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## Health Care & Wellness Committee

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### HB 2351

**Brief Description:** Establishing the essential worker health care program.

**Sponsors:** Representatives Riccelli, Chapman, Bateman, Tharinger, Macri, Ryu, Gregerson, Simmons, Leavitt, Davis, Doglio, Nance, Low, Pollet, Reed, Ramel and Ormsby.

#### Brief Summary of Bill

- Establishes the Essential Worker Health Care Program within the Department of Social and Health Services to help provide nursing home and assisted living workers with high-quality, affordable health coverage through supplemental Medicaid payments to participating nursing home operators.

**Hearing Date:** 1/31/24

**Staff:** Kim Weidenaar (786-7120).

#### **Background:**

##### Taft Hartley Benefit Trusts.

Taft-Hartley Benefit Trusts are formed and operated according to the federal law originally called the Labor Management Relations Act of 1947. Taft-Hartley Benefit Trusts (Trusts) are typically formed through agreements between multiple collective bargaining units and employers. Pension benefits are most often provided by Taft-Hartley plans, but they also may provide health, occupational, unemployment, and other benefit programs. These Trusts must be governed by a board of trustees with equal employee and employer representation. Collective bargaining agreements typically provide that employers contribute a specific amount to the trust fund for their bargaining unit employees, rather than provide the employees with specific

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benefits. The Taft-Hartley trustees then carry out the terms of the Trusts to provide members with benefits from the fund.

#### Multiple Employer Welfare Arrangement.

A Multiple Employer Welfare Arrangement (MEWA) is a form of group purchasing arrangement defined by the federal Employee Retirement Income Security Act of 1974, as an employee welfare benefit plan, or any other arrangement that is established or maintained for the purpose of offering or providing medical, surgical, or hospital care or other benefits to the employees of two or more employers or to their beneficiaries. To obtain and maintain the ability to do business as a MEWA in Washington State, the MEWA must comply with the following regulations:

- obtain a certificate of authority from the Office of the Insurance Commissioner (OIC);
- MEWA members must be employers in a bona fide association that provides health care services to at least 20 employers, not a mere conduit for the collection of insurance premiums;
- the association must have been in existence for at least ten years, as of December 31, 2003;
- MEWAs must deposit \$200,000 with OIC and maintain a surplus of \$2 million or more; and
- MEWAs must meet numerous technical requirements for disclosure of financial status, plan operation, and management competence, integrity, and bondability.

#### Medicaid Rate Methodology for Nursing Homes.

The Medicaid nursing home payment system is administered by the Department of Social and Health Services (DSHS). The Medicaid rates in Washington are unique to each facility and reflect the client acuity of each facility's residents. Medicaid payments for nursing home residents are shared by the state and federal governments at the state's Federal Matching Assistance Percentage (FMAP) rate. The current FMAP rate in Washington is 50 percent.

#### **Summary of Bill:**

The Essential Worker Health Care Program (Program) is established within the DSHS to help provide nursing home and assisted living workers with high-quality and affordable health coverage through participating nursing home employers.

#### Supplemental Payments.

The DSHS must distribute funding through a supplemental payment to participating employers and seek any necessary approvals from the Centers for Medicare and Medicaid Services. The supplemental payment must be distributed annually in proportion to their Medicaid bed days in the previous calendar year. Supplemental payments to participating employers may be disbursed only to employers that offer employee health benefits solely through a qualified health fund.

#### Program Participation.

To participate in the Program, employers must operate at least one licensed nursing home in Washington that participates in Medicaid and have a memorandum of understanding (MOU)

with the DSHS committing to:

- participate in a multiemployer health fund certified as a qualified health fund by the OIC;
- allocate substantially all of the funds distributed through the Program to the qualified health fund;
- provide documentation to the DSHS of its spending on employee health benefits in the two years prior to its entry into the Program;
- maintain spending on health care benefits in the first year of its participation in the Program at least equal to the average of its spending in the two years prior to its entry into the Program and maintain spending in subsequent years at least equal to this level plus the consumer price index medical inflation rate maintained by the United States Bureau of Labor Statistics. For qualified health plans offered through a Taft-Hartley fund in which union representatives occupy at least 50 percent of board seats, a certification from each participating union is sufficient to comply with this requirement;
- provide the DSHS with information on its health plan benefits, covered employee uptake, cost to the employer and covered employees, and employee retention in the two years prior to its entry into the Program, and provide updated information at the end of each year of participation in the Program;
- demonstrate at least annually to the DSHS that it has used all of the supplemental payments received through the Program to significantly improve the quality of health care offered to covered employees and that it has processes in place to offer employees input into health benefit design and delivery; and
- meet any other conditions or requirements specified by the DSHS in rule.

#### Covered Employees.

Only covered employees may participate in the Program. A covered employee is any permanent employee of a company that operates a participating facility who works primarily in Washington including employees providing direct care to nursing home or assisted living facility residents, employees indirectly involved in resident care, employees providing dietary, housekeeping, laundry, or environmental services on location, administrative employees and management, and corporate office employees, or any subcontractor of such a company who works on a full-time, permanent basis in a nursing home or assisted living facility.

#### Qualified Health Fund.

The OIC must certify that a proposed health care benefit arrangement is a qualified health fund that meets the following requirements:

- includes at least two distinct and unrelated employers;
- operates as either a self-insured MEWA or a self-insured Taft-Hartley fund with equal union and employer participation;
- offers benefits to at least 5,000 employees in the long-term care industry in Washington;
- offers a benefits package that is either equivalent to an Affordable Care Act platinum plan in covered benefits and cost sharing or, if the plan is offered by a Taft-Hartley Trust, a plan approved by the board of the Trust;
- certifies each year that participating employers are complying with the terms of the Program;

- except for Taft-Hartley plans, demonstrates on entry to the Program and annually that it has:
  - provided the opportunity for substantive input on the plan from substantially all covered employees;
  - robust enrollment process in place to ensure that covered employees fully understand their benefits; and
- complies with any other requirements determined by the OIC in rule.

The OIC may revoke certification for a qualified health fund that fails to meet these requirements. Employers participating in a health plan that loses certified qualified health plan status for noncompliance must return any supplemental payments received through the Program during the time the qualified health fund was out of compliance. The OIC may terminate any participating employer that fails to comply with the MOU or other requirements and must recoup any supplemental payments received through the Program for the fiscal years the operator was out of compliance.

#### Multiple Employer Welfare Arrangement.

A MEWA that meets the Program requirements is exempt from the prohibition on new MEWAs and the requirements for any existing MEWAs.

#### Rulemaking.

The OIC and the DSHS are authorized to adopt rules to implement the act and administer the Program.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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