



COMPLIANCE SERVICES Alert



June 27, 2019

California imposes individual health insurance mandate for 2020, bumps Covered California subsidy eligibility to 600% of poverty level

We said it was only a question of time. Turns out, it didn't take much time at all.

The California legislature has passed a spending bill imposing an individual health insurance mandate and tax penalty on state residents. This serves to replace the Affordable Care Act's individual mandate penalty effectively repealed by Congress for 2019 and later years. The law will have an indirect, but very real, impact on the state's employers.

The state-imposed penalty will apply beginning in 2020. The state's governor is expected to sign the measure.

The bill will impose an individual mandate penalty on nearly 40 million state residents, or about 12% of the nation's population, and place California with Massachusetts, Vermont and New Jersey as the only states to levy tax penalties on residents who don't maintain health insurance. The District of Columbia also has such a law. We understand Rhode Island is contemplating a similar measure.

The California law applies to state residents but exempts undocumented resident aliens, those qualifying for exemption due to financial hardship or religious objection, members of a healthcare sharing ministry, incarcerated individuals, citizens of American Indian tribes, individuals enrolled in restricted-scope Medi-Cal coverage, and certain other individuals.

Ghosts of the ACA individual mandate penalty

The mandate and its penalty are patterned after the ACA penalty. A nonexempt California resident who fails to maintain insurance may be subject to a state tax penalty (determined monthly, for each month of noncompliance) equal to the lesser of two amounts:

- One-twelfth of the average annual premium for bronze-level coverage in Covered California, the state's ACA marketplace.
- One-twelfth of \$695 (adjusted annually for inflation) for each noncompliant individual in the tax family, or half that amount if the individual is under age 18, up to a maximum of 300% of \$695

(adjusted for inflation) for the family; or, if greater, 2.5% of the taxpayer's household income above the state income tax filing threshold.

Like the ACA individual mandate penalty, a failure to have insurance coverage for one period of three consecutive months or less in any given year is ignored.

Similar to the ACA individual mandate, the state's mandate may be met by enrolling in any one of a variety of medical plans, including the following:

- Any employment-based medical coverage other than an "excepted benefit," such as dental or vision coverage, a health flexible spending account, or critical illness or similar indemnity coverage. A health reimbursement arrangement integrated with other group coverage under current federal rules, or a new (for 2020) HRA reimbursing individual market coverage, would also meet the state requirement.
- Medicare, full-scope Medi-Cal, CHIP, TRICARE, and the University of California student (and dependent) health insurance coverage.
- A Covered California-based individual medical insurance policy.

Shoring up the individual health insurance market ... with enhanced state subsidies

A main purpose of the mandate is to drive an adequate number of uninsured residents into the state's individual health insurance market to stabilize that market. To entice the uninsured to do just that, the new state law makes state-paid medical insurance subsidies available through Covered California to eligible residents with household incomes up to 600% of the federal poverty level.

Lockton comment: The ACA provides federal subsidies up to 400% of the poverty level. The state-enhanced subsidies mean eligible residents with household incomes (for a family of four) of approximately \$150,000 or less can qualify for assistance.

Consequences for employers

Employers with California employees will experience two main consequences under the new state mandate.

First, any reduction in group insurance enrollment rates, for California-based employees, caused by the effective elimination of the *federal* health insurance mandate will likely be undone by the state mandate. That is, in 2020 and beyond, employees in California will have the same tax avoidance incentive to enroll in employment-based coverage that they had under the ACA's mandate.

Second, to enforce the state mandate, California needs to know who had medical coverage during the year and who did not. The state wants insurance companies to report that information, for insured coverage, and employers to report it, for self-insured coverage (a self-insured employer could, of course, contract with a vendor to supply that reporting on its behalf).

For 2018 and several years before that, self-funded employers reported the fact of employees' and their dependents' self-insured coverage to the IRS, in Part III of federal Form 1095-C. Employers provided a copy

of that form to the employees so the employees could indicate on their federal tax forms whether they and their dependents met the ACA individual mandate.

We expect the IRS will, later this year, excuse self-funded employers from completing Part III of Form 1095-C. Self-insured employers with covered employees and dependents *in California*, however, must nevertheless supply that same information to the state's Franchise Tax Board by March 31 each year, beginning in 2021. The employer must provide a copy of that information to its covered California employees by Jan. 31 each year, also beginning in 2021. In both cases the information relates to the coverage of the California employee and the employee's dependents under the employer's self-insured medical plan during the preceding calendar year.

Lockton comment: There's an argument that ERISA preempts this state-imposed reporting obligation, at least as to self-funded ERISA employers. As a practical matter, however, self-funded employers will have to comply to help their California employees avoid a state-imposed tax penalty. That is, if the employer doesn't report the information to the state, with a copy to the California employee, the employee is likely to suffer the state-imposed tax penalty.

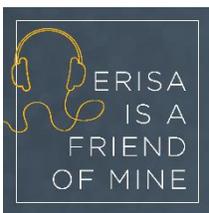
Self-funded employers with employees in California will want to dialogue with their ACA reporting vendors to arrange for coverage information to be reported to the state's Franchise Tax Board, beginning in 2021. Failure to honor the state reporting requirement can trigger a penalty on the self-funded employer of \$50 per individual whose coverage is not reported.

More to come

California's taxing authorities and its ACA marketplace, Covered California, will quickly issue emergency regulations implementing these requirements for 2020. We'll have more on those rules as they are issued.

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Compliance Services

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