

SENATE No. 550

The Commonwealth of Massachusetts

In the Year Two Thousand 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
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:—

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

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

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

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

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

(e) The commissioner shall determine which benefiting employers shall be subject to the payment. The commissioner may exempt employers who employ less than a minimum number of employees set by the commissioner. The commissioner may exempt employers who employ less than a minimum number of benefiting employees set by the commissioner. No employer who employs 25 or fewer full-time equivalent employees shall be subject to the

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

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

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

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

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

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

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

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

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

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

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

76 “Covered employee”, an employee as defined in section of chapter 151A of the General
77 Laws of a covered employer, provided that the division of health care finance and policy shall
78 further define covered employee for purposes of this section, which may include, but not be

limited to, specifying a minimum number of hours worked, a minimum length of employment, a maximum salary, and the exclusion of those with access to federal or other health programs or health coverage.

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

“Health care expenditure”, any amount paid by a covered employer to its covered employees or to a third party on behalf of its covered employees for the purpose of providing health care services for covered employees or reimbursing the cost of such services for its covered employees, including, but not limited to (1) reimbursement by such covered employer to its covered employees for expenses incurred in the purchase of health care services; (2) payments by a covered employer to a third party for the purpose of providing health care services for covered employees; (3) costs incurred by a covered employer in the direct delivery of health care services to its covered employees; and (4) payments by a covered employer to the commonwealth pursuant to section 188 of chapter 149 of the General Laws, and (5) payments by a covered employer to the commonwealth, which shall be credited to the Commonwealth Care Trust Fund established pursuant to section 2000 of chapter 29 of the General Laws.

Notwithstanding any other provision of this section, “health care expenditure” shall not include any payment made directly or indirectly for workers’ compensation or Medicare benefits.

“Health care expenditure rate”, the amount of health care expenditure that a covered employer shall be required to make for each hour paid for each of its covered employees each

101 quarter, as determined by regulation by the division of health care finance and policy. In setting
102 the health care expenditure rate, the division may establish different rates for covered employers
103 with different amounts of employees.

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

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

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

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

120 (f) The director of unemployment assistance shall collect any payments made to the
121 commonwealth under this section. The director shall determine penalties for late payment and
122 failure to pay any required health care expenditure, reporting forms and procedures, and other

matters as the director may determine. In order to reduce the administrative costs of collection of contributions, the director shall, to the extent possible, use any existing procedures that have been implemented by the division of unemployment assistance to collect contributions under section 188 of chapter 149 of the General Laws.

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

(b) Each employer who employs more than 25 employees and is subject to the provisions of 14, 14A, or 14C of chapter 151A of the General Laws shall pay, in the same manner and at the same times as the director of workforce development prescribes for the contribution required by section 14, an employer responsibility contribution. For employers with fewer than 100 employees the contribution shall be computed by multiplying the wages paid its employees by the employer responsibility contribution rate of 5 per cent. For employers with 100 or more employees the contribution shall be computed by multiplying the wages paid its employees by the employer responsibility contribution rate of 7 per cent. The receipts from these contributions shall be paid to the director and shall be credited to the Commonwealth Care Trust Fund established pursuant to section 2000 of chapter 29 of the General Laws.

(c) For the purposes of this section, “wages” shall not include that part of remuneration which, after remuneration equal to the employer responsibility wage base with respect to employment with such employer has been paid to an individual during the calendar year, is paid to such individual during the year. For the purposes of this section, the employer responsibility

144 wage base shall be equal to the maximum wage base as determined by 42 USC 430 for each
145 year.

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

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