HOUSE BILL REPORT
HB 2517

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to establishing minimum labor standards for certain large employers as related to health care services expenditures.

Brief Description: Establishing minimum labor standards for certain large employers as related to health care services expenditures.

Sponsors: Representatives Cody, Conway, Chase, Morrell, Appleton, Green, Wood, Hasegawa, Hudgins, Ormsby, Miloscia, Dickerson, Kenney, Moeller, McDermott, Sells, Hunt, Williams, Simpson, Roberts, Schual-Berke, Lantz, McIntire and Kagi.

Brief History:
Committee Activity:
Commerce & Labor: 1/19/06, 1/26/06 [DPS].

Brief Summary of Substitute Bill

- Establishes minimum standards for health care service expenditures for employers of 5,000 or more employees.
- Requires the director of the Department of Labor and Industries to administer and enforce these requirements.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

Minority Report: Do not pass. Signed by 4 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Crouse and Holmquist.

Staff: Jill Reinmuth (786-7134).

Background:

Neither federal law nor state law set minimum standards relating to employment-based health benefits. Consequently, employers are free to choose whether to offer health benefits to their employees, and employees of some employers do not have access to employment-based health benefits.

Two recent surveys, the National Compensation Survey of Employee Benefits in Private Industry by the federal Bureau of Labor Statistics (the "national survey") and the Washington State Employee Benefits Survey by the state Employment Security Department (the "Washington survey"), reported on the incidence of access to and participation in medical care plans and other employment-based benefits. They also described how the incidence of medical care varies by establishment size.

The national survey for 2005 found that 63 percent of private establishments offered health insurance to their workers. Seventy percent of workers in private industry had access to medical care plans, and 53 percent participated in such plans. Nine out of ten larger establishments offered healthcare benefits to their workers, compared with six out of ten smaller establishments. Workers in medium-sized and large private establishments (those with 100 employees or more) enjoyed higher rates of access to health benefits than did their counterparts in small establishments.

The Washington survey for 2004 also found that 63 percent of employers provided health care benefits to full-time workers. Large companies with 100 or more workers were more likely to offer benefits. More than 95 percent of large firms offered health insurance to full-time workers, whereas 55 percent of very small firms with two to nine workers offered coverage to full-time workers.

Summary of Substitute Bill:

Employers of 5,000 or more employees are subject to reporting requirements and minimum health care service expenditure standards. The director of the Department of Labor and Industries (Department) is required to administer and enforce these requirements and standards.

<u>Legislative Intent</u>

The Legislature intends to set minimum labor standards for some large employers with respect to health benefit expenditures. It also intends to further the state's interest in ensuring that its residents have access to health care.

The Legislature does not intend to influence the establishment, content, or administration of employee benefit plans. The Legislature is neutral as to whether employers choose to meet the minimum expenditure standard by providing health care services for their employees or paying the state the difference between the minimum expenditure and their actual expenditures.

<u>Reporting Requirement</u>

Employers that employ 5,000 or more employees must report annually to the director of the Department the employer's health care services expenditures and the employer's payroll in the preceding calendar year. Employers may exclude from their payroll the following: wages paid to employees where wages are greater than 150 percent of the average annual wage, and wages paid to employees who are enrolled in or eligible for Medicare.

Chief executive officers or individuals performing similar functions must sign the reports. They also must sign affidavits affirming that they reviewed the information in the report, that the information is true to the best of their knowledge, information, and belief, and that the information does not contain untrue statements of material fact or omit material facts necessary to make the reports not misleading.

Expenditure Standards

Employers that employ 5,000 or more employees must either spend a specified percentage of their payroll on health care services expenditures or pay the director of the Department an amount equal to the difference between the minimum expenditures and their actual expenditures. For employers other than nonprofit organizations and governmental entities, the percentage is 9 percent. For nonprofit organizations and governmental entities, the percentage is 7 percent. Payments are deposited in the Health Services Account.

Civil Penalties and Hearings

Employers that fail to comply with the reporting requirement are assessed a civil penalty of $250 per day up to a maximum civil penalty of $7,500. Employers that fail to report for more than 30 days are presumed to have failed to spend any percentage of their payroll on health care services expenditures, and are subject to penalties for failing to comply with the expenditures standard. Employers that fail to comply with the expenditures standard are assessed the amount due, plus an interest penalty of one percent per month on the amount due and a civil penalty of $250,000. Civil penalties are deposited in the Health Services Account. Employers must be afforded the opportunity for a hearing conducted in accordance with the Administrative Procedures Act. If employers fail to pay assessments that are final, the director must refer the matter to the Attorney General to recover these assessments.

Department of Labor and Industries

The director of the Department must administer and enforce the reporting requirement and minimum expenditure standard. The director also must review reports, inspect records, and conduct investigations and audits that are necessary or appropriate to determine whether an employer is in compliance. Finally, the director must adopt rules necessary to implement the reporting requirement and minimum expenditure standard.

Definitions

An "employer" is an employer as defined in the state Minimum Wage Act who employed 5,000 or more employees in any calendar quarter in the preceding calendar year at any and all locations in Washington. Employees of a franchisor's franchisee are not employees of the franchisor.

An "employee" is any individual employed by an employer.

"Health care services expenditures" are amounts paid by an employer to provide or reimburse the cost of health care services for its employees or their dependents in Washington.

"Average annual wage," "payroll," and "wage" are also defined.

Substitute Bill Compared to Original Bill:

A sentence is added to clarify that employees of a franchisor's franchisee are not employees of the franchisor.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) This bill is a matter of basic fairness. We need to save our health care system from a race to the bottom. The working uninsured live sicker and die sooner. This bill is about dealing with the erosion of employment-based health care and the absence of comprehensive care.

This bill establishes a minimum level of corporate responsibility. Those who do not pay force others to pay more than their fair share. The costs of providing health care for the uninsured are borne by those who buy health care and by taxpayers. Taxpayers and persons with insurance should not have to bear the costs of those who do not pay. It is not unreasonable to set a minimum standard for health care.

Health care coverage is being eroded. This bill attempts to slow the erosion. We should not give a competitive advantage to those who are not responsible. Of large employers, 97 percent provide health care benefits. But as more and more workers are uninsured, their health care costs are shifted to others. An additional $700 million in uninsured costs adds 10 percent to the cost of everyone else's premiums. A more comprehensive solution is inevitable.

This bill is a step forward in fairness and in access to health care. This bill is one step in the right direction. This is not just the Wal-Mart bill. This is not a general tax on business. Instead, it levels the playing field for those who provide health care and those who do not.

Large companies should not receive unintended subsidies. Large companies should prove what they claim, that they are good corporate citizens.

My small CPA firm provides health, dental, and disability insurance for my employees. Last year, it cost me $19,000 to provide this insurance. I do this because of my beliefs, because I have lifetime medical coverage and could not sleep at night if my employees had to go without, and because, if the feds will not, I have to.

My grocery stores provide health benefits for 95 percent of my employees. While some have abandoned the American value of good companies taking care of their workers, others are paying for benefits not only for their own employees, but also for other employees. Profiteering by polluting is forbidden. Failing to provide health care benefits is socio-economic pollution. We should not reward firms for being bad employers. Establishing a floor for health care expenditures serves a critical public purpose. If my business can meet these standards, so can a very large business.

In recent years, we have been focused on a race to the bottom. Different elements of society are affected unequally. We have to do something, but so far, we have not. In the next five years, health care expenses will grow and health care premiums will rise. There will be significant numbers of new uninsured Americans.

One-third of the state budget goes to health care. This bill will decrease state expenses and increase access to health care.

The current system results in persons who are uninsured receiving health care in the most costly settings and in the least efficient manner (e.g., in emergency rooms). The costs of paying customers increased 20 percent to cover the costs of nonpaying customers.

As a family physician, I see the downstream part of this problem. My clinic is full of full-time employees who are left out. Full-time workers are ashamed to be taking charity care. Low-wage workers pay about 17 percent of their income in health care costs. As an emergency room nurse, I also see the consequences. Some of my patients are severely ill. If they had health care coverage, their condition could have been treated with a simple antibiotic. Instead, their condition becomes serious when they defer treatment. They put off basic preventative care. Personal bankruptcies due to medical debt have increased 360 percent.

Good health care means a lot to me. Over the years, I have been able to concentrate on my job, and have been able to keep small problems from turning into large ones. If we have minimum wages, we should be able to have minimum health care services expenditures. If large companies provided health care, we would not have to tell them to step up.

This standard should be adopted because it will help eliminate the cost shift from large employers to the state and also to persons who are insured. It should also be adopted because it is the right thing to do. It is inhumane to allow people to go without health insurance. Nine percent was selected as the minimum standard for health care services expenditures because that is the average percentage of payroll that employers in Washington pay for health care.

(Neutral) Of Medicaid enrollees, 107,000 were employed. Of this number, 61,000 worked less than 21 hours per week, 28,000 worked 21 to 34 hours per week, and 18,000 worked 35 or more hours per week. We cannot speak to the number of employers with 5,000 or more employees, but we are collecting data.

A determination of Basic Health Plan (BHP) participants who are working is made by matching Social Security numbers of BHP participants in Health Care Authority records with

Social Security numbers of employees in Employment Security Department records. Roughly 15 percent cannot be matched because they did not provide and cannot be required to provide Social Security numbers to participate in the plan.

The Basic Health Plan was originally created, in large part, to assist the working poor.

Testimony Against: (Opposed) This bill removes flexibility for Washington employers and makes them less competitive. It will deter the location of new businesses and the expansion of existing businesses in Washington. Employers that exceed the minimum standard will drop what they do to that minimum standard. If a solution is needed, it should be one based on the marketplace.

Wal-Mart has 42 stores, two distribution centers, and 16,000 associates in Washington. It generated approximately $160 million in sales tax. Associates have a myriad of benefits, and Wal-Mart spends a significant amount on these benefits. There are more than 18 different health plans, and an associate can participate in one for as little as $23 per month. Last year, 16 percent more associates joined Wal-Mart health plans. This bill does not address the issue of escalating health care costs. It is about politics.

This bill establishes a 9 percent payroll tax. It radically increases government control over the economy and removes choices for employees. This bill punishes businesses that grow larger and creates unusual incentives (e.g., to have only 4,999 employees). This bill also does not deal with access to health care or the cost of health care. Government mandates add 15 percent to the cost of health care. Medical malpractice awards also increase costs.

This bill sets an arbitrary payroll tax. Instead, health care benefits should reflect the employer-employee relationship, and not an arbitrary figure imposed by the state.

We have concerns when government believes it can manage the private sector better than those who are invested in it. The 5,000 employee threshold is easily lowered. We recognize that this bill impacts only a handful of employers now, but we are concerned that it may be extended to cover all employers in the future. We cannot trust that this threshold will stay where it is.

If the goal is greater coverage, then we need to get at the cost of health care. We should let the market work to address this problem.

My company already pays more than $60,000 for medical coverage. If medical coverage is mandated, my company will go out of business. This bill does not level the playing field; it destroys the playing field.

Using workers' compensation funds to administer this program is not appropriate.

The definition of employer is very broad. It is unclear whether it includes all franchises or just individual operators.

This is the wrong problem, the wrong policy, the wrong time, and the wrong outcome. It will result in a higher cost floor that small employers will have to step up to. Insurance contracts will match the standards set in the bill, which will make insurance more expensive and result in less coverage.

Persons Testifying: (In support) Representative Eileen Cody, prime sponsor; Mike Kreidler, State Insurance Commissioner; Mike Murphy, State Treasurer; Randy Joseph, Joseph & Associates; Joe King, Community Health Network of Washington; Terry Gardiner; Sean Corry, Sprague, Israel, Giles; David West, Center for a Changing Work Force; Len McComb, Washington State Hospital Association and Community Health Network of Washington; Robert Crittenden, MD, MPH, family physician; Julie Yackel, emergency room nurse; Paul Henry; Anthony Walters, Spokane Alliance; Allen Morrow, Washington Senior Lobby; Robby Stern, Washington State Labor Council; and Velvet Champion, United Food and Commercial Workers Local 21 (UFCW).

(Neutral) Roger Ganz, Department of Social and Health Services; and Dennis Martin, Health Care Authority.

(Opposed) Mark Johnson, Washington Retail Association; Amy Hill, Wal-Mart; Paul Guppy, Washington Policy Center; Mellani McAleenan, Association of Washington Business; Susan Fagan, Schweitzer Engineering Labs and Association of Washington Business Health Care Committee; Doris Johnson, Vancouver Bolt and Supply; Carolyn Logue, National Federation of Independent Business; Michael Carr, Washington Restaurant Association; and Gary Smith, Independent Business Association.

Persons Signed In To Testify But Not Testifying: (In support) Jerri Wood, Washington State Alliance for Retired Americans; Tracie L. Champion, UFCW; Brian Smith, UFCW; Paul Henry, UFCW; and Christy Margelli, Washington for Health Care.