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**SENATE BILL 5840**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Cleveland and Kuderer

AN ACT Relating to requiring maintenance of minimum essential health care coverage; adding a new chapter to Title 48 RCW; and prescribing penalties.

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

NEW SECTION. **Sec.**  INTENT. (1) The legislature finds that:

(a) The federal government passed the tax cuts and jobs act, which reduces all penalties for failing to maintain minimum essential coverage to zero;

(b) Maintaining minimum essential coverage is an integral part of stabilizing the individual health insurance market in the state and ensuring Washington residents have access to affordable health coverage; and

(c) In the 1990s, Washington's individual health insurance market collapsed, partially as a result of revoking the state requirement to maintain minimum essential coverage.

(2) It is therefore the intent of the legislature to implement and enforce a state level requirement to maintain minimum essential coverage.

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

(1) "Applicable entity" means:

(a) An employer or other sponsor of an employment-based health plan with respect to employment-based minimum essential coverage;

(b) The health care authority with respect to medicaid or the children's health insurance program coverage;

(c) Health carriers with respect to fully insured health plans; or

(d) The exchange with respect to individual market health coverage offered on the exchange.

(2) "Applicable resident" means a person who is domiciled in this state.

(3) "Department" means the department of revenue.

(4) "Dependent" means a dependent as defined in section 152 of the internal revenue code, as it existed on December 15, 2017.

(5) "Enrollee" has the same meaning as in RCW 48.43.005.

(6) "Exchange" means the health benefit exchange established under chapter 43.71 RCW.

(7) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005.

(8) "Health plan" has the same meaning as in RCW 48.43.005.

(9) "Minimum essential coverage" means:

(a) Minimum essential coverage as defined in section 5000A(f) of the internal revenue code, as it existed on December 15, 2017; or

(b) Other health benefit coverage, as the commissioner recognizes for purposes of this section.

NEW SECTION. **Sec.**  REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL COVERAGE. An individual who is an applicable resident shall for each month beginning January 2020, ensure that the individual, and any applicable resident who is a dependent of the individual, is covered under minimum essential coverage for the month, unless the resident is eligible for an exemption for the month.

NEW SECTION. **Sec.**  SHARED RESPONSIBILITY PENALTY. (1)(a) If an individual who is an applicable resident, or an applicable resident for whom the individual is liable under subsection (3) of this section, is not eligible for an exemption as provided in subsection (5) of this section and fails to meet the requirement of section 3 of this act for one or more months, there is imposed on the individual a shared responsibility penalty with respect to such failures in the amount determined under subsection (4) of this section. This penalty applies only with respect to months beginning January 2021.

(b)(i) Individuals who owe a shared responsibility payment under this section must pay the department or contest the assessment within sixty days of the date of the assessment.

(ii) Individuals who contest an assessment and for whom the department determines still owes an assessment, have thirty days from the department's determination to pay the department.

(c)(i) An individual who receives an assessment from the department may contest the assessment by, within sixty days of the date of the assessment:

(A) Notifying the department that the assessment is contested; and

(B) Providing information, in a manner designated by the department in collaboration with the exchange, indicating enrollment in minimum essential coverage or eligibility for an exemption.

(ii) The department must make a determination with respect to the contested assessment within sixty days.

(d) Individuals who fail to pay an assessment when due are required to pay the department interest at the rate computed under RCW 82.32.050(2).

(e) All shared responsibility penalties and any interest collected under this section shall be deposited in the shared responsibility trust account created in section 10 of this act.

(2) The penalty imposed by this section is owed only upon assessment by the department following the completion of the outreach procedures described in section 5 of this act.

(3) If an applicable resident with respect to whom a penalty is imposed by this section for any month:

(a) Is a dependent of another applicable resident for the year including such month, the other applicable resident is liable for the penalty; or

(b) Files a joint federal income tax return for the taxable year including such month, the applicable resident and the spouse of the applicable resident is jointly liable for the penalty.

(4) Except as provided in (a), (b), and (c) of this subsection, an applicable resident's shared responsibility penalty for the taxable year is calculated under rules for determining a federal shared responsibility payment for the taxable year under section 5000A of the internal revenue code as it existed on December 15, 2017.

(a) For individuals who are eligible for an exemption under subsection (5) of this section, the amount of the penalty imposed by this section is determined using an applicable dollar of zero.

(b) The amount of the penalty imposed by this section cannot exceed, if applicable, the Washington state average premium for bronze level health plans, rather than the national average premium for bronze level plans described in section 5000A(c)(1)(B) of the internal revenue code as it existed on December 15, 2017.

(c) If an individual is subject to both the penalty imposed by this section and the federal shared responsibility payment under section 5000A of the internal revenue code as it existed on December 15, 2017, for a taxable year, the amount of the penalty imposed by this section is reduced, but not below zero, by the amount of the individual's federal shared responsibility payment.

(5)(a) An applicable resident is exempt from the shared responsibility penalty under subsection (1) of this section for a month if the applicable resident:

(i) Is not an applicable individual as defined in section 5000A(d) of the internal revenue code, as it existed on December 15, 2017;

(ii) Is eligible for an exemption under section 5000A(e) of the internal revenue code, as it existed on December 15, 2017;

(iii) Is a resident of another state for the month;

(iv) Is under the age of eighteen or over the age of sixty-four at any point during the month; or

(v) Is eligible for a hardship exemption as designated by the exchange.

(b) For purposes of determining eligibility for the exemption for individuals who cannot afford coverage as provided in section 5000A(e)(1) of the internal revenue code as it existed on December 15, 2017, the required contribution for an individual eligible for minimum essential coverage under both an eligible employer-sponsored plan and a plan in the individual market is the lesser of the amounts described in section 5000A(e)(1)(B)(i) and (ii) of the internal revenue code as it existed on December 15, 2017.

NEW SECTION. **Sec.**  ADMINISTRATION AND OUTREACH. (1) The department shall assess the penalty imposed by section 4 of this act on an individual who, after the completion of the outreach process under subsection (3) of this section for the taxable year does not have minimum essential coverage or qualify for an exemption. The assessment must be canceled if the individual successfully contests it under subsection (4) of this section.

(2) Information about residents for whom the state has no available record of them being enrolled in minimum essential coverage will be compiled by the commissioner and made available to the exchange and department.

(3)(a) The exchange must contact individuals who, based on reliable data sources, were applicable residents for the taxable year and for whom the state has no record of them being enrolled in minimum essential coverage or being eligible for an exemption for the taxable year to notify them that:

(i) It appears that the individual is a Washington state resident, and the state has no record of the individual having minimum essential coverage or qualifying for an exemption for one or more months of the taxable year;

(ii) If the individual had minimum essential coverage or qualified for an exemption for one or more months of the taxable year, the individual should respond providing such information;

(iii) If the individual does not respond or, after responding, is found to have not had minimum essential coverage or qualified for an exemption for every month of the taxable year, the individual may be assessed a shared responsibility penalty by the department;

(iv) If the individual believes that for one or more months of the taxable year, he or she did not have minimum essential coverage and did not qualify for an exemption, then the individual may indicate that, and may contact the department to pay the penalty; and

(v) The individual should contact the exchange regarding options for enrolling in minimum essential coverage.

(b) The exchange must send the notifications required by this section to each individual who has, or has a dependent who has, no record of being enrolled in minimum essential coverage for the taxable year, by November 30th of each year. The notification may contain information on the services available through the exchange, options for enrolling in minimum essential coverage, and how to apply for an exemption.

(4)(a) An individual contacted under subsection (3) of this section may respond to the exchange indicating and providing evidence if applicable that he or she had minimum essential coverage or qualified for an exemption for one or more months of the taxable year. Individuals who do not respond within sixty days must be treated as not having responded.

(b) In consideration of responses received, the exchange must determine whether that individuals on the outreach list under subsection (2) of this section had minimum essential coverage or qualified for an exemption for any months of the taxable year. Determinations must be made following criteria similar to those provided under section 1331(d)(4)(H) of the patient protection and affordable care act of 2010, as it existed on December 15, 2017.

(5) Annually, the exchange must make a list of applicable residents for the taxable year for whom the exchange has no record of them being enrolled in minimum essential coverage or being eligible for an exemption available to the commissioner and the department.

(6) Any information obtained by the commissioner, the department, or the exchange, or shared between the commissioner, the department, and the exchange under this section is confidential and privileged, is not subject to public disclosure under chapter 42.56 RCW, and may only be disclosed to other state agencies and the exchange as explicitly authorized in this act.

(7) For purposes of this section, "reliable data sources" may include:

(a) Records maintained by the department of licensing related to state residents receiving drivers' licenses and identification cards;

(b) The jury source list prepared by consolidated technology services under RCW 2.36.054(3);

(c) Medicaid and children's health insurance program enrollment records maintained by the health care authority under chapter 74.09 RCW;

(d) Individual marketplace enrollment records maintained by the exchange;

(e) Records maintained by the department of corrections related to individuals who are incarcerated for any month of the year; and

(f) Information provided by other federal, state, or local agencies.

NEW SECTION. **Sec.**  DATA SHARING. (1) For purposes of enforcing this section, the following agencies must provide the following information to the commissioner:

(a) The department of licensing must provide records of state residents receiving drivers' licenses and identification cards, including identification by a minimum of last name, first name, middle initial where available, date of birth, address, and social security number; and

(b) The consolidated technology services agency shall provide the jury source list merged by the agency under RCW 2.36.054(3).

(2) Any information obtained by the commissioner under this section is confidential and privileged, is not subject to public disclosure under chapter 42.56 RCW, and may only be disclosed to other federal and state agencies and the exchange as explicitly authorized in this act or under federal or state law. The commissioner must consult with applicable entities and the exchange to establish criteria and procedures for data storage and transmittal that are secure and compliant with federal and state privacy and security laws and rules.

NEW SECTION. **Sec.**  FINDINGS. For purposes of section 8 of this act, the legislature makes the following findings:

(1) The reporting requirement provided for in section 8 of this act is necessary for the successful implementation of the shared responsibility penalty imposed on residents for not maintaining minimum essential coverage or qualifying for an exemption. In particular, this requirement provides the only widespread source of third-party reporting to help taxpayers and the commissioner verify whether an applicable individual maintains minimum essential coverage. There is compelling evidence that third-party reporting is crucial for ensuring compliance with tax provisions.

(2) The penalty imposed under section 4 of this act, and therefore the reporting requirement in section 8 of this act, is necessary to protect the compelling state interest of protecting the health and welfare of its residents. The congressional budget office estimates that, in the absence of an individual mandate, health insurance premiums would increase by ten percent, and about nine million people nationwide would lose coverage. There is substantial evidence that not maintaining insurance causes health problems and unnecessary deaths.

(3) The penalty imposed under section 4 of this act, and therefore the reporting requirement in section 8 of this act, is necessary to protect the compelling state interest of fostering economic stability and growth in the state.

(4) The penalty imposed under section 4 of this act, and therefore the reporting requirement in section 8 of this act, is necessary to protect the compelling state interest of ensuring a stable and well-functioning health insurance market. There is compelling evidence that, without an effective penalty in place for those who go without coverage, there would be substantial instability in health insurance markets, including higher prices and the possibility of areas without any insurance available. Ensuring the health of insurance markets is a responsibility reserved for states under the McCarran-Ferguson act and other federal law.

(5) The reporting requirement in section 8 of this act has been narrowly tailored to support compliance with the penalty imposed under section 4 of this act, while imposing only an incidental burden on reporting entities. In particular, the information that must be reported is limited to the information that must already be reported under a similar federal reporting requirement under section 6055 of the internal revenue code as it existed on December 15, 2017. In addition, this section provides that its reporting requirement may be satisfied by providing the same information that is currently reported under the federal requirement.

NEW SECTION. **Sec.**  INSURANCE REPORTING REQUIREMENT. (1) For purposes of administering the penalty on individuals who fail to maintain minimum essential coverage under section 3 of this act, every applicable entity that provides minimum essential coverage to an applicable resident during a calendar year must, as required by the commissioner, make a return described in subsection (2) of this section.

(2)(a) Except as provided in (b) of this subsection, a return must:

(i) Contain:

(A) The name, address, and taxpayer identification number of the primary applicable resident enrollee and the name and taxpayer identification number of each other applicable resident enrollee under the policy;

(B) The dates during which the applicable resident was covered under minimum essential coverage during the calendar year;

(C) Other information as the commissioner may require; and

(ii) Be in a form prescribed by the commissioner.

(b) A return complies with this section if it includes the information contained in a return described in section 6055 of the internal revenue code, as it existed on December 15, 2017.

(3)(a) Except as provided in (c) of this subsection, every applicable entity required to make a return under subsection (1) of this section must furnish to each applicable resident whose name is required to be set forth in such return a written statement showing:

(i) The name and address of the person or applicable entity required to make the return and the phone number of the information contact for the person or applicable entity; and

(ii) The information required to be shown on the return with respect to the applicable resident.

(b) The written statement required under (a) of this subsection must be furnished before January 31st of the year following the calendar year for which the return under subsection (1) of this section was required to be made.

(c) The requirements of this subsection (3) may be satisfied by a written statement provided to an individual under section 6055 of the internal revenue code, as it existed on December 15, 2017.

(4)(a) In the case of coverage provided by an applicable entity that is any governmental unit or any agency or instrumentality thereof, the officer or employee who enters into the agreement to provide coverage or such person's designee is responsible for the returns and statements required by this section.

(b) An applicable entity may contract with third-party service providers, including carriers, to provide the returns and statements required by this section.

(5) Any information obtained by the commissioner, or shared between the commissioner, the department, and the exchange, under this section is confidential and privileged, and is not subject to public disclosure under chapter 42.56 RCW.

NEW SECTION. **Sec.**  DATA SECURITY. (1) Any information obtained by or disclosed to the commissioner under sections 5, 6, and 8 of this act is confidential and privileged, is not subject to public disclosure under chapter 42.56 RCW, and is not subject to subpoena directed to the commissioner or any person who received documents, materials, or other information while acting under the authority of or on behalf of the commissioner. The confidentiality and privilege created by this section and RCW 42.56.400 applies to the commissioner, any person acting under the authority of the commissioner, and any person who is authorized to receive this information from the commissioner.

(2) The commissioner may enter into agreements governing the sharing and use of information identified in subsection (1) of this section, with other state agencies and the exchange, if the recipient agrees to and has the authority to maintain the confidentiality and privileged status of the document, material, or other information.

(3) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information may occur as a result of sharing information as authorized in subsection (2) of this section.

(4) Nothing prevents the commissioner from using or sharing deidentified or aggregated data obtained under sections 6 and 8 of this act for another lawful purpose.

(5) Notwithstanding any other provisions of this chapter, nothing prevents the exchange from complying with reporting requirements required under state or federal law, or using data obtained under this chapter to improve the customer experience in Washington healthplanfinder.

NEW SECTION. **Sec.**  ACCOUNT. The shared responsibility trust account is created in the state treasury. All receipts from the shared responsibility penalty and any interest collected under section 4 of this act must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for:

(1) Administration of the shared responsibility penalty;

(2) Engaging in outreach to uninsured residents to increase health insurance coverage;

(3) Providing information to residents on options for health insurance coverage; and

(4) Engaging in activities that increase the availability of health insurance options or increase the affordability of insurance premiums in the individual health insurance market for residents seeking coverage through the exchange.

NEW SECTION. **Sec.**  CONTINGENCY. For any taxable year in which federal advance premium tax credits or equivalent state-based premium assistance becomes unavailable, as determined by the commissioner in consultation with the exchange, the state shared responsibility penalty under this act shall not be enforced.

NEW SECTION. **Sec.**  DEPARTMENT OF REVENUE RULES. The department may adopt rules to implement sections 4 through 6 of this act.

NEW SECTION. **Sec.**  INSURANCE COMMISSIONER RULES. The commissioner may adopt rules to implement sections 2 and 4 through 10 of this act.

NEW SECTION. **Sec.**  Sections 1 through 13 of this act constitute a new chapter in Title 48 RCW.

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