

**SENATE . . . . . No. 00518**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*Mark C. Montigny*

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*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*

# SENATE . . . . . No. 00518

By Mr. Montigny, petition (accompanied by bill, Senate, No. 518) of Montigny for legislation relative to shared responsibility in health reform [Joint Committee on Health Care Financing].

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ SENATE  
□ , NO. 550 OF 2009-2010.]

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
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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 secretary of  
6 health and human services shall implement an option authorized by sections 2, 3, 4 or 5 of this  
7 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 and employs 25 or  
16 more full-time equivalent employees in the commonwealth.

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

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

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

30 (e) The commissioner shall determine which benefiting employers shall be subject to  
31 the payment. The commissioner may exempt employers who employ less than a minimum  
32 number of employees set by the commissioner. The commissioner may exempt employers who  
33 employ less than a minimum number of benefiting employees set by the commissioner. No  
34 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  
49 this section and shall implement penalties for employers who fail to make payments as required  
50 by this section. In order to reduce the administrative costs of collection of contributions, the  
51 director shall, to the extent possible, use any existing procedures that have been implemented by  
52 the division of unemployment assistance to collect contributions under section 188 of chapter  
53 149 of the General Laws.

54 (j) No employer shall discriminate against any employee or applicant for employment  
55 on 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  
64 the General Laws, the annual fair share employer contribution established in said section 188  
65 shall be increased to take into account the cost to the commonwealth of covering employees of  
66 non-contributing employers in the most recent fiscal year on whose behalf health care services  
67 were 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 Laws of  
77 a covered employer, provided that the division of health care finance and policy shall further  
78 define covered employee for purposes of this section, which may include, but not be limited to,  
79 specifying a minimum number of hours worked, a minimum length of employment, a maximum  
80 salary, and the exclusion of those with access to federal or other health programs or health  
81 coverage.

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

86 “Health care expenditure”, any amount paid by a covered employer to its covered employees or  
87 to a third party on behalf of its covered employees for the purpose of providing health care  
88 services for covered employees or reimbursing the cost of such services for its covered  
89 employees, including, but not limited to (1) reimbursement by such covered employer to its  
90 covered employees for expenses incurred in the purchase of health care services; (2) payments

91 by a covered employer to a third party for the purpose of providing health care services for  
92 covered employees; (3) costs incurred by a covered employer in the direct delivery of health care  
93 services to its covered employees; and (4) payments by a covered employer to the  
94 commonwealth pursuant to section 188 of chapter 149 of the General Laws, and (5) payments by  
95 a covered employer to the commonwealth, which shall be credited to the Commonwealth Care  
96 Trust Fund established pursuant to section 2000 of chapter 29 of the General Laws.

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

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

104 “Required health care expenditure”, the total health care expenditure that a covered employer is  
105 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  
123 matters as the director may determine. In order to reduce the administrative costs of collection of  
124 contributions, the director shall, to the extent possible, use any existing procedures that have  
125 been implemented by the division of unemployment assistance to collect contributions under  
126 section 188 of chapter 149 of the General Laws.

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

130 (b) Each employer who employs more than 25 employees and is subject to the  
131 provisions of 14, 14A, or 14C of chapter 151A of the General Laws shall pay, in the same  
132 manner and at the same times as the director of workforce development prescribes for the  
133 contribution required by section 14, an employer responsibility contribution. For employers with  
134 fewer than 100 employees the contribution shall be computed by multiplying the wages paid its



135 employees by the employer responsibility contribution rate of 5 per cent. For employers with 100  
136 or more employees the contribution shall be computed by multiplying the wages paid its  
137 employees by the employer responsibility contribution rate of 7 per cent. The receipts from these  
138 contributions shall be paid to the director and shall be credited to the Commonwealth Care Trust  
139 Fund established pursuant to section 2000 of chapter 29 of the General Laws.

140 (c) For the purposes of this section, “wages” shall not include that part of remuneration  
141 which, after remuneration equal to the employer responsibility wage base with respect to  
142 employment with such employer has been paid to an individual during the calendar year, is paid  
143 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  
147 conditions of chapter 151A of the General Laws that apply to the payment of and the collection  
148 of contributions shall apply to the same extent to the payment of and the collection of the  
149 employer responsibility contributions required by this section; provided, however, said  
150 contributions shall be reduced by an amount equal to the employer's health care expenditures,  
151 provided that said contribution shall not be less than zero. For the purposes of this section, health  
152 care expenditures shall mean any amount paid by an employer to its employees or a dependent of  
153 an employee or to a third party on behalf of its employees or their dependents for the purpose of  
154 providing health care services for employees or their dependents or reimbursing the cost of such  
155 services for its employees or their dependents, including, but not limited to (1) reimbursement  
156 by such employer to its employees for expenses incurred in the purchase of health care services;  
157 (2) 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,  
161 shall promulgate regulations to enforce the provisions of this section. The regulations shall  
162 include reasonable exemptions, including exemptions for substantial hardship, penalties for late  
163 payment and failure to pay, reporting forms and procedures, and other matters as the director  
164 may determine.