agency." As follows:
A person engaged for hire in the business of providing or procuring temporary employment in health care facilities for health care personnel.

The term does not include an individual who only engages on the individual's own to provide services on a temporary basis to health care facilities or a home health care agency licensed under 28 Pa. Code Ch. 601 (relating to home health care agencies).

Section 802-A. Registration generally.

(a) Requirement.—A person that operates a temporary health care services agency shall register annually with the department and provide a list of each separate location.

(b) Forms.—The department shall establish forms and procedures for processing each application under subsection (a).

The following apply:

(1) The application shall include at least the following:

(i) The names and addresses of each person having an ownership interest in the temporary health care services agency.

(ii) If the owner is a corporation, copies of the articles of incorporation or articles of association and current bylaws, together with the names and addresses of officers and directors.

(iii) Any other relevant information that the department determines necessary to properly evaluate the application.

(2) The application shall specify the policies and procedures regarding how the temporary health care services agency's records shall be immediately available at all times.
to the department upon request, except for those records
subject to confidentiality protection under Federal and State
law.

(c) Fees.--The department shall establish a registration fee
for an application under subsection (a) of not less than $1,000
annually to meet the necessary expenses of the department for
the administration of this chapter.

(d) Failure to register.--If a temporary health care
services agency fails to provide the items required in this
section to the department:

(1) The department shall immediately suspend or refuse
to issue the temporary health care services agency's
registration.

(2) The temporary health care services agency shall
immediately suspend operations in this Commonwealth.

(e) Term of registration and voided registration.--A
registration issued by the department according to this section
shall be effective for a period of one year from the date of its
issuance unless:

(1) the registration has been revoked or suspended, in
accordance with this section; or

(2) the temporary health care services agency is sold or
ownership or management is transferred, in which case the
registration shall be voided, but the new owner or operator
of the temporary health care services agency may apply for a
new registration.

Section 803-A. Conditions of registration.

(a) Requirements generally.--A temporary health care
services agency:

(1) Shall provide to the health care facility to which
any temporary health care personnel are supplied documentation that each temporary employee meets all licensing or certification, training and continuing education standards for the position in which the temporary employee will be working.

(2) Shall comply with all pertinent requirements relating to the health and other qualifications of personnel employed in health care facilities.

(3) May not restrict in any manner the employment opportunities of its employees. This requirement shall also apply to a health care facility.

(4) Shall carry medical malpractice insurance to insure against loss, damages or expenses incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in the provision of health care services by the temporary health care services agency or an employee, agent or contractor of the temporary health care services agency.

(5) Shall carry for each employee a dishonesty bond in the amount of $10,000.

(6) Shall maintain insurance coverage for workers' compensation for all health care personnel provided or procured by the temporary health care services agency.

(7) Shall file with the Department of Revenue the name and address of the bank, savings bank or savings association in which the temporary health care services agency deposits all employee income tax withholdings or, if the temporary health care services agency purports that the income is not subject to withholding, the name and address of any health care personnel whose income is derived from the placement by
the temporary health care services agency.

(8) Shall retain all records for 10 calendar years in a manner to allow the records to be immediately available to the department for inspection to determine compliance with this chapter.

(9) Shall provide health care facilities with proof of applicable criminal records checks for each temporary employee consistent with their regulatory requirements.

(b) Supplemental requirements.--The requirements under subsection (a) may be supplemented by rules or regulations promulgated by the department in accordance with this chapter.

(c) Compliance.--Failure of a temporary health care services agency to comply with this section shall subject the temporary health care services agency to revocation or nonrenewal of its registration.

Section 804-A. Rates.

(a) Maximum rate.--A temporary health care services agency may not bill or receive payments from a health care facility at a rate higher than 150% of the sum of the average rate, plus a factor to incorporate payroll taxes, for the health care facility's location as determined under subsection (c).

(b) Determination of average rate.--The average rate shall be determined by the department and reported on an annual basis. A health care facility shall provide to the department information necessary for the department to determine the average rates for applicable regions of this Commonwealth.

(c) Standard.--The average rate for health care personnel shall be established for each metropolitan statistical area of the Department of Labor and Industry.

(d) Components of maximum rate.--The maximum rate shall
include all charges for administrative fees, contract fees or 
other special charges, in addition to the hourly rate for the 
health care personnel supplied to a health care facility.

(e) Payments by health care facility.--A health care 
facility that pays for the actual travel and housing costs for 
health care personnel at the health care facility and that pays 
these costs to the temporary health care services agency, an 
employee of the temporary health care services agency or another 
vendor shall not be considered in violation of the limitation on 
charges described in this section.

(f) Cost reports.--The department shall:

(1) Establish a system for each temporary health care 
services agency to complete and file a cost report annually.

(2) Conduct annual audits of each cost report.

(g) Publication.--The department shall transmit notice to 
the Legislative Reference Bureau for publication in the 
Pennsylvania Bulletin of the maximum rate established in this 
section.

(h) Penalty.--A temporary health care services agency that 
has violated this section shall be subject to a fine equal to 
200% of the amount billed or received in excess of the maximum 
rate permitted under this section.

Section 805-A. Oversight.

(a) Oversight by department.--The department shall provide 
oversight of temporary health care services agencies through 
complaint investigations and other actions necessary to ensure 
compliance with this chapter.

(b) Complaint process.--The department shall establish a 
system for reporting complaints against a temporary health care 
services agency or its employees. Complaints may be made by any
member of the public.

(c) Administrative procedure.--The registration of a
temporary health care services agency may not be revoked without
a hearing held as a contested case before the department's
Bureau of Facility Licensure and Certification. The following
apply:

(1) If a controlling person has been notified by the
department that the temporary health care services agency
will not receive an initial registration or that a renewal of
that registration has been denied, the controlling person, or
a legal representative on behalf of the temporary health care
services agency, may request and receive a hearing on the
denial.

(2) The department may not issue or renew a registration
to a temporary health care services agency or a controlling
person whose registration was not renewed or was revoked
because of noncompliance with this chapter until at least
five years have elapsed following the effective date of the
nonrenewal or revocation.

Section 806-A. Reports.

The department shall report annually on the progress in
implementing and administering this chapter. Each report shall
be submitted to the chairperson and minority chairperson of the
Health and Human Services Committee of the Senate and the
chairperson and minority chairperson of the Health Committee of
the House of Representatives.

Section 2. This act shall take effect in 90 days.