
SENATE BILL 5840

State of Washington

66th Legislature

2019 Regular Session

By Senators Cleveland and Kuderer

Read first time 02/06/19. Referred to Committee on Health & Long Term Care.

1 AN ACT Relating to requiring maintenance of minimum essential
2 health care coverage; adding a new chapter to Title 48 RCW; and
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** INTENT. (1) The legislature finds that:

6 (a) The federal government passed the tax cuts and jobs act,
7 which reduces all penalties for failing to maintain minimum essential
8 coverage to zero;

9 (b) Maintaining minimum essential coverage is an integral part of
10 stabilizing the individual health insurance market in the state and
11 ensuring Washington residents have access to affordable health
12 coverage; and

13 (c) In the 1990s, Washington's individual health insurance market
14 collapsed, partially as a result of revoking the state requirement to
15 maintain minimum essential coverage.

16 (2) It is therefore the intent of the legislature to implement
17 and enforce a state level requirement to maintain minimum essential
18 coverage.

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

4 (1) "Applicable entity" means:

5 (a) An employer or other sponsor of an employment-based health
6 plan with respect to employment-based minimum essential coverage;

7 (b) The health care authority with respect to medicaid or the
8 children's health insurance program coverage;

9 (c) Health carriers with respect to fully insured health plans;
10 or

11 (d) The exchange with respect to individual market health
12 coverage offered on the exchange.

13 (2) "Applicable resident" means a person who is domiciled in this
14 state.

15 (3) "Department" means the department of revenue.

16 (4) "Dependent" means a dependent as defined in section 152 of
17 the internal revenue code, as it existed on December 15, 2017.

18 (5) "Enrollee" has the same meaning as in RCW 48.43.005.

19 (6) "Exchange" means the health benefit exchange established
20 under chapter 43.71 RCW.

21 (7) "Health carrier" or "carrier" has the same meaning as in RCW
22 48.43.005.

23 (8) "Health plan" has the same meaning as in RCW 48.43.005.

24 (9) "Minimum essential coverage" means:

25 (a) Minimum essential coverage as defined in section 5000A(f) of
26 the internal revenue code, as it existed on December 15, 2017; or

27 (b) Other health benefit coverage, as the commissioner recognizes
28 for purposes of this section.

29 NEW SECTION. **Sec. 3.** REQUIREMENT TO MAINTAIN MINIMUM ESSENTIAL
30 COVERAGE. An individual who is an applicable resident shall for each
31 month beginning January 2020, ensure that the individual, and any
32 applicable resident who is a dependent of the individual, is covered
33 under minimum essential coverage for the month, unless the resident
34 is eligible for an exemption for the month.

35 NEW SECTION. **Sec. 4.** SHARED RESPONSIBILITY PENALTY. (1)(a) If
36 an individual who is an applicable resident, or an applicable
37 resident for whom the individual is liable under subsection (3) of
38 this section, is not eligible for an exemption as provided in

1 subsection (5) of this section and fails to meet the requirement of
2 section 3 of this act for one or more months, there is imposed on the
3 individual a shared responsibility penalty with respect to such
4 failures in the amount determined under subsection (4) of this
5 section. This penalty applies only with respect to months beginning
6 January 2021.

7 (b) (i) Individuals who owe a shared responsibility payment under
8 this section must pay the department or contest the assessment within
9 sixty days of the date of the assessment.

10 (ii) Individuals who contest an assessment and for whom the
11 department determines still owes an assessment, have thirty days from
12 the department's determination to pay the department.

13 (c) (i) An individual who receives an assessment from the
14 department may contest the assessment by, within sixty days of the
15 date of the assessment:

16 (A) Notifying the department that the assessment is contested;
17 and

18 (B) Providing information, in a manner designated by the
19 department in collaboration with the exchange, indicating enrollment
20 in minimum essential coverage or eligibility for an exemption.

21 (ii) The department must make a determination with respect to the
22 contested assessment within sixty days.

23 (d) Individuals who fail to pay an assessment when due are
24 required to pay the department interest at the rate computed under
25 RCW 82.32.050(2).

26 (e) All shared responsibility penalties and any interest
27 collected under this section shall be deposited in the shared
28 responsibility trust account created in section 10 of this act.

29 (2) The penalty imposed by this section is owed only upon
30 assessment by the department following the completion of the outreach
31 procedures described in section 5 of this act.

32 (3) If an applicable resident with respect to whom a penalty is
33 imposed by this section for any month:

34 (a) Is a dependent of another applicable resident for the year
35 including such month, the other applicable resident is liable for the
36 penalty; or

37 (b) Files a joint federal income tax return for the taxable year
38 including such month, the applicable resident and the spouse of the
39 applicable resident is jointly liable for the penalty.

1 (4) Except as provided in (a), (b), and (c) of this subsection,
2 an applicable resident's shared responsibility penalty for the
3 taxable year is calculated under rules for determining a federal
4 shared responsibility payment for the taxable year under section
5 5000A of the internal revenue code as it existed on December 15,
6 2017.

7 (a) For individuals who are eligible for an exemption under
8 subsection (5) of this section, the amount of the penalty imposed by
9 this section is determined using an applicable dollar of zero.

10 (b) The amount of the penalty imposed by this section cannot
11 exceed, if applicable, the Washington state average premium for
12 bronze level health plans, rather than the national average premium
13 for bronze level plans described in section 5000A(c)(1)(B) of the
14 internal revenue code as it existed on December 15, 2017.

15 (c) If an individual is subject to both the penalty imposed by
16 this section and the federal shared responsibility payment under
17 section 5000A of the internal revenue code as it existed on December
18 15, 2017, for a taxable year, the amount of the penalty imposed by
19 this section is reduced, but not below zero, by the amount of the
20 individual's federal shared responsibility payment.

21 (5)(a) An applicable resident is exempt from the shared
22 responsibility penalty under subsection (1) of this section for a
23 month if the applicable resident:

24 (i) Is not an applicable individual as defined in section
25 5000A(d) of the internal revenue code, as it existed on December 15,
26 2017;

27 (ii) Is eligible for an exemption under section 5000A(e) of the
28 internal revenue code, as it existed on December 15, 2017;

29 (iii) Is a resident of another state for the month;

30 (iv) Is under the age of eighteen or over the age of sixty-four
31 at any point during the month; or

32 (v) Is eligible for a hardship exemption as designated by the
33 exchange.

34 (b) For purposes of determining eligibility for the exemption for
35 individuals who cannot afford coverage as provided in section
36 5000A(e)(1) of the internal revenue code as it existed on December
37 15, 2017, the required contribution for an individual eligible for
38 minimum essential coverage under both an eligible employer-sponsored
39 plan and a plan in the individual market is the lesser of the amounts

1 described in section 5000A(e)(1)(B)(i) and (ii) of the internal
2 revenue code as it existed on December 15, 2017.

3 NEW SECTION. **Sec. 5.** ADMINISTRATION AND OUTREACH. (1) The
4 department shall assess the penalty imposed by section 4 of this act
5 on an individual who, after the completion of the outreach process
6 under subsection (3) of this section for the taxable year does not
7 have minimum essential coverage or qualify for an exemption. The
8 assessment must be canceled if the individual successfully contests
9 it under subsection (4) of this section.

10 (2) Information about residents for whom the state has no
11 available record of them being enrolled in minimum essential coverage
12 will be compiled by the commissioner and made available to the
13 exchange and department.

14 (3)(a) The exchange must contact individuals who, based on
15 reliable data sources, were applicable residents for the taxable year
16 and for whom the state has no record of them being enrolled in
17 minimum essential coverage or being eligible for an exemption for the
18 taxable year to notify them that:

19 (i) It appears that the individual is a Washington state
20 resident, and the state has no record of the individual having
21 minimum essential coverage or qualifying for an exemption for one or
22 more months of the taxable year;

23 (ii) If the individual had minimum essential coverage or
24 qualified for an exemption for one or more months of the taxable
25 year, the individual should respond providing such information;

26 (iii) If the individual does not respond or, after responding, is
27 found to have not had minimum essential coverage or qualified for an
28 exemption for every month of the taxable year, the individual may be
29 assessed a shared responsibility penalty by the department;

30 (iv) If the individual believes that for one or more months of
31 the taxable year, he or she did not have minimum essential coverage
32 and did not qualify for an exemption, then the individual may
33 indicate that, and may contact the department to pay the penalty; and

34 (v) The individual should contact the exchange regarding options
35 for enrolling in minimum essential coverage.

36 (b) The exchange must send the notifications required by this
37 section to each individual who has, or has a dependent who has, no
38 record of being enrolled in minimum essential coverage for the
39 taxable year, by November 30th of each year. The notification may

1 contain information on the services available through the exchange,
2 options for enrolling in minimum essential coverage, and how to apply
3 for an exemption.

4 (4) (a) An individual contacted under subsection (3) of this
5 section may respond to the exchange indicating and providing evidence
6 if applicable that he or she had minimum essential coverage or
7 qualified for an exemption for one or more months of the taxable
8 year. Individuals who do not respond within sixty days must be
9 treated as not having responded.

10 (b) In consideration of responses received, the exchange must
11 determine whether that individuals on the outreach list under
12 subsection (2) of this section had minimum essential coverage or
13 qualified for an exemption for any months of the taxable year.
14 Determinations must be made following criteria similar to those
15 provided under section 1331(d) (4) (H) of the patient protection and
16 affordable care act of 2010, as it existed on December 15, 2017.

17 (5) Annually, the exchange must make a list of applicable
18 residents for the taxable year for whom the exchange has no record of
19 them being enrolled in minimum essential coverage or being eligible
20 for an exemption available to the commissioner and the department.

21 (6) Any information obtained by the commissioner, the department,
22 or the exchange, or shared between the commissioner, the department,
23 and the exchange under this section is confidential and privileged,
24 is not subject to public disclosure under chapter 42.56 RCW, and may
25 only be disclosed to other state agencies and the exchange as
26 explicitly authorized in this act.

27 (7) For purposes of this section, "reliable data sources" may
28 include:

29 (a) Records maintained by the department of licensing related to
30 state residents receiving drivers' licenses and identification cards;

31 (b) The jury source list prepared by consolidated technology
32 services under RCW 2.36.054(3);

33 (c) Medicaid and children's health insurance program enrollment
34 records maintained by the health care authority under chapter 74.09
35 RCW;

36 (d) Individual marketplace enrollment records maintained by the
37 exchange;

38 (e) Records maintained by the department of corrections related
39 to individuals who are incarcerated for any month of the year; and

1 (f) Information provided by other federal, state, or local
2 agencies.

3 NEW SECTION. **Sec. 6.** DATA SHARING. (1) For purposes of
4 enforcing this section, the following agencies must provide the
5 following information to the commissioner:

6 (a) The department of licensing must provide records of state
7 residents receiving drivers' licenses and identification cards,
8 including identification by a minimum of last name, first name,
9 middle initial where available, date of birth, address, and social
10 security number; and

11 (b) The consolidated technology services agency shall provide the
12 jury source list merged by the agency under RCW 2.36.054(3).

13 (2) Any information obtained by the commissioner under this
14 section is confidential and privileged, is not subject to public
15 disclosure under chapter 42.56 RCW, and may only be disclosed to
16 other federal and state agencies and the exchange as explicitly
17 authorized in this act or under federal or state law. The
18 commissioner must consult with applicable entities and the exchange
19 to establish criteria and procedures for data storage and transmittal
20 that are secure and compliant with federal and state privacy and
21 security laws and rules.

22 NEW SECTION. **Sec. 7.** FINDINGS. For purposes of section 8 of
23 this act, the legislature makes the following findings:

24 (1) The reporting requirement provided for in section 8 of this
25 act is necessary for the successful implementation of the shared
26 responsibility penalty imposed on residents for not maintaining
27 minimum essential coverage or qualifying for an exemption. In
28 particular, this requirement provides the only widespread source of
29 third-party reporting to help taxpayers and the commissioner verify
30 whether an applicable individual maintains minimum essential
31 coverage. There is compelling evidence that third-party reporting is
32 crucial for ensuring compliance with tax provisions.

33 (2) The penalty imposed under section 4 of this act, and
34 therefore the reporting requirement in section 8 of this act, is
35 necessary to protect the compelling state interest of protecting the
36 health and welfare of its residents. The congressional budget office
37 estimates that, in the absence of an individual mandate, health
38 insurance premiums would increase by ten percent, and about nine

1 million people nationwide would lose coverage. There is substantial
2 evidence that not maintaining insurance causes health problems and
3 unnecessary deaths.

4 (3) The penalty imposed under section 4 of this act, and
5 therefore the reporting requirement in section 8 of this act, is
6 necessary to protect the compelling state interest of fostering
7 economic stability and growth in the state.

8 (4) The penalty imposed under section 4 of this act, and
9 therefore the reporting requirement in section 8 of this act, is
10 necessary to protect the compelling state interest of ensuring a
11 stable and well-functioning health insurance market. There is
12 compelling evidence that, without an effective penalty in place for
13 those who go without coverage, there would be substantial instability
14 in health insurance markets, including higher prices and the
15 possibility of areas without any insurance available. Ensuring the
16 health of insurance markets is a responsibility reserved for states
17 under the McCarran-Ferguson act and other federal law.

18 (5) The reporting requirement in section 8 of this act has been
19 narrowly tailored to support compliance with the penalty imposed
20 under section 4 of this act, while imposing only an incidental burden
21 on reporting entities. In particular, the information that must be
22 reported is limited to the information that must already be reported
23 under a similar federal reporting requirement under section 6055 of
24 the internal revenue code as it existed on December 15, 2017. In
25 addition, this section provides that its reporting requirement may be
26 satisfied by providing the same information that is currently
27 reported under the federal requirement.

28 NEW SECTION. **Sec. 8.** INSURANCE REPORTING REQUIREMENT. (1) For
29 purposes of administering the penalty on individuals who fail to
30 maintain minimum essential coverage under section 3 of this act,
31 every applicable entity that provides minimum essential coverage to
32 an applicable resident during a calendar year must, as required by
33 the commissioner, make a return described in subsection (2) of this
34 section.

35 (2)(a) Except as provided in (b) of this subsection, a return
36 must:

37 (i) Contain:

38 (A) The name, address, and taxpayer identification number of the
39 primary applicable resident enrollee and the name and taxpayer

1 identification number of each other applicable resident enrollee
2 under the policy;

3 (B) The dates during which the applicable resident was covered
4 under minimum essential coverage during the calendar year;

5 (C) Other information as the commissioner may require; and

6 (ii) Be in a form prescribed by the commissioner.

7 (b) A return complies with this section if it includes the
8 information contained in a return described in section 6055 of the
9 internal revenue code, as it existed on December 15, 2017.

10 (3)(a) Except as provided in (c) of this subsection, every
11 applicable entity required to make a return under subsection (1) of
12 this section must furnish to each applicable resident whose name is
13 required to be set forth in such return a written statement showing:

14 (i) The name and address of the person or applicable entity
15 required to make the return and the phone number of the information
16 contact for the person or applicable entity; and

17 (ii) The information required to be shown on the return with
18 respect to the applicable resident.

19 (b) The written statement required under (a) of this subsection
20 must be furnished before January 31st of the year following the
21 calendar year for which the return under subsection (1) of this
22 section was required to be made.

23 (c) The requirements of this subsection (3) may be satisfied by a
24 written statement provided to an individual under section 6055 of the
25 internal revenue code, as it existed on December 15, 2017.

26 (4)(a) In the case of coverage provided by an applicable entity
27 that is any governmental unit or any agency or instrumentality
28 thereof, the officer or employee who enters into the agreement to
29 provide coverage or such person's designee is responsible for the
30 returns and statements required by this section.

31 (b) An applicable entity may contract with third-party service
32 providers, including carriers, to provide the returns and statements
33 required by this section.

34 (5) Any information obtained by the commissioner, or shared
35 between the commissioner, the department, and the exchange, under
36 this section is confidential and privileged, and is not subject to
37 public disclosure under chapter 42.56 RCW.

38 NEW SECTION. **Sec. 9.** DATA SECURITY. (1) Any information
39 obtained by or disclosed to the commissioner under sections 5, 6, and

1 8 of this act is confidential and privileged, is not subject to
2 public disclosure under chapter 42.56 RCW, and is not subject to
3 subpoena directed to the commissioner or any person who received
4 documents, materials, or other information while acting under the
5 authority of or on behalf of the commissioner. The confidentiality
6 and privilege created by this section and RCW 42.56.400 applies to
7 the commissioner, any person acting under the authority of the
8 commissioner, and any person who is authorized to receive this
9 information from the commissioner.

10 (2) The commissioner may enter into agreements governing the
11 sharing and use of information identified in subsection (1) of this
12 section, with other state agencies and the exchange, if the recipient
13 agrees to and has the authority to maintain the confidentiality and
14 privileged status of the document, material, or other information.

15 (3) No waiver of an existing privilege or claim of
16 confidentiality in the documents, materials, or information may occur
17 as a result of sharing information as authorized in subsection (2) of
18 this section.

19 (4) Nothing prevents the commissioner from using or sharing
20 deidentified or aggregated data obtained under sections 6 and 8 of
21 this act for another lawful purpose.

22 (5) Notwithstanding any other provisions of this chapter, nothing
23 prevents the exchange from complying with reporting requirements
24 required under state or federal law, or using data obtained under
25 this chapter to improve the customer experience in Washington
26 healthplanfinder.

27 NEW SECTION. **Sec. 10.** ACCOUNT. The shared responsibility trust
28 account is created in the state treasury. All receipts from the
29 shared responsibility penalty and any interest collected under
30 section 4 of this act must be deposited into the account. Moneys in
31 the account may be spent only after appropriation. Expenditures from
32 the account may be used only for:

- 33 (1) Administration of the shared responsibility penalty;
- 34 (2) Engaging in outreach to uninsured residents to increase
35 health insurance coverage;
- 36 (3) Providing information to residents on options for health
37 insurance coverage; and
- 38 (4) Engaging in activities that increase the availability of
39 health insurance options or increase the affordability of insurance

1 premiums in the individual health insurance market for residents
2 seeking coverage through the exchange.

3 NEW SECTION. **Sec. 11.** CONTINGENCY. For any taxable year in
4 which federal advance premium tax credits or equivalent state-based
5 premium assistance becomes unavailable, as determined by the
6 commissioner in consultation with the exchange, the state shared
7 responsibility penalty under this act shall not be enforced.

8 NEW SECTION. **Sec. 12.** DEPARTMENT OF REVENUE RULES. The
9 department may adopt rules to implement sections 4 through 6 of this
10 act.

11 NEW SECTION. **Sec. 13.** INSURANCE COMMISSIONER RULES. The
12 commissioner may adopt rules to implement sections 2 and 4 through 10
13 of this act.

14 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
15 constitute a new chapter in Title 48 RCW.

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