
HOUSE BILL 2588

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By Representatives Cody, Appleton, Ryu, Riccelli, Sells, Walkinshaw, Dunshee, Reykdal, Robinson, Green, Fitzgibbon, Bergquist, Tharinger, Freeman, S. Hunt, Gregerson, Pollet, and Jinkins

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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; creating a new section; and prescribing penalties.

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

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

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

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

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

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

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

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

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

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

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

36 (j) Taxpayers, through state and local governments, fund county
37 hospitals and clinics, community clinics, and other safety net

1 providers that provide care to those working people whose employers
2 fail to provide affordable health care coverage to their employees as
3 well as to other uninsured persons.

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

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

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

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

18 (b) Encourage the provision of affordable employer-based coverage
19 to low-wage employees who would otherwise be covered by medical
20 assistance and discourage employers from reducing hours, wages, or both
21 to avoid the employer responsibility penalty of the patient protection
22 and affordable care act by extending an employer responsibility penalty
23 to employers with employees covered by medical 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 assistance,
28 improve reimbursement to the providers who care for medical assistance
29 clients, and support the safety net of county hospitals and community
30 clinics that provide care for the remaining uninsured adult workers,
31 with due consideration for the needs of rural areas.

32 NEW SECTION. **Sec. 2.** This subchapter may be known and cited as
33 the employer responsibility for medical assistance costs of employees
34 act of 2014.

35 NEW SECTION. **Sec. 3.** The definitions in this section apply

1 throughout this subchapter unless the context clearly requires
2 otherwise.

3 (1) "Average cost of coverage" means the average cost of employee-
4 only health care coverage provided by covered employers to their
5 employees, including both the employer's and employee's share of the
6 premium.

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 medical assistance on the basis of his or her
11 modified adjusted gross income in accordance with the patient
12 protection and affordable care act;

13 (c) Is not a person who is enrolled in medical assistance by reason
14 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 taxes,
22 or for any other tax purpose. "Covered employer" also includes all of
23 the members of a controlled group of corporations, as defined in 26
24 U.S.C. Sec. 1563. "Covered employer" does not include the state, state
25 agencies, or any unit of local government including, but not limited
26 to, a county, city, town, municipal corporation, quasi-municipal
27 corporation, or other political subdivision.

28 (5) "Department" means the employment security department.

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

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

32 (8) "Patient protection and affordable care act" means the federal
33 patient protection and affordable care act (P.L. 111-148), as amended
34 by the federal health care and education reconciliation act of 2010
35 (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, 2016, 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 described
7 in (a) of this subsection and the denominator of which is described in
8 (b) of this subsection.

9 (a) The numerator of the fraction is equal to the average cost of
10 coverage multiplied by the share of a forty-hour work week that the
11 average covered employee works per week.

12 (b) The denominator of the fraction is equal to the average annual
13 wage of covered employees.

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

17 (2) The authority shall calculate the amount of the employer
18 responsibility penalty for each employer on an annual basis and
19 transmit the amount of the penalty to the department for collection
20 beginning January 1, 2016.

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

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

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

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

35 (4) A covered employer shall pay to the department any penalties
36 imposed pursuant to this subchapter. The department shall deposit all
37 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 in the same manner and at
3 the same time as any contributions required under chapter 50.24 RCW.

4 (5) The department shall annually send a notice to each covered
5 employer subject to an employer responsibility penalty of the amount of
6 the penalty and the date on which payment is due. Each covered
7 employer subject to an employer responsibility penalty shall pay the
8 amount of the penalty to the department for deposit into the employer
9 responsibility for medical assistance trust fund.

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

15 (7) If an employer responsibility penalty payment is more than
16 sixty days overdue, a penalty equal to the interest charged as
17 described in subsection (6) of this section is assessed and due for
18 each month, or part thereof, that the employer responsibility penalty
19 payment is not received after sixty days. The department must deposit
20 penalties collected under this subsection in the employer
21 responsibility for medical assistance trust fund.

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

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

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

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

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

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

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

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

35 (c) If the department of labor and industries determines that a
36 covered employer violated this section, it may order the covered
37 employer to reinstate the employee and pay the employee all wages owed.
38 In addition, the department of labor and industries may order the

1 covered employer to pay a civil penalty of twice the amount of the
2 employer responsibility penalty imposed under sections 4 and 5 of this
3 act. The department of labor and industries 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.** The employer responsibility for medical
10 assistance trust fund is created in the state treasury. All receipts
11 from moneys collected pursuant to this subchapter must be deposited in
12 the fund. Moneys in the fund may be spent only after appropriation.
13 Expenditures from the fund may be used only for:

14 (1) Providing payment for the nonfederal share of medical
15 assistance costs;

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

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

24 (4) Implementation and administration of this chapter.

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

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

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

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

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

34 (b) The date on which the employee first performed services for pay
35 for the employer, or, in the case of an employee described in (a)(ii)

1 of this subsection, the date on which the employee returned to perform
2 services for pay after a layoff, furlough, separation, or leave without
3 pay.

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

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

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

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

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

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

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

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

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

32 (6) The department shall provide information collected under this
33 section to the Washington state health care authority and the
34 employment security department for the purpose of determining the
35 employer responsibility penalty under sections 2 through 8 of this act.

36 (7) The registry shall retain the information for a particular
37 employee only if the registry is responsible for establishing,

1 enforcing, or collecting a support debt of the employee. The registry
2 may, however, retain information for a particular employee for as long
3 as may be necessary to:

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

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

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

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

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

21 NEW SECTION. **Sec. 11.** Sections 2 through 8 of this act are each
22 added to chapter 74.09 RCW to be codified under the subchapter heading
23 "employer responsibility for medical assistance costs of employees."

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