

# SENATE BILL REPORT

## HB 2380

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As of February 27, 2020

**Title:** An act relating to the home care agency vendor rate and repeal of electronic timekeeping.

**Brief Description:** Changing the home care agency vendor rate and repealing electronic timekeeping.

**Sponsors:** Representatives Tharinger, Harris, Macri, Riccelli, Cody, Leavitt, Wylie, Kloba and Appleton; by request of Department of Social and Health Services.

**Brief History:** Passed House: 2/14/20, 98-0.

**Committee Activity:** Ways & Means: 2/27/20.

### Brief Summary of Bill

- Allows the home care agency vendor rate calculation to reflect the average home care agency employer tax rate.
- Adds employer premiums for the state Paid Family and Medical Leave Act to the premiums addressed in the home care agency vendor rate calculation.
- Clarifies language in how rate parity between home care agencies and individual providers of home care services relates to changes in benefits.
- Repeals electronic timekeeping requirements that are inconsistent with federal law.

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Maria Hovde (786-7474)

**Background:** Home Care Agencies. The Department of Social and Health Services (DSHS) Aging and Long-Term Support Administration and Developmental Disabilities Administration provide in-home care services to clients who meet Medicaid functional and financial eligibility requirements. In-home care services may be provided by Individual Providers (IPs), or by employees of licensed home care agencies, also known as Agency Providers (APs).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The state must provide parity between AP and IP rates. When IP rates change, AP rates must also change so that home care workers providing direct care receive comparable wages and benefits to IPs.

When an IP is a family member of the client the IP serves, the IP is exempt from certain payroll taxes. Direct care AP employees are always subject to such taxes. The difference in tax liability impacts the AP parity calculation by not fully covering the APs' tax liability within the AP rate.

Paid Family and Medical Leave Act. In 2017, the Legislature enacted the Paid Family and Medical Leave Act (PFMLA). The program is jointly funded by premiums paid by employees and employers. Eligible employees may use PFMLA benefits for reasons that include caring for a family member with a serious health condition or caring for a newborn or adopted child. The AP parity calculation currently does not address whether or how PFMLA employer premiums are included within the AP rate.

Electronic Visit Verification. The federal Twenty-First Century Cures Act required states to have electronic visit verification (EVV) systems in place for in-home care workers by January 1, 2020, or face a financial penalty. The enacted 2019-21 budget included an AP rate increase to cover the cost of EVV implementation for home care agencies. State law requires that APs verify employee hours through electronic timekeeping to receive payment for Medicaid services. This requirement is now duplicative of the federal EVV requirement.

**Summary of Bill:** The AP parity calculation is updated and clarified to specify that the AP rate must reflect changes to the IP rate regarding health benefit trust and retirement trust contributions. Language pertaining to the tax liability of APs is modified to reflect the average Medicaid home care agency tax liability for taxes, including but not limited to employer contributions or premiums for federal insurance; state and federal unemployment; state PFMLA; and workers' compensation. Within the AP parity calculation, the DSHS must also include compensation due to direct care workers under wage and hour laws for work time that is not billed as service hours, such as travel time.

The AP vendor rate must be paid in a per-quarter-hour amount, as is current practice, rather than a per-hour amount.

The requirement that APs verify employee hours through electronic timekeeping to receive payment is repealed.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony:** PRO: Home care agencies are a vital part of the long-term services and supports delivery system. These agencies serve some of the most

vulnerable individuals by helping with critical daily tasks and providing respite for unpaid family caregivers. It is important to ensure that these agencies can recruit and retain a workforce and remain financially viable with the growth in the aging population. This is a long overdue fix that will ensure that these agencies' tax rate matches their actual experience, which will help ensure that more dollars go into the pockets of the direct care workers.

**Persons Testifying:** PRO: Brad Banks, Washington Home Care Coalition; Bea Rector, Department of Social and Health Services.

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