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## Health Care & Wellness Committee

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### HB 1508

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

**Sponsors:** Representatives Macri, Riccelli, Simmons, Fitzgibbon, Berry, Alvarado, Bateman, Ormsby, Doglio, Reed, Callan, Stonier, Tharinger and Bergquist.

#### 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.

**Hearing Date:** 2/1/23

**Staff:** Christopher Blake (786-7392).

#### Background:

The Health Care Cost Transparency Board (Transparency Board) was 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

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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 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 Health Care Cost Transparency Board (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.

The Transparency Board may use information received from existing data sources, such as the Washington Health Benefit Exchange 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 necessary data from payers and health care providers and levy civil fines on those who violate data submission requirements.

The Health Care Authority (Authority) is expressly authorized to conduct activities to support the Transparency Board, including activities related to data collection and analysis, 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.

#### Reports, Studies, and Surveys.

##### *Cost Drivers.*

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 Transparency Board may consider other cost drivers that it determines are informative for determining annual total health care expenditures and establishing the annual health care cost growth limit.

#### *Underinsurance Survey.*

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:

- ten percent or more of household income for persons whose household income is over 200 percent of the federal poverty level;
- five percent or more of household income for persons whose household income is 200 percent of the federal poverty level or less; or
- deductibles of five 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 forego care due to cost. The survey may be conducted by the Authority, by private contract, or by arrangement with another state agency conducting a similar survey.

#### *Tax Preferences Study.*

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 the Authority, by private contract, or by arrangement with another state agency conducting a similar survey. The study must be included in the Transparency Board's August 1, 2025 annual report.

#### Health Care Cost Growth Benchmark Enforcement.

At the same 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. At the hearing, the Transparency Board may invite testimony from health care stakeholders and provide an opportunity for public comment.

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. The Authority, 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. The Authority, 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 civil fine schedule, the rules 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; and
- good faith efforts to address health care costs and cooperate with the Transparency Board.

The Authority 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. The Authority 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:** None.

**Fiscal Note:** Requested on January 24, 2023.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is

passed.