

# Model Fair Share Health Care Act

## **BACKGROUND**

- **Fewer Employers Provide Health Care for Their Workers.** Employer-based health insurance is the backbone of the U.S. health care system, but has been slowly eroding. If this trend continues, greater numbers of Americans are likely to be uninsured or without affordable coverage. Between 2001 and 2003, the number of uninsured people in the U.S. rose by nearly 4 million to 45 million people, with nearly the entire increase accounted for by a decline in employer-sponsored health insurance coverage. Although large firms have historically provided nearly universal coverage, a new study by the Commonwealth Fund reports that more than one-quarter of workers in companies with 500 or more workers do not receive employer-based coverage. Workers and their families increasingly must turn to taxpayer-funded programs like Medicaid and SCHIP to get health care as job-based health coverage declines and employers shift ever-growing health costs onto employees.
- **Medicaid Costs Are Skyrocketing.** While Medicaid has clearly provided quality care and has prevented workers from becoming uninsured, employers – rather than state taxpayers—should be responsible for their workers’ health care costs. Like the rest of the health care system, Medicaid is wrestling with explosive cost growth -- 56 percent since 2000-- partly as a result of increased participation as well as cost inflation afflicting the health care system as a whole. Medicaid is the second largest expense for most states, accounting for around 16 percent of state budgets, on average. States’ spending on the program is expected to grow almost 12 percent this year, four times faster than the increase in states’ general fund spending.
- **Workers, Taxpayers, and Other Businesses Are Forced to Pick Up \$113 Billion Tab for Health Care When Profitable Companies Don’t Pay Their Fair Share.**
  - ***Taxpayers pay \$21 Billion:*** The Commonwealth Fund study found that public programs – and consequently taxpayers -- were forced to pick up \$8 billion in covering workers who lack employer coverage. And charity care and bad debt cost taxpayers \$13 billion each year.
  - ***Workers Pay \$61 Billion:*** Workers who lack job-based coverage pay \$58 billion in out of pocket expenses and \$3 billion in private individual insurance premiums. Workers and their families who currently have private coverage are forced to pay higher premiums in order to cover the costs of workers without adequate health care. A recent study by Families USA found health insurance premiums for families who have employer-sponsored coverage, on average, are \$922 higher due to the cost of health care for uninsured.

- **Other Businesses Pay \$31 Billion:** Businesses that provide health care are forced to spend an estimated \$31 billion to cover cost-shifting businesses' workers through dependent coverage. That's in addition to the estimated \$150 billion they spend on their own workers' health care costs.

*Sources: A Shared Responsibility: U.S. Employers and the Provision of Health Insurance to Employees, Sara R. Collins, PhD, Karen David, PhD, and Alice Ho, Inquiry, Spring 2005, 42 (1): 6-15 (Commonwealth Fund) and Paying a Premium: The Added Cost of Care for the Uninsured (Families USA)*

## **THE SOLUTION**

The Model Fair Share Health Care Fund Act requires large corporations to spend the same percentage of their payroll to provide health care benefits for their employees as the average large employer in the state, or pay the difference into a state Fair Share Health Care Fund. Under this bill, non-profits would pay a lower percentage of their payroll due to differences in the tax structure that do not allow federal deductions for health care.

The Model Fair Share Health Care Fund Act will prevent large employers from shifting their costs onto workers, taxpayers, and other businesses and will:

- Help alleviate the financial pressures facing states as they struggle to contain Medicaid costs
- Reduce the bill taxpayers pay to cover profitable employers' business costs
- Level the playing field between companies providing good jobs and benefits to their workers and those that don't.

The Maryland State Legislature overwhelmingly passed a similar bill – HB 1284/SB 790, the Fair Share Health Care Fund Act – during the 2004-2005 session, but it was vetoed by Governor Ehrlich. The Maryland bill required corporations with 10,000 or more employees to pay eight percent (8%) of payroll toward health care.

### **Important Considerations During Bill Drafting:**

#### ***1. Choose a Payroll Percentage That Works for Your State***

Each state should base the percentage of payroll required by the bill on the average payroll percentage employers in the state contribute for health care. Why? If the payroll percentage is set too low – or lower than the average paid by employers in the state – the bill could have the unintended consequence of undermining the quality and breadth of coverage provided by other large employers in the state. New Jersey, one of the many states considering the Fair Share model, found that the average New Jersey employer pays 15% of payroll toward health care costs, and has set the payroll percentage required by the bill at that level.

For reasons specific to Maryland, eight percent — the national average of total compensation dedicated to health care benefits — was chosen as the percentage used for the bill. We strongly encourage legislators to use state-specific percentages based on the national average of

total wages and salaries dedicated to health care benefits instead. Around the country, employers (both public and private) spend 10.7 % of wages and salaries on health care, according to an analysis of June 2005 data from the Bureau of Labor Statistics. And private firms with 500+ workers spend 11.3% of wages and salaries on health care benefits.

***2. Choose the Definition of Large Employers in a Way That Works for Your State***

While Maryland legislators chose to apply the legislation to companies with 10,000 employees in the state (which impacted 5 companies, only one of which failed to meet the 8% payroll percentage). Each state should look at a cut-off that fits its needs.

## **COMPANION LEGISLATION: The Model Health Care Disclosure Act**

The Model Health Care Disclosure Act could serve as a companion to this bill, or as a stand-alone bill. (See AFL-CIO or AFSCME website). It will allow states to determine which employers are shifting their responsibility to provide health care coverage for their employees onto state taxpayers. The bill requires the state to collect and disclose the names of the employers of applicants for publicly funded health care programs like Medicaid and SCHIP, as well as any person requesting uncompensated care in a hospital. In addition, the state must disclose the total cost to the State of providing public health care benefits for the employees and enrolled dependents of each named employer.

*This fact sheet and model legislation was developed in partnership with AFSCME by the AFL-CIO, August 2005.*

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**(SEE NEXT PAGE FOR MODEL LANGUAGE)**

# *Model Fair Share Health Care Fund Act*

## **Fair Share Health Care Fund Act.**

**SECTION 1.** *[This section creates the fund and should be written to the portion of the state code related to the Medicaid program.]*

For the purposes of this section, "fund" means the fair share health care fund.

- (A) There is a fair share health care fund.
- (B) The purpose of the fund is to support the operations of the state Medicaid program, and specifically to help finance health insurance coverage for uninsured workers forced to rely on Medicaid because their employer fails to provide adequate coverage.
- (C)
  - (1) the fund is a special, nonlapsing fund that is not subject to *[insert the state code relating to finance and procurement]*
  - (2) the treasurer shall hold the fund separately, and the comptroller shall account for the fund.
- (D) The fund consists of:
  - (1) any revenue received from payments made by employers under *[insert title of the code where the fair share health care law will be created]*; and
  - (2) any other money from any other source accepted for the benefit of the fund.
- (E) The fund may be used only to support the operations of the state Medicaid program, and specifically to help finance health insurance coverage for uninsured workers forced to rely on Medicaid because their employer fails to provide adequate coverage.
- (F)
  - (1) The treasurer shall invest the money of the fund in the same manner as other state money may be invested.
  - (2) any investment earnings of the fund shall be retained to the credit of the fund.
- (G) The fund shall be subject to an audit by the office of legislative audits as provided

## **SECTION 2. Definitions**

- (A) For purposes of this section only, the following terms shall have the following meaning:
  - (1) "Employee" means all individuals employed full time or part time directly by an employer.
  - (2) "Employer" has the meaning stated in *[insert applicable state tax code that defines employer]*.
  - (3) "Employer" does not include the federal government, the state, another state, or a political subdivision of the state or another state.

(4) "Health insurance costs" means the amount paid by an employer to provide health care or health insurance to employees in the state to the extent the costs may be deductible by the an employer under federal tax law.

(5) "Health insurance costs" includes payments for medical care, prescription drugs, vision care, medical savings accounts, and any other costs to provide health benefits as defined in § 213(d) of the internal revenue code.

(6) "Secretary" means the secretary of *[insert state secretary responsible for labor regulation in the state]*.

(7) "Wages" has the meaning stated in *[insert state tax code related to wages]*

(8) "Salaries" has the meaning stated in *[insert state tax code related to wages]*

### **SECTION 3. Develops reporting guidelines from corporations to the Secretary**

This title applies to an employer with XXXX or more employees in the state.

(A) (1) On January 1, 200x, and annually thereafter, an employer shall submit on a form and in a manner approved by the secretary:

- (i) The number of employees of the employer in the state as of January 1 of the previous year;
- (ii) The amount spent by the employer in the previous calendar year on health insurance costs for employees in the state; and
- (iii) The percentage of payroll that was spent by the employer in the previous calendar year on health insurance costs for employees in the state.

(2) The secretary shall adopt regulations that specify the information that an employer shall submit under paragraph (1) of this subsection.

(3) The information required shall:

- (i) Be designated in a report signed by the principal executive officer or an individual performing a similar function; and
- (ii) Include an affidavit under penalty of perjury that the information required under paragraph (1) of this subsection:
  1. Was reviewed by the signing officer; and
  2. Was based on the officer's knowledge and does not contain any untrue statement of a material fact or omit a material fact necessary to make the statement made not misleading is true to the best of the signing officer's knowledge, information, and belief.

(B) When calculating the percentage of payroll under subsection (a)(1)(iii) or the amount spent on health care under subsection (a)(1)(ii) of this section, an employer may exempt wages and salaries paid to an employee who is enrolled in or eligible for Medicare.

**SECTION 4. Creates the language requiring employers to provide a percentage of their payroll to health care or pay the difference to a fund.**

This title applies to an employer with XXXX or more employees in the state.

(A) An employer that is organized as a nonprofit organization and does not spend at least [the average percentage of total wages and salaries similarly-sized non-profit employers in the state pay for health care costs] shall pay to the secretary an amount equal to the difference between what the employer spends for health insurance costs and an amount equal to [the average percentage of total wages and salaries non-profit employers in the state pay for health care costs.]

(B) An employer that is not organized as a nonprofit organization and does not spend at least [the average percentage of total wages and salaries similarly-sized for-profit employers in the state pay for health care costs] shall pay to the secretary an amount equal to the difference between what the employer spends for health insurance costs and an amount equal to [the average percentage of total wages and salaries for-profit employers in the state pay for health care costs.]

(C) An employer may not deduct any payment made under subsection (a) or (b) of this section from the wages of an employee.

(D) An employer shall make the payment required under this section to the secretary on a periodic basis as determined by the secretary.

**SECTION 5. Establishes penalties for late reporting and/or non-payment.**

(A) Failure to report in accordance with [insert section of code that establishes reporting as described in section 1 of this model bill] shall result in the imposition by the secretary of a civil penalty of \$250 for each day that the report is not timely filed.

(B) Failure to make the payment required under *[insert section of code that establishes payment requirements as described in section 4 of this model bill]* of this title shall result in the imposition by the secretary of a civil penalty of \$250,000.

**SECTION 6. Reporting guidelines of the Secretary to the Governor and State Assembly.**

(A) In this section, "health insurance benefits" includes payments for medical care, prescription drugs, vision care, medical savings accounts, and any other costs to provide health benefits, as defined in § 213(d) of the internal revenue code.

(B) On or before March 15 of each year, the secretary shall report to the governor and to the general assembly on:

- (1) The name of each nonprofit and for profit employer with **X,XXX** or more employees in the state;
- (2) The employer's definition of full-time employee and part-time employee;
- (3) The number of full-time employees;
- (4) The number of full-time employees eligible to receive health insurance benefits;
- (5) The number of full-time employees receiving health insurance benefits from the employer;
- (6) The source of health insurance benefits for those eligible full-time employees not receiving health insurance benefits through an employer subject to reporting under this title;
- (7) The number of part-time employees;
- (8) The number of part-time employees eligible to receive health insurance benefits;
- (9) The number of part-time employees receiving health insurance benefits from the employer; and
- (10) The source of health insurance benefits for those eligible part-time employees not receiving health insurance benefits through an employer subject to reporting under this title.

(C) The information required under subsection (b) of this section shall be reported as of the information reporting date determined by the employer under *[insert section of code that establishes reporting requirements as described in section 3 of this model bill]* of this title.

#### **SECTION 7. Outlines duties of Secretary.**

The secretary shall:

- (1) On an annual basis, based on the information reported under *[insert section of code that establishes reporting requirements as described in section 3 of this model bill]* of this title:
  - (i) Verify which employers in the state have **XXXX** or more employees in the state; and
  - (ii) Ensure that all employers in the state with **XXXX** or more employees in the state have made the report required;
- (2) Adopt regulations to implement this title; and
- (3) Pay the revenue from the payroll assessment into the fund created under *[insert section of code that establishes the fund as described in section 1 of this model bill]*.

#### **Section 8. Effective Date**

And be it further enacted, that this act shall take effect *[insert effective date]*.

***END***