

SECTION 1. Article 5.18 (commencing with Section 14165.60) is added to Chapter 7 of Division 9 of the Welfare and Institutions Code to read:

ARTICLE 5.18. HOSPITAL AND SKILLED NURSING FACILITY COVID-19 WORKER RETENTION PAYMENTS

14165.60

(a) (1) The Legislature finds and declares that stability in the California health care workforce will further its efforts to manage the COVID-19 pandemic and address other public health issues that face Californians.

(2) The Legislature further finds and declares that providing California health care workers in 24-hour care facilities with retention payments as appropriated and available will advance California's effort to promote stability and retention in California's health care workforce.

(b) For purposes of this section, the following definitions apply

(1) "Covered Employer" means both of the following:

(A) Any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person, consistent with the definition of employer in Wage Order 5; and

(B) Is a qualifying facility or provides contracted services such as janitorial, laundry, security, or dietary services on the site of a qualified facility.

(2) "State Facility" means a health facility that is owned or operated by this state or any state department, authority, bureau, commission, or officer, other than a health facility owned or operated by the Regents of the University of California. A health facility owned or operated by the Regents of the University of California shall not be considered a state facility.

(3) "Qualifying Facility" means a health facility that is not a state facility and is licensed as one of the following:

(A) A general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(B) An acute psychiatric hospital as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(C) A skilled nursing facility as defined in subdivision (c) of Section 1250 of the Health and Safety Code.

(4) "Worker" means a person employed indirectly or directly by a covered employer or members of Qualifying Facilities' medical staff.

(5) "Qualifying Work Period" means period identified by the department beginning on January 1, 2022 and ending no later than 60 days after the enactment of this section.

(6) "Date of Record" means a date determined by the department that is no later than 45 days after the end of the Qualifying Work Period.

(7) "Eligible Worker" means a full-time or part-time worker of a covered employer as of the date of record. This does not include those workers who are working primarily on a remote basis, as defined by the department.

(8) "Full-time" employment means to be compensated for an average of 32 or more hours per week from January 1, 2022, through the Qualifying Work Period. A worker is also considered to be employed full-time if the covered employer considers the worker to work full time.

(9) "Part-time" employment means to be compensated for an average of fewer than 32 hours per week from January 1, 2022, through the Qualifying Work Period, so long as the covered employer does not consider the worker to work full time.

(10) "Wage Order 5" means the Order Regulating Wages, Hours, and Working Conditions in the Public Housekeeping Industry (Section 11050 of Title 8 of the California Code of Regulations).

(c) Upon appropriation by the Legislature, the department shall provide funding to participant Qualifying Facilities to make retention payments to their eligible workers for the public purposes specified in subdivision (a). The department may provide up to \$1,500 for each eligible worker of a participant covered employer, subject to the methodology described in subdivision (d) and the aggregate amount of funding available for this purpose.

(d)(1) As a condition of receipt of funding pursuant to this section, a covered employer shall submit to the department the following information for each eligible worker by a date specified by the department.

(A) Name of the eligible worker.

(B) Mailing address of the eligible worker.

(C) The total amount of matching retention payments that the covered employer paid or will pay to the eligible worker.

(D) Average number of hours for which the covered employer compensated the eligible worker from January 1, 2022 through the end of the Qualifying Work Period.

(E) Other information as required by the department for purposes of implementing this section.

(2) Upon receipt of covered employer submissions pursuant to paragraph (1), the department shall determine the amount of the retention payment to be paid by each participant covered employer to each eligible worker. The amount of the retention payment shall be calculated as follows, subject to available funding and reduced on a pro-rata basis if necessary:

(A) For a full-time eligible worker, the state payment amount shall be \$1,000 plus the amount of matching retention payment paid to the eligible worker by the covered employer, up to a total maximum state payment of \$1,500.

(B) For a part-time eligible worker, the state payment amount shall be \$750 plus the amount of matching retention payment paid to the eligible worker by the covered employer, up to a total maximum state payment of \$1,500.

(C) The department may reduce the payment amounts described in paragraph (2) and (3) on a pro-rata basis subject to the total amount of funding appropriated to the department.

(3) The department shall determine the conditions and data reporting requirements for participant covered employers to be eligible to receive funding for retention payments. At a minimum, participant covered employers shall be required to commit to all of the following:

(A) The covered employer shall provide funding to their eligible workers within 30 days of receipt from the department.

(B) The covered employer shall report to the department within 90 days of receipt of funds information on the number of eligible workers paid by profession type, the total amount of payments made including covered employer matching funds, and information on the timing of payments.

(C) The covered employer shall not use the funding to supplant other payments from the covered employer to the eligible worker.

(4) The department shall define "matching retention payments" to include monetary compensation other than salaries, wages, and overtime paid to an eligible worker that was paid to the eligible worker on or after January 1, 2022 and prior to the date of record, and meets any of the following criteria:

(i) The compensation was or is paid as hazard or bonus pay as a result of the COVID-19 pandemic.

(ii) The compensation was or is paid as a bonus based on performance or financial targets or a payout resulting from performance sharing programs designed to provide employees with a share in performance gains.

(iii) The compensation was or is paid in response to operational needs of the covered employer, including, but not limited to, staffing shortages or recruitment needs.

(e) The department may make payments described in this section to Qualifying Facilities using the existing Medi-Cal Check-write system.

(f) This section shall be implemented only if, and to the extent that, the department determines that federal financial participation under the Medi-Cal program is not jeopardized.

(g) The department may enter into exclusive or non-exclusive contracts, or amend existing contracts, on a bid or negotiated basis for purposes of implementing this section. Contracts entered into or amended pursuant to this subdivision shall be exempt from Chapter 6 (commencing with Section 14825) of Part 5.5 of Division 3 of Title 2 of the Government Code, Section 19130 of the Government Code, Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, and from the State Administrative and State Contracting manuals, and shall be exempt from the review or approval of any division of the Department of General Services.

(h) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific this section, in whole or in part, by means of information notices or other similar instructions, without taking any further regulatory action.

(i) The Legislature finds and declares that this section is a state law within the meaning of Section 1621(d) of Title 8 of the United States Code.

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