



2005 SENATE BILL 440

November 16, 2005 – Introduced by Senators HANSEN, ROBSON, TAYLOR and MILLER, cosponsored by Representatives BERCEAU, NELSON, LEHMAN, BLACK, POPE-ROBERTS, SINICKI, ZEPNICK and MOLEPSKE. Referred to Committee on Agriculture and Insurance.

1 **AN ACT to create** 25.77 (8) and 49.667 of the statutes; **relating to:** an assessment
2 on large employers that do not provide subsidized health care coverage,
3 extending the time limit for emergency rule procedures, providing an
4 exemption from emergency rule procedures, requiring the exercise of
5 rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law does not require an employer to provide health care coverage for its employees. This bill requires an employer employing 10,000 or more full-time or part-time employees in this state (large employer) that does not provide family health care coverage under a group health insurance plan for which the large employer pays at least 80 percent of the cost, excluding deductibles and copayments, (employer-subsidized health care coverage) to all of its full-time and part-time employees to pay to the Department of Health and Family Services (DHFS) an assessment that is equal to the cost incurred by society as a result of the employer not providing that coverage and requires DHFS to deposit any assessments collected under the bill in the Medical Assistance trust fund.

Under the bill, DHFS is required to calculate that cost by using a methodology promulgated by rule that includes all of the following costs incurred by society as a result of an employer not providing employer-subsidized health care coverage to all of its employees:

1. The cost of increased enrollment in the Medical Assistance Program, the Badger Care Program, and any other state or federal health care program.

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2. The cost of increased premiums for health care coverage incurred by other employers and the employees of those employers due to cost shifting of unpaid health care bills.

3. The cost of health care services provided that would not otherwise have been provided due to a lack of preventive care, delays in seeking care, and using hospital emergency room care for nonemergency situations.

4. The cost of bankruptcies caused by the inability of persons to pay debts incurred for health care services.

5. The cost of decreased worker productivity, including decreased productivity of employees who are covered under employer-subsidized health care coverage caused by the spread to those employees of communicable diseases that would have been preventable by a vaccination of an employee or family member not covered by that coverage.

6. The cost of decreased lifetime earning capacity caused by premature deaths.

7. The cost of financial assistance, treatment, and support services provided to individuals with disabilities that are caused or contributed to by a lack of access to health care.

8. The cost of services provided to children to address gaps in educational and developmental achievement caused by preventable health conditions.

9. Costs that would not otherwise have been incurred due to a lack of contraceptive coverage and access to prenatal care.

10. Any other cost incurred by society as a result of an employer not providing that coverage, as determined by DHFS.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 25.77 (8) of the statutes is created to read:

2 25.77 (8) All moneys received under s. 49.667 (3) (c).

3 **SECTION 2.** 49.667 of the statutes is created to read:

4 **49.667 Large employer health care assessment. (1) DEFINITIONS.** In this
5 section:

6 (a) “Employee” means any individual employed full time or part time in this
7 state by an employer.

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1 (b) “Employer” means any person engaging in any activity, enterprise, or
2 business employing 10,000 or more employees in this state, except that “employer”
3 does not include the state, any political subdivision of the state, or any office,
4 department, independent agency, authority, institution, society, or body in state or
5 local government.

6 (c) “Employer-subsidized health care coverage” has the meaning given in s.
7 49.665 (1) (c).

8 **(2) EMPLOYER REPORT.** (a) On January 1 of each year, beginning in 2008, an
9 employer shall submit to the department a report disclosing all of the following
10 information with respect to the year immediately preceding the previous year:

11 1. The number of employees employed by the employer in this state as of a day
12 in that year determined by the employer.

13 2. A description of the health care coverage provided by the employer, together
14 with the total cost of that coverage, excluding any deductibles and copayments that
15 may be required under the employer’s group health insurance plan, and a breakdown
16 of the amount of that total cost that is paid by the employer and the amount of that
17 total cost that is paid by the employer’s employees.

18 (b) A report under par. (a) shall be signed by the chief executive officer or chief
19 financial officer of the employer or by another person performing a similar function
20 for the employer and shall be accompanied by an affidavit stating that the report was
21 reviewed by the signing officer and is true and correct to the best of the signing
22 officer’s knowledge, information, and belief.

23 (c) The department shall verify the information reported under par. (a) 1.,
24 determine based on the description provided under par. (a) 2. whether the health care

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1 coverage provided by the employer is employer–subsidized health care coverage, and
2 calculate the amount of any assessment that may be due under sub. (3) (a).

3 **(3) ASSESSMENT.** (a) 1. If in a year that is the subject of a report under sub. (2)
4 (a) an employer does not provide employer–subsidized health care coverage to all of
5 its employees, the employer shall pay to the department an assessment that is equal
6 to the cost incurred by society as a result of the employer not providing that coverage.
7 The department shall calculate that cost using the methodology promulgated by rule
8 under sub. (5) (b).

9 (b) An employer may not deduct any part of an assessment paid under par. (a)
10 from the wages of an employee.

11 (c) An employer shall pay an assessment required under par. (a) to the
12 department on a periodic basis during the year in which the report under sub. (2) (a)
13 is submitted, as determined by the department by rule promulgated under sub. (5)

14 (c). The department shall deposit any assessments received under this subsection
15 in the Medical Assistance trust fund.

16 **(4) PENALTIES.** (a) Any employer that fails to submit a report as required under
17 sub. (2) (a) may be required to forfeit not more than \$250 for each day that the report
18 is not timely filed.

19 (b) Any employer that fails to pay an assessment required under sub. (3) (a)
20 may be required to pay the assessment, plus a forfeiture equal to the amount of the
21 assessment ordered.

22 **(5) RULES.** The department shall promulgate rules to implement this section.
23 Those rules shall include all of the following:

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1 (a) A form for the report under sub. (2) (a) and the affidavit under sub. (2) (b)
2 and the manner in which that report and affidavit shall be submitted to the
3 department.

4 (b) A methodology for calculating the cost incurred by society as a result of an
5 employer not providing employer-subsidized health care coverage to all of its
6 employees. In devising that methodology, the department shall include all of the
7 following costs incurred by society as a result of an employer not providing that
8 coverage:

9 1. The cost of increased enrollment in the Medical Assistance program, the
10 Badger Care health care program under s. 49.665, and any other state or federal
11 health care program.

12 2. The cost of increased premiums for health care coverage incurred by other
13 employers and the employees of those employers due to cost shifting of unpaid health
14 care bills.

15 3. The cost of health care services provided that would not otherwise have been
16 provided due to a lack of preventive care, delays in seeking care, and using hospital
17 emergency room care for nonemergency situations.

18 4. The cost of bankruptcies caused by the inability of persons to pay debts
19 incurred for health care services.

20 5. The cost of decreased worker productivity, including decreased productivity
21 of employees who are covered under employer-subsidized health care coverage
22 caused by the spread to those employees of communicable diseases that would have
23 been preventable by a vaccination of an employee or family member not covered by
24 that coverage.

25 6. The cost of decreased lifetime earning capacity caused by premature deaths.

SENATE BILL 440**SECTION 2**

1 7. The cost of financial assistance, treatment, and support services provided to
2 individuals with disabilities that are caused or contributed to by a lack of access to
3 health care.

4 8. The cost of services provided to children to address gaps in educational and
5 developmental achievement caused by preventible health conditions.

6 9. Costs that would not otherwise have been incurred due to a lack of
7 contraceptive coverage and access to prenatal care.

8 10. Any other cost incurred by society as a result of an employer not providing
9 that coverage, as determined by the department.

10 (c) A schedule for the periodic payment of assessments required under sub. (3)
11 (a).

SECTION 3. Nonstatutory provisions.

12 (1) HEALTH CARE PAYROLL ASSESSMENT; RULES.

13 (a) The department of health and family services shall submit in proposed form
14 the rules required under section 46.667 (5) of the statutes, as created by this act, to
15 the legislative council staff under section 227.15 (1) of the statutes no later than the
16 first day of the 6th month beginning after the effective date of this paragraph.

17 (b) Using the procedure under section 227.24 of the statutes, the department
18 of health and family services may promulgate as emergency rules the rules required
19 under section 46.667 (5) of the statutes, as created by this act, for the period before
20 the effective date of the rules submitted under paragraph (a). Notwithstanding
21 section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this
22 paragraph remain in effect until the date on which the rules submitted under
23 paragraph (a) take effect. Notwithstanding section 227.24 (1) (a) and (3) of the
24 statutes, the department of health and family services is not required to provide
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1 evidence that promulgating a rule under this paragraph as an emergency rule is
2 necessary for the preservation of public peace, health, safety, or welfare and is not
3 required to provide a finding of emergency for a rule promulgated under this
4 paragraph.

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(END)