

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen Kulik

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to shared responsibility in health reform.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO SHARED RESPONSIBILITY IN HEALTH REFORM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The secretary of administration and finance and the secretary of health and human
2 services shall implement a health reform employer responsibility revenue program pursuant to this act.
3 The program shall be designed to increase revenue available to fund health programs authorized by
4 chapter 58 of the acts of 2006.

5 In implementing the program, the secretary of administration and finance and the secretary of
6 health and human services shall implement an option authorized by sections 2, 3, 4 or 5 of this act, or a
7 combination of such options.

8 SECTION 2. (a) The secretary of administration and finance and the secretary of health and
9 human services may implement the provisions of this section pursuant to section 1 of this act.

10 (b) As used in this section, the following words, unless the context clearly requires otherwise,
11 shall have the following meanings:—

12 “Benefiting employee”, an employee who is enrolled in the Commonwealth Care Health
13 Insurance Program established pursuant to chapter 118H of the General Laws.

14 “Benefiting employer”, an employer that employs a benefiting employee.

15 Words used in this section that are defined in subsection (a) of section 188 of chapter 149 of the
16 General Laws shall have the meaning ascribed to them by that subsection.

17

18 (c) The division of health care finance and policy and the department of workforce development
19 shall assess benefiting employers a health benefit compensation payment for each benefiting employee

20 enrolled in the Commonwealth Care Health Insurance Program, subject to the provisions of this section
21 and regulations promulgated by the division. Health benefit compensation payments shall be made
22 quarterly based on enrollment of employees in the Commonwealth Care Health Insurance Program
23 during the quarter. Revenue received under this section shall be credited to the Commonwealth Care
24 Trust Fund established pursuant to section 2000 of chapter 29 of the General Laws.

25 (d) The commissioner shall determine the amount of the payment each year. The amount shall
26 be no more than half of the Commonwealth's share of the average per-member cost of the
27 Commonwealth Care Health Insurance Program net of average federal reimbursements.

28 (e) The commissioner shall determine which benefiting employers shall be subject to the
29 payment. The commissioner may exempt employers who employ less than a minimum number of
30 employees set by the commissioner. The commissioner may exempt employers who employ less than
31 a minimum number of benefiting employees set by the commissioner. No employer who employs 10
32 or fewer full-time equivalent employees shall be subject to the payment. The commissioner may pro-
33 rate the payment required with respect to benefiting employees who work less than 500 hours during a
34 quarter.

35 (f) The commissioner shall establish a hardship exemption process that exempts benefiting
36 employers from the payment due to financial hardship. The commissioner shall establish by regulation
37 criteria for a hardship exemption.

38 (g) Benefiting employers subject to the health benefit compensation payment shall receive a
39 credit against the amount due under this section for any fair share employer contributions paid
40 pursuant to section 188 of chapter 149 of the General Laws.

41 (h) The Commonwealth Health Insurance Connector Authority, the department of revenue and
42 the office of medicaid shall assist the division and the department of workforce development with the
43 administration of this section. The department of revenue shall share information required to
44 administer this subsection with the division of health care finance and policy.

45 (i) The director of unemployment assistance shall collect the payment required under this
46 section and shall implement penalties for employers who fail to make payments as required by this
47 section. In order to reduce the administrative costs of collection of contributions, the director shall, to
48 the extent possible, use any existing procedures that have been implemented by the division of
49 unemployment assistance to collect contributions under section 188 of chapter 149 of the General Laws.

50 (j) No employer shall discriminate against any employee or applicant for employment on the
51 basis of the employee's eligibility for or enrollment in the Commonwealth Care Health Insurance
52 Program, or any facts or circumstances relating to a health benefit compensation payment assessed
53 against the employer in relation to the employee. Violation of this subsection shall constitute a per se
54 violation of chapter 93A of the General Laws and shall constitute an unlawful practice under section 4 of
55 chapter 151B of the General Laws.

56 SECTION 3. (a) The secretary of administration and finance and the secretary of health and
57 human services may implement the provisions of this section pursuant to section 1 of this act

58 (b) Notwithstanding the provisions of subsection (c) of section 188 of chapter 149 of the General
59 Laws, the annual fair share employer contribution established in said section 188 shall be increased to
60 take into account the cost to the commonwealth of covering employees of non-contributing employers
61 in the most recent fiscal year on whose behalf health care services were reimbursed in whole or in part
62 by the Commonwealth Care Health Insurance Program. Notwithstanding the \$295 per employee limit of
63 clause (10) of said subsection (c), the commissioner of health care finance and policy shall annually
64 determine the increased annual fair share employer contribution pursuant to this subsection.

65 SECTION 4. (a) The secretary of administration and finance and the secretary of health and
66 human services may implement the provisions of this section pursuant to section 1 of this act.

67 (b) As used in this section, the following words, unless the context clearly requires otherwise,
68 shall have the following meanings:–

69 “Covered employee”, an employee as defined in section of chapter 151A of the General Laws of
70 a covered employer, provided that the division of health care finance and policy shall further define
71 covered employee for purposes of this section, which may include, but not be limited to, specifying a
72 minimum number of hours worked, a minimum length of employment, a maximum salary, and the
73 exclusion of those with access to federal or other health programs or health coverage.

74 “Covered employer”, an employing unit as defined in section 1 of chapter 151A of the General
75 Laws that employs 11 or more full-time equivalent employees in the commonwealth, provided that the
76 division of health care finance and policy shall further define covered employer for purposes of this
77 section.

78 “Health care expenditure”, any amount paid by a covered employer to its covered employees or
79 to a third party on behalf of its covered employees for the purpose of providing health care services for
80 covered employees or reimbursing the cost of such services for its covered employees, including, but
81 not limited to (1) reimbursement by such covered employer to its covered employees for expenses
82 incurred in the purchase of health care services; (2) payments by a covered employer to a third party for
83 the purpose of providing health care services for covered employees; (3) costs incurred by a covered
84 employer in the direct delivery of health care services to its covered employees; and (4) payments by a
85 covered employer to the commonwealth pursuant to section 188 of chapter 149 of the General Laws,
86 and (5) payments by a covered employer to the commonwealth, which shall be credited to the
87 Commonwealth Care Trust Fund established pursuant to section 2000 of chapter 29 of the General
88 Laws. Notwithstanding any other provision of this section, “health care expenditure” shall not include
89 any payment made directly or indirectly for workers’ compensation or Medicare benefits.

90 “Health care expenditure rate”, the amount of health care expenditure that a covered employer
91 shall be required to make for each hour paid for each of its covered employees each quarter, as
92 determined by regulation by the division of health care finance and policy. In setting the health care

93 expenditure rate, the division may establish different rates for covered employers with different
94 amounts of employees.

95 "Required health care expenditure", the total health care expenditure that a covered employer
96 is required to make every quarter for all its covered employees.

97 (c) Covered employers shall make required health care expenditures to or on behalf of their
98 covered employees each quarter pursuant to this subsection. The division of health care finance and
99 policy and the department of workforce development shall promulgate regulations to implement the
100 provisions of this subsection.

101 (d) The required health care expenditure for a covered employer shall be calculated by
102 multiplying the total number of hours paid for each of its covered employees during the quarter by the
103 applicable health care expenditure rate. In determining whether a covered employer has made its
104 required health care expenditures, payments to or on behalf of a covered employee shall not be
105 considered if they exceed the number of hours paid for the covered employee during the quarter
106 multiplied by the applicable health care expenditure rate.

107 (e) The division of health care finance and policy shall establish a hardship exemption process
108 that exempts covered employers from the required health care expenditure due to financial hardship.
109 The commissioner shall establish by regulation criteria for a hardship exemption.

110 (f) The director of unemployment assistance shall collect any payments made to the
111 commonwealth under this section. The director shall determine penalties for late payment and failure to
112 pay any required health care expenditure, reporting forms and procedures, and other matters as the
113 director may determine. In order to reduce the administrative costs of collection of contributions, the
114 director shall, to the extent possible, use any existing procedures that have been implemented by the
115 division of unemployment assistance to collect contributions under section 188 of chapter 149 of the
116 General Laws.

117 SECTION 5. (a) The secretary of administration and finance and the secretary of health and
118 human services may implement the provisions of this section pursuant to section 1 of this act.

119 (b) Each employer who employs more than 10 employees and is subject to the provisions of 14,
120 14A, or 14C of chapter 151A of the General Laws shall pay, in the same manner and at the same times as
121 the director of workforce development prescribes for the contribution required by section 14, an
122 employer responsibility contribution. For employers with fewer than 100 employees the contribution
123 shall be computed by multiplying the wages paid its employees by the employer responsibility
124 contribution rate of 5 per cent. For employers with 100 or more employees the contribution shall be
125 computed by multiplying the wages paid its employees by the employer responsibility contribution rate
126 of 7 per cent. The receipts from these contributions shall be paid to the director and shall be credited to
127 the Commonwealth Care Trust Fund established pursuant to section 2000 of chapter 29 of the General
128 Laws.

129 (c) For the purposes of this section, “wages” shall not include that part of remuneration which,
130 after remuneration equal to the employer responsibility wage base with respect to employment with
131 such employer has been paid to an individual during the calendar year, is paid to such individual during
132 the year. For the purposes of this section, the employer responsibility wage base shall be equal to the
133 maximum wage base as determined by 42 USC 430 for each year.

134 (d) Except where inconsistent with the provisions of this section, the terms and conditions of
135 chapter 151A of the General Laws that apply to the payment of and the collection of contributions shall
136 apply to the same extent to the payment of and the collection of the employer responsibility
137 contributions required by this section; provided, however, said contributions shall be reduced by an
138 amount equal to the employer's health care expenditures, provided that said contribution shall not be
139 less than zero. For the purposes of this section, health care expenditures shall mean any amount paid by
140 an employer to its employees or a dependent of an employee or to a third party on behalf of its
141 employees or their dependents for the purpose of providing health care services for employees or their
142 dependents or reimbursing the cost of such services for its employees or their dependents, including,
143 but not limited to (1) reimbursement by such employer to its employees for expenses incurred in the
144 purchase of health care services; (2) payments by a employer to a third party for the purpose of
145 providing health care services for employees or their dependents; and (3) costs incurred by a employer
146 in the direct delivery of health care services to its employees or their dependents.

147 (e) The director, in consultation and cooperation with the commissioner of revenue, shall
148 promulgate regulations to enforce the provisions of this section. The regulations shall include
149 reasonable exemptions, including exemptions for substantial hardship, penalties for late payment and
150 failure to pay, reporting forms and procedures, and other matters as the director may determine.

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