

**HOUSE . . . . . No. 1084**

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Nine**  
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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  
2 human services shall implement a health reform employer responsibility revenue program  
3 pursuant to this act. The program shall be designed to increase revenue available to fund health  
4 programs authorized by chapter 58 of the acts of 2006.

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

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

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

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

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

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

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

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

29 (e) The commissioner shall determine which benefiting employers shall be subject to the  
30 payment. The commissioner may exempt employers who employ less than a minimum number  
31 of employees set by the commissioner. The commissioner may exempt employers who  
32 employ less than a minimum number of benefiting employees set by the commissioner. No  
33 employer who employs 10 or fewer full-time equivalent employees shall be subject to the

34 payment. The commissioner may pro-rate the payment required with respect to benefiting  
35 employees who work less than 500 hours during a quarter.

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

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

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

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

53 (j) No employer shall discriminate against any employee or applicant for employment on  
54 the basis of the employee's eligibility for or enrollment in the Commonwealth Care Health  
55 Insurance Program, or any facts or circumstances relating to a health benefit compensation

56 payment assessed against the employer in relation to the employee. Violation of this subsection  
57 shall constitute a per se violation of chapter 93A of the General Laws and shall constitute an  
58 unlawful practice under section 4 of chapter 151B of the General Laws.

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

61 (b) Notwithstanding the provisions of subsection (c) of section 188 of chapter 149 of the  
62 General Laws, the annual fair share employer contribution established in said section 188 shall  
63 be increased to take into account the cost to the commonwealth of covering employees of non-  
64 contributing employers in the most recent fiscal year on whose behalf health care services were  
65 reimbursed in whole or in part by the Commonwealth Care Health Insurance Program.

66 Notwithstanding the \$295 per employee limit of clause (10) of said subsection (c), the  
67 commissioner of health care finance and policy shall annually determine the increased annual  
68 fair share employer contribution pursuant to this subsection.

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

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

74 “Covered employee”, an employee as defined in section of chapter 151A of the General  
75 Laws of a covered employer, provided that the division of health care finance and policy shall  
76 further define covered employee for purposes of this section, which may include, but not be  
77 limited to, specifying a minimum number of hours worked, a minimum length of employment, a

78 maximum salary, and the exclusion of those with access to federal or other health programs or  
79 health coverage.

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

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

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

100 the health care expenditure rate, the division may establish different rates for covered employers  
101 with different amounts of employees.

102 “Required health care expenditure”, the total health care expenditure that a covered  
103 employer is required to make every quarter for all its covered employees.

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

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

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

118 (f) The director of unemployment assistance shall collect any payments made to the  
119 commonwealth under this section. The director shall determine penalties for late payment and  
120 failure to pay any required health care expenditure, reporting forms and procedures, and other  
121 matters as the director may determine. In order to reduce the administrative costs of collection of

122 contributions, the director shall, to the extent possible, use any existing procedures that have  
123 been implemented by the division of unemployment assistance to collect contributions under  
124 section 188 of chapter 149 of the General Laws.

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

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

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

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

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