

---

HOUSE BILL 1931

---

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

Read first time 02/03/15. Referred to Committee on Health Care & Wellness.

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

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

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

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

9 (b) Most working Washingtonians obtain their health insurance  
10 coverage through their employment, but some working Washingtonians  
11 are covered by medical assistance and many have recently gained  
12 coverage through the Washington health benefit exchange.

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

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

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

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

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

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

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

34 (2) It is therefore the intent of the legislature to encourage  
35 the provision of affordable employer-based coverage to low-wage  
36 employees who would otherwise be covered by medical assistance and  
37 discourage employers from reducing hours, wages, or both to avoid the  
38 employer responsibility penalty of the federal patient protection and  
39 affordable care act by extending an employer responsibility penalty  
40 to employers with employees covered by medical assistance.

1        NEW SECTION.    **Sec. 2.**    The definitions in this section apply  
2 throughout this chapter unless the context clearly requires  
3 otherwise.

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

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

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

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

10       NEW SECTION.    **Sec. 3.**    No covered employer may:

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

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

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

24       NEW SECTION.    **Sec. 4.**    A covered employer determined to have  
25 violated section 3 of this act shall be assessed a civil penalty of  
26 up to three times the amount of the cost of the least expensive  
27 silver level plan offered in the health benefit exchange multiplied  
28 by the number of employees who would have had coverage had the  
29 employer complied with 26 U.S.C. Sec. 4980H and any federal  
30 regulations or guidance issued pursuant to that section and the  
31 length of time that the coverage would have lasted. In addition, the  
32 authority may require the covered employer to submit a corrective  
33 action plan to restore the affected employees' employment status to  
34 allow them to enroll in minimum essential coverage under the covered  
35 employer's health plan.

36       NEW SECTION.    **Sec. 5.**    The authority shall:

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

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

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

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

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

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

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

25 NEW SECTION. **Sec. 6.** The authority may not investigate any  
26 alleged violation under section 3 of this act that occurred more than  
27 three years before the date that the employee filed a complaint under  
28 section 3(1) of this act or the noncompliant pattern of staffing was  
29 first detected by the authority under section 3(2) of this act.

30 NEW SECTION. **Sec. 7.** (1) Covered employers must comply with the  
31 authority's investigation procedures and requests for information in  
32 any investigation related to section 3 of this act.

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

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

7 NEW SECTION. **Sec. 8.** The authority shall deposit all civil  
8 penalties paid under this chapter into the general fund for use in  
9 funding medical assistance programs.

10 NEW SECTION. **Sec. 9.** Sections 1 through 8 of this act  
11 constitute a new chapter in Title 70 RCW.

12 NEW SECTION. **Sec. 10.** This act takes effect January 1, 2016.

--- END ---