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CALIFORNIA INDIVIDUAL HEALTH COVERAGE MANDATE INCLUDES EMPLOYER REPORTING

By Mercer's Catherine Stamm, Leena Bhakta and Carol Malenka
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In This Article

California's new individual health insurance mandate (2019 Ch. 38, SB 78) requires state residents to maintain minimum essential coverage (MEC) for themselves and their dependents starting on Jan. 1, 2020, or pay a state tax penalty. The legislation also establishes a three-year program to provide additional state subsidies to help certain households purchase coverage through Covered California, the state's public exchange. California joins Massachusetts, New Jersey, Vermont and the District of Columbia, which have similar mandates that aim to stabilize the individual health insurance market. While Massachusetts' law predates the Affordable Care Act (ACA), other states took action after Congress zeroed out the ACA's individual mandate penalty as of Jan. 1, 2019.

CALIFORNIA INDIVIDUAL MANDATE

The California law imposes a tax penalty (described below) on any state resident who fails to maintain MEC for themselves and their dependents, which include spouses, dependent children and registered domestic partners. The tax penalty for failing to maintain MEC won't apply to certain individuals whose premium contribution for health coverage exceeds 8.3% of their household income for the taxable year. Individuals who aren't required to file California income taxes don't have to maintain MEC.

Additional exemptions apply to the following individuals for any month in which they fail to maintain MEC:

- Individuals who obtain a hardship exemption from the exchange
- Members of certain religious sects who obtain a religious-conscience certificate of exemption
- Health care sharing ministry members
- Incarcerated individuals

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- Non-US citizens or nationals who are not lawfully present in the US
- Tribal members
- Certain expatriates
- Residents of another US state or US possession
- Individuals enrolled in limited-scope coverage under Medi-Cal or other similar programs

Residents who don't fall into one of these categories may still avoid a penalty if their coverage lapse lasts less than three months. However, if the lack of coverage lasts longer, they will face a penalty for the full duration of the lapse.

MEC Defined

The California MEC definition substantially mirrors the ACA definition of MEC. Enrollment in any of the following types of coverage will qualify as MEC under the California individual mandate:

- Employer-sponsored group health plans that cover more than just excepted benefits (such as accident or disability insurance, onsite medical clinics, separate dental or vision plans, workers' compensation policies, or long-term care insurance)
- Individual health policies that meet ACA's market requirements
- Certain government-sponsored programs, including Medicare, Medi-Cal, CHIP, TriCare and similar programs
- University of California student health insurance, other student health plans and voluntary dependent plans

Limited-scope, supplemental, hospital and fixed indemnity, and certain other plans covering only excepted benefits won't qualify as MEC. The California Department of Health and Safety can add other types of MEC that are "similar in form and substance" to the coverages listed above.

REPORTING AND NOTICE REQUIREMENTS

Self-insured plan sponsors, health insurers and other entities that provide MEC to residents must report to the California Franchise Tax Board (FTB) by March 31 of the year after close of each coverage year. Additional notices must go to covered individuals and their dependents by Jan. 31 after the coverage year ends. Failure to report this coverage can trigger penalties of $50 per affected individual per tax year.

Notice Forms

The FTB will develop a reporting form that includes the covered individual's (and covered dependents') name, address, taxpayer identification number, and dates of MEC coverage during the calendar year. The FTB also will develop the notice to individuals. The FTB form may request additional data, but a form with the same information required by Section 6055 of the Internal Revenue Code (as of Dec. 15, 2017) will suffice for California reporting. This essentially means entities that provide coverage statements to individuals using IRS Forms 1095-A, 1095-B or 1095-C won't have to provide duplicate state notices, unless IRS substantially changes those forms.

INDIVIDUAL SHARED-RESPONSIBILITY PENALTIES

While the MEC standards and reporting requirements substantially mirror ACA provisions in effect as of Dec. 15, 2017, California residents who don't maintain MEC face a state-specific penalty. The penalty formula is complicated. The penalty will be tied to several factors, including the average cost of an area bronze plan, an annually adjusted "applicable dollar amount" (starting at $695 for adults and $347.50 for children), household size, and taxpayer income.

Per an FTB bill analysis, the penalty is equal to the lesser of either of the following amounts:

1. The sum of the monthly penalty amounts for months in the taxable year during which one or more failures occurred.

2. An amount equal to one-twelfth of the state average premium for qualified health plans that have a bronze level of coverage for the applicable household size involved, and are offered through the Exchange for plan years beginning in the calendar year with or within which the taxable year ends, multiplied by the number of months in which a failure occurred.

The analysis gives these additional instructions for calculating the penalty:

> For purposes of computing (1) above, the monthly penalty amount for any month during which a failure occurred is an amount equal to one-twelfth of the greater of either of the following amounts:

- An amount equal to the lesser of either of the following:
  - The sum of the applicable dollar amounts for all applicable household members who failed to enroll in and maintain MEC during the month unless they did not maintain MEC for a continuous period of three months or less.
  - Three hundred percent of the applicable dollar amount determined for the calendar year during which the taxable year ends.
- An amount equal to 2.5 percent of the excess of the responsible individual's applicable household income for the taxable year over the amount of gross income that would trigger the responsible individual's requirement to file a state income tax return based on the applicable filing threshold for the taxable year.

ADDITIONAL PREMIUM TAX SUBSIDIES

California will supplement premium tax credits for health insurance purchased through Covered California, the state's public exchange. Under the ACA, individuals who earn less than 400% of the federal poverty line (FPL) qualify for federal premium tax credits. Beginning Jan. 1, 2020, California will provide additional premium subsidies to state residents who qualify for federal premium credits and earn between 400% and 600% of the FPL. (This range equates to 2019 household income of approximately $50,000 to $75,000 for a single individual and $103,000 to $155,000 for a family of four.)

Funding and Sunset

The state exchange will oversee designing the subsidy program, using funds appropriated for the coverage year and earmarked for the program. The measure specifically notes that the subsidy isn't an entitlement and isn't intended to increase taxes. This suggests the state won't impose any assessment on insurers, third-party administrators or employers to help fund the subsidies. The program is scheduled to remain in effect until Jan. 1, 2023. No funding will be appropriated after 2022.

EMPLOYER NEXT STEPS

To prepare for the new law's implementation on Jan. 1, 2020, employers with employees in California should:

- Coordinate with their insurance carriers and self-insured medical plan vendors to stay informed about updates, including announcements giving reporting details.

- Watch for guidance on employee notice requirements and, in the absence of specific rules, consider informing affected employees about the mandate.

- Coordinate with ACA reporting vendors to ensure that you are prepared for the filings that will be due in the first quarter of 2021.

RELATED RESOURCES

Non-Mercer Resources

- 2019 Ch. 38 (SB 78) (California Legislature, June 27, 2019)

- Individual Shared-Responsibility Provision — Minimum Essential Coverage (IRS, last updated March 29, 2019)

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- New Jersey Posts Update on Health-Coverage Reports Due in 2020 (April 16, 2019)

Other Mercer Resources

- Grab Some Ibuprofen: State Mandates May Create Reporting Headaches (June 20, 2018)

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