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**HOUSE BILL 2351**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

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

Read first time 01/12/24. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to establishing the essential worker health care  
2 program; amending RCW 48.125.030; adding a new section to chapter  
3 43.20A RCW; adding new sections to chapter 48.02 RCW; and creating  
4 new sections.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that there is a  
7 workforce crisis in Washington's elder care industry.

8 (2) Therefore, the legislature intends to address this crisis by:

9 (a) Offering increased funding to nursing home operators who  
10 commit to offering high quality and affordable health care to their  
11 employees;

12 (b) Encouraging nursing home operators to offer health care in  
13 the most cost-effective way possible, through large-scale,  
14 multiemployer, self-funded plans; and

15 (c) Requiring that funds appropriated for this purpose are spent  
16 as intended and that these funds supplement rather than supplant  
17 existing health care funding for employee health care coverage.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.20A  
19 RCW to read as follows:

1 (1) The essential worker health care program is established  
2 within the department to help provide nursing home and assisted  
3 living workers with high quality, affordable health coverage through  
4 participating nursing home employers. The department shall distribute  
5 funding through a supplemental payment to participating employers and  
6 seek any necessary approvals from the centers for medicare and  
7 medicaid services to provide this supplemental payment. The  
8 supplemental payment must be distributed annually in proportion to  
9 their medicaid bed days in the previous calendar year.

10 (2) To participate in the essential worker health care program,  
11 employers must operate at least one nursing home licensed under  
12 chapter 18.51 RCW in Washington that participates in medicaid and  
13 enter into a memorandum of understanding with the department  
14 committing to:

15 (a) Participate in a multiemployer health fund certified as a  
16 qualified health fund by the office of the insurance commissioner;

17 (b) Allocate substantially all of the funds distributed through  
18 this program to the qualified health fund;

19 (c) Provide documentation to the department of its spending on  
20 employee health benefits in Washington in the two years prior to its  
21 entry into the program;

22 (d) Maintain spending on health care benefits in the first year  
23 of its participation in the program at least equal to the average of  
24 its spending in the two years prior to its entry into the program and  
25 maintain spending in subsequent years at least equal to this level  
26 plus the consumer price index medical inflation rate maintained by  
27 the United States bureau of labor statistics. Spending to meet this  
28 requirement must flow through the certified qualified health fund.  
29 For qualified health plans offered through a Taft-Hartley fund in  
30 which union representatives occupy at least 50 percent of board  
31 seats, a certification from each participating union is sufficient to  
32 comply with this requirement;

33 (e) Provide the department with information concerning its health  
34 plan benefits, covered employee uptake, cost to the employer and  
35 covered employees, and employee retention in the two years prior to  
36 its entry into the program, and provide updated information at the  
37 end of each year of participation in the program;

38 (f) Demonstrate at least annually or more frequently at the  
39 request of the department that it has used all of the supplemental

1 payments received through the program to significantly improve the  
2 quality of health care offered to covered employees;

3 (g) Demonstrate to the department at least annually or more  
4 frequently at the request of the department that it has processes in  
5 place to offer covered employees significant input into health  
6 benefit design and delivery; and

7 (h) Meet any other conditions or requirements specified by the  
8 department in rule to achieve the goals of this program.

9 (3) Only covered employees may participate in the program. A  
10 "covered employee" is any permanent employee of a company that  
11 operates a participating facility who works primarily in the state of  
12 Washington including, but not limited to, employees providing direct  
13 care to nursing home or assisted living facility residents, employees  
14 indirectly involved in resident care, employees providing dietary,  
15 housekeeping, laundry, or environmental services on location,  
16 administrative employees and management, and corporate office  
17 employees, or any subcontractor of such a company who works on a  
18 full-time, permanent basis in a nursing home or assisted living  
19 facility.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 48.02  
21 RCW to read as follows:

22 The office of the insurance commissioner shall certify that a  
23 proposed health care benefit arrangement is a qualified health fund  
24 that meets the requirements of this section. Supplemental payments to  
25 participating employers may be disbursed only to employers that offer  
26 employee health benefits solely through a qualified health fund that  
27 meets the following requirements:

28 (1) Includes at least two distinct and unrelated employers in  
29 each year of the program;

30 (2) Operates as either a self-insured multiemployer welfare  
31 arrangement or a self-insured Taft-Hartley fund with equal union and  
32 employer participation;

33 (3) Offers benefits to at least 5,000 employees in the long-term  
34 care industry in Washington state in each year of the program;

35 (4) Offers a benefit package that is either equivalent to an  
36 affordable care act platinum plan in covered benefits and cost  
37 sharing, or, if the plan is offered by a Taft-Hartley trust, a plan  
38 approved by the board of the trust;

1 (5) Certifies each year that participating employers are  
2 complying with the terms of the program, including the maintenance of  
3 spending requirement provided in section 2(2)(d) of this act;

4 (6) Except for Taft-Hartley plans, demonstrates on entry to the  
5 program and annually that it has provided the opportunity for  
6 substantive input on the plan from substantially all covered  
7 employees;

8 (7) Except for Taft-Hartley plans, demonstrates on entry to the  
9 program and annually that it has a robust enrollment process in place  
10 to ensure that covered employees fully understand their benefits; and

11 (8) Complies with any other requirements determined by the office  
12 of the insurance commissioner in rule to further the goals of the  
13 program.

14 NEW SECTION. **Sec. 4.** A new section is added to chapter 48.02  
15 RCW to read as follows:

16 (1) The office of the insurance commissioner may revoke  
17 certification for a qualified health fund that fails to meet the  
18 requirements of sections 2 and 3 of this act and any rules adopted by  
19 the office of the insurance commissioner. Employers participating in  
20 a health plan that loses certified qualified health plan status for  
21 noncompliance shall return any supplemental payments received under  
22 this program during the period in which the qualified health fund was  
23 out of compliance with the requirements established in sections 2 and  
24 3 of this act and in rule from the program.

25 (2) The office of the insurance commissioner may terminate any  
26 participating employer that fails to comply with the requirements  
27 established in the memorandum of understanding, sections 2 and 3 of  
28 this act, and in rule from the program. The office of the insurance  
29 commissioner shall recoup any supplemental payments from any  
30 participating employer who fails to comply with the program  
31 requirements for the fiscal years in which the operator was out of  
32 compliance.

33 **Sec. 5.** RCW 48.125.030 and 2008 c 217 s 96 are each amended to  
34 read as follows:

35 ~~((The))~~ (1) Except as provided in subsection (2) of this section,  
36 the commissioner may not issue a certificate of authority to a self-  
37 funded multiple employer welfare arrangement unless the arrangement

1 establishes to the satisfaction of the commissioner that the  
2 following requirements have been satisfied by the arrangement:

3 ~~((1))~~ (a) The employers participating in the arrangement are  
4 members of a bona fide association;

5 ~~((2))~~ (b) The employers participating in the arrangement  
6 exercise control over the arrangement, as follows:

7 ~~((a))~~ (i) Subject to (b)(ii) of this subsection, control exists  
8 if the board of directors of the bona fide association or the  
9 employers participating in the arrangement have the right to elect at  
10 least ~~((seventy-five))~~ 75 percent of the individuals designated in  
11 the arrangement's organizational documents as having control over the  
12 operations of the arrangement and the individuals designated in the  
13 arrangement's organizational documents in fact exercise control over  
14 the operation of the arrangement; and

15 ~~((b))~~ (ii) The use of a third-party administrator to process  
16 claims and to assist in the administration of the arrangement is not  
17 evidence of the lack of exercise of control over the operation of the  
18 arrangement;

19 ~~((3))~~ (c) In this state, the arrangement provides only health  
20 care services;

21 ~~((4))~~ (d) In this state, the arrangement provides or arranges  
22 benefits for health care services in compliance with those provisions  
23 of this title that mandate particular benefits or offerings and with  
24 provisions that require access to particular types or categories of  
25 health care providers and facilities;

26 ~~((5))~~ (e) In this state, the arrangement provides or arranges  
27 benefits for health care services in compliance with RCW 48.43.500  
28 through 48.43.535, 48.43.545, and 48.43.550;

29 ~~((6))~~ (f) The arrangement provides health care services to not  
30 less than ~~((twenty))~~ 20 employers and not less than ~~((seventy-five))~~  
31 75 employees;

32 ~~((7))~~ (g) The arrangement may not solicit participation in the  
33 arrangement from the general public. However, the arrangement may  
34 employ licensed insurance producers who receive a commission,  
35 unlicensed individuals who do not receive a commission, and may  
36 contract with a licensed insurance producer who may be paid a  
37 commission or other remuneration, for the purpose of enrolling and  
38 renewing the enrollments of employers in the arrangement;

39 ~~((8))~~ (h) The arrangement has been in existence and operated  
40 actively for a continuous period of not less than ~~((ten))~~ 10 years as

1 of December 31, 2003, except for an arrangement that has been in  
2 existence and operated actively since December 31, 2000, and is  
3 sponsored by an association that has been in existence more than  
4 (~~twenty-five~~) 25 years; and

5 (~~(9)~~) (i) The arrangement is not organized or maintained solely  
6 as a conduit for the collection of premiums and the forwarding of  
7 premiums to an insurance company.

8 (2) This section does not prohibit the commissioner from issuing  
9 a certificate of authority to a self-funded multiple employer welfare  
10 arrangement, if the arrangement satisfies the requirements of  
11 sections 2 and 3 of this act.

12 NEW SECTION. **Sec. 6.** The department of social and health  
13 services and the office of the insurance commissioner may adopt rules  
14 to implement this act and to administer the essential worker health  
15 care program.

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