

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

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:

Mark C. Montigny

DISTRICT/ADDRESS:

Second Bristol and Plymouth

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

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

9

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

12

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

15

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

18

19 “Benefiting employer”, an employer that employs a benefiting employee and employs 25 or
20 more full-time equivalent employees in the commonwealth.

21

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

24

25 (c) The division of health care finance and policy and the department of workforce development
26 shall assess benefiting employers a health benefit compensation payment for each benefiting employee
27 enrolled in the Commonwealth Care Health Insurance Program, subject to the provisions of this section
28 and regulations promulgated by the division. Health benefit compensation payments shall be made
29 quarterly based on enrollment of employees in the Commonwealth Care Health Insurance Program
30 during the quarter. Revenue received under this section shall be credited to the Commonwealth Care
31 Trust Fund established pursuant to section 2000 of chapter 29 of the General Laws.

32

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

36

37 (e) The commissioner shall determine which benefiting employers shall be subject to the
38 payment. The commissioner may exempt employers who employ less than a minimum number of
39 employees set by the commissioner. The commissioner may exempt employers who employ less than
40 a minimum number of benefiting employees set by the commissioner. No employer who employs 25
41 or fewer full-time equivalent employees shall be subject to the payment. The commissioner may pro-
42 rate the payment required with respect to benefiting employees who work less than 500 hours during a
43 quarter.

44

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

48

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

52

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

57

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

63

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

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71

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

74

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

82

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

85

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

88

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

94

95 “Covered employer”, an employing unit as defined in section 1 of chapter 151A of the General
96 Laws that employs 25 or more full-time equivalent employees in the commonwealth, provided that the
97 division of health care finance and policy shall further define covered employer for purposes of this
98 section.

99

100 “Health care expenditure”, any amount paid by a covered employer to its covered employees or
101 to a third party on behalf of its covered employees for the purpose of providing health care services for
102 covered employees or reimbursing the cost of such services for its covered employees, including, but
103 not limited to (1) reimbursement by such covered employer to its covered employees for expenses
104 incurred in the purchase of health care services; (2) payments by a covered employer to a third party for
105 the purpose of providing health care services for covered employees; (3) costs incurred by a covered
106 employer in the direct delivery of health care services to its covered employees; and (4) payments by a
107 covered employer to the commonwealth pursuant to section 188 of chapter 149 of the General Laws,
108 and (5) payments by a covered employer to the commonwealth, which shall be credited to the
109 Commonwealth Care Trust Fund established pursuant to section 2000 of chapter 29 of the General
110 Laws. Notwithstanding any other provision of this section, “health care expenditure” shall not include
111 any payment made directly or indirectly for workers’ compensation or Medicare benefits.

112

113 “Health care expenditure rate”, the amount of health care expenditure that a covered employer
114 shall be required to make for each hour paid for each of its covered employees each quarter, as
115 determined by regulation by the division of health care finance and policy. In setting the health care
116 expenditure rate, the division may establish different rates for covered employers with different
117 amounts of employees.

118

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

121

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

126

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

133

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

137

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

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

149

150 (b) Each employer who employs more than 25 employees and is subject to the provisions of 14,
151 14A, or 14C of chapter 151A of the General Laws shall pay, in the same manner and at the same times as

152 the director of workforce development prescribes for the contribution required by section 14, an
153 employer responsibility contribution. For employers with fewer than 100 employees the contribution
154 shall be computed by multiplying the wages paid its employees by the employer responsibility
155 contribution rate of 5 per cent. For employers with 100 or more employees the contribution shall be
156 computed by multiplying the wages paid its employees by the employer responsibility contribution rate
157 of 7 per cent. The receipts from these contributions shall be paid to the director and shall be credited to
158 the Commonwealth Care Trust Fund established pursuant to section 2000 of chapter 29 of the General
159 Laws.

160

161 (c) For the purposes of this section, "wages" shall not include that part of remuneration which,
162 after remuneration equal to the employer responsibility wage base with respect to employment with
163 such employer has been paid to an individual during the calendar year, is paid to such individual during
164 the year. For the purposes of this section, the employer responsibility wage base shall be equal to the
165 maximum wage base as determined by 42 USC 430 for each year.

166

167 (d) Except where inconsistent with the provisions of this section, the terms and conditions of
168 chapter 151A of the General Laws that apply to the payment of and the collection of contributions shall
169 apply to the same extent to the payment of and the collection of the employer responsibility
170 contributions required by this section; provided, however, said contributions shall be reduced by an
171 amount equal to the employer's health care expenditures, provided that said contribution shall not be
172 less than zero. For the purposes of this section, health care expenditures shall mean any amount paid by
173 an employer to its employees or a dependent of an employee or to a third party on behalf of its
174 employees or their dependents for the purpose of providing health care services for employees or their
175 dependents or reimbursing the cost of such services for its employees or their dependents, including,
176 but not limited to (1) reimbursement by such employer to its employees for expenses incurred in the
177 purchase of health care services; (2) payments by a employer to a third party for the purpose of
178 providing health care services for employees or their dependents; and (3) costs incurred by a employer
179 in the direct delivery of health care services to its employees or their dependents.

180

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