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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

Read first time 02/09/15. Referred to Committee on Commerce & Labor.

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

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

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

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

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

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

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

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

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

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

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

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

38 (j) Taxpayers, through state and local governments, fund county  
39 hospitals and clinics, community clinics, and other safety net  
40 providers that provide care to those working people whose employers

1 fail to provide affordable health care coverage to their employees as  
2 well as to other uninsured persons.

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

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

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

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

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

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

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

33 NEW SECTION. **Sec. 2.** This subchapter may be known and cited as  
34 the employer responsibility for medical assistance costs of employees  
35 act of 2015.

36 NEW SECTION. **Sec. 3.** The definitions in this section apply  
37 throughout this subchapter unless the context clearly requires  
38 otherwise.

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

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

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

9 (a) Is an employee of a covered employer;

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

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

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

17 (4) "Covered employer" means an employing unit, as defined in RCW  
18 50.04.090, that has in its employment, as defined in RCW 50.04.100,  
19 five hundred or more individuals in this state. "Covered employer"  
20 includes employers who are nonprofit entities for purposes of federal  
21 corporate income taxes, for purposes of state or local property  
22 taxes, or for any other tax purpose. "Covered employer" also includes  
23 all of the members of a controlled group of corporations, as defined  
24 in 26 U.S.C. Sec. 1563. "Covered employer" does not include the  
25 state, state agencies, or any unit of local government including, but  
26 not limited to, a county, city, town, municipal corporation, quasi-  
27 municipal corporation, or other political subdivision.

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

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 4.**    (1) Beginning January 1, 2017, a covered  
2 employer shall pay an employer responsibility penalty for all covered  
3 employees.

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

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

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

15        NEW SECTION.    **Sec. 5.**    (1) The department shall administer this  
16 subchapter in coordination with the authority, the office of the  
17 insurance commissioner, and the department of employment security.

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

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

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

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

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

37        (4) A covered employer shall pay to the department any penalties  
38 imposed pursuant to this subchapter. The department shall deposit all  
39 moneys collected pursuant to this subchapter in the employer

1 responsibility for medical assistance trust fund created in section 8  
2 of this act. The penalty must be collected:

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

6 (b) In the same manner as any payment required under RCW  
7 51.16.060 for covered employers who are not self-insurers under the  
8 industrial insurance program. The department shall collect the  
9 penalty annually based upon one of the quarterly payment cycles  
10 identified in RCW 51.16.060.

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

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

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

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

31 NEW SECTION. **Sec. 6.** A covered employer shall provide  
32 information to all newly hired and existing employees regarding the  
33 availability of medical assistance for low-income employees,  
34 including the availability of advanced premium tax credits as well as  
35 medical assistance for persons whose income is less than the modified  
36 adjusted gross income threshold established for the medicaid program  
37 pursuant to the federal patient protection and affordable care act.  
38 The department, in consultation with the authority, shall develop a  
39 simple, uniform notice containing that information.

1        NEW SECTION.    **Sec. 7.**    (1) A covered employer may not designate  
2 an employee as an independent contractor or temporary employee,  
3 reduce an employee's hours of work, or terminate an employee to avoid  
4 the employer's obligations under this subchapter.

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

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

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

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

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

38        (c) If the department determines that a covered employer violated  
39 this section, it may order the covered employer to reinstate the  
40 employee and pay the employee all wages owed. In addition, the

1 department may order the covered employer to pay a civil penalty of  
2 twice the amount of the employer responsibility penalty imposed under  
3 sections 4 and 5 of this act. The department shall deposit civil  
4 penalties paid under this section in the employer responsibility for  
5 medical assistance trust fund created pursuant to section 8 of this  
6 act.

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

9 NEW SECTION. **Sec. 8.** A new section is added to chapter 74.09  
10 RCW to read as follows:

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

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

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

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

27 (4) Implementation and administration of this subchapter.

28 **Sec. 9.** RCW 26.23.040 and 2012 c 109 s 1 are each amended to  
29 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16       NEW SECTION.   **Sec. 10.** A new section is added to chapter 42.56  
17 RCW to read as follows:

18       Any documents and records that result from matching records with  
19 or sharing information among the Washington state health care  
20 authority, the employment security department, or the department of  
21 social and health services pursuant to section 5 of this act or RCW  
22 26.23.040 are exempt from disclosure under this chapter.

23       NEW SECTION.   **Sec. 11.** A new section is added to chapter 74.09  
24 RCW to read as follows:

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

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

33       (3) The authority and the employment security department shall  
34 provide information about covered employees to the department of  
35 labor and industries as necessary to permit the department to collect  
36 the employer responsibility penalty. Any documents and records that  
37 result from matching records with or providing information to the

1 authority or the department are exempt from disclosure under chapter  
2 42.56 RCW.

3 NEW SECTION. **Sec. 12.** Sections 2 through 7 of this act are each  
4 added to chapter 43.22 RCW to be codified under the subchapter  
5 heading "employer responsibility for medical assistance costs of  
6 employees."

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