

California legislation to require individual residents to carry health insurance

As a part of its 2019 budget legislation, the California legislature has passed an individual mandate, which the Governor is expected to sign. The legislation, which was modelled after the federal Affordable Care Act (ACA), generally would require Californians to carry health insurance for themselves and their dependents. Its provisions are effective January 1, 2020.

Background

Section 5000A of the Internal Revenue Code (IRC) generally requires individuals to either carry health insurance or pay an excise tax (the so-called individual mandate). The Tax Cut and Jobs Act of 2017 (TCJA) amended IRC Section 5000A to reduce the excise tax to \$0 beginning in calendar year 2019. In response to that federal change, New Jersey and the District of Columbia enacted their own individual mandate to keep younger and healthier individuals in the exchange market pool. Those provisions are effective for 2019.

Vermont also enacted individual mandate legislation during 2018 to be effective in 2020. In enacting enabling legislation in 2019, however, the state legislature did not include a monetary penalty associated with its individual mandate for 2020 but may reconsider and add one for future years.

Massachusetts had an individual mandate that predated the ACA under its state health provisions known as "Romney Care." The penalty under the Massachusetts mandate was fully offset by the federal penalty for the years the penalty under the ACA was greater than \$0, but is, in effect, resurrected in 2019 because of the TCJA provision.

Summary of the California legislation

The California legislation would require all individuals who are California residents to carry to minimum essential coverage for themselves, their spouses and their dependents for every month beginning on and after January 1, 2020. The mandate would exclude individuals for hardship or religious conscience reasons.

The penalty for not having minimum essential coverage is like the penalty that existed under IRC Section 5000A before its amendment by the TCJA: 2.5% of the taxpayer's household income over the state filing threshold or \$695 per adult and \$347 per child, whichever is greater. The dollar amounts would be increased annually by inflation. If less, the penalty would equal the state average premium for a "bronze" level health plan in the California Health Benefit Exchange, also known as Covered California.

To be certain taxpayers remain aware of their coverage status, the legislation would require Covered California annually to conduct outreach and enrollment efforts to individuals who indicated on their tax returns that they or their dependents were not enrolled in minimum essential coverage.

Like the ACA, the legislation would require issuers of health coverage to report the coverage provided to the individuals that they cover. In general, issuers are insurers or employers of self-insured medical plans. The legislation would specifically incorporate the federal reporting requirements by referencing reporting under IRC Section 6055 as in effect immediately before the enactment of the TCJA. An issuer faces a penalty of \$50 per form for failing to file the required forms.

Implications

California will soon join the growing list of jurisdictions that impose an individual mandate on their residents. Insurers and employers should be able to satisfy the new reporting requirement by leveraging the information on federal Forms 1095-B and 1095-C if there is no change in the reporting requirements at the federal level. (Whether the IRS will change the reporting required on these forms for 2019 based on the TCJA's amendments to the federal individual mandate excise tax is still unclear as of the date of this Alert).

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