

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5835

Chapter 294, Laws of 2017

65th Legislature
2017 Regular Session

PREGNANCY--WORKPLACE ACCOMMODATIONS--DELIVERY SERVICES--ADVISORY
COMMITTEE

EFFECTIVE DATE: 7/23/2017

Passed by the Senate March 8, 2017
Yeas 48 Nays 0

CYRUS HABIB

President of the Senate

Passed by the House April 10, 2017
Yeas 98 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 16, 2017 10:14 AM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5835** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

May 16, 2017

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5835

Passed Legislature - 2017 Regular Session

State of Washington

65th Legislature

2017 Regular Session

By Senate Ways & Means (originally sponsored by Senators Keiser, Baumgartner, Fain, Conway, Cleveland, Rivers, Kuderer, Braun, Rossi, Hasegawa, Hunt, and Saldaña)

READ FIRST TIME 02/24/17.

1 AN ACT Relating to promoting healthy outcomes for pregnant women
2 and infants; amending RCW 74.09.480; adding a new section to chapter
3 74.09 RCW; adding a new section to chapter 43.10 RCW; adding a new
4 section to chapter 43.70 RCW; creating a new section; and providing
5 an expiration date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that the state
8 has an interest in assuring that children are given the opportunity
9 to have a healthy start in life. Because approximately half of all
10 births in Washington state are funded by state resources, and over
11 eight hundred thousand children in Washington state are enrolled in
12 the apple health program, the state is in a unique position to make a
13 difference in the health of children in Washington.

14 (2) The legislature also finds that there may be gaps in programs
15 that could greatly benefit children. Where programs may benefit
16 children in their early stages of development, the state must assure
17 they receive these benefits. Where children are not receiving
18 services because the public is unaware of the services, opportunities
19 for outreach must be explored.

20 (3) The legislature additionally finds that several hospitals
21 have begun adopting the best practices of the baby-friendly hospital

1 initiative. The state can use its resources to encourage hospitals to
2 adopt some of the most critical components by incorporating the
3 standards into medicaid contracts.

4 (4) The legislature further finds that providing children with a
5 healthy start also requires promoting healthy pregnancies. In one
6 national survey, pregnant workers said they needed more frequent
7 breaks while pregnant. Prenatal care is also critical for positive
8 birth outcomes, and pregnant women have cited the need for
9 flexibility in their work schedule for the purposes of attending
10 doctor visits. Reasonable accommodations for pregnant women in the
11 workplace can go a long way to promoting healthy pregnancies without
12 producing an undue hardship on employers.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.09
14 RCW to read as follows:

15 (1) Effective January 1, 2018, the authority shall require that
16 all health care facilities that provide newborn delivery services to
17 medical assistance clients establish policies and procedures to
18 provide:

19 (a) Skin-to-skin placement of the newborn on the mother's chest
20 immediately following birth to promote the initiation of
21 breastfeeding, except as otherwise indicated by authority guidelines;
22 and

23 (b) Room-in practices in which a newborn and a mother share the
24 same room for the duration of their postdelivery stay at the
25 facility, except as otherwise indicated by authority guidelines.

26 (2) The authority shall provide guidelines for hospitals to use
27 when establishing policies and procedures for services under
28 subsection (1) of this section, including circumstances in which
29 providing the services is not appropriate.

30 (3) The authority shall require managed care organizations to
31 report on the frequency with which each facility they contract with
32 is able to adhere to the policies and procedures and the most common
33 reasons for nonadherence. The authority shall include a summary of
34 this information in the biennial report required under RCW
35 74.09.480(3).

36 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.10
37 RCW to read as follows:

1 (1) The definitions in this subsection apply throughout this
2 section unless the context clearly requires otherwise.

3 (a) "Employer" has the same meaning as and shall be interpreted
4 consistent with how that term is defined in RCW 49.60.040, except
5 that for the purposes of this section only the threshold of employees
6 must be fifteen or more.

7 (b) "Pregnancy" includes the employee's pregnancy and pregnancy-
8 related health conditions.

9 (c) "Reasonable accommodation" means:

10 (i) Providing more frequent, longer, or flexible restroom breaks;

11 (ii) Modifying a no food or drink policy;

12 (iii) Job restructuring, part-time or modified work schedules,
13 reassignment to a vacant position, or acquiring or modifying
14 equipment, devices, or an employee's work station;

15 (iv) Providing seating or allowing the employee to sit more
16 frequently if her job requires her to stand;

17 (v) Providing for a temporary transfer to a less strenuous or
18 less hazardous position;

19 (vi) Providing assistance with manual labor and limits on
20 lifting;

21 (vii) Scheduling flexibility for prenatal visits; and

22 (viii) Any further pregnancy accommodation an employee may
23 request, and to which an employer must give reasonable consideration
24 in consultation with information provided on pregnancy accommodation
25 by the department of labor and industries or the attending health
26 care provider of the employee.

27 (d) "Undue hardship" means an action requiring significant
28 difficulty or expense. An employer may not claim undue hardship for
29 the accommodations under (c)(i), (ii), and (iv) of this subsection,
30 or for limits on lifting over seventeen pounds.

31 (2) It is an unfair practice for any employer to:

32 (a) Fail or refuse to make reasonable accommodation for an
33 employee for pregnancy, unless the employer can demonstrate that
34 doing so would impose an undue hardship on the employer's program,
35 enterprise, or business;

36 (b) Take adverse action against an employee who requests,
37 declines, or uses an accommodation under this section that affects
38 the terms, conditions, or privileges of employment;

1 (c) Deny employment opportunities to an otherwise qualified
2 employee if such denial is based on the employer's need to make
3 reasonable accommodation required by this section;

4 (d) Require an employee to take leave if another reasonable
5 accommodation can be provided for the employee's pregnancy.

6 (3) An employer may request that the employee provide written
7 certification from her treating health care professional regarding
8 the need for reasonable accommodation, except for accommodations
9 listed in subsection (1)(d) of this section.

10 (4)(a) This section does not require an employer to create
11 additional employment that the employer would not otherwise have
12 created, unless the employer does so or would do so for other classes
13 of employees who need accommodation.

14 (b) This section does not require an employer to discharge any
15 employee, transfer any employee with more seniority, or promote any
16 employee who is not qualified to perform the job, unless the employer
17 does so or would do so to accommodate other classes of employees who
18 need accommodation.

19 (5) The department of labor and industries must provide online
20 education materials explaining the respective rights and
21 responsibilities of employers and employees who have a health
22 condition related to pregnancy or childbirth. The online education
23 materials must be prominently displayed on the department's web site.

24 (6) The attorney general shall investigate complaints and enforce
25 this section, including by conference and conciliation. In addition
26 to the complaint process with the attorney general, any person
27 believed to be injured by a violation of this section has a civil
28 cause of action in court to enjoin further violations, or to recover
29 the actual damages sustained by the person, or both, together with
30 the cost of suit and reasonable attorneys' fees or any other
31 appropriate remedy authorized by state or federal law.

32 (7) This section does not preempt, limit, diminish, or otherwise
33 affect any other provision of law relating to sex discrimination or
34 pregnancy, or in any way diminish or limit legal protections or
35 coverage for pregnancy, childbirth, or a pregnancy-related health
36 condition.

37 **Sec. 4.** RCW 74.09.480 and 2011 1st sp.s. c 15 s 22 are each
38 amended to read as follows:

1 (1) The authority, in collaboration with the department of
2 health, department of social and health services, health carriers,
3 local public health jurisdictions, children's health care providers
4 including pediatricians, family practitioners, advanced registered
5 nurse practitioners, certified nurse midwives, and pediatric
6 subspecialists, community and migrant health centers, parents, and
7 other purchasers, shall establish a concise set of explicit
8 performance measures that can indicate whether children enrolled in
9 the program are receiving health care through an established and
10 effective medical home, and whether the overall health of enrolled
11 children is improving. Such indicators may include, but are not
12 limited to:

13 (a) Childhood immunization rates;

14 (b) Well child care utilization rates, including the use of
15 behavioral and oral health screening, and validated, structured
16 developmental screens using tools, that are consistent with
17 nationally accepted pediatric guidelines and recommended
18 administration schedule, once funding is specifically appropriated
19 for this purpose;

20 (c) Care management for children with chronic illnesses;

21 (d) Emergency room utilization;

22 (e) Visual acuity and eye health;

23 (f) Preventive oral health service utilization; and

24 (g) Children's mental health status. In defining these measures
25 the authority shall be guided by the measures provided in RCW
26 71.36.025.

27 Performance measures and targets for each performance measure
28 must be established and monitored each biennium, with a goal of
29 achieving measurable, improved health outcomes for the children of
30 Washington state each biennium.

31 (2) Beginning in calendar year 2009, targeted provider rate
32 increases shall be linked to quality improvement measures established
33 under this section. The authority, in conjunction with those groups
34 identified in subsection (1) of this section, shall develop
35 parameters for determining criteria for increased payment,
36 alternative payment methodologies, or other incentives for those
37 practices and health plans that incorporate evidence-based practice
38 and improve and achieve sustained improvement with respect to the
39 measures.

1 (3) The department shall provide a report to the governor and the
2 legislature related to provider performance on these measures, as
3 well as the information collected under section 2 of this act,
4 beginning in September 2010 for 2007 through 2009 and the authority
5 shall provide the report biennially thereafter.

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.70
7 RCW to read as follows:

8 (1) The healthy pregnancy advisory committee is established to
9 develop a strategy for improving maternal and infant health outcomes.
10 The advisory committee shall conduct its activities in consultation
11 with the maternal mortality review panel established in RCW 70.54.450
12 and an initiative related to improving maternal and infant outcomes
13 that is established by the largest association representing hospitals
14 in Washington. Administration of the advisory committee by the
15 department must be done within existing resources.

16 (2) The secretary shall appoint up to twenty members to the
17 advisory committee including experts in maternal and child health,
18 pediatric primary care providers, public health experts, hospitals
19 that provide birthing services, health care providers involved in the
20 care of pregnant women and infants, and representatives of low-income
21 women, women of color, and immigrant communities. In addition, the
22 secretary shall designate a representative from the department of
23 health and invite participation from the health care authority, the
24 department of social and health services, and the department of early
25 learning. The secretary's designee shall serve as the chair of the
26 advisory committee and shall convene the work group.

27 (3) The advisory committee shall meet quarterly and develop a
28 strategy to promote maternal and child health outcomes. The strategy
29 shall consider best practices that agencies may integrate into their
30 programs to improve birth outcomes, reduce maternal mortality and
31 morbidity, and reduce infant mortality. The strategy shall include
32 elements to promote breastfeeding, incentivize the adoption of the
33 baby-friendly designation by hospitals, and reduce barriers to
34 accessing prenatal care. The advisory committee shall consider where
35 there may be gaps in the availability of services that may benefit
36 pregnant women and infants, such as coverage for lactation
37 consulting, the availability of smoking cessation programs for
38 persons who are codomiciled with the pregnant woman or infant, access

1 to fresh fruits and vegetables, and improved access to dental care
2 for pregnant women.

3 (4) The advisory committee shall submit the strategy to the
4 legislature and the governor's council for the healthiest next
5 generation by October 15, 2018.

6 (5) This section expires July 1, 2019.

Passed by the Senate March 8, 2017.

Passed by the House April 10, 2017.

Approved by the Governor May 16, 2017.

Filed in Office of Secretary of State May 16, 2017.

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