



## Summary Analysis of Amended Bill

Author: Friedman, et al.

Sponsor:

Bill Number: AB 2459

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Amended: May 16, 2018, and  
May 25, 2018

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Related Bills: See Prior Analysis

**Subject:** Health Insurance Premiums Refundable Credit

### Summary

This bill, under the Personal Income Tax Law (PITL), would create a credit for health insurance premiums.

This analysis only addresses the provisions of the bill that would impact the department's programs and operations.

**Recommendation – No position.**

### Summary of Amendments

The May 16, 2018, amendments modified the definition of “qualified individual” by restricting credit eligibility to a person whose household income equals or exceeds 400 percent of the federal poverty level (FPL), added additional definitions, added a certifying agency, and made additional changes to the credit proposed by this bill.

The May 25, 2018, amendments added sunset and repeal dates, added operative date language related to the annual Budget Act, and further modified the definition of “qualified individual” by capping household income at 600 percent of the FPL.

As a result of the amendments, two of the department's implementation concerns and one policy concern discussed in the department's analysis of the bill as amended March 23, 2018, and April 11, 2018, were resolved, and three additional implementation concerns and four technical concerns were identified. Except for the “Effective/Operative Date,” “This Bill,” “Implementation Considerations,” “Technical Considerations,” “Economic Impact,” “Support/Opposition,” and “Policy Concerns” sections, the remainder of the department's analysis of the bill as amended March 23, 2018, and April 11, 2018, still applies. The “Fiscal Impact” section has been restated below for convenience. The “Support/Opposition” section has been updated to reflect recently updated information.

## **Effective/Operative Date**

As a tax levy, this bill would be effective immediately upon enactment, and specifically operative for taxable years beginning on or after January 1, 2019, and before January 1, 2026, contingent upon resources being authorized in the annual Budget Act for the Franchise Tax Board (FTB) to oversee and audit returns associated with this credit.

## **This Bill**

For each taxable year beginning on or after January 1, 2019, and before January 1, 2026, this bill, under the PITL, would allow a qualified individual a health insurance premium credit.

The credit would be equal to the portion of the cost of health insurance premiums of the lowest cost bronze plan for the qualified individual or the qualified individual's dependent that exceeds eight percent of the qualified individual's modified adjusted gross income.

This bill would require that the credit be claimed on a return filed for the taxable year in which the health insurance premium was purchased, regardless of the year in which the health insurance plan is operative.

The credit would only be operative for taxable years for which resources are authorized in the annual Budget Act of the FTB to oversee and audit returns associated with the credit.

This bill would define the following terms and phrases:

- “Bronze plan” has the same meaning as “bronze level,” under the Health and Safety Code (HSC),<sup>1</sup> which is a health care service plan contract that provides a level of coverage that is actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan contract.
- “Individual market” means an individual market for health insurance benefits plans described in either the HSC or the Insurance Code.<sup>2</sup>
- “Lowest cost bronze plan” means the lowest cost bronze plan available to the qualified individual or the qualified individual's dependent, given the age and geographic region of the individual covered by the health care coverage.
- “Modified adjusted gross income” has the same meaning as in Section 36B(d)(2)(B) of the Internal Revenue Code, relating to modified adjusted gross income.

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<sup>1</sup> HSC section 1367.008.

<sup>2</sup> Article 11.8 (commencing with Section 1399.845) of Chapter 2.2 (commencing with Section 1340) of Division 2 of the HSC or Chapter 9.9 (commencing with Section 10965) of Part 2 of Division 2 of the Insurance Code.

- “Qualified individual” means a person who purchased health care coverage in the individual market for himself or herself or for a dependent, if that coverage is a standardized benefit design approved by Covered California,<sup>3</sup> and whose household income is 400 percent to 600 percent, inclusive, of the federal poverty level and who is not an applicable taxpayer eligible for the federal premium assistance credit.<sup>4</sup> A “qualified individual” would exclude an individual who, or whose dependent for which the credit is claimed, is otherwise eligible for minimum essential coverage through employment, Medicare, Medicaid, or other public programs. “Minimum essential coverage through employment” means affordable employer coverage of minimum value, as provided under the federal law.<sup>5</sup>
- “Public programs” has the same meaning as an applicable state health subsidy program as defined in the federal Patient Protection and Affordable Care Act.<sup>6</sup>
- “Standardized benefit design” has the same meaning as a standardized product described in the HSC.<sup>7</sup>
- “Dependent” has the same meaning as in the HSC,<sup>8</sup> which includes the spouse or registered domestic partner, or child, of an individual, subject to applicable terms of the health benefit plan.

The calculation of the credit would be based on the lowest cost bronze plan regardless of the qualified individual’s cost to purchase health care coverage. If the amount allowable as a credit under this section exceeds the tax liability for the taxable year, the excess would be credited against other amounts due, if any, and the balance, if any, upon appropriation by the Legislature, would be refunded to the qualified individual.

The bill would provide that Covered California would be the certifying agency for the proposed credit.

This credit would be exempted from the requirements of Section 41 of the Revenue and Taxation Code (R&TC).<sup>9</sup>

The Legislative Analyst’s Office would be required to submit a report to the Legislature on or before January 1, 2024, that includes the following information:

- The number of qualified individuals who claimed the credit.

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<sup>3</sup> Pursuant to subdivision (c) of Section 100504 of the Government Code.

<sup>4</sup> “Applicable taxpayer” as defined under IRC section 36B(c)(1).

<sup>5</sup> Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any rules and regulations promulgated thereunder.

<sup>6</sup> Refer to Section 1413(e) of Public Law 111-148.

<sup>7</sup> Refer to subdivision (e) of Section 1366.6 of the HSC.

<sup>8</sup> Refer to subdivision (b) of Section 1399.845 of the HSC.

<sup>9</sup> Under R&TC section 41, legislation that would create a new tax credit is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the credit’s effectiveness.

- The average and median credit amounts claimed.
- The effectiveness of the credit in reducing health care costs.

This credit would remain in effect until December 1, 2026, and would be repealed as of that date.

### **Implementation Considerations**

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill lacks administrative details necessary to implement the credit. For example, the bill leaves unspecified:

- The cost of the insurance eligible for credit and whether the cost would be capped.
- The amount of modified adjusted gross income.
- The taxable year in which the credit would be claimed. For example, when would the credit be considered "purchased"? Would the credit be considered "purchased" and claimed in the year the premiums are paid in full, or if the health plan coverage period spans portions of two taxable years would the credit be claimed ratably in the two taxable years?

The bill is silent as to what Covered California would certify and how certifications would be reported to the qualified individual and the FTB which could lead to disputes between taxpayers and the department. For clarity and ease of administration, the author may wish to consider amending the bill to require that the certificate include the following:

- A certificate number.
- The purchaser's name, address, and social security number.
- For each individual covered by the health care plan provide the name, social security numbers, relationship to the purchaser.
- The certified credit amount.
- The date of the certification.

Additionally, the author may wish to require:

- The taxpayer to include the certificate number and credit amount with their timely filed original tax return, and upon request of the FTB, provide a copy of the certificate.
- The certifying agency provide to the FTB information appropriate to administer the credit in the form and manner specified by the FTB.

The credit would be based on an individual's purchase of a health care plan for the individual or the individual's dependent. If the author intends that the credit be available for the purchase of "family plans," the bill should be amended.

This bill would require regular annual appropriations by the Legislature to pay for the refundable portion of this credit. Disallowance of the credit to some taxpayers could result if the amount of credits claimed exceeds the amount of appropriated funds. This concern could be alleviated by providing a continuous appropriation.

### Technical Considerations

For consistency of terminology, the following changes are recommended:

- On page 3, line 4, the term “purchased” should be replaced with “paid.”
- On page 3, line 26, the term “person” should be replaced with “individual.”
- On page 4, line 23, the term “premium” should be replaced with “plan.”

For clarity, on page 3, lines 31 and 32, it is recommended that the phrase “is 400 percent to 600 percent, inclusive” be replaced with “is at least 400 percent but does not exceed 600 percent,”

### Fiscal Impact

The department’s costs to implement this bill as amended May 25, 2018, have yet to be determined, but ongoing costs are anticipated to exceed \$2,000,000 for system changes and ongoing staffing costs. As the bill moves through the legislative process and the implementation considerations are resolved, costs will be identified.

### Economic Impact

#### Revenue Estimate

Estimated Revenue Impact of AB 2459 as Amended May 25, 2018  
Assumed Enactment after June 30, 2018

(\$ in Millions)

Fiscal Year	Revenue*
2018-2019	- \$40
2019-2020	- \$70
2020-2021	- \$75

\*This estimate assumes annual appropriations are made by the legislature to pay for the refundable portion of the credit.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

## Revenue Discussion

Based on data from Covered California, the Kaiser Family Foundation, the California Health Care Foundation, and the U.S. Census Bureau, the number of health exchange enrollments and premium costs were calculated. The bill specifies that the credit recipient must be an individual or the individual's dependent with income between 400 and 600 percent of federal poverty level. Using the FTB data, it is estimated that approximately 400,000 single filers would meet the income requirements specified in the bill and could purchase a single person plan. However, according to published statistics approximately 93 percent of individuals either receive health benefits through their employer, other federal or state managed options, or do not purchase health insurance. This results in an estimated 26,000 qualified individual taxpayers. Merging data from Covered California on the lowest cost Bronze plan by region, family size, and age with the FTB income data, it is estimated that the average individual would receive a premium credit of \$2,600, resulting in an estimated \$67 million in credits generated. It is assumed that the elimination of the federal insurance mandate would reduce this amount by 10 percent. This results in an estimated \$60 million in refundable health care premium credit. The estimate is then adjusted to reflect changes in health care premiums over time.

This estimate does not include any behavioral changes that may result from the credit. The tax-year estimates are converted to fiscal-year estimates, and then rounded to arrive at the amounts reflected in the above table.

## Support/Opposition<sup>10</sup>

Support: Health Access California (Sponsor), California Immigrant Policy Center, California Labor Federation, Congress of California Seniors, and National Association of Social Workers.

Opposition: None provided.

## Policy Concerns

This bill fails to limit the amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited either on a per-expenditure or per-taxpayer basis.

The department is concerned that another refundable credit could increase the trend in refund fraud and identity theft. Historically, both the IRS and the FTB have experienced fraud and improper claims with refundable credits. These concerns are heightened because if a refund is determined to be fraudulent, the refund commonly cannot be recovered.

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<sup>10</sup> As noted in the Assembly Revenue and Taxation Committee analysis, dated May 11, 2018.