



States increase group health plan reporting obligations

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Group health plan sponsors' state reporting obligations have grown over the past few years. While ERISA continues to preempt certain state regulation of private employers' group health plans, some state reporting requirements for group health plan sponsors have moved forward. This GRIST reviews key state reporting mandates for group health plan sponsors and has revisions to reflect updated New Jersey and clarified California guidance.

Individual health coverage mandates

In 2017, Congress zeroed out the assessment under the Affordable Care Act (ACA) that residents must pay if they don't maintain health coverage that qualifies as minimum essential coverage (MEC). This requirement is commonly called the "individual mandate." In response to this change, four states — California, New Jersey, Rhode Island and Vermont — along with Washington, DC, have imposed their own individual mandates, with penalties to ensure compliance. In addition, Massachusetts has its long-standing individual mandate, which took effect in 2007. The US Supreme Court next week will hear a [legal challenge](#) on whether the zeroed-out assessment for the individual mandate invalidates any part or the entire ACA (*California v. Texas*, Docket No. 19-840).

Coverage

States that instituted an individual mandate after the 2017 tax change generally require state residents to maintain MEC as defined by the ACA in effect Dec. 15, 2017, or pay a state tax assessment. Only Massachusetts differs in its coverage requirements, setting a more stringent [minimum creditable](#)

coverage (MCC) standard. The other jurisdictions define MEC as any plan meeting the federal statutory definition (26 USC § 5000A(f)) and implementing regulations in effect on Dec. 15, 2017. These coverage options include:

- Government-sponsored health programs, including Medicare, Medicaid, TRICARE, Veterans Affairs and other government plans
- Employer-sponsored health plans, including grandfathered health plans
- Coverage under a health plan offered in the individual market that complies with requirements in effect Dec. 15, 2017

The term excludes plans that offer only excepted benefits, such as stand-alone vision or dental plans, long-term care insurance, supplemental or specified-disease coverage, and accident or disability insurance. Certain other programs like short-term limited-duration insurance and healthcare sharing ministries also do not count as MEC.

Reporting

Reports due in 2021 for the 2020 coverage year will follow the same schedule in some states as the IRS deadlines to file federal Forms 1094/1095. Some jurisdictions have indicated they will accept the federal forms that employers or other applicable entities must send to IRS and won't require employers to send duplicative statements to residents. New Jersey and Washington, DC, delayed their 2020 filing deadlines due to COVID-19, but regulators haven't indicated any similar delay in 2021.

California

Effective Jan. 1, 2020, California's mandate (CA Gov't Code § 100700 et seq.) requires state residents to maintain MEC for themselves and their dependents or pay a state tax penalty, subject to certain exceptions (CA Rev. & Tax. Code § 61000 et seq.). The rules define MEC in much the same way as the federal law in effect on Dec. 15, 2017. Beginning in 2021, self-funded plan sponsors, health insurers and other entities that provide MEC to residents must file coverage reports with the California Franchise Tax Board (FTB) by March 31 after the coverage year has ended. However, penalties for failure to file won't begin to accrue until May 31.

A coverage statement is due to individuals by Jan. 31 after the coverage year. Although IRS Notice 2020-76 extends the 2021 federal deadline to provide individual statements until March 2, the FTB has informally confirmed the state's Jan. 31 due date won't be extended. However, the FTB also has indicated that California penalties for furnishing statements to individuals late won't apply. In addition, duplicative California statements aren't necessary if individuals have received the federal coverage statement (IRS Form 1095-B or 1095-C). FTB draft regulations define MEC terms and affordability parameters.

The FTB requires MEC providers to submit the same information reported to IRS under Section 6055 of the Internal Revenue Code (as of Dec. 15, 2017). Entities that have to file IRS Forms 1094/1095 may submit the same forms to FTB. Entities submitting at least 250 returns in a year to FTB must file electronically, unless granted a waiver due to technology constraints or undue hardship. Smaller entities may file either on paper or electronically.

Massachusetts

By Jan. 31 after the close of each coverage year, plan sponsors (or their vendors) that provide minimum creditable coverage (MCC) to Massachusetts residents must distribute Form MA 1099-HC to covered Massachusetts residents and report this information to the state Department of Revenue (DOR).

Most plan sponsors rely on their vendors to determine MCC status, distribute the forms and file the DOR report. Insurers subject to Massachusetts regulation must determine MCC status and typically complete the reporting requirements. However, employers that self-insure or contract with more than one vendor for a single plan may need to complete an attestation form before their vendor will complete the annual reporting. Employers whose plans don't meet MCC standards may apply for MCC certification by Nov. 30 of the plan year.

All reports to the DOR must be filed electronically. An employer whose insurer or third-party administrator (TPA) won't file the Form MA 1099-HC can upload XML files through MassTaxConnect and distribute the forms to covered residents.

New Jersey

By every March 31, group health plan sponsors and other MEC providers must transmit to the state Division of Taxation health-coverage information about covered employees and their dependents residing in the state during the prior year. Applicable entities also must disclose this information to covered employees unless they receive IRS Form 1095-B or 1095-C statements (duplicative statements aren't required). The New Jersey deadline to provide statements to covered employees generally is Jan. 31, the same as the federal deadline. However, since IRS Notice 2020-76 extends the 2021 federal deadline to provide individual statements until March 2, this federal extension also applies to New Jersey statements.

For the 2020 coverage year, the state plans to accept NJ-1095 forms, fully completed federal Forms 1095-B and 1095-C, and/or Form 1095-C with parts I and III completed. Forms 1095-C with only Parts I and II completed won't meet New Jersey filing requirements. The state does not require Forms 1094 but will accept them as part of a larger file that includes Forms 1095.

Employers with fewer than 100 forms to file can register to complete Form NJ-1095 online. Employers submitting 100 or more forms must file electronically using the system for W-2 submissions (Axway).

Fully insured plan sponsors should file Forms 1095 with New Jersey only if their insurer does not. MEC providers can submit reporting questions to the state via its [dedicated website](#). The filing requirement applies to not only businesses that withhold New Jersey payroll taxes, but also out-of-state employers that provide health coverage to New Jersey residents — including part-year residents who live in the state at least 15 days in any month. Penalties are \$50 per form not filed correctly by the deadline, up to a cap of \$50,000 per company.

Rhode Island

Final Rhode Island [regulations](#) on its individual mandate (RI Gen. Laws §§ 44-30-101 to -102) address some reporting obligations for insurers, plan sponsors and other “applicable entities.” As of the start of 2020, Rhode Island residents must maintain MEC, as defined under federal law in effect on Dec. 15, 2017.

Starting in 2021, an employer or other applicable entity that provides MEC to any Rhode Island resident must send reports to the [Division of Taxation](#) (DOT) and covered individuals by Jan. 31 each year. However, in light of IRS Notice 2020-76, recent state guidance ([Pub. 20-04](#)) specifies that for the 2020 tax year only, the DOT will extend the state deadlines for delivering statements to individuals to March 2, 2021, and sending reports to the DOT to March 31, 2021.

Reports to the DOT must include name, address, and taxpayer identification number of the primary insured and each other covered individual and indicate their MEC coverage dates. DOT will accept IRS Form 1095 returns if they contain the information required under the federal tax law in effect Dec. 15, 2017. The DOT's [health coverage mandate website](#) will provide a webpage for uploading files.

The individual statement must include the covered person's name, address and contact information. Each applicable entity must notify each individual, including dependents, who had MEC during the prior year. Regulators haven't said whether applicable entities must send RI statements to individuals if they also receive federal Form 1095.

Vermont

Vermont's individual mandate (Vt. Stat. Ann. tit. 32 § 10451 et seq.) requires residents to maintain MEC beginning in 2020 and self-report compliance beginning in 2021. MEC has the same meaning as the ACA definition as of Dec. 31, 2017. When filing individual income tax returns, residents will indicate if they had MEC during the tax year and, if requested by the state, will have to submit their IRS Forms 1095 as proof. Vermont doesn't require employer reporting, unless the federal ACA's MEC reporting requirement is suspended or eliminated.

Washington, DC

Under a city law (DC Code §§ 47-5101 to 47-5109) effective Jan. 1, 2019, most residents must have MEC for themselves and their dependents or pay a tax penalty. Modeled on the federal ACA provision before the 2017 tax change, the DC law follows many ACA definitions, including MEC as defined by federal law and regulations on Dec. 15, 2017.

Applicable entities, including sponsors of group health plans covering at least 50 employees and providing MEC to at least one DC resident during the coverage year, must sign up with the [DC Office of Tax and Revenue](#) (OTR) to upload files through [MyTax DC](#). Applicable entities should electronically file with OTR the same information filed with IRS. For tax years beginning in 2020 or later, the filing deadline is 30 days after the IRS deadline for submitting Forms 1095-B or 1095-C, including any extensions granted. However, no penalty applies for failing to file the city reports.

A notice ([OTR 2020-04](#)) published earlier this year hasn't yet been updated for 2021, but includes FAQs and more reporting details. Employers that furnish federal MEC statements to covered employees don't have to provide duplicative MEC statements for the city's mandate. Entities may contract with third-party providers to complete the filing. Any filer that doesn't currently have a MyTax DC account will have to sign up to obtain login credentials. Special bulk-filing accounts apply for filers that are not DC taxpayers.

Other health plan sponsor reporting

Group health plan sponsors also face other state reporting requirements, sometimes in conjunction with a covered-lives surcharge or employment benefit. While ERISA preempts state laws that regulate key facets of plan administration, including claims reporting, a state's "innocuous and peripheral set of additional rules" may withstand preemption (*Gobeille v. Liberty Mutual Ins. Co.*, 136 S. Ct. 936 (2016)). The US Supreme Court has upheld certain health assessments and related reporting that are incidental and indirectly apply to ERISA plans (*New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995)).

In addition, ERISA (29 USC § 1181(f)(3)(B)(ii)) requires employers that sponsor group health plans to disclose plan details if requested by state Medicaid premium-assistance programs. This allows state Medicaid regulators to evaluate the feasibility of providing premium assistance.

The following state and local reporting requirements generally fall into these categories exempt from ERISA preemption.

California — San Francisco

The [Health Care Security Ordinance](#) (HCSO) requires employers with San Francisco employees to electronically [submit](#) by April 30 annual Health Care Expenditure (HCE) reports for the preceding year.

The HCE is the minimum amount employers must spend on healthcare for each hour worked by a covered employee — one employed for more than 90 days who regularly works at least eight hours a week in San Francisco. Minimum HCE amounts are adjusted annually and vary by employer size. To determine workforce size, employers must count all employees, no matter where they live or work. However, the expenditure applies only for hours worked in San Francisco.

Hawaii

The Hawaii Prepaid Health Care Act requires employers to offer health coverage to all eligible employees in the state. The act, which is exempt from ERISA preemption, strictly limits employee contributions and requires minimum benefit levels and certain plan provisions. The state's Department of Labor and Industrial Relations (DLIR) must approve all employer health plans before they are offered to employees. Approval also is required before an employer makes any plan changes, including changes to deductibles and out-of-pocket maximums. Plans are typically approved only if they are at least actuarially equivalent to the two most prevalent plans offered in the state, commonly called plans 7a and 7b.

An employee can waive coverage under the employer's health plan if certain conditions are met, including having other health coverage. To claim an exemption, the employee must complete and submit a notice (Form HC-5) to the employer. The notice is binding for one year and must be renewed every Dec. 31. If employees waive employer-sponsored coverage because they have other health coverage, the employee must include name of plan and health plan contractor on Form HC-5, which the employer must forward to the DLIR. ACA public exchange plans for individuals apparently don't qualify as other health coverage. The employer must keep this form on file. If an employee who works two jobs waives coverage of the second employer, that employer must file the notification with state regulators.

Massachusetts

In addition to the state's individual mandate reports due each January, Massachusetts requires every employer with six or more employees in the state to submit an annual Health Insurance Responsibility Disclosure (HIRD). The HIRD Form is due by Dec. 15 but available to complete online starting Nov. 15. Employers must complete the HIRD form if they included six or more employees in any Department of Unemployment Assistance wage report during the 12 months before the HIRD due date.

Required data may include the availability of coverage, eligibility requirements, employment-based classifications, plan description, MCC status, wellness plan credits, employee contributions per tier, deductibles and out-of-pocket maximums. Employers must file a separate form for each covered entity that has its own federal employer identification number, even if all other information is the same. Employers with multiple plans or substantive variations must report information about each plan offered in Massachusetts. A payroll vendor can file forms on behalf of client employers if it has the relevant information. Employers complete the form by logging into their withholding account on MassTaxConnect.

New York

The New York Health Care Reform Act (NYHCRA) imposes two separate surcharges on health claim payors, including self-funded employer-sponsored group health plans:

- One surcharge, which subsidizes indigent care and state healthcare initiatives, applies to payments for New York hospital inpatient and outpatient services, comprehensive diagnostic and treatment centers, and ambulatory surgery centers. For this surcharge, nonelecting payors must pay an additional amount — essentially a penalty for not electing direct payment to the state Public Goods Pool administrator.
- The other surcharge, which funds a graduate medical education (GME) pool, applies to health claim payors that cover New York residents. For this surcharge, electing payors pay an annual covered-lives assessment directly to the state pool administrator, while nonelecting payors instead incur a surcharge on direct payments to in-state hospital expenses for covered services.

The two surcharges are subject to slightly different operating guidelines. Monthly online reports on covered charges are due to the NYHCRA pool administrator for the first year after claim payor becomes an electing payor. The pool administrator may notify payors that subsequent reports will be due annually, which is the typical schedule for out-of-state health plan sponsors with few or no New York employees. Reports must be filed electronically within 30 days after the end of the reporting month or year, even if a payor has no activity to report. Self-funded health plan sponsors commonly rely on TPAs to file the monthly or annual report. However, the ultimate responsibility falls to the plan sponsor.

Vermont

Vermont requires certain employers to pay a quarterly fee for “uncovered employees” who don’t have qualifying health coverage. Employers must file their “uncovered” employee report with any required payment, if any, on Form WHT-436, Quarterly Withholding Reconciliation and Health Care Contribution, through myVTax.vermont.gov or by paper, using the most recent forms and information on the department’s website. All employers with Vermont employees must complete and submit the report by the 25th of the month following the end of each calendar quarter, even if no payment is due.

Looking ahead

States may begin requiring more reporting for individual mandates, assessments and Medicaid premium-assistance information. Group health plan sponsors in states with reporting laws will need to work with the appropriate vendor, such as a TPA or payroll processor, to clarify which report supply and ensure compliance.

Chart: State reporting schedules and due dates for group health plans

This chart identifies state reporting schedules for group health plan sponsors. While some states have required health plan reports for several years, this is the first reporting year for California and Rhode Island.

| State | Covered entities | Report schedule | Report due to state |
|-------------------|---|--|--|
| California | Plan sponsors providing MEC to California residents | IRS Forms 1094/1095 or equivalent state form | Annually by March 31 |
| San Francisco, CA | Employers with 20 or more employees and at least one in San Francisco | Employer Annual Reporting Form | Annually by April 30 |
| Hawaii | Employers with a Hawaii employee who waives health plan participation due to other coverage | Form HC-5 | Annually by Dec. 31 |
| Massachusetts | Plan sponsors providing MCC to Massachusetts residents | Form MA 1099-HC | Annually by Jan. 31 |
| | Plan sponsors seeking MCC certification for health plan | MCC Certification Application | Nov. 30 of reporting year |
| | Employers with six or more Massachusetts employees | HIRD Form | Annually by Dec. 15 |
| New Jersey | Plan sponsors providing MEC to New Jersey residents | IRS Forms 1094/1095 (or Form NJ-1095 for coverage providers filing fewer than 100 forms) | Annually by March 31 |
| New York | Self-funded employers that elect to participate for lower NYHCRA surcharge | Public Goods Pool report | 30 days after end of reporting month or year |
| Rhode Island | Plan sponsors providing MEC to Rhode Island residents | IRS Forms 1094/1095 or equivalent state form | Annually by Jan. 31, but for 2020 reporting, the extended due date is March 31, 2021 |
| Vermont | Employers paying Vermont wages | Form WHT-436 | 25th of month after end of each calendar quarter |

| State | Covered entities | Report schedule | Report due to state |
|----------------|--|---------------------|---|
| Washington, DC | Plan sponsors providing MEC to Washington, DC, residents | IRS Forms 1094/1095 | 30 days after IRS deadline, including any extensions, to file Form 1095-B or 1095-C |

Related resources

Non-Mercer resources

- [CA Gov't Code § 100700 et seq.](#), California individual MEC mandate (CA Legislature)
- [CA Rev. & Tax. Code § 61000 et seq.](#), California individual-mandate tax penalty law (CA Legislature)
- [California individual-mandate reporting draft regulations](#) (CA Franchise Tax Board, Aug. 19, 2020)
- [California reporting website](#) (CA Franchise Tax Board)
- [Washington, DC, OTR Notice 2020-04](#) (DC Office of Tax and Revenue, March 31, 2020)
- [MyTax.DC.gov](#) (DC Office of Tax and Revenue)
- [DC Code §§ 47-5101 to 47-5109](#), Washington, DC's individual mandate (City Council)
- [Hawaii Form HC-5](#) (HI Disability Compensation Division)
- [Summary of Hawaii Prepaid Health Care Act](#) (HI Disability Compensation Division)
- [Massachusetts attestation form](#) (MA Department of Revenue, Dec. 7, 2011)
- [Massachusetts HIRD reporting](#) (MA Department of Revenue)
- [Massachusetts minimum creditable coverage standards](#) (MA Department of Revenue)
- [MassTaxConnect](#) (MA Department of Revenue)
- [2019 Form MA 1099-HC](#) (MA Department of Revenue, Dec. 16, 2019)
- [MCC 2020 certification application for plan year beginning on or after Jan. 1, 2020](#) (MA Health Connector, Feb. 11, 2020)
- [New Jersey e-file system](#) (NJ Treasury Department)
- [New Jersey reporting guidance](#) (NJ Treasury Department, last updated Nov. 13, 2020)
- [New York Health Care Reform Act guidance](#) (NY Health Department)

- [Rhode Island final individual-mandate regulations](#) (RI Division of Taxation)
- [RI Gen. Laws §§ 44-30-101 to -102](#), Rhode Island individual mandate (RI Division of Taxation, Aug. 4, 2020)
- [Rhode Island individual mandate website](#) (RI Division of Taxation)
- [Rhode Island health insurance mandate: Reporting requirements FAQs](#) (RI Division of Taxation, Nov. 5, 2020)
- [San Francisco Health Care Security Ordinance](#) (Office of Labor Standards Enforcement)
- [Vermont 2019 Form WHT-436](#) (VT Department of Taxes, August 2019)
- [myVTax website](#) (VT Department of Taxes)
- [VT Stat. tit. 32 § 10451 et seq.](#), Vermont individual mandate (VT General Assembly)
- [Gobeille v. Liberty Mutual Ins. Co.](#), 136 S. Ct. 936 (2016)
- [New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.](#), 514 U.S. 645 (1995)

Mercer Law & Policy resources

- [New York announces 2020 HCRA covered-lives assessment rates](#) (Jan. 21, 2020)
- [Massachusetts employers' health coverage reports due by Dec. 15](#) (Nov. 13, 2019)
- [Vermont reissues employer health plan assessment reporting guidelines](#) (Sept. 24, 2019)
- [DC details employer reporting for individual health coverage mandate](#) (Aug. 20, 2019)
- [San Francisco's annual health care expenditure report due April 30](#) (March 26, 2019)

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