

SENATE BILL REPORT

ESHB 1508

As of March 15, 2023

Title: An act relating to improving consumer affordability through the health care cost transparency board.

Brief Description: Improving consumer affordability through the health care cost transparency board.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Macri, Riccelli, Simmons, Fitzgibbon, Berry, Alvarado, Bateman, Ormsby, Doglio, Reed, Callan, Stonier, Tharinger and Bergquist).

Brief History: Passed House: 3/6/23, 57-38.

Committee Activity: Health & Long Term Care: 3/17/23.

Brief Summary of Bill

- Directs the Health Care Cost Transparency Board (Transparency Board) to conduct an annual survey of underinsurance among Washington residents and a study of how state tax preferences affect the calculation of total health care expenditures.
- Authorizes the Transparency Board to require that payers or health care providers that frequently exceed the health care cost growth benchmark without a reasonable justification submit a performance improvement plan or pay a civil fine unless the health care provider is composed of 25 or fewer health care professionals.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

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Background: The Health Care Cost Transparency Board (Transparency Board) was

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established in 2020, to analyze total health care expenditures in Washington, identify trends in health care cost growth, and establish a health care cost growth benchmark. Total health care expenditures include all health care expenditures in the state by public and private sources. Health care cost growth is a measure of the annual percentage change in total health care expenditures in the state. The health care cost growth benchmark is the target percentage for health care cost growth in the state. The Transparency Board must identify health care providers and payers that exceed the health care cost growth benchmark.

The Transparency Board is supported by the Health Care Authority (HCA) and consists of 13 voting members representing state agencies, local governments, consumers, Taft-Hartley health benefit plans, employers, persons who are actuaries or experts in health care economics, and an expert in health care financing. The Transparency Board has an advisory committee on data issues and an advisory committee of health care providers and carriers. The Transparency Board may establish other advisory committees.

Summary of Bill: Health Care Cost Transparency Board Operations. The membership of the Health Care Stakeholder Advisory Committee of the Transparency Board is expanded to include:

- at least two members representing the interests of consumers, selected from a list of nominees submitted by consumer organizations;
- at least two members representing the interests of labor purchasers, selected from a list of nominees submitted by the Washington State Labor Council; and
- at least two members representing the interests of employer purchasers, including at least one small business representative, selected from a list of nominees submitted by business organizations.

Any standing advisory committees of the Transparency Board, other than the Health Care Stakeholder Advisory Committee and the Advisory Committee on Data Issues, must include members representing the interests of consumers, labor, and employer purchasers and may include others with expertise in the advisory committee's jurisdiction, such as health care providers, payers, and health care cost researchers. Unless there are exigent circumstances, the Transparency Board must seek input and recommendations from relevant advisory committees before a major vote or decision.

The Transparency Board may use information received from existing data sources, such as Medicare cost reports and data collected by the Department of Health, the Washington Health Benefit Exchange, the All-Payers Claims Database, and the Prescription Drug Affordability Board. The Transparency Board may share its data with the Prescription Drug Affordability Board and other health care cost analysis efforts. In addition, the Transparency Board may collect data not available from existing sources from payers and health care providers and levy civil fines on those who violate data submission requirements.

HCA is expressly authorized to conduct activities to support the Transparency Board,

including activities related to data collection and analysis, the provision of technical assistance, the enforcement of performance improvement plan submissions, and the payment of fees and fines. The Transparency Board may levy civil fines on payers and health care providers that violate its data submission requirements, including failing to submit data, submitting data late, and submitting inaccurate data.

By July 1, 2024, HCA must adopt rules governing the health care cost growth benchmark that will be applicable beginning in 2026. The calculations of total health care expenditures and health care cost growth for each health care provider, provider system, and payer must be both adjusted and unadjusted for the health status of the health care provider's patients and the payer's enrollees. The Transparency Board may establish a common risk adjustment methodology. The Transparency Board's analysis of the factors impacting trends in health care cost growth must be performed by individuals with relevant expertise.

Reports, Studies, and Surveys. When considering the impacts of cost drivers on health care, the Transparency Board may consider the financial earnings of health care providers and payers, including information regarding profits, assets, accumulated surpluses, reserves, and investment income. The cost driver analysis may include utilization trends and adjustments for demographic changes and severity of illness as well as new state health insurance benefit mandates. The Transparency Board may consider other cost drivers it determines are informative for determining annual total health care expenditures and establishing the annual health care cost growth limit.

Beginning January 1, 2024, the Transparency Board must conduct an annual survey of underinsurance among Washington residents and include the survey results in the annual report. Underinsurance is measured as the share of residents whose out-of-pocket costs over the prior 12 months, excluding premiums, equals:

- 10 percent or more of household income for persons whose household income is over 200 percent of the federal poverty level;
- 5 percent or more of household income for persons whose household income is 200 percent of the federal poverty level or less; or
- deductibles of 5 percent or more for any household income level.

The Transparency Board must recommend improvements to the measure of underinsurance, such as a broader health care affordability index that considers health care expenses in the context of other household expenses. The survey must be designed to allow for analysis of the aggregate impact of out-of-pocket costs and premiums as well as analysis of the number of residents who delay or forgo care due to cost. The survey may be conducted by HCA, by private contract, or by arrangement with another state agency conducting a similar survey.

The Transparency Board must conduct a study of how state tax preferences, tax deductions, and tax-exempt capital financing and other public reimbursement and funding for non-profit health care providers and payers would affect the calculation of total health care expenditures were they to be considered. The study must address whether or not those costs

to the state should be included in the calculation of total health care expenditures and incorporated into the health care cost growth benchmark. The study may be conducted by HCA, by private contract, or by arrangement with another state agency conducting a similar survey. The study must be included in the Transparency Board's annual report for August 1, 2025.

Health Care Cost Growth Benchmark Enforcement. At the time that the Transparency Board releases its annual report, it must hold at least one public hearing related to the growth in total health care expenditures in relation to the health care cost growth benchmark in the previous year. The hearing must include the identification of any payers or health care providers that exceeded the health care cost growth benchmark. At the hearing, the Transparency Board may require payers or health care providers that have substantially exceeded the health care cost growth benchmark in the prior year to testify regarding the reasons for the excess health care cost growth and the measures being taken to stay within the limits of the health care cost growth benchmark in the future. The Transparency Board may also invite testimony from health care stakeholders and provide an opportunity for public comment. The annual report must include information about any testimony or public comments received at the hearing.

Beginning July 1, 2024, the Transparency Board may require a payer or health care provider to submit a performance improvement plan if it has substantially exceeded the health care cost growth benchmark without reasonable justification or meaningful improvement for two of the previous three years. The performance improvement plan must (1) identify key cost drivers and steps to be taken to address costs that exceed the health care cost growth benchmark, (2) identify a time frame for reducing costs below the health care cost growth benchmark, and (3) have clear measures of success. HCA, in consultation with the Transparency Board, must adopt rules related to notification, opportunities to correct, and appeal procedures.

Beginning July 1, 2025, the Transparency Board may impose a civil fine on a payer or health care provider if it has (1) substantially exceeded the health care cost growth benchmark without reasonable justification or meaningful improvement for three of the previous five years, or (2) failed to participate in a performance improvement plan. Civil fines are to be deposited in the State Health Care Affordability Account. HCA, in consultation with the Transparency Board, must adopt rules related to the criteria for imposing a civil fine, notification, opportunities to correct, the establishment of a civil fine schedule, and appeal procedures.

In establishing a performance improvement plan or civil fine schedule, the Transparency Board and HCA must consider:

- the amount and duration by which the health care cost growth benchmark was exceeded;
- initial civil fines must be commensurate with the failure to meet the health care cost growth benchmark with escalating civil fines for repeated or continuing failures to

- meet the health care cost growth benchmark;
- the relative size and financial condition of the payer or health care provider;
- quality performance data regarding the payer or health care provider;
- good faith efforts to address health care costs and cooperate with the Transparency Board; and
- the relative starting price position of the payer or health care provider in relation to the health care cost growth benchmark.

The Transparency Board may not require a health care provider composed on 25 or fewer health care professionals to submit a performance improvement plan, pay a civil fine for data submission violations, or pay a civil fine for exceeding the health care cost growth benchmark.

HCA may charge a fee to a health care provider or payer to account for the cost of developing and monitoring a performance improvement plan or levying a civil fine. HCA may waive the imposition of a performance improvement plan and civil fines if there are unforeseen market conditions or if it would promote consumer health care access and affordability.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available. New fiscal note requested on March 6, 202.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.