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**SENATE BILL 5895**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Conway, Keiser, Hasegawa, Kohl-Welles, Fraser, Cleveland, and Chase

AN ACT Relating to employers' responsibility for the medical assistance costs of employees; amending RCW 26.23.040; adding new sections to chapter 74.09 RCW; adding a new section to chapter 42.56 RCW; adding new sections to chapter 43.22 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec.**  (1) The legislature finds and declares the following:

(a) Working Washingtonians should have affordable, comprehensive health insurance coverage.

(b) Most working Washingtonians obtain their health insurance coverage through their employment, but some working Washingtonians are covered by medical assistance and, beginning this year, some will be covered through the Washington health benefit exchange.

(c) In 2012, more than nine hundred thousand Washingtonians lacked health insurance coverage at some time in the year. The federal patient protection and affordable care act is expected to reduce the number of Washingtonians without health insurance coverage by providing coverage through changes to medical assistance and the creation of the exchange.

(d) The patient protection and affordable care act was intended to set a foundation of individual, employer, and government responsibility for the provision of health insurance. The patient protection and affordable care act sets a floor for what constitutes affordable, employment-based coverage and imposes penalties on any large employer whose full-time, nonseasonal employees receive coverage through the exchange. Federal law imposes no penalty on large employers whose employees receive coverage through taxpayer-funded medical assistance.

(e) Employers who fail to provide affordable coverage to low-wage workers who are covered by medical assistance shift the cost of health care coverage from the employer to the taxpayer. Employers can avoid the employer responsibility penalty of the patient protection and affordable care act by reducing wages, hours worked, or both, so that workers are no longer full-time, full-year employees within the meaning of the patient protection and affordable care act.

(f) Persons who are covered by health insurance have better health outcomes than those who lack coverage. Persons without health insurance coverage are more likely to be in poor health, more likely to miss needed medications and treatment, and more likely to have chronic conditions that are not properly managed.

(g) Persons without health insurance coverage are at risk of financial ruin. Medical debt is the second most common cause of personal bankruptcy in the United States.

(h) Washington provides health insurance coverage to low-income workers through medical assistance. The taxpaying public pays the cost of coverage for those working people who are not provided health care coverage through employment.

(i) In 2006, the legislature, concerned about the trend of low-wage employers shifting costs to the medicaid system, directed the department of social and health services and the health care authority to report annually on the employment status of medical assistance clients. The report issued in November of 2013 states that ninety-three thousand seven hundred fifty medicaid clients are currently employed, and the cost of providing coverage through medicaid for these individuals totals six hundred sixty-one million dollars.

(j) Taxpayers, through state and local governments, fund county hospitals and clinics, community clinics, and other safety net providers that provide care to those working people whose employers fail to provide affordable health care coverage to their employees as well as to other uninsured persons.

(k) Controlling health care costs can be more readily achieved if a greater share of working people and their families have health benefits so that cost shifting is minimized.

(l) The social and economic burden created by the lack of health care coverage for some workers creates a burden on other employers, the state, affected workers, and the families of affected workers who suffer ill health and risk financial ruin.

(2) It is therefore the intent of the legislature to do the following:

(a) Ensure that large employers contribute to the cost of coverage by paying a penalty for health coverage received by their employees through medical assistance and base that penalty on the cost of employee-only coverage provided by other large employers to their employees.

(b) Encourage the provision of affordable employer-based coverage to low-wage employees who would otherwise be covered by medical assistance and discourage employers from reducing hours, wages, or both to avoid the employer responsibility penalty of the patient protection and affordable care act by extending an employer responsibility penalty to employers with employees covered by medical assistance.

(c) Ensure that employees who receive coverage through medical assistance are protected from any possible retaliation by their employer for seeking or obtaining that coverage.

(d) Help pay the nonfederal share of costs for medical assistance, improve reimbursement to the providers who care for medical assistance clients, and support the safety net of county hospitals and community clinics that provide care for the remaining uninsured adult workers, with due consideration for the needs of rural areas.

NEW SECTION. **Sec.**  This subchapter may be known and cited as the employer responsibility for medical assistance costs of employees act of 2015.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this subchapter unless the context clearly requires otherwise.

(1) "Average cost of coverage" means the average cost of employee-only health care coverage provided by covered employers to their employees, including both the employer's and employee's share of the premium, as calculated for the large group market by the federal agency for healthcare research and quality in its medical expenditure panel survey.

(2) "Authority" means the Washington state health care authority.

(3) "Covered employee" means an individual who:

(a) Is an employee of a covered employer;

(b) Is enrolled in a medicaid full benefit coverage plan on the basis of his or her modified adjusted gross income in accordance with the patient protection and affordable care act;

(c) Is not a person who is enrolled in medical assistance by reason of disability or being over sixty-five years of age; and

(d) Works on average more than one hundred four hours per quarter for the covered employer.

(4) "Covered employer" means an employing unit, as defined in RCW 50.04.090, that has in its employment, as defined in RCW 50.04.100, five hundred or more individuals in this state. "Covered employer" includes employers who are nonprofit entities for purposes of federal corporate income taxes, for purposes of state or local property taxes, or for any other tax purpose. "Covered employer" also includes all of the members of a controlled group of corporations, as defined in 26 U.S.C. Sec. 1563. "Covered employer" does not include the state, state agencies, or any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or other political subdivision.

(5) "Department" means the department of labor and industries.

(6) "Employee" has the same meaning as in RCW 49.12.005.

(7) "Fund" means the employer responsibility for medical assistance trust fund, established pursuant to section 8 of this act.

(8) "Patient protection and affordable care act" means the federal patient protection and affordable care act (P.L. 111-148), as amended by the federal health care and education reconciliation act of 2010 (P.L. 111-152).

(9) "Provider" has the same meaning as in RCW 48.44.010.

(10) "Rural community" has the same meaning as in RCW 48.45.010.

(11) "Wage" has the same meaning as in RCW 49.46.010.

NEW SECTION. **Sec.**  (1) Beginning January 1, 2017, a covered employer shall pay an employer responsibility penalty for all covered employees.

(2) The amount of the employer responsibility penalty is equal to the covered employer's total annual wage payments to all covered employees multiplied by a fraction, the numerator of which is described in (a) of this subsection and the denominator of which is described in (b) of this subsection.

(a) The numerator of the fraction is equal to the average cost of coverage multiplied by the total number of covered employees enrolled in medicaid full benefit coverage.

(b) The denominator of the fraction is equal to the total months that the covered employees received medicaid full benefit coverage while working for the covered employer.

NEW SECTION. **Sec.**  (1) The department shall administer this subchapter in coordination with the authority, the office of the insurance commissioner, and the department of employment security.

(2) The authority shall calculate the amount of the employer responsibility penalty for each employer on an annual basis and transmit the amount of the penalty to the department for collection beginning January 1, 2017.

(a) The office of the insurance commissioner shall provide the authority with information on the average cost of coverage in the large group market for the previous year.

(b) The department of social and health services shall provide the authority and the department with the information reported by employers under RCW 26.23.040.

(c) The authority may determine whether individuals enrolled in medical assistance are covered employees by using the data generated for the report required by RCW 74.09.053.

(3) The authority and the employment security department shall provide information about covered employees to the department as necessary to permit the department to collect the employer responsibility penalty. Any documents and records that result from matching records with or providing information to the authority or the department are exempt from disclosure under chapter 42.56 RCW.

(4) A covered employer shall pay to the department any penalties imposed pursuant to this subchapter. The department shall deposit all moneys collected pursuant to this subchapter in the employer responsibility for medical assistance trust fund created in section 8 of this act. The penalty must be collected:

(a) At the same time and in the same manner as any assessments collected under RCW 51.44.150 for covered employers who are self-insurers under the industrial insurance program; and

(b) In the same manner as any payment required under RCW 51.16.060 for covered employers who are not self-insurers under the industrial insurance program. The department shall collect the penalty annually based upon one of the quarterly payment cycles identified in RCW 51.16.060.

(5) The department shall annually send a notice to each covered employer subject to an employer responsibility penalty of the amount of the penalty and the date on which payment is due. Each covered employer subject to an employer responsibility penalty shall pay the amount of the penalty to the department for deposit into the employer responsibility for medical assistance trust fund.

(6) Interest must be assessed on any employer responsibility penalty not paid on or before payment is due at ten percent per annum. Interest begins to accrue the day after the date the payment is due and must be deposited in the employer responsibility for medical assistance trust fund.

(7) If an employer responsibility penalty payment is more than sixty days overdue, a penalty equal to the interest charged as described in subsection (6) of this section is assessed and due for each month, or part thereof, that the employer responsibility penalty payment is not received after sixty days. The department must deposit penalties collected under this subsection in the employer responsibility for medical assistance trust fund.

(8) Administration of this subchapter may not be performed by contract with a private entity.

NEW SECTION. **Sec.**  A covered employer shall provide information to all newly hired and existing employees regarding the availability of medical assistance for low-income employees, including the availability of advanced premium tax credits as well as medical assistance for persons whose income is less than the modified adjusted gross income threshold established for the medicaid program pursuant to the federal patient protection and affordable care act. The department, in consultation with the authority, shall develop a simple, uniform notice containing that information.

NEW SECTION. **Sec.**  (1) A covered employer may not designate an employee as an independent contractor or temporary employee, reduce an employee's hours of work, or terminate an employee to avoid the employer's obligations under this subchapter.

(2) A covered employer may not request or otherwise seek to obtain information concerning income, family income, or other eligibility requirements for public health benefit programs regarding an employee, other than that information about the employee's employment status otherwise known to the employer consistent with state and federal law and regulation.

(3) A covered employer may not require as a condition of employment that an employee not enroll in or disenroll from a public health benefit program, including, but not limited to, medical assistance or advanced premium tax credits through the Washington health benefit exchange. A covered employer may not encourage or discourage enrollment in a public health benefit program for which an employee is otherwise eligible, but may provide information on the programs.

(4) A covered employer may not discharge or in any manner discriminate or retaliate against an employee who enrolls in a public health benefit program, including, but not limited to, medical assistance or advanced premium tax credits through the Washington health benefit exchange.

(5)(a) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her covered employer in violation of subsection (1), (2), or (3) of this section, or for exercising his or her rights set out in subsection (4) of this section, may file a complaint with the department.

(b) Upon receipt of a complaint by an employee, the department shall investigate and determine whether the covered employer violated this section. If the investigation indicates that a violation may have occurred, the department shall hold a hearing in accordance with chapter 34.05 RCW. The department must issue a written determination including findings after the hearing. A judicial appeal from the determination may be taken in accordance with chapter 34.05 RCW.

(c) If the department determines that a covered employer violated this section, it may order the covered employer to reinstate the employee and pay the employee all wages owed. In addition, the department may order the covered employer to pay a civil penalty of twice the amount of the employer responsibility penalty imposed under sections 4 and 5 of this act. The department shall deposit civil penalties paid under this section in the employer responsibility for medical assistance trust fund created pursuant to section 8 of this act.

(6) A covered employer who willfully violates this section is guilty of a misdemeanor.

NEW SECTION. **Sec.**  A new section is added to chapter 74.09 RCW to read as follows:

The employer responsibility for medical assistance trust fund is created in the state treasury. All receipts from moneys collected pursuant to this subchapter must be deposited in the fund. Moneys in the fund may be spent only after appropriation. Expenditures from the fund may be used only for:

(1) Providing payment for the nonfederal share of medical assistance costs;

(2) Increasing reimbursement to health care providers, with due consideration for the needs of rural areas and access to primary care;

(3) Providing reimbursement to county health systems, community clinics, and other safety net providers that provide care without expectation of compensation to those Washingtonians who do not have minimum essential coverage as defined in 26 U.S.C. Sec. 5000A, with due consideration given to the needs of those in rural areas and access to primary care; and

(4) Implementation and administration of this subchapter.

**Sec.**  RCW 26.23.040 and 2012 c 109 s 1 are each amended to read as follows:

(1) All employers doing business in the state of Washington shall report to the Washington state support registry:

(a) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings and who:

(i) Has not previously been employed by the employer; or

(ii) Was previously employed by the employer but has been separated from such employment for at least sixty consecutive days; and

(b) The date on which the employee first performed services for pay for the employer, or, in the case of an employee described in (a)(ii) of this subsection, the date on which the employee returned to perform services for pay after a layoff, furlough, separation, or leave without pay.

The secretary of the department of social and health services may adopt rules to establish additional exemptions if needed to reduce unnecessary or burdensome reporting.

(2) Employers shall report to the extent practicable by W-4 form, or, at the option of the employer, an equivalent form, and may mail the form by first-class mail, or may transmit it electronically, or by other means authorized by the registry which will result in timely reporting.

(3) Employers shall submit reports within twenty days of the hiring, rehiring, or return to work of the employee, except as provided in subsection (4) of this section. The report shall contain:

(a) The employee's name, address, social security number, and date of birth; and

(b) The employer's name, address, and identifying number assigned under section 6109 of the internal revenue code of 1986.

(4) In the case of an employer transmitting reports magnetically or electronically, the employer shall report those employees described in subsection (1) of this section, in two monthly transmissions, if necessary, not less than twelve days nor more than sixteen days apart.

(5) An employer who fails to report as required under this section shall be subject to a civil penalty of:

(a) Twenty-five dollars per month per employee; or

(b) Five hundred dollars, if the failure to report is the result of a conspiracy between the employer and the employee not to supply the required report, or to supply a false report. All violations within a single month shall be considered a single violation for purposes of assessing the penalty. The penalty may be imposed and collected by the division of child support under RCW 74.20A.350.

(6) The department shall provide information collected under this section to the Washington state health care authority and the department of labor and industries for the purpose of determining the employer responsibility penalty under sections 2 through 8 of this act.

(7) The registry shall retain the information for a particular employee only if the registry is responsible for establishing, enforcing, or collecting a support debt of the employee. The registry may, however, retain information for a particular employee for as long as may be necessary to:

(a) Transmit the information to the national directory of new hires as required under federal law; or

(b) Provide the information to other state agencies for comparison with records or information possessed by those agencies as required by law.

Information that is not permitted to be retained shall be promptly destroyed. Agencies that obtain information from the department of social and health services under this section shall maintain the confidentiality of the information received, except as necessary to implement the agencies' responsibilities.

NEW SECTION. **Sec.**  A new section is added to chapter 42.56 RCW to read as follows:

Any documents and records that result from matching records with or sharing information among the Washington state health care authority, the employment security department, or the department of social and health services pursuant to section 5 of this act or RCW 26.23.040 are exempt from disclosure under this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 74.09 RCW to read as follows:

(1) Consistent with sections 3 through 5 of this act, the authority shall calculate the amount of the employer responsibility penalty for each employer on an annual basis and transmit the amount of the penalty to the department of labor and industries for collection beginning January 1, 2017.

(2) The authority may determine whether individuals enrolled in medical assistance are covered employees by using the data generated for the report required by RCW 74.09.053.

(3) The authority and the employment security department shall provide information about covered employees to the department of labor and industries as necessary to permit the department to collect the employer responsibility penalty. Any documents and records that result from matching records with or providing information to the authority or the department are exempt from disclosure under chapter 42.56 RCW.

NEW SECTION. **Sec.**  Sections 2 through 7 of this act are each added to chapter 43.22 RCW to be codified under the subchapter heading "employer responsibility for medical assistance costs of employees."

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