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Rhode Island requires individual residents to carry health insurance

As a part of its fiscal year 2020 budget legislation, Rhode Island enacted an individual mandate on July 5, 2019. The legislation was modelled after the federal Affordable Care Act (ACA), and generally requires Rhode Island residents to carry health insurance for themselves, their spouses and their dependents. The mandate is 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 the federal change, California, New Jersey and the District of Columbia enacted their own individual mandates to keep younger and healthier individuals in the exchange market pool. Those mandates are effective for 2019 in New Jersey and the District of Columbia. The California individual mandate will be effective in 2020.

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 excise tax for the years the tax was greater than \$0. Because of the TCJA provision, the Massachusetts penalty is effectively resurrected in 2019.

Summary of the Rhode Island legislation

The legislation requires all Rhode Island residents to carry minimum essential coverage for themselves, their spouse and their dependents for every month beginning on and after January 1, 2020. The mandate excludes individuals for hardship or religious conscience reasons.

The penalty for not having minimum essential coverage mirrors the IRC Section 5000A excise tax 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 increase annually with inflation. The penalty is capped at the level of the state average premium for a "bronze"-level health plan in Rhode Island (rather than the national average for bronze-level health plans, which was the cap in the now-effectively-repealed federal individual mandate.) The Rhode Island law specifies that the state penalty will not apply for any year in which the federal excise tax applies.

Like the ACA, the legislation requires 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 specifically incorporates the federal reporting requirements by referencing reporting under IRC Section 6055 as in effect immediately before the enactment of the TCJA. It further specifies that furnishing the federal forms and filing those with the state will fulfill the reporting requirements, assuming that the federal forms continue to have the same requirements as were in place before the TCJA.

Implications

Rhode Island has joined the growing list of jurisdictions that impose an individual mandate on their residents. Insurers and employers should be able to satisfy the new state reporting requirement by submitting their federal

Forms 1095-B and 1095-C, which currently require information on which employees have been offered, or received, employer-provided health insurance.

Satisfying Rhode Island's reporting requirement becomes more complicated, however, if federal reporting requirements change. With the change to the federal excise tax, the IRS has indicated that it might change 2019 Forms 1095-B and 1095-C to eliminate the requirement to identify employees with employer-provided health insurance. If that happens, insurers and employers will need a new way to report the required information. Rhode Island and other states would also be affected, as they would have to create their own forms to capture that information.

Along with the challenge of determining how to report the information required by states with individual mandates, many insurers and employers have questions on which employees to include. For example, is reporting required for an employee who resided in the state for part of the year? Is reporting required only for employees who are residents as of December 31? Guidance addressing these questions and other questions is not yet available, though New Jersey is expected to be the first to address them in the coming months.

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