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**HOUSE BILL 1931**

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

**By** Representatives Cody, Riccelli, Reykdal, Robinson, Walkinshaw, Moscoso, Ormsby, Fey, Gregory, Ryu, Ortiz-Self, Peterson, Tharinger, Dunshee, Bergquist, Jinkins, Moeller, Tarleton, Appleton, Gregerson, S. Hunt, Pollet, and McBride

AN ACT Relating to employer obligations to provide health care for employees; adding a new chapter to Title 70 RCW; prescribing penalties; and providing an effective date.

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 many have recently gained coverage through the Washington health benefit exchange.

(c) The federal 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 federal 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.

(d) 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 federal 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 federal patient protection and affordable care act.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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 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 federal patient protection and affordable care act by extending an employer responsibility penalty to employers with employees covered by medical assistance.

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

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

(2) "Covered employer" means an "applicable large employer" as defined in 26 U.S.C. Sec. 4980H and any federal regulations or guidance issued pursuant to that section.

(3) "Director" means the director of the authority.

(4) "Employee" has the same meaning as in RCW 49.46.010.

NEW SECTION. **Sec.**  No covered employer may:

(1) Reduce the scheduled hours of one or more employees or structure overall staffing patterns in an attempt to avoid federal penalties applicable to the covered employer's obligation to provide health care coverage for its employees under 26 U.S.C. Sec. 4980H and any federal regulations or guidance issued pursuant to that section;

(2) Engage in a pattern of staffing in a manner that results in an annual increase of five percent or more in the number of employees of a covered employer who are enrolled in medical assistance as determined by the report compiled pursuant to RCW 74.09.053; or

(3) Engage in a pattern of staffing in which more than twenty‑five percent of the covered employer's employees are enrolled in medical assistance as determined by the report compiled pursuant to RCW 74.09.053.

NEW SECTION. **Sec.**  A covered employer determined to have violated section 3 of this act shall be assessed a civil penalty of up to three times the amount of the cost of the least expensive silver level plan offered in the health benefit exchange multiplied by the number of employees who would have had coverage had the employer complied with 26 U.S.C. Sec. 4980H and any federal regulations or guidance issued pursuant to that section and the length of time that the coverage would have lasted. In addition, the authority may require the covered employer to submit a corrective action plan to restore the affected employees' employment status to allow them to enroll in minimum essential coverage under the covered employer's health plan.

NEW SECTION. **Sec.**  The authority shall:

(1) Investigate complaints from employees of a covered employer that allege a violation of section 3(1) of this act;

(2) On its own accord, identify patterns in staffing that may indicate a violation of section 3(2) of this act and conduct investigations of those covered employers;

(3) Issue initial orders, including findings, penalties, and corrective action plans, against covered employers who are determined upon investigation to have violated section 3 of this act. The authority may attempt to reach an agreement for the elimination of the violating practices through an informal disposition which may include a reduced penalty and a more robust corrective action plan;

(4) Develop an appeals process for covered employers that have been issued an initial order for having violated section 3 of this act and for appealing a final order issued following the director's consideration of an appeal;

(5) Develop a process for issuing final orders in cases that have exhausted the appeals process or have not been contested in a timely manner;

(6) Develop reasonable investigation procedures that allow for the covered employer to submit requested records in a time and manner that minimizes the burden to the covered employer's operations; and

(7) Adopt procedures for collecting civil penalties assessed upon covered employers pursuant to a final order issued under this chapter.

NEW SECTION. **Sec.**  The authority may not investigate any alleged violation under section 3 of this act that occurred more than three years before the date that the employee filed a complaint under section 3(1) of this act or the noncompliant pattern of staffing was first detected by the authority under section 3(2) of this act.

NEW SECTION. **Sec.**  (1) Covered employers must comply with the authority's investigation procedures and requests for information in any investigation related to section 3 of this act.

(2) A covered employer that has been issued an initial order for having violated section 3 of this act may appeal that order directly to the director within thirty days of the issuance of the initial order. An initial order that has not been appealed within thirty days shall become a final order that is binding and not subject to further appeal.

(3) A covered employer that has been issued a final order following a timely appeal to the director may appeal the final order within thirty days of the issuance of the final order. Upon receipt of the final order, the appeal shall be assigned to an administrative law judge to conduct the hearing in accordance with chapter 34.05 RCW.

NEW SECTION. **Sec.**  The authority shall deposit all civil penalties paid under this chapter into the general fund for use in funding medical assistance programs.

NEW SECTION. **Sec.**  Sections 1 through 8 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  This act takes effect January 1, 2016.

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