



## **Analysis of Original Bill**

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Bill Number: AB 174

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Related Bills: See Legislative  
History

**Subject:** Health Insurance Premiums Refundable Credit

### **Summary**

This bill, under the Personal Income Tax Law (PITL), would create a refundable credit for health insurance premiums, subject to an appropriation in the annual Budget Act, and as certified by Covered California under the Government Code (GC).

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

**Recommendation – No position.**

### **Reason for the Bill**

The reason for this bill is to make health insurance coverage more affordable for Californians.

### **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, 2020.

### **Program Background**

The Affordable Care Act (ACA) was enacted on March 23, 2010.<sup>1</sup> Among its many provisions, the ACA established health insurance exchanges allowing individuals without access to public coverage or affordable employer coverage to purchase insurance. Additionally, the ACA provided premium credits making health care coverage more affordable, and generally required individuals to have health

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<sup>1</sup> Public Law (PL) 111-148, with the official short title: The Patient Protection and Affordable Care Act.

insurance by 2014. The “individual shared responsibility payment” requirement, commonly referred to as the “individual mandate,” established penalties for failure to have insurance, unless otherwise exempted. The individual mandate penalty was set to zero under the Federal Tax Cuts and Jobs Act, effectively eliminating the penalty as of December 31, 2018.

Covered California is the State's insurance exchange where Californians may apply for health insurance coverage. Covered California offers a variety of plans, with the least expensive being the “Bronze Plan” that is designed to cover 60 percent of annual medical services on average.<sup>2</sup>

### **Federal/State Law**

Federal law allows a refundable premium tax credit that helps eligible individuals and families cover the premiums for their health insurance purchased through the Health Insurance Marketplace. Certain requirements must be met, including filing a federal tax return and having household income that falls within a specified range.<sup>3</sup> The premium tax credit is based on a sliding scale with lower income individuals qualifying for a greater credit.

The following additional requirements must be met:

- Have health insurance coverage through a Health Insurance Marketplace.
- Are unable to get affordable coverage through an eligible employer-sponsored plan that provides minimum value.
- Are ineligible for coverage through a government program, like Medicaid, Medicare, Children's Health Insurance Program (CHIP) or TRICARE, a Department of Defense Military Health System.
- Pay the share of premiums not covered by advance credit payments.

Individuals receiving advance payments of the premium tax credit must file Form 8962 to reconcile the credit with the amount of advance credit payments for the year.

Current state law lacks a comparable credit to the one that would be created by this bill.

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<sup>2</sup> Additional information on Covered California may be accessed at: [CoveredCalifornia](#)

<sup>3</sup> To be eligible for the premium tax credit, household income generally must be at least 100 – but no more than 400 – percent of the federal poverty line based on family size. The federal poverty line for the 2017 return may be accessed at: [IRS-EligibilityforthePremiumTaxCredit](#)

## **This Bill**

For each taxable year beginning on or after January 1, 2020, this bill, under the PITL, would allow a qualified individual a refundable 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, but no more than an unspecified percent, of the qualified individual's modified adjusted gross income (modified AGI).

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.

This bill, under the PITL, would define the following terms and phrases:

- "Bronze plan" has the same meaning as "bronze level," under the Health and Safety Code (HSC),<sup>4</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.
- "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 (IRC), relating to modified AGI.
- "Qualified individual" means a person who received a certification from Covered California.<sup>5</sup>
- "Standardized benefit design" has the same meaning as a standardized product described in the HSC.<sup>6</sup>

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, subject to the limitation below and upon appropriation by the Legislature, would be refunded to the taxpayer.

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<sup>4</sup> HSC section 1367.008.

<sup>5</sup> Pursuant to Section 100504.1 of the GC.

<sup>6</sup> See subdivision (e) of Section 1366.6 of the HSC.

The refundable amount paid to the taxpayer would be \$0 unless otherwise specified in the annual Budget Act or any bill providing appropriations related to the Budget Act.

Under the PITL, Covered California<sup>7</sup> would be the certifying agency. Under the GC, the board (of Covered California) would certify qualified individuals and would provide to the qualified individual and the FTB the certification including the following:

- The individual's name and address.
- The individual's social security number or taxpayer identification number.
- Whether the individual is a qualified individual.
- The cost of the second lowest bronze plan available to the qualified individual for the calendar year in excess of eight percent of the qualified individual's estimated adjusted gross income.
- The date of enrollment or renewal of coverage.
- The calendar year for which the coverage is obtained.

The Franchise Tax Board (FTB) would have the authority to adopt regulations necessary or appropriate to carry out the purposes of this bill, including any regulations to prevent improper claims from being filed or improper payments being made. The FTB would be exempt from the Administrative Procedure Act (APA) when prescribing rules, guidelines, or procedures to administer this credit.

Additionally, the FTB would have authority to adopt any regulations as emergency regulations in accordance with the rulemaking provisions of the APA. Such emergency regulations would become effective immediately upon filing with the Secretary of State, and would remain in effect until revised or repealed by the FTB.

This credit would be exempted from the requirements of Section 41 of the Revenue and Taxation Code (R&TC). 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 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.
- The average and median credit amounts claimed.
- The effectiveness of the credit in reducing health care costs.

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<sup>7</sup> The California Health Benefit Exchange, known as Covered California, pursuant to Title 22 (commencing with Section 100500) of the GC. Section 100500 also provides that Covered California shall be governed by an executive board.

This bill, under the GC, would define the following terms and phrases for purposes of Covered California's certification of the credit:

- “Bronze plan” has the same meaning as “bronze level,” under the HSC,<sup>8</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.
- “Dependent” has the same meaning as in the HSC,<sup>9</sup> which includes the spouse or registered domestic partner, or child, of an individual, subject to applicable terms of the health benefit plan.
- “Individual market” means an individual market for health insurance benefits plans described in either the HSC or the Insurance Code (IC).<sup>10</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>11</sup>
- “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>12</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>13</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>14</sup>

## 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.

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<sup>8</sup> HSC section 1367.008.

<sup>9</sup> See subdivision (b) of Section 1399.845 of the HSC.

<sup>10</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 IC.

<sup>11</sup> See Section 1413(e) of PL 111-148.

<sup>12</sup> Pursuant to subdivision (c) of Section 100504 of the GC.

<sup>13</sup> “Applicable taxpayer” as defined under IRC section 36B(c)(1).

<sup>14</sup> Patient Protection and Affordable Care Act (PL 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (PL 111-152), and any rules and regulations promulgated thereunder.

This bill lacks administrative details necessary to implement the credit. For example: The cost of the insurance eligible for the credit, whether the cost would be capped, and the unspecified percentage of modified AGI. Additionally, the credit in the PITL would be based on the "lowest cost bronze plan" as defined; however, Covered California would certify the cost of the "second lowest bronze plan," as specified in GC section 100504.1(b)(4), an undefined phrase.

The bill provides that Covered California would certify qualified individuals for purposes of the credit proposed by this bill and the certifications would be provided to both the qualified individual and the FTB. However, the certification provision lacks details, 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 also require that the certificate include:

- A certificate number.
- The name, social security number, and relationship to the purchaser for each individual covered by the purchaser's health care plan.
- The cost of health insurance premiums of the lowest cost bronze plan available to the qualified individual.
- The date of the certification.

The bill is silent on when and how the certificates would be provided to the FTB. To insure timely receipt of certificate information necessary to administer this credit, it is recommended that the bill be amended to specify that the information be provided in a form and manner specified by the FTB.

The bill is silent on whether or when a qualified individual would be required to provide their certificate to the FTB. For ease of administration, it is recommended that the bill be amended to require the certificate number and the health insurance premium cost as certified be reported on the timely filed original tax return and require a copy of the certificate to be provided to the FTB upon request.

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. If there are insufficient funds available to cover all of the refunds due, the department would suspend payment of the refunds until additional funds were appropriated. Interest would have to be paid to refund recipients for the period the refund was delayed. This delay would result in additional contacts to the department by refund recipients, which would likely increase departmental costs. This concern could be alleviated by providing a continuous appropriation.

This bill would set the “amount paid” to the taxpayer at zero (\$0) for years without an appropriation, thereby making the refund provision intermittently operative. It is unclear how the department would effectively employ resources necessary to administer this credit. This concern could be alleviated by providing that the refund authorized by this section would only be operative for taxable years for which resources are authorized in the annual Budget Act for the FTB to oversee and audit returns associated with this credit.

This bill uses inconsistent terminology that could lead to disputes with taxpayers: For example, it is unclear which taxpayers would be eligible for the credit because the defined term qualified individual uses “person” rather than “taxpayer”.

For clarity, and consistency with common usage within the R&TC, it is recommended that “purchased” be replaced with “were paid” and “purchases a health care premium” be replaced with “purchases a health care plan” where they appear in the bill.

### **Legislative History**

AB 2459 (Friedman, et al., 2017/2018), substantially similar to this bill, would have provided a refundable tax credit for health insurance premiums, as specified. AB 2459 failed to pass by the constitutional deadline.

AB 2367 (Donnelly, 2013/2014), would have provided a tax credit for the excess annual cost of health insurance premiums over the annual cost in 2014. AB 2367 failed to pass by the constitutional deadline.

SB 1376 (Gaines, 2013/2014), would have provided a tax credit in an amount equal to 50 percent of the annual premium amount paid or incurred as a result of a premium increase. SB 1376 failed to pass by the constitutional deadline.

SB 92 (Aanestad, 2009/2010) would have, among other things, provided a tax credit for the amount paid or incurred by a qualified taxpayer for qualified health expenses. SB 92 failed to pass by the constitutional deadline.

### **Other States' Information**

*Review of Illinois, Massachusetts, Michigan, Minnesota, and New York laws found no tax credit comparable to the credit this bill would create. The laws of these states were selected due to their similarities to California's economy, business entity types, and tax laws.*

### **Fiscal Impact**

The department's costs to implement this bill have yet to be determined, but are anticipated to be significant. As the bill moves through the legislative process and implementation concerns are resolved, costs will be identified.

## Economic Impact

### Revenue Estimate

Estimated Revenue Impact of AB 174  
Assumed Enactment after June 30, 2019

(\$ in Millions)

<b>Fiscal Year</b>	<b>Revenue*</b>
2019-2020	- \$46
2020-2021	- \$80
2021-2022	- \$80

\*The estimates above assume that there is no cap on credits claimed and 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 FTB data, it is estimated that slightly more than 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 27,000 qualified individual taxpayers. Merging data from Covered California on the lowest cost Bronze plan by region, family size, and age with FTB income data, it is estimated that the average individual would receive a premium credit of \$3,000, resulting in an estimated \$80 million in credit generated. It is assumed that the elimination of the federal insurance mandate would reduce this amount by 10 percent. This results in an estimated \$72 million in 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 shown in the above table.

### **Policy Concerns**

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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