

# HOUSE BILL REPORT

## ESHB 1508

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**As Passed House:**

March 6, 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:**

**Committee Activity:**

Health Care & Wellness: 2/1/23, 2/10/23 [DP];

Appropriations: 2/23/23, 2/24/23 [DPS].

**Floor Activity:**

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

**Brief Summary of Engrossed Substitute 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.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

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## HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** Do pass. Signed by 10 members: Representatives Riccelli, Chair; Bateman, Vice Chair; Bronoske, Davis, Macri, Orwall, Simmons, Stonier, Thai and Tharinger.

**Minority Report:** Do not pass. Signed by 7 members: Representatives Schmick, Ranking Minority Member; Hutchins, Assistant Ranking Minority Member; Barnard, Graham, Harris, Maycumber and Mosbrucker.

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

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Berg, Chopp, Davis, Fitzgibbon, Lekanoff, Pollet, Riccelli, Ryu, Senn, Simmons, Slatter, Springer, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 1 member: Representative Chandler.

**Minority Report:** Without recommendation. Signed by 11 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Connors, Couture, Dye, Harris, Rude, Sandlin, Schmick and Steele.

**Staff:** Meghan Morris (786-7119).

### **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 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 Engrossed Substitute 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 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 that are not available from existing sources 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 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, the Authority 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.

#### *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. In addition, 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 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:

- 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 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 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. 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 performance improvement plan or civil fine schedule, the Transparency Board and the Authority 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 that is composed of 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.

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.

Additional Data Authority.

Information collected by the Authority related to prescription drug cost and utilization may be shared with the Transparency Board, subject to the same disclosure restrictions. The Prescription Drug Affordability Board may use data collected by the Transparency Board.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on March 6, 2023.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Health Care & Wellness):**

(In support) The question at the core of the bill is who is hurting and who is profiting and this bill provides the tools needed to get those answers. This legislation takes two steps forward by putting consumers at the center of the dialogue and giving the state tools to hold entities accountable if their prices are repeatedly out of line. This bill gives the Health Care Cost Transparency Board (Transparency Board) access to expanded data and additional authority to see what is going on and address the lack of transparency. Surveys show that 82 percent of Washington residents support limits on health spending, including penalizing entities with excess spending growth. The state needs to take the Transparency Board's data and go a step further by establishing accountability tools to help ensure fair and reasonable pricing. There needs to be real carrots and sticks and powers for the Transparency Board going ahead. The bill strengthens the Transparency Board by providing tools that will improve data collection and tracking and inform the recommendations of policymakers. Providing the Transparency Board with additional tools will help reduce costs for the

individual health insurance market customers and maximize the state's investment in the marketplace. This bill will help with government efficiency by ensuring the data can be shared between agencies which should decrease some of the duplicative reporting that the hospitals have been concerned about.

Health care systems need to operate within financial constraints just like other residents and the state budget. This bill will set a budget for the health care system so that the burden of rising prices does not fall on the people who need the care. Setting cost growth goals and gathering data on cost trends are necessary first steps, but there needs to be an aggressive accountability process that includes public reporting for outliers, performance improvement plans for those that are not meeting targets, and financial incentives for those that do not consistently meet the targets. This bill will strengthen the Transparency Board and result in lower prices, a stronger economy, and affordable health care for Washingtonians.

(Opposed) The cost growth benchmark cap is not anchored in reality. The cost growth benchmarks that the Transparency Board adopted are not within the realm of possibility since inflation is at 6 percent which makes the 3.2 percent benchmark for this year impossible. The inflation that has occurred in the last year is an example of a cost that drives the overall cost of care that is not within the control of a health carrier or health care provider and was not adequately addressed by the Transparency Board in the benchmark conversation. The threat of a penalty will not give a hospital any additional ability to control macroeconomic forces. This bill will further undermine the fragile economic condition of health care in the state. Other states with stringent benchmarks and performance improvement plans still have not been able to meet their benchmarks. The Transparency Board needs time to do its work and dig into the costs without adding additional layers of penalties and requirements right now.

The Transparency Board is in its infancy and has not demonstrated the maturity for fining hospitals. The bill's proposed accountability components will likely result in patients delaying care. Under this bill, persons from disadvantaged communities will lose access to health care or see delayed care. While the work of the Transparency Board needs to be adjusted, this process is punitive.

It is unclear why the Transparency Board needs blanket authority to request data when it is not currently maximizing the existing public sources of data. The Transparency Board and its consultants have just started to dig into the All Payer Claims Database and the Medicare cost reports and still have not leveraged a few open public data sources. This bill has duplicate mandates such as reporting health care executive compensation and the hospital system consolidated and balance sheet financials.

The tax preference study is not necessary because the Joint Legislative Audit and Review Committee recently finished a report showing that hospitals had \$93.1 million in property tax exemptions, but also provided \$336 million in charity care.

(Other) Other states that use transparency programs have been able to make evidence-based, informed policy decisions that have influenced high costs. These tools will help consumers and purchasers with cost control. It is critical to continue to examine where the costs are in health care and specific cost drivers. The direction of the bill is appreciated, but will increase some costs to the state. Washington is the fifth state to start a cost transparency board and the work in Washington is in its early phases.

**Staff Summary of Public Testimony (Appropriations):**

(In support) The state is a major purchaser of health care. Health care costs now take up about 20 percent of the state operating budget. Ensuring affordable health care is essential. Washingtonians are harmed by the quickly escalated costs of health care. The Health Care Cost Transparency Board (Transparency Board) passed the Legislature with bipartisan support in 2020. This bill will help bend the health care cost curve.

In a recent survey, four out of five Washingtonians were worried about affording health care. This will help the state understand what is driving health care cost problems. A similar model was initially successful in Massachusetts, but the benchmark alone stopped working. Oregon and California have added accountability measures to the model. Simply setting targets does not result in lower cost increases. The state needs a progressive accountability process that includes performance improvement plans and financial incentives for providers that consistently miss the targets. The state can collect information, but the information alone is not sufficient. The system is missing carrots and sticks.

This bill will help control costs for patients and make sure people can afford and utilize their insurance. Copays, deductibles, and out of pocket costs are real for people. The underlying cost of health care matters and is much too high. The average annual premiums for employer-sponsored coverage for a single person in Washington increased from about \$5,000 in 2010 to nearly \$7,500 in 2020, a 49 percent increase. This is nearly twice the rate increase of general inflation in the same time period. This is an issue for all employers, but especially for small businesses.

(Opposed) Health care costs are high, but the Transparency Board is young and this bill is premature. The Transparency Board is still trying to find the best data and understand the state's health care cost drivers. Better use of the Advisory Committee would help that work, which should be done before adding complexity and sanctions. Reducing the cost of care in a durable way will need expert provider input and collaboration at all levels. The Advisory Committee recommendations should be heard.

The Transparency Board should not pivot the focus from transparency to enforcement. There should not be fines or penalties on providers since there is no evidence to warrant these at this time.

(Other) The goals of the bill to study costs, add transparency, and understand the drivers in



the health care system are appreciated. The definitions in the bill are tricky. This bill is a work in progress.

**Persons Testifying (Health Care & Wellness):** (In support) Representative Nicole Macri, prime sponsor; Bob Crittenden; Ronnie Shure, Health Care for All Washington; Eileen Cody; Emily Brice, Northwest Health Law Advocates; Sam Hatzenbeler, Economic Opportunity Institute; Jim Freeburg, Patient Coalition of Washington; Bill Kramer, Purchaser Business Group on Health; John Godfrey, Washington Community Action Network; Leah Hole-Marshall, Washington Health Benefit Exchange; and Sybill Hyppolite, Washington State Labor Council.

(Opposed) Chelene Whiteaker and Albert Froling, Washington State Hospital Association; Mike Marsh, Overlake Medical Center and Clinics; Jennifer Ziegler, Association of Washington Health Care Plans; and Jeb Shepard and Mika Sinanan, Washington State Medical Association.

(Other) Mich'l Needham, Health Care Authority; and Maureen Hensley-Quinn, National Academy for State Health Policy.

**Persons Testifying (Appropriations):** (In support) Representative Nicole Macri, prime sponsor; Emily Brice, Northwest Health Law Advocates; Erin Dziedzic, Patient Coalition of Washington; Bill Kramer, Purchaser Business Group on Health; and Bob Crittenden.

(Opposed) Katie Kolan, Washington State Hospital Association; Katherine Mahoney, Virginia Mason Franciscan Health; and Sean Graham and Mika Sinanan, Washington State Medical Association.

(Other) Melissa Johnson, American Physical Therapy Association Washington.

**Persons Signed In To Testify But Not Testifying (Health Care & Wellness):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.