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**Health Care & Wellness Committee**

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**HB 2588**

**Brief Description:** Concerning employers' responsibility for the medical assistance costs of employees.

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

**Brief Summary of Bill**

- Requires an employer with 500 or more employees in Washington to pay an employer responsibility penalty based on the number of employees enrolled in medical assistance.

**Hearing Date:** 2/3/14

**Staff:** Alexa Silver (786-7190).

**Background:**

Employer Shared Responsibility Payment Under the Affordable Care Act.

The Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010 (ACA) subjects employers with 50 or more full-time employees to a shared responsibility payment if at least one full-time employee enrolls in a qualified health plan and is eligible for a premium tax credit or reduced cost-sharing. The amount of the employer responsibility payment is:

- \$2,000 per full-time employee (excluding the first 30 employees) if the employer does not offer its full-time employees a plan that provides minimum essential coverage; or
- \$3,000 per full-time employee who qualifies for a premium tax credit or reduced cost-sharing if the employer does offer its full-time employees a plan that provides minimum essential coverage, but the plan is not affordable or does not provide minimum value.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The ACA also requires employers to provide employees written notice about the Health Benefit Exchange and potential eligibility for a premium tax credit or reduced cost-sharing.

#### Report on Employed Recipients of Medical Assistance.

The Health Care Authority (HCA) and the Department of Social and Health Services (DSHS) are required to submit an annual report to the Legislature with information about medical assistance recipients who are employed. The report must include the number of recipients who reported being employed (or being the dependent of someone who was employed), as well as the total cost to the state for those recipients. This information must be reported by employer size for employers with more than 50 employees who are recipients or dependents of recipients.

In addition, the report must include aggregate information by industry, employer size, and public versus private ownership. For each aggregated classification, the report must also include the total cost to the state.

#### **Summary of Bill:**

The Employer Responsibility for Medical Assistance Costs of Employees Act (Act) is adopted.

#### Employer Responsibility Penalty.

Beginning January 1, 2016, an employer with 500 or more employees in Washington (a covered employer) must pay an employer responsibility penalty for all covered employees. An employee is a covered employee if he or she works on average more than 104 hours per quarter for the employer and is enrolled in medical assistance on the basis of his or her modified adjusted gross income, but not by reason of disability or being over the age of 65. State and local government employers are not subject to the penalty.

The amount of the penalty is equal to the covered employer's total annual wage payments to all covered employees multiplied by a fraction. The denominator of the fraction is the average annual wage of covered employees. The numerator of the fraction is the average cost of employee-only health care coverage multiplied by the share of a 40-hour work week that the average covered employee works per week.

#### Administration and Enforcement.

The Employment Security Department (ESD) is responsible for administering the Act in coordination with the Health Care Authority (HCA), the Office of the Insurance Commissioner (OIC), and the Department of Labor and Industries (L&I). Administration of the Act may not be performed by contract with a private entity. The agencies have the following responsibilities related to administration:

- The HCA must calculate the amount of the penalty for each covered employer on an annual basis and transmit that information to the ESD.
- The OIC must provide the HCA with information on the average cost of health insurance coverage in the large group market for the previous year.
- The Department of Social and Health Services must provide the HCA and the ESD with reports from employers on hiring activity (including the name, address, social security

number, and date of birth of new employees, and the employer's name, address, and identifying number).

- The HCA may determine whether people enrolled in medical assistance are covered employees by using data generated for the report on medical assistance recipients.

Documents that result from providing information to the HCA and the ESD are exempt from disclosure under the Public Records Act.

Beginning January 1, 2016, the ESD must collect the employer penalty after receiving the necessary information from the HCA. The penalty must be collected in the same manner and at the same time as unemployment contributions. The ESD must send an annual notice to covered employers subject to the penalty of the amount of the penalty and the date on which payment is due. Interest is assessed at 10 percent per annum, and an additional penalty is added if a payment is more than 60 days overdue.

The ESD must deposit penalties in the Employer Responsibility for Medical Assistance Trust Fund (Fund). Expenditures from the Fund may be used only for:

- providing payment for the non-federal share of medical assistance costs;
- increasing reimbursement of health care providers, with due consideration for the needs of rural areas and access to primary care;
- providing reimbursement to county health systems, community clinics, and other safety net providers that provide care without expectation of compensation to residents who do not have minimum essential coverage, with due consideration for the needs of rural areas and access to primary care; and
- implementation and administration of the Act and the medical assistance chapter of law.

#### Notice to Employees.

Covered employers must provide information to newly hired and existing employees regarding the availability of medical assistance, including the availability of advanced premium tax credits. The ESD and the HCA must develop a simple, uniform notice containing this information.

#### Discrimination and Retaliation.

A covered employer may not:

- avoid its obligations by designating an employee as an independent contractor or temporary employee, reducing an employee's hours, or terminating an employee;
- request information about an employee's income or other eligibility requirements for public health benefit programs;
- require as a condition of employment that an employee not enroll in or disenroll from a public health benefit program; or
- discharge, discriminate against, or retaliate against an employee who enrolls in a public health benefit program.

A covered employer that willfully violates these prohibitions is guilty of a misdemeanor. An employee who has been retaliated against for exercising these rights may file a complaint with the L&I. The L&I must investigate the complaint and, if a violation may have occurred, must hold a hearing. If the L&I finds that a violation occurred, it may order the employer to reinstate

the employee, pay all wages owed, and pay a civil penalty of twice the amount of the employer responsibility penalty.

**Appropriation:** None.

**Fiscal Note:** Requested on January 27, 2014.

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