

HOUSE BILL REPORT

HB 2380

As Passed House:
February 14, 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:

Committee Activity:

Appropriations: 1/20/20, 1/27/20 [DP].

Floor Activity:

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

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.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 31 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Corry, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

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.

Staff: Mary Mulholland (786-7391).

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).

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 in order to cover the cost of EVV implementation for home care agencies. Currently, state law requires that APs verify employee hours through electronic timekeeping in order 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.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 1, relating to agency provider rate parity, which takes effect July 1, 2020.

Staff Summary of Public Testimony:

(In support) Back in the 1990s, the Legislature always tried to maintain comparable rates for all in-home care workers who serve Medicaid clients. The process changed when IPs became unionized. The AP parity statute was put in place in 2007 to ensure that home care workers employed by APs continued to have equivalent salaries and benefits to IPs. This intent has largely been achieved, but some corrections are necessary to recognize differences between APs and IPs.

The modification regarding tax liability will help APs fully operate and serve state residents. Approximately 25 percent of IPs are exempt from payroll taxes, while AP employees are not. The APs have difficulty recruiting and retaining home care workers, and correcting the tax liability issue will help.

The federal ETV law supersedes and meets the intent of the statutory electronic timekeeping statute. Modifying the statute will avoid confusion and administrative complexity, and reduce audit risks.

(Opposed) None.

Persons Testifying: Representative Tharinger, prime sponsor; Bea Rector, Department of Social and Health Services; Demas Nesterenko, Service Employees International Union 775; Michael Howard, First Choice In-Home Care; Mark Robinson, Addus Healthcare; and Peter Nazzal, Catholic Community Services.

Persons Signed In To Testify But Not Testifying: None.