

Senate Bill No. 525

Passed the Senate September 14, 2023

Secretary of the Senate

Passed the Assembly September 14, 2023

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2023, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Sections 1182.14 and 1182.15 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 525, Durazo. Minimum wages: health care workers.

Existing law generally requires the minimum wage for all industries to not be less than specified amounts to be increased until it is \$15 per hour commencing January 1, 2022, for employers employing 26 or more employees, and commencing January 1, 2023, for employers employing 25 or fewer employees. Existing law makes a violation of minimum wage requirements a misdemeanor.

This bill would establish 5 separate minimum wage schedules for covered health care employees, as defined, depending on the nature of the employer.

This bill would require, for any covered health care facility employer, as defined, with 10,000 or more full-time equivalent employees (FTEE), as defined, any covered health care facility employer that is a part of an integrated health care delivery system or a health care system with 10,000 or more FTEEs, a covered health care facility employer that is a dialysis clinic or is a person that owns, controls, or operates a dialysis clinic, or a covered health facility owned, affiliated, or operated by a county with a population of more than 5,000,000 as of January 1, 2023, the minimum wage for covered health care employees to be \$23 per hour from June 1, 2024, to May 31, 2025, inclusive, \$24 per hour from June 1, 2025, to May 31, 2026, inclusive, and \$25 per hour from June 1, 2026, and until as adjusted as specified.

This bill would require, for any hospital that is a hospital with a high governmental payor mix, an independent hospital with an elevated governmental payor mix, a rural independent covered health care facility, or a covered health care facility that is owned, affiliated, or operated by a county with a population of less than 250,000 as of January 1, 2023, as those terms are defined, the minimum wage for covered health care employees to be \$18 per

hour from June 1, 2024, to May 31, 2033, inclusive, and \$25 per hour from June 1, 2033, and until as adjusted as specified.

This bill would require, for specified clinics that meet certain requirements, the minimum wage for covered health care employees to be \$21 per hour from June 1, 2024, to May 31, 2026, inclusive, and \$22 per hour from June 1, 2026, to May 31, 2027, inclusive, and \$25 from June 1, 2027, and until as adjusted as specified.

This bill would require, for all other covered health care facility employers, the minimum wage for covered health care employees to be \$21 per hour from June 1, 2024, to May 31, 2026, inclusive, \$23 per hour from June 1, 2026, to May 31, 2028, inclusive, and \$25 per hour from June 1, 2028, and until as adjusted as specified.

This bill would provide that a covered health care facility that is county owned, affiliated, or operated must implement the appropriate minimum wage schedule described above, as applicable, beginning January 1, 2025.

This bill would also separately require, for a licensed skilled nursing facility, as described, the minimum wage for certain other covered health care employees, as described, to be \$21 per hour from June 1, 2024, to May 31, 2026, inclusive, \$23 per hour from June 1, 2026, to May 31, 2028, inclusive, and \$25 per hour from June 1, 2028, and until as adjusted as specified. The bill would make this minimum wage requirement effective only when a patient care minimum spending requirement applicable to skilled nursing facilities is in effect.

This bill would provide that the health care worker minimum wages constitute the state minimum wage for covered health care employment for all purposes under the Labor Code and the Wage Orders of the Industrial Welfare Commission. The bill would provide that a health care worker minimum wage is enforceable by the Labor Commissioner or by a covered worker through a civil action, through the same means and with the same relief available for violation of any other state minimum wage requirement. By establishing new minimum wages, the violation of which would be a crime, the bill would impose a state-mandated local program.

This bill would require, for covered health care employment where the employee is paid on a salary basis, that the employee earn a monthly salary equivalent to no less than 150% of the health care worker minimum wage or 200% of the applicable minimum

wage, whichever is greater, for full-time employment in order to qualify as exempt from the payment of minimum wage and overtime.

This bill would require the Department of Health Care Access and Information to publish, on or before January 31, 2024, and on the department's internet website, specified information, including a list of hospitals that qualify under certain classifications. The bill would provide, until January 31, 2025, a process for hospitals excluded from that list to request classification.

This bill would authorize, until January 1, 2025, the adoption of any necessary rules and regulations for purposes of implementing certain provisions of the bill as emergency regulations in accordance with the Administrative Procedure Act and would deem the adoption of those emergency regulations an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. The bill would require the Department of Health Care Access and Information to consider input from specified stakeholders when adopting those rules and regulations, as specified.

This bill would, by March 1, 2024, require the Department of Industrial Relations, in collaboration with the State Department of Health Care Services and the Department of Health Care Access and Information, to develop a waiver program that would allow a covered health care facility, as defined, to apply for and receive a temporary pause or alternative phase in schedule of the minimum wage requirements described above. In order to obtain a waiver, the bill would require a covered health care facility to demonstrate that compliance with the minimum wage requirements would raise doubts about the covered health care facility's ability to continue as a going concern under generally accepted accounting principles, as specified. The bill would provide that issuance of the terms of the pause or alternative phase in schedule is solely and exclusively within the authority of the Department of Industrial Relations, and the authority regarding whether the covered health care facility demonstrates the inability to continue as a going concern pursuant is solely and exclusively within the authority of the State Department of Health Care Services.

This bill would prohibit any ordinance, regulations, or administrative action that is applicable to a covered health care facility and that establishes, requires, imposes, limits, or otherwise

relates to wages or compensation for covered health care facility employees from being enacted or enforced in or by any city, county, or city and county, except as provided.

This bill would also make its provisions severable.

This bill would make legislative findings and declarations as to the necessity of a special statute for health care workers.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 1182.14 is added to the Labor Code, to read:

1182.14. (a) The Legislature finds and declares as follows:

(1) Workers in the health care industry, including workers at general acute care hospitals, acute psychiatric hospitals, medical offices and clinics, behavioral health centers, and residential care centers provide vital health care services to California residents, including emergency care, labor and delivery, cancer treatments, and primary and specialty care. Similarly, dialysis clinics provide life-preserving care to patients with end-stage renal disease and are part of the continuum of kidney care that also includes hospitals and health systems. Residents and visitors to the state rely on access to this high-quality health care.

(2) Higher wages are an important means of retaining an experienced workforce and attracting new workers. A stable workforce benefits patients and improves quality of care.

(3) Employers across multiple industries are raising wages. The health care sector in California must offer higher wages to remain competitive.

(4) Members of the health care team such as certified nursing assistants, patient aides, technicians, and food service workers,

among many others, are essential to both routine medical care and emergency response efforts.

(5) Even before the COVID pandemic, California was facing an urgent and immediate shortage of health care workers, adversely impacting the health and well-being of Californians, especially economically disadvantaged Californians. The pandemic has worsened these shortages. Higher wages are needed to attract and retain health care workers to treat patients, including being prepared to provide necessary care in an emergency.

(6) The Legislature finds and declares that laws that establish, require, impose, limit or otherwise relate to wages, salary, or compensation affect access to quality health care for all residents of, and visitors to, the state provided by licensed health care facilities, which serve as a critical part of the state's ability to respond to catastrophic emergencies. The Legislature also finds and declares that the time limitations and other provisions established by this section are necessary to stabilize the health care system following the state and federal public health emergencies related to COVID-19, the closure and bankruptcy of licensed health care facilities, and the reduction in vital services by licensed health care facilities due to financial distress and the health care workforce crisis that has resulted in staffing shortages and strain for health care workers. The Legislature further finds and declares that access to quality health care and the stability of the health care system is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section occupies the whole field of wages, salary, or compensation for covered health care facility employees, and applies to all cities and counties, including charter cities, charter counties, and charter cities and counties during the stabilization period provided by this section.

(b) As used in this section:

(1) "Adjusted patient days" means the total gross patient revenue, divided by gross revenue provided for inpatient services, multiplied by the number of patient days.

(2) (A) "Covered health care employee" means any of the following:

(i) An employee of a health care facility employer who provides patient care, health care services, or services supporting the provision of health care, which includes, but is not limited to,

employees performing work in the occupation of a nurse, physician, caregiver, medical resident, intern or fellow, patient care technician, janitor, housekeeping staff person, groundskeeper, guard, clerical worker, nonmanagerial administrative worker, food service worker, gift shop worker, technical and ancillary services worker, medical coding and medical billing personnel, scheduler, call center and warehouse worker, and laundry worker, regardless of formal job title.

(ii) A contracted or subcontracted employee described in subparagraph (B).

(B) “Covered health care employee” includes a contracted or subcontracted employee, if all of the following apply:

(i) The employee’s employer contracts with the health care facility employer, or with a contractor or subcontractor to the health care facility employer, to provide health care services, or services supporting the provision of health care.

(ii) The health care facility employer directly or indirectly, or through an agent or any other person, exercises control over the employee’s wages, hours or working conditions. However, “covered health care employee” includes all employees performing contracted or subcontracted work primarily on the premises of a health care facility to provide health care services or services supporting the provision of health care.

(C) Notwithstanding subparagraph (A), “covered health care employee” does not include:

(i) Employment as an outside salesperson.

(ii) Any work performed in the public sector where the primary duties performed are not health care services.

(iii) Delivery or waste collection work on the premises of a covered health care facility, provided that the delivery or waste collection worker is not an employee of any person that owns, controls, or operates a covered health care facility.

(iv) Medical transportation services in or out of a covered health care facility, provided that the medical transportation services worker is not an employee of any person that owns, controls, or operates a covered health care facility.

(3) (A) “Covered health care facility” means any of the following:

(i) A facility or other work site that is part of an integrated health care delivery system.

(ii) A licensed general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, including a distinct part of any such hospital.

(iii) A licensed acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code, including a distinct part of any such hospital.

(iv) A special hospital, as defined in subdivision (f) of Section 1250 of the Health and Safety Code.

(v) A licensed skilled nursing facility, as defined in subdivision (c) of Section 1250 of the Health and Safety Code, if owned, operated, or controlled by a hospital or integrated health care delivery system or health care system.

(vi) A patient's home when health care services are delivered by an entity owned or operated by a general acute care hospital or acute psychiatric hospital.

(vii) A licensed home health agency, as defined in subdivision (a) of Section 1727 of the Health and Safety Code.

(viii) A clinic, as defined in subdivision (b) of Section 1204 of the Health and Safety Code, including a specialty care clinic, or a dialysis clinic.

(ix) A psychology clinic, as defined in Section 1204.1 of the Health and Safety Code.

(x) A clinic as defined in subdivision (d), (g), or (l) of Section 1206 of the Health and Safety Code.

(xi) A licensed residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, if affiliated with an acute care provider or owned, operated, or controlled by a general acute care hospital, acute psychiatric hospital, or the parent entity of a general acute care hospital or acute psychiatric hospital.

(xii) A psychiatric health facility, as defined in Section 1250.2 of the Health and Safety Code.

(xiii) A mental health rehabilitation center, as defined in Section 5675 of the Welfare and Institutions Code.

(xiv) A community clinic licensed under subdivision (a) of Section 1204 of the Health and Safety Code, an intermittent clinic exempt from licensure under subdivision (h) of Section 1206 of the Health and Safety Code, or a clinic operated by the state or any of its political subdivisions, including, but not limited to, the University of California or a city or county that is exempt from

licensure under subdivision (b) of Section 1206 of the Health and Safety Code.

(xv) A rural health clinic, as defined in paragraph (1) of subdivision (I) of Section 1396d of Title 42 of the United States Code.

(xvi) An urgent care clinic.

(xvii) An ambulatory surgical center that is certified to participate in the Medicare Program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act.

(xviii) A physician group.

(xix) A county correctional facility that provides health care services.

(xx) A county mental health facility.

(B) “Covered health care facility” does not include either of the following:

(i) A hospital owned, controlled, or operated by the State Department of State Hospitals.

(ii) A tribal clinic exempt from licensure under subdivision (c) of Section 1206 of the Health and Safety Code, or an outpatient setting conducted, maintained, or operated by a federally recognized Indian tribe, tribal organization, or urban Indian organization, as defined in Section 1603 of Title 25 of the United States Code.

(4) “Employ” means to engage, suffer, or permit to work.

(5) “Employee” means any person employed by an employer.

(6) “Employer” means a 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. “Employer” includes the state, political subdivisions of the state, the University of California, and municipalities.

(7) “Full-time equivalent employee” means the total paid hours at a covered health care facility, including an integrated health care delivery system, as of January 1, 2022, as per Department of Health Care Access and Information guidance, divided by 2,080.

(8) “Health care services” means patient care-related services including nursing; caregiving; services provided by medical residents, interns, or fellows; technical and ancillary services; janitorial work; housekeeping; groundskeeping; guard duties; business office clerical work; food services; laundry; medical coding and billing; call center and warehouse work; scheduling;

and gift shop work; but only where such services support patient care.

(9) “Health care worker minimum wage” means the minimum wage rate established by this section.

(10) “Health care system” means a parent entity that owns, controls, or operates two or more separately licensed hospitals.

(11) “Hospital with a high governmental payor mix” means a licensed acute care hospital, as defined in subdivision (a) or (b) of Section 1250 of the Health and Safety Code, where the combined Medicare and Medi-Cal payor mix is 90 percent or greater, as determined by using the adjusted patient days from the Department of Health Care Access and Information annual financial disclosure report, as recorded and calculated as of January 1, 2022, as per the Department of Health Care Access and Information guidance. A hospital shall qualify pursuant to this paragraph only if the combined payor mix of both the hospital and the health care system to which it belongs, if any, is 90 percent or greater.

(12) “Independent hospital with an elevated governmental payor mix” means all of the following:

(A) A hospital, as defined in subdivision (a) or (b) of Section 1250 of the Health and Safety Code, where the combined Medicare and Medi-Cal payor mix is 75 percent or greater, as determined by using the adjusted patient days from the Department of Health Care Access and Information annual financial disclosure report, as recorded and calculated as of January 1, 2022, as per the Department of Health Care Access and Information guidance.

(B) The hospital is not owned, controlled, or operated by any parent entity with two or more separately licensed hospitals.

(13) “Integrated health care delivery system” means an entity or group of related entities that includes both of the following: (A) one or more hospitals and (B) one or more physician groups, health care service plans, medical foundation clinics, other health care facilities, or other entities, providing health care or supporting the provision of health care, where the hospital or hospitals and other entities are related through one of the following:

(A) Parent and subsidiary relationships, joint or common ownership or control, common branding, or common boards of directors and shared senior management.

(B) A contractual relationship in which affiliated covered physician groups or medical foundation clinics contract with a

health care service plan, hospital or other part of the system, all operating under a common trade name.

(C) A contractual relationship in which a nonprofit health care service plan provides medical services to enrollees in a specific geographic region of the state through an affiliated hospital system, and contracts with a single covered physician group in each geographic region of the state to provide medical services to a majority of the plan’s enrollees in that region.

(14) “Physician group” means a medical group practice, including a professional medical corporation, as defined in Section 2406 of the Business and Professions Code, another form of corporation controlled by physicians and surgeons, or a medical partnership, provided that the group includes a total of 25 or more physicians.

(15) “Rural independent covered health care facility” means a hospital that is not part of an integrated health care delivery system and is not owned, controlled, or operated by any parent entity with two or more separately licensed hospitals and any of the following:

(A) A hospital that is located in a county that is not designated as a metropolitan core-based statistical area.

(B) A small and rural hospital, as defined in Section 124840 of the Health and Safety Code.

(C) A rural general acute care hospital, as described in Section 1250 of the Health and Safety Code.

(16) “Urgent care clinic” means a facility or clinic that provides immediate, nonemergent ambulatory medical care to patients, including, but not limited to, facilities known as walk-in clinics or centers or urgent care centers.

(c) (1) For any covered health care facility employer with 10,000 or more full-time equivalent employees, any covered health care facility employer that is a part of an integrated health care delivery system or health care system with 10,000 or more full-time equivalent employees, any covered health care facility employer that is a dialysis clinic as defined in subdivision (b) of Section 1204 of the Health and Safety Code or that is a person that owns, controls, or operates a dialysis clinic, or a covered health facility owned, affiliated, or operated by a county with a population of more than 5,000,000 as of January 1, 2023, the minimum wage for all covered health care employees shall be as follows:

(A) From June 1, 2024, to May 31, 2025, inclusive, twenty-three dollars (\$23) per hour.

(B) From June 1, 2025, to May 31, 2026, inclusive, twenty-four dollars (\$24) per hour.

(C) From June 1, 2026, and until adjusted pursuant to subdivision (d), twenty-five dollars (\$25) per hour.

(2) For any hospital that is a hospital with a high governmental payor mix, an independent hospital with an elevated governmental payor mix, a rural independent covered health care facility, or a covered health care facility that is owned, affiliated, or operated by a county with a population of less than 250,000 as of January 1, 2023, the minimum wage for all covered health care employees shall be as follows:

(A) From June 1, 2024, to May 31, 2033, inclusive, eighteen dollars (\$18) per hour, with 3.5 percent increases annually.

(B) From June 1, 2033, and until adjusted pursuant to subdivision (d), twenty-five (\$25) per hour.

(3) (A) For any health care facility specified in clauses (i) to (iv), inclusive, the minimum wage for all covered health care employees shall be as set forth in subparagraph (B).

(i) A clinic as defined in subdivision (h) of Section 1206 of the Health and Safety Code, that is not operated by or affiliated with a clinic described in subdivision (b) of Section 1206 of the Health and Safety Code.

(ii) A community clinic licensed under subdivision (a) of Section 1204 of the Health and Safety Code, and any associated intermittent clinic exempt from licensure under subdivision (h) of Section 1206 of the Health and Safety Code.

(iii) A rural health clinic, as defined in paragraph (1) of subdivision (l) of Section 1396d of Title 42 of the United States Code, that is not license-exempt.

(iv) An urgent care clinic that is owned by or affiliated with a facility defined in clause (ii) or (iii).

(B) (i) From June 1, 2024, to May 31, 2026, inclusive, twenty-one dollars (\$21) per hour.

(ii) From June 1, 2026, to May 31, 2027, inclusive, twenty-two dollars (\$22) per hour.

(iii) From June 1, 2027, and until adjusted by subdivision (d), twenty-five dollars (\$25) per hour.

(4) For all other covered health care facility employers, the minimum wage for all covered health care employees shall be as follows:

(A) From June 1, 2024, to May 31, 2026, inclusive, twenty-one dollars (\$21) per hour.

(B) From June 1, 2026, to May 31, 2028, inclusive, twenty-three dollars (\$23) per hour.

(C) From June 1, 2028, and until adjusted pursuant to subdivision (d), twenty-five dollars (\$25) per hour.

(5) Notwithstanding any other provision of this subdivision, a covered health care facility that is county owned, affiliated, or operated shall not be required to comply with this subdivision before January 1, 2025. Commencing January 1, 2025, a covered health care facility that is county owned, affiliated, or operated shall comply with the appropriate schedule described in this subdivision.

(d) (1) Following the implementation of the minimum wage increase specified in subparagraph (C) of paragraph (1), subparagraph (B) of paragraph (2), clause (iii) of subparagraph (B) of paragraph (3), or subparagraph (C) of paragraph (4) of subdivision (c), on or before August 1 of the following year, and on or before each August 1 thereafter, the Director of Finance shall calculate an adjusted minimum wage. The calculation shall increase the health care worker minimum wage by the lesser of 3.5 percent or the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted United States Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. CPI-W). The result shall be rounded to the nearest ten cents (\$0.10). Each adjusted health care worker minimum wage increase calculated under this subdivision shall take effect on the following January 1.

(2) If the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted U.S. CPI-W is negative, there shall be no increase or decrease in the health care worker minimum wage pursuant to this subdivision on the following January 1.

(e) The health care worker minimum wages shall constitute the state minimum wages for covered health care employment for all purposes under this code and the Wage Orders of the Industrial Welfare Commission.

(f) A health care worker minimum wage shall be enforceable by the Labor Commissioner or by a covered worker through a civil action, through the same means and with the same relief available for violation of any other state minimum wage requirement.

(g) For covered health care employment where the compensation of the employee is on a salary basis, the employee shall earn a monthly salary equivalent to no less than 150 percent of the health care worker minimum wage or 200 percent of the minimum wage, as described in Section 1182.12, whichever is greater, for full-time employment in order to qualify as exempt from the payment of minimum wage and overtime under the law of this state, including where the employer is the state, a political subdivision of the state, the University of California, or a municipality.

(h) (1) On or before January 31, 2024, the Department of Health Care Access and Information shall publish the following information on their internet website:

(A) A list of all covered health care facility employers with 10,000 or more full-time equivalent employees, or covered health care facility employers that are a part of an integrated delivery system or health care system with 10,000 or more full-time equivalent employee, as defined in this section.

(B) A list of all hospitals that qualify as a hospital with a high governmental payor mix, independent hospital with an elevated governmental payor mix, or a rural independent covered health care facility.

(2) If a covered health care facility believes that they were inappropriately excluded from the list of hospitals that qualify as a hospital with a high governmental payor mix, independent hospital with an elevated governmental payor mix, or a rural independent covered health care facility, the health facility may file a request with the Department of Health Care Access and Information to be classified as a hospital with a high governmental payor mix, independent hospital with an elevated governmental payor mix, or a rural independent covered health care facility. The requesting hospital shall provide the following:

(A) The physical location of the requesting hospital.

(B) The payor mix of the requesting hospital, including the percent of uninsured patients and patients covered by Medi-Cal and Medicare.

(C) Any other information as determined necessary by the Department of Health Care Access and Information.

(3) The Department of Health Care Access and Information shall classify a requesting hospital as a hospital with a high governmental payor mix, independent hospital with an elevated governmental payor mix, or a rural independent covered health care facility if they meet the definitions provided under this section.

(4) The rules and regulations process described in paragraph (6) shall require the Department of Health Care Access and Information to consider input by stakeholders including health care employees, their representatives, consumers, and health care employers as to the accuracy of the classification of covered health care facility employers according to the numbers of full-time equivalent employees, system affiliation, payor mix, and any other relevant information.

(5) The Department of Health Care Access and Information shall not accept any requests for classification as a hospital with a high governmental payor mix, independent hospital with an elevated governmental payor mix, or a rural independent covered health care facility after January 31, 2025.

(6) Until January 1, 2025, any necessary rules and regulations for the purpose of implementing this section may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of emergency regulations pursuant to this section shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(i) (1) No later than March 1, 2024, the Department of Industrial Relations shall, in collaboration with the State Department of Health Care Services and the Department of Health Care Access and Information, develop a waiver program for covered health care facilities described in clauses (i) to (iv), inclusive, of subparagraph (A) of paragraph (3) of subdivision (c), which would authorize a covered health care facility to apply for and receive a temporary pause or alternative phase in schedule of the health care

minimum wage requirements in this section. The issuance of the terms of the pause or alternative phase in schedule pursuant to this subdivision shall be solely and exclusively within the authority of the Department of Industrial Relations, and the authority regarding whether the covered health care facility demonstrates the inability to continue as a going concern pursuant to paragraphs (2) and (3) shall be solely and exclusively within the authority of the State Department of Health Care Services. A waiver issued pursuant to this subdivision shall be for a term of one year from the date of issuance.

(2) In order to obtain a waiver, a covered health care facility shall demonstrate that compliance with this section would raise doubts about the covered health care facility's ability to continue as a going concern under generally accepted accounting principles. The evidence must include documentation of the covered health care facility's financial condition, as well as the condition of any parent or affiliated entity, and evidence of the actual or potential direct financial impact of compliance with this section.

(3) Consideration of a covered health care facility's ability to continue as a going concern shall include the following factors regarding the covered health care facility or any affiliated entity:

(A) Actual or likely closure of the covered health care facility or any affiliated entity.

(B) Actual or likely closure of patient services or programs.

(C) Actual or likely loss of jobs.

(D) Whether the covered health care facility is small, rural, frontier, or serves a rural catchment area.

(E) Whether closure of the covered health care facility would significantly impact access to services in the region or service area.

(F) Whether the covered health care facility is in financial distress that results or is likely to result in the closure of the covered health care facility or any affiliated entity, closure of patient services or programs, or loss of jobs. Factors to consider in determining financial distress include, but are not limited to, the covered health care facility's prior and projected performance on financial metrics, including the amount of cash on hand, and whether the covered health care facility has, or is projected to experience negative operating margins.

(4) Requests for a waiver pursuant to this subdivision shall be submitted in writing to the Department of Industrial Relations.

(5) The Department of Industrial Relations shall coordinate with the State Department of Health Care Services for consideration of the waiver request pursuant to the authorities described in paragraph (1)

(6) The Department of Industrial Relations shall notify the covered health care facility of the decision on the waiver request in writing.

(7) A covered health care facility may apply to renew a waiver issued pursuant to this subdivision at any time no less than 180 days before the expiration of the existing waiver. The process for consideration and issuance of a waiver renewal shall follow the process described in paragraphs (4) to (6), inclusive.

(8) A waiver issued pursuant to this subdivision shall not exempt a covered health care facility from complying with any and all federal, state, or local laws and regulations, except to the extent that such local laws and regulations are preempted in accordance with subdivision (j).

(9) Notwithstanding paragraph (3) of subdivision (b), for purposes of this subdivision only, “covered health care facility” shall mean the clinics described in clauses (i) to (iv), inclusive, of subparagraph (A) of paragraph (3) of subdivision (c).

(j) (1) An ordinance, regulation, or administrative action applicable to a covered health care facility, as defined in this section, that establishes, requires, imposes, limits, or otherwise relates to wages or compensation for covered health care facility employees, as defined in this section, shall not be enacted or enforced in or by any city, county, city and county, including charter cities, charter counties, and charter cities and counties.

(2) Any ordinance, regulation, or administrative action taken by any city, county, or city and county, including charter cities, charter counties, and charter cities and counties, that is enacted or takes effect after September 6, 2023, related to covered health facilities, that establishes, requires, imposes, limits, or otherwise relates to wages, salaries, or compensation for covered health care facility employees, as defined in this section, is void.

(3) This subdivision does not preclude any employer, including a city, county, city and county, including charter cities, charter counties, and charter cities and counties, that employs health care employees, from establishing higher wage, salary, or compensation rates for its employees or contracted or subcontracted employees.

(4) This subdivision does not preclude a city, county, city and county, including charter cities, charter counties, and charter cities and counties from establishing a minimum wage that would apply uniformly to all employees across all industries and sectors and not exclusively to employees employed by covered health care facilities.

(5) This subdivision does not preclude a city, county, city and county, including charter cities, charter counties, and charter cities and counties, from establishing or enforcing a minimum wage applicable to covered health care facility employees, as defined in this section, after January 1, 2034. Any such ordinance, regulation, or administrative action shall be evaluated under ordinary preemption principles.

(6) This subdivision does not preclude a city, county, city and county, including charter cities, charter counties, and charter cities and counties, from enacting an ordinance or regulation, or taking administrative action, limiting or otherwise relating to compensation for covered health care facility employees, as defined in this section, after January 1, 2030. Any such ordinance, regulation, or administrative action shall be evaluated under ordinary preemption principles.

(7) This subdivision shall be effective only if the provisions of this section that require health care worker minimum wages take effect.

SEC. 2. Section 1182.15 is added to the Labor Code, to read:

1182.15. (a) The Legislature finds and declares as follows:

(1) Workers in the health care industry, including workers at general acute care hospitals, acute psychiatric hospitals, medical offices and clinics, behavioral health centers, and residential care centers provide vital health care services to California residents, including emergency care, labor and delivery, cancer treatments, and primary and specialty care. Similarly, dialysis clinics provide life-preserving care to patients with end-stage renal disease and are part of the continuum of kidney care that also includes hospitals and health systems. Residents and visitors to the state rely on access to this high-quality health care.

(2) Higher wages are an important means of retaining an experienced workforce and attracting new workers. A stable workforce benefits patients and improves quality of care.

(3) Employers across multiple industries are raising wages. The health care sector in California must offer higher wages to remain competitive.

(4) Members of the health care team such as certified nursing assistants, patient aides, technicians, and food service workers, among many others, are essential to both routine medical care and emergency response efforts.

(5) Even before the COVID pandemic, California was facing an urgent and immediate shortage of health care workers, adversely impacting the health and well-being of Californians, especially economically disadvantaged Californians. The pandemic has worsened these shortages. Higher wages are needed to attract and retain health care workers to treat patients, including being prepared to provide necessary care in an emergency.

(6) The Legislature finds and declares that laws that establish, require, impose, limit or otherwise relate to wages, salary, or compensation affect access to quality health care for all residents of, and visitors to, the state provided by licensed health care facilities, which serve as a critical part of the state's ability to respond to catastrophic emergencies. The Legislature also finds and declares that the time limitations and other provisions established by this section are necessary to stabilize the health care system following the state and federal public health emergencies related to COVID-19, the closure and bankruptcy of licensed health care facilities, and the reduction in vital services by licensed health care facilities due to financial distress and the health care workforce crisis that has resulted in staffing shortages and strain for health care workers. The Legislature further finds and declares that access to quality health care and the stability of the health care system is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this section occupies the whole field of wages, salary, or compensation for covered health care facility employees, and applies to all cities and counties, including charter cities, charter counties, and charter cities and counties during the stabilization period provided by this section.

(b) As used in this section:

(1) (A) "Covered health care employee" means any of the following:

(i) An employee of a health care facility employer who provides patient care, health care services, or services supporting the provision of health care, which includes, but is not limited to, employees performing work in the occupation of a nurse, physician, caregiver, medical resident, intern or fellow, patient care technician, janitor, housekeeping staff person, groundskeeper, guard, clerical worker, nonmanagerial administrative worker, food service worker, gift shop worker, technical and ancillary services worker, medical coding and medical billing personnel, scheduler, call center and warehouse worker, and laundry worker, regardless of formal job title.

(ii) A contracted or subcontracted employee described in subparagraph (B).

(B) “Covered health care employee” includes a contracted or subcontracted employee, if all of the following apply:

(i) The employee’s employer contracts with the health care facility employer, or with a contractor or subcontractor to the health care facility employer, to provide health care services, or services supporting the provision of health care.

(ii) The health care facility employer directly or indirectly, or through an agent or any other person, exercises control over the employee’s wages, hours or working conditions. However, “covered health care employee” includes all employees performing contracted or subcontracted work primarily on the premises of a health care facility to provide health care services or services supporting the provision of health care.

(C) Notwithstanding subparagraph (A), “covered health care employee” does not include:

(i) Employment as an outside salesperson.

(ii) Any work performed in the public sector where the primary duties performed are not health care services.

(iii) Delivery or waste collection work on the premises of a covered health care facility, provided that the delivery or waste collection worker is not an employee of any person that owns, controls, or operates a covered health care facility.

(iv) Medical transportation services in or out of a covered health care facility, provided that the medical transportation services worker is not an employee of any person that owns, controls, or operates a covered health care facility.

(2) (A) “Covered health care facility” means a licensed skilled nursing facility, as defined in subdivision (c) of Section 1250 of the Health and Safety Code, that is not covered by Section 1182.14.

(B) “Covered health care facility” does not include either of the following:

(i) A skilled nursing facility owned, controlled, or operated by the state.

(ii) A tribal clinic exempt from licensure under subdivision (c) of Section 1206 of the Health and Safety Code, or an outpatient setting conducted, maintained, or operated by a federally recognized Indian tribe, tribal organization, or urban Indian organization, as defined in Section 1603 of Title 25 of the United States Code.

(4) “Employ” means to engage, suffer, or permit to work.

(5) “Employee” means any person employed by an employer.

(6) “Employer” means a 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.

(7) “Health care services” means patient care-related services including nursing; caregiving; services provided by medical residents, interns, or fellows; technical and ancillary services; janitorial work; housekeeping; groundskeeping; guard duties; business office clerical work; food services; laundry; medical coding and billing; call center and warehouse work; scheduling; and gift shop work; but only where such services support patient care.

(8) “Health care worker minimum wage” means the minimum wage rate established by this section.

(c) For any covered health care facility employer covered by this section, the minimum wage for all covered health care employees shall be as follows:

(1) From June 1, 2024, to May 31, 2026, inclusive, twenty-one dollars (\$21) per hour.

(2) From June 1, 2026, to May 31, 2028, inclusive, twenty-three dollars (\$23) per hour.

(3) From June 1, 2028, and until adjusted pursuant to subdivision (d), twenty-five dollars (\$25) per hour.

(d) (1) Following the implementation of the minimum wage increase specified in subdivision (c), on or before August 1 of the following year, and on or before each August 1 thereafter, the

Director of Finance shall calculate an adjusted minimum wage. The calculation shall increase the health care worker minimum wage by the lesser of 3.5 percent or the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted United States Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. CPI-W). The result shall be rounded to the nearest ten cents (\$0.10). Each adjusted health care worker minimum wage increase calculated under this subdivision shall take effect on the following January 1.

(2) If the rate of change in the averages of the most recent July 1 to June 30, inclusive, period over the preceding July 1 to June 30, inclusive, period for the United States Bureau of Labor Statistics nonseasonally adjusted U.S. CPI-W is negative, there shall be no increase or decrease in the health care worker minimum wage pursuant to this subdivision on the following January 1.

(e) The health care worker minimum wages shall constitute the state minimum wages for covered health care employment for all purposes under this code and the Wage Orders of the Industrial Welfare Commission.

(f) A health care worker minimum wage shall be enforceable by the Labor Commissioner or by a covered worker through a civil action, through the same means and with the same relief available for violation of any other state minimum wage requirement.

(g) For covered health care employment where the compensation of the employee is on a salary basis, the employee shall earn a monthly salary equivalent to no less than 150 percent of the health care worker minimum wage or 200 percent of the minimum wage, as described in Section 1182.12, whichever is greater, for full-time employment in order to qualify as exempt from the payment of minimum wage and overtime under the law of this state, including where the employer is the state, a political subdivision of the state, the University of California, or a municipality.

(h) (1) An ordinance, regulation, or administrative action applicable to a covered health care facility, as defined in this section, that establishes, requires, imposes, limits, or otherwise relates to wages or compensation for covered health care facility employees, as defined in this section, shall not be enacted or

enforced in or by any city, county, city and county, including charter cities, charter counties, and charter cities and counties.

(2) Any ordinance, regulation, or administrative action taken by any city, county, or city and county, including charter cities, charter counties, and charter cities and counties, that is enacted or takes effect after September 6, 2023, related to covered health facilities, that establishes, requires, imposes, limits, or otherwise relates to wages, salaries, or compensation for covered health care facility employees, as defined in this section, is void.

(3) This subdivision does not preclude any employer, including a city, county, city and county, including charter cities, charter counties, and charter cities and counties, that employs health care employees, from establishing higher wage, salary, or compensation rates for its employees or contracted or subcontracted employees.

(4) This subdivision does not preclude a city, county, city and county, including charter cities, charter counties, and charter cities and counties from establishing a minimum wage that would apply uniformly to all employees across all industries and sectors and not exclusively to employees employed by covered health care facilities.

(5) This subdivision does not preclude a city, county, city and county, including charter cities, charter counties, and charter cities and counties, from establishing or enforcing a minimum wage applicable to covered health care facility employees, as defined in this section, after January 1, 2034. Any such ordinance, regulation, or administrative action shall be evaluated under ordinary preemption principles.

(6) This subdivision does not preclude a city, county, city and county, including charter cities, charter counties, and charter cities and counties, from enacting an ordinance or regulation, or taking administrative action, limiting or otherwise relating to compensation for covered health care facility employees, as defined in this section, after January 1, 2030. Any such ordinance, regulation, or administrative action shall be evaluated under ordinary preemption principles.

(7) This subdivision shall take effect only if subdivision (c) takes effect.

(i) This section shall only take effect when a patient care minimum spending requirement applicable to skilled nursing facilities, as covered in this section, is in effect.

SEC. 3. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 4. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the urgent and immediate shortage of health care workers.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2023

Governor