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**SUBSTITUTE SENATE BILL 5835**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Keiser, Baumgartner, Fain, Conway, Cleveland, Rivers, Kuderer, Braun, Rossi, Hasegawa, Hunt, and Saldaña)

AN ACT Relating to promoting healthy outcomes for pregnant women and infants; amending RCW 74.09.480; adding a new section to chapter 74.09 RCW; adding a new section to chapter 43.10 RCW; adding a new section to chapter 43.70 RCW; creating a new section; and providing an expiration date.

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

NEW SECTION. **Sec.**  (1) The legislature finds that the state has an interest in assuring that children are given the opportunity to have a healthy start in life. Because approximately half of all births in Washington state are funded by state resources, and over eight hundred thousand children in Washington state are enrolled in the apple health program, the state is in a unique position to make a difference in the health of children in Washington.

(2) The legislature also finds that there may be gaps in programs that could greatly benefit children. Where programs may benefit children in their early stages of development, the state must assure they receive these benefits. Where children are not receiving services because the public is unaware of the services, opportunities for outreach must be explored.

(3) The legislature additionally finds that several hospitals have begun adopting the best practices of the baby-friendly hospital initiative. The state can use its resources to encourage hospitals to adopt some of the most critical components by incorporating the standards into medicaid contracts.

(4) The legislature further finds that providing children with a healthy start also requires promoting healthy pregnancies. In one national survey, pregnant workers said they needed more frequent breaks while pregnant. Prenatal care is also critical for positive birth outcomes, and pregnant women have cited the need for flexibility in their work schedule for the purposes of attending doctor visits. Reasonable accommodations for pregnant women in the workplace can go a long way to promoting healthy pregnancies without producing an undue hardship on employers.

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

(1) Effective January 1, 2018, the authority shall require that all health care facilities that provide newborn delivery services to medical assistance clients establish policies and procedures to provide:

(a) Skin-to-skin placement of the newborn on the mother's chest immediately following birth to promote the initiation of breastfeeding, except as otherwise indicated by authority guidelines; and

(b) Room-in practices in which a newborn and a mother share the same room for the duration of their postdelivery stay at the facility, except as otherwise indicated by authority guidelines.

(2) The authority shall provide guidelines for hospitals to use when establishing policies and procedures for services under subsection (1) of this section, including circumstances in which providing the services is not appropriate.

(3) The authority shall require managed care organizations to report on the frequency with which each facility they contract with is able to adhere to the policies and procedures and the most common reasons for nonadherence. The authority shall include a summary of this information in the biennial report required under RCW 74.09.480(3).

NEW SECTION. **Sec.**  A new section is added to chapter 43.10 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Employer" has the same meaning as and shall be interpreted consistent with how that term is defined in RCW 49.60.040, except that for the purposes of this section only the threshold of employees must be fifteen or more.

(b) "Pregnancy" includes the employee's pregnancy and pregnancy-related health conditions.

(c) "Reasonable accommodation" means:

(i) Providing more frequent, longer, or flexible restroom breaks;

(ii) Modifying a no food or drink policy;

(iii) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, or acquiring or modifying equipment, devices, or an employee's work station;

(iv) Providing seating or allowing the employee to sit more frequently if her job requires her to stand;

(v) Providing for a temporary transfer to a less strenuous or less hazardous position;

(vi) Providing assistance with manual labor and limits on lifting;

(vii) Scheduling flexibility for prenatal visits; and

(viii) Any further pregnancy accommodation an employee may request, and to which an employer must give reasonable consideration in consultation with information provided on pregnancy accommodation by the department of labor and industries or the attending health care provider of the employee.

(d) "Undue hardship" means an action requiring significant difficulty or expense. An employer may not claim undue hardship for the accommodations under (c)(i), (ii), and (iv) of this subsection, or for limits on lifting over seventeen pounds.

(2) It is an unfair practice for any employer to:

(a) Fail or refuse to make reasonable accommodation for an employee for pregnancy, unless the employer can demonstrate that doing so would impose an undue hardship on the employer's program, enterprise, or business;

(b) Take adverse action against an employee who requests, declines, or uses an accommodation under this section that affects the terms, conditions, or privileges of employment;

(c) Deny employment opportunities to an otherwise qualified employee if such denial is based on the employer's need to make reasonable accommodation required by this section;

(d) Require an employee to take leave if another reasonable accommodation can be provided for the employee's pregnancy.

(3) An employer may request that the employee provide written certification from her treating health care professional regarding the need for reasonable accommodation, except for accommodations listed in subsection (1)(d) of this section.

(4)(a) This section does not require an employer to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation.

(b) This section does not require an employer to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job, unless the employer does so or would do so to accommodate other classes of employees who need accommodation.

(5) The department of labor and industries must provide online education materials explaining the respective rights and responsibilities of employers and employees who have a health condition related to pregnancy or childbirth. The online education materials must be prominently displayed on the department's web site.

(6) The attorney general shall investigate complaints and enforce this section, including by conference and conciliation. In addition to the complaint process with the attorney general, any person believed to be injured by a violation of this section has a civil cause of action in court to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit and reasonable attorneys' fees or any other appropriate remedy authorized by state or federal law.

(7) This section does not preempt, limit, diminish, or otherwise affect any other provision of law relating to sex discrimination or pregnancy, or in any way diminish or limit legal protections or coverage for pregnancy, childbirth, or a pregnancy-related health condition.

**Sec.**  RCW 74.09.480 and 2011 1st sp.s. c 15 s 22 are each amended to read as follows:

(1) The authority, in collaboration with the department of health, department of social and health services, health carriers, local public health jurisdictions, children's health care providers including pediatricians, family practitioners, advanced registered nurse practitioners, certified nurse midwives, and pediatric subspecialists, community and migrant health centers, parents, and other purchasers, shall establish a concise set of explicit performance measures that can indicate whether children enrolled in the program are receiving health care through an established and effective medical home, and whether the overall health of enrolled children is improving. Such indicators may include, but are not limited to:

(a) Childhood immunization rates;

(b) Well child care utilization rates, including the use of behavioral and oral health screening, and validated, structured developmental screens using tools, that are consistent with nationally accepted pediatric guidelines and recommended administration schedule, once funding is specifically appropriated for this purpose;

(c) Care management for children with chronic illnesses;

(d) Emergency room utilization;

(e) Visual acuity and eye health;

(f) Preventive oral health service utilization; and

(g) Children's mental health status. In defining these measures the authority shall be guided by the measures provided in RCW 71.36.025.

Performance measures and targets for each performance measure must be established and monitored each biennium, with a goal of achieving measurable, improved health outcomes for the children of Washington state each biennium.

(2) Beginning in calendar year 2009, targeted provider rate increases shall be linked to quality improvement measures established under this section. The authority, in conjunction with those groups identified in subsection (1) of this section, shall develop parameters for determining criteria for increased payment, alternative payment methodologies, or other incentives for those practices and health plans that incorporate evidence-based practice and improve and achieve sustained improvement with respect to the measures.

(3) The department shall provide a report to the governor and the legislature related to provider performance on these measures, as well as the information collected under section 2 of this act, beginning in September 2010 for 2007 through 2009 and the authority shall provide the report biennially thereafter.

NEW SECTION. **Sec.**  A new section is added to chapter 43.70 RCW to read as follows:

(1) The healthy pregnancy advisory committee is established to develop a strategy for improving maternal and infant health outcomes. The advisory committee shall conduct its activities in consultation with the maternal mortality review panel established in RCW 70.54.450 and an initiative related to improving maternal and infant outcomes that is established by the largest association representing hospitals in Washington. Administration of the advisory committee by the department must be done within existing resources.

(2) The secretary shall appoint up to twenty members to the advisory committee including experts in maternal and child health, pediatric primary care providers, public health experts, hospitals that provide birthing services, health care providers involved in the care of pregnant women and infants, and representatives of low-income women, women of color, and immigrant communities. In addition, the secretary shall designate a representative from the department of health and invite participation from the health care authority, the department of social and health services, and the department of early learning. The secretary's designee shall serve as the chair of the advisory committee and shall convene the work group.

(3) The advisory committee shall meet quarterly and develop a strategy to promote maternal and child health outcomes. The strategy shall consider best practices that agencies may integrate into their programs to improve birth outcomes, reduce maternal mortality and morbidity, and reduce infant mortality. The strategy shall include elements to promote breastfeeding, incentivize the adoption of the baby-friendly designation by hospitals, and reduce barriers to accessing prenatal care. The advisory committee shall consider where there may be gaps in the availability of services that may benefit pregnant women and infants, such as coverage for lactation consulting, the availability of smoking cessation programs for persons who are codomiciled with the pregnant woman or infant, access to fresh fruits and vegetables, and improved access to dental care for pregnant women.

(4) The advisory committee shall submit the strategy to the legislature and the governor's council for the healthiest next generation by October 15, 2018.

(5) This section expires July 1, 2019.

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