



## **Bill Analysis**

Author: Committee on Budget and Fiscal Review      Bill Number: SB 78

**Subject:** Omnibus Health

### **Summary**

This bill creates a California Individual Healthcare Mandate, a program similar to the Affordable Care Act (ACA) administered by the Internal Revenue Service (IRS), but the state program will be administered by the California Health Benefit Exchange (Exchange) and the Franchise Tax Board (FTB).

Beginning January 1, 2020, California residents and their dependents are required to obtain and maintain monthly healthcare coverage, unless they qualify for an exemption from the mandate. The Exchange, the state's insurance marketplace, will provide financial assistance to households that meet certain income requirements and certify those who are exempt from the mandate.

If an individual required to obtain health insurance under the mandate fails to obtain healthcare coverage, a penalty per uninsured person may be imposed on the individual. This penalty is referred to as the Individual Shared Responsibility Penalty (Penalty).

At the end of each year, taxpayers will either verify they maintained minimum essential coverage or verify their exemption from the mandate. Those who lacked health insurance and were not exempt from the mandate will compute and pay the Penalty on their California individual tax return. In addition, taxpayers may be eligible to receive subsidies from the Exchange to help cover the cost of their required insurance. At the end of each year, taxpayers are required to reconcile the subsidies received based on projected income against the subsidies they were entitled to base on actual income. The reconciliation may result in a refund or a liability depending on the difference between the actual subsidy received and the subsidy they were entitled to receive.

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

**Reason for the Bill**

The reason for the bill is to require health care coverage for Californians.

**Effective/Operative Date**

This bill, providing for appropriations related to the Budget Bill and identified as a bill related to the budget in the Budget Bill, would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2020.

**Federal/State Law**

Existing federal law, the Patient Protection and Affordable Care Act (PPACA), enacts various health care coverage market reforms as of January 1, 2014. PPACA generally requires an individual, and any dependents of the individual, to maintain minimum essential coverage, as defined, and, if an individual fails to maintain minimum essential coverage, PPACA imposes on the individual taxpayer a penalty. This provision is referred to as the individual mandate. The federal Tax Cuts and Jobs Act set the penalty associated with the individual shared responsibility requirement of the PPACA to zero beginning in 2019.

California currently does not have a comparable law.

**This Bill**Minimum Essential Coverage Individual Mandate

This bill creates the Minimum Essential Coverage Individual Mandate under Title 24 (commencing with Section 100700) of the Government Code (GC) to require an applicable individual, who is a California resident, to ensure that the applicable individual and any applicable spouse or applicable dependents of the individual are enrolled in and maintains minimum essential coverage (MEC) for each month beginning on and after January 1, 2020, unless the applicable individual, applicable spouse, or applicable dependents meets one of the statutory exemptions. The provision defines terms including the following:

- An Applicable Individual, with respect to any month, is an individual who is subject to the Minimum Essential Coverage Individual Mandate.
- California Resident has the same meaning as in Section 17014 of the Revenue and Taxation Code (R&TC), relating to residency for income tax purposes.

- Applicable Spouse is a spouse or domestic partner of an applicable individual who meets all of the following criteria:
  - The spouse or domestic partner is an applicable individual.
  - The spouse or domestic partner is generally eligible for enrollment for health care coverage purposes, including, but not limited to, because of the applicable individual's employment status as the head of household, parent, spouse, or domestic partner.
  - With respect to a given month, the spouse or domestic partner is not covered by other minimum essential coverage.
  - The spouse or domestic partner files a joint California income tax return with the individual under Chapter 2 (commencing with Section 18501) of part 10.2 of the R&TC.
- Applicable Dependent is a dependent, with respect to an applicable individual, who meets all of the following criteria:
  - The dependent is an applicable individual.
  - The dependent is generally eligible for enrollment for health care coverage purposes, including but not limited to, because of the applicable individual's employment status or status as head of household, parent, spouse, or domestic partner.
  - With respect to a given month, the dependent is not covered by other minimum essential coverage for that month.
- Dependent has the same meaning as the California individual income tax provision, Section 17056 of the R&TC.

This bill requires the Exchange to grant exemptions from the mandate for reasons of hardship or religious conscience, and would require the Exchange to establish a process for determining eligibility for an exemption. It also requires the Exchange to notify the individual and FTB of the issuance of certificate of exemptions in a time and manner as the Exchange, in consultation with the FTB, determines is feasible and prompt.

The Exchange shall annually conduct outreach and enrollment efforts to individuals who did not indicate on their income tax return that they and their dependents were enrolled in and maintained MEC for the preceding taxable year or who indicated that they or their dependents were exempt from the MEC for that year. For purposes of this effort, the FTB shall provide the Exchange with individual income tax return information.

The FTB may, in consultation with the Exchange, promulgate rules and regulations to implement this title. Until January 1, 2022, any rules and regulations necessary to implement this title may be adopted as emergency regulations in accordance with the Administrative Procedure Act (APA).

### Individual Market Assistance

This bill would also create an Individual Market Assistance program under Title 25 (commencing with Section 100800) of the GC, which would authorize the Exchange to provide health care coverage financial assistance to California residents with household incomes at or below 600 percent of the federal poverty level, including advanced premium assistance subsidies. This provision defines terms including the following:

- Program Participant: an individual eligible to receive financial assistance pursuant to this title.
- Responsible Individual: a program participant of an individual with a dependent who is a program participant. With respect to a dependent, "responsible individual" means the individual who claims the dependent as a dependent.

A premium assistance subsidy provided by the program will be remitted by the Exchange directly to a qualified health plan issuer, based on the program participant's projected household income, family size, and other factors determined by the program design. The premium assistance subsidy is subject to reconciliation against actual household income, family size, and other factors determined by the program design.

In order for a taxpayer to receive a premium assistance subsidy, the taxpayer must be a California resident who is eligible for the federal premium tax credit authorized under Section 36B of the Internal Revenue Code (IRC).

An amount received as a premium assistance subsidy provided by the Exchange would not be included in gross income, as defined in Section 17071 of the R&TC.

A responsible individual shall reconcile any premium assistance subsidies advanced to the responsible individual or the responsible individual's dependents with the premium subsidy allowed for a coverage year during which the responsible individual or the responsible individual's dependents received an advanced premium assistance subsidy. The amount of the allowed premium assistance subsidy is determined based on household income, family size, and other factors pursuant to the program design.

After the responsible individual reconciles the amounts above:

- (1) The FTB shall remit a refund to the program participant, less any taxes, fees and penalties owed to the state if the allowed premium assistance subsidies for the taxable year exceeds the program participant's advanced premium assistance subsidies. If a program participant is a dependent, the FTB shall remit the refund to the responsible individual, less any taxes, fees, and penalties the responsible individual or program participant owes to the state.

(2) The program participant may have a reconciliation liability in the amount equal to the excess of the advanced premium assistance subsidies over the program participant's allowed premium assistance subsidies, up to a limit specified by the program design, and must include the liability imposed by this section or the premium assistance subsidy reconciliation refund on an individual income tax return filed pursuant to Chapter 2 (commencing with Section 18501) of Part 10.2 of the R&TC for the taxable year. The program design may vary that limit based on household income.

The responsible individual shall be solely liable if a program participant with a premium assistance liability is a dependent. The responsible individual and the spouse or domestic partner of the responsible individual shall be jointly and severally liable if a responsible individual with a premium assistance subsidy liability files a joint return for the taxable year.

Regardless of the return filing thresholds requirements, a responsible individual must file a California income tax return with the FTB for the purpose of reconciliation of the premium assistance subsidies.

For purposes of compliance, the FTB may use its tax administration authority to collect any premium assistance subsidy reconciliation liability. The FTB shall integrate enforcement of the liability imposed into existing activities, protocols, and procedures, including audits, enforcement actions, and taxpayer education efforts. Any amount due shall be paid upon notice and demand by the FTB and shall be assessed and collected pursuant to Part 10.2 (commencing with Section 18401) of the R&TC.

The Individual Market Assistance program shall remain in effect only until January 1, 2023, and as of that date is repealed. New financial assistance or other subsidies shall not be provided for periods after coverage year 2022.

The FTB shall disclose to the Exchange individual tax return information and other information related to the income tax return in the records of the FTB. The following information will be provided to the Exchange from the individual tax return of a taxpayer who fails to report minimum essential coverage or fails to reconcile the advanced premium assistance subsidy:

- Taxpayer's name or, in the case of taxpayers filing a joint return, the names of both spouses or domestic partners
- Full mailing address listed on the return
- Number and age of household dependents
- Gross income
- Number of months the applicable individual, and the applicable individual's applicable spouse and applicable dependents, if any were covered by minimum essential coverage

- The amount of the penalty paid or owed by the taxpayer
- Whether the taxpayer or any of the taxpayer's dependents claimed an exemption from the Minimum Essential Coverage Individual Mandate established pursuant to Title 24 (commencing with Section 100700) of the GC and the Individual Shared Responsibility Penalty pursuant to Part 32 (commencing with Section 61000) and which exemption or exemptions were claimed
- Whether the taxpayer reconciled the premium assistance subsidy advanced pursuant to Title 25 (commencing with Section 100800) of the GC with the premium assistance subsidy granted

The FTB may require reimbursement from the Exchange for costs incurred in providing the information.

The FTB may, in consultation with the Exchange, promulgate rules and regulations to implement this title. Until January 1, 2022, any rules and regulations necessary to implement this title may be adopted as emergency regulations in accordance with the APA.

#### Individual Shared Responsibility Penalty

This bill adds Part 32 (commencing with Section 61000) to Division 2 of the R&TC which would impose an individual shared responsibility penalty (Penalty) on applicable individuals who fail to maintain MEC as required by Title 24 (commencing with Section 100700) of the GC.

The penalty will be imposed on a responsible individual for failure by the responsible individual, applicable spouse, or applicable dependent to enroll in and maintain MEC. The penalty imposed shall be included with a responsible individual's return.

The penalty is equal to the lesser of either of the following amounts, and is computed as follows:

1. The sum of the monthly penalty amounts for months in the taxable year during which one or more failures occurred.
2. An amount equal to one-twelfth of the state average premium for qualified health plans that have a bronze level of coverage for the applicable household size involved, and are offered through the Exchange for plan years beginning in the calendar year with or within which the taxable year ends, multiplied by the number of months in which a failure occurred.

For purposes of computing (1) above, the monthly penalty amount for any month during which a failure occurred is an amount equal to one-twelfth of the greater of either of the following amounts:

- An amount equal to the lesser of either of the following:
  - The sum of the applicable dollar amounts for all applicable household members who failed to enroll in and maintain MEC during the month unless they did not maintain MEC for a continuous period of three months or less.
  - Three hundred percent of the applicable dollar amount determined for the calendar year during which the taxable year ends.
- An amount equal to 2.5 percent of the excess of the responsible individual's applicable household income for the taxable year over the amount of gross income that would trigger the responsible individual's requirement to file a state income tax return based on the applicable filing threshold for the taxable year.

The applicable dollar amount for adults is six hundred ninety-five dollars (\$695). If an applicable individual has not attained 18 years of age as of the beginning of the month, the applicable dollar amount with respect to that individual for that month shall be equal to one-half of the applicable dollar amount (\$347.50).

The applicable dollar amount is subject to cost of living adjustments.

For taxable years during which the FTB determines that a federal shared responsibility penalty applies, the penalty shall be reduced, but not below zero, by the amount of the federal penalty imposed on the responsible individual for each month of the taxable year during which the Individual Shared Responsibility Penalty is imposed.

Under an unaffordable coverage exception, a penalty shall not be imposed on a responsible individual for a month in which any of the following circumstances apply:

- If the responsible individual's required contribution, determined on an annual basis, for coverage for the month exceeds 8.3 percent of that responsible individual applicable household income for the taxable year as determined and collected by the FTB, in collaboration with the Exchange, as specified.
- If the responsible individual's applicable household income for the taxable year containing the month is less than the income tax return minimum filing requirement amount of adjusted gross income specified in paragraph (1) or (2) of subdivision (a) of Section 18501 of the R&TC for that taxable year.
- If the responsible individual's gross income for the taxable year containing the month is less than the income tax return minimum filing requirement amount specified in paragraph (3) of subdivision (a) of Section 18501 of the R&TC

Under a short coverage gap exception, a penalty shall not be imposed with respect to an applicable household member for a month if the last day of the month occurred

during a period in which the applicable household member did not maintain MEC for a continuous period of three months or less.

This provision defines the following terms:

- **Applicable Household Income:** With respect to a responsible individual for a taxable year, an amount equal to the sum of the modified adjusted gross income of all applicable household members who were required to file a tax return.
- **Applicable Household Members:** With respect to a responsible individual, all of the following persons:
  - The responsible individual
  - The responsible individual's applicable spouse
  - The responsible individual's applicable dependents
- **Household size:** With respect to a responsible individual, the number of applicable household members.
- **Modified Adjusted Gross Income:** Adjusted gross income as defined in Section 17072 of the R&TC, increased by both of the following:
  - The amount of interest received or accrued by the individual during the taxable year that is exempt from tax, unless the interest is exempt from tax under the United States Constitution or the California Constitution.
  - Foreign-earned income, foreign housing exclusion, or foreign housing deduction under Section 911 of the IRC.
- **Responsible Individual** is an applicable individual who is required to file a return and who is either of the following:
  - An applicable individual required to be enrolled in and maintain minimum essential coverage.
  - An applicable individual required to ensure that a person who qualifies as the applicable individual's applicable spouse or applicable dependent is enrolled in and maintains minimum essential coverage for that month.
  - If two applicable individuals file a joint return, only one shall be considered the responsible individual for purposes of calculating the penalty as determined by the FTB.
  - If a dependent files a return, only the dependent of the individual claiming the dependent, but not both, shall be considered the responsible individual for purposes of calculating the penalty as determined by the FTB.

The FTB may, in consultation with the Exchange, adopt regulations that are necessary and appropriate to implement the individual shared responsibility penalty. The FTB may also prescribe rules for the collection of the penalty.



The FTB's civil authority and procedures for purposes of compliance with notice and other due process requirements imposed by law to collect income taxes shall be applicable to the collection of the Individual Shared Responsibility Penalty. The FTB shall integrate enforcement of the Penalty into existing activities, protocols, and procedures, including audits, enforcement actions, and taxpayer education efforts.

The penalty shall be paid upon notice and demand by the FTB and shall be assessed and collected pursuant to FTB's general administrative statutory authority under Part 10.2 (commencing with Section 18401), except as follows:

- If the applicable individual fails to timely pay the Individual Shared Responsibility Penalty, the applicable individual shall not be subject to criminal prosecution or penalty with respect to that failure.
- The FTB shall not file a notice of lien with respect to any real property of an applicable individual by reason of any failure to pay the Individual Shared Responsibility Penalty, or levy any real property with respect to that failure.
- For purposes of collecting the Individual Shared Responsibility Penalty, the provisions of the law allowing the FTB to file suit in court to collect taxes, Article 1 (commencing with Section 19201) of Chapter 5 of Part 10.2 (Judgment for Tax) shall not apply.

Moneys collected from the Penalty shall be deposited into the General Fund.

#### Applicable Entities

For purposes of administering the penalty, applicable entities that provided MEC to an individual during a calendar year, shall, at the time the FTB prescribes, file an information return to the FTB on or before March 31 of the year following the calendar year for which the return is required that complies with all of the following:

- Is in the form as the FTB prescribes.
- Contains the name, address, and taxpayer identification number of the applicable individual and the name and taxpayer identification number of each other individual who receives coverage under the policy.
- Contains the dates during which the individuals were covered under MEC during the calendar year.
- Contains any other information the FTB may require.

A filing complies with the requirements of this provision if it is in the form of, and includes the information contained in, IRS Forms 1095-A, 1095-B and 1095-C, described in Section 6055 (Reporting of Health Insurance Coverage) of the IRC of 1986, as that section was in effect on December 15, 2017.

An applicable entity required to make an information return shall provide to each primary subscriber, primary policyholder, primary insured, employee, former employee, uniformed services sponsor, parent, or other related person named on an application

who enrolls one or more individuals, including themselves, in MEC a written statement on or before January 31 of the year following the calendar year for which the information return is required.

A penalty shall be imposed on an applicable entity that fails to make an information return as required in an amount of fifty dollars (\$50) per applicable individual covered by the applicable entity for a taxable year in which the failure occurs. Applicable Entity means the following:

- A carrier licensed or otherwise authorized to offer health coverage with respect to minimum essential coverage, including coverage in a catastrophic plan.
- An employer or other sponsor of an employment-based health plan with respect to employment-based minimum essential coverage.
- The State Department of Health Care Services and county welfare departments with respect to coverage under a state program.
- The Exchange with respect individual health plans, except catastrophic plans, on the Exchange.
- Any other provider of minimum essential coverage, including the University of California with respect to coverage under a student health insurance program.

The FTB shall annually publish on its internet website all of the following information:

- The number of applicable households paying the penalty and the average penalty amount by applicable household income level.
- The number of applicable households paying the penalty in each count and statewide.
- The total penalty collected.
- The number and type of most commonly claimed exemptions.
- The number and total penalty amounts collected under subdivision (j) of Section 61005.

The Penalty and the Individual Market Assistance program subsidy are not considered a payment of an income taxes for the collection of tax debts due to the Internal Revenue Service or due to other states. However, the Penalty and the Individual Market Assistance program subsidy is subject to interest and any liability is subject to the cost collection recovery fee and is treated as a priority debt to be collected by the FTB.

## Appeals

This bill would require an individual that files an appeal with the State Department of Social Services, upon final exhaustion of administrative or judicial review, whichever is later, that affects the amount of advanced payment of the premium tax credit or the amount of the advanced premium assistance subsidy, or both, for a taxable year that has been reconciled previously, shall file an amended return for that taxable year to reconcile the advanced premium assistance subsidy.

## **Legislative History**

AB 414 (Bonta, 2019/2020) would establish the California Health Care Coverage Shared Responsibility Act which requires California residents and their dependents to have minimum essential health care coverage for each month beginning after 2019. This bill is currently in the committee process.

SB 175 (Pan, 2019/2020) would require California residents to have minimum essential health care coverage for each month beginning after 2019 and create the Health Care Penalty Fund. This bill is currently in the committee process.

## **Program Background**

*Patient Protection and Affordable Care Act (ACA).* Enacted in March 2010, the ACA provides the framework, policies, regulations and guidelines for the implementation of comprehensive health care reform by the states. The ACA expands access to quality, affordable insurance and health care. As of January 1, 2014, insurers are no longer able to deny coverage or charge higher premiums based on preexisting conditions. These aspects of the ACA, along with tax credits for low and middle income people buying insurance on their own in new health benefit exchanges, make it easier for people with preexisting conditions to gain insurance coverage.

*Federal Individual Shared Responsibility Provision.* The ACA's individual mandate requires that individuals maintain MEC or pay a penalty for noncompliance. Exemptions from the individual mandate are granted for a variety of reasons related to income, affordability of coverage, and federally defined hardship. The penalty for not maintaining MEC is either a flat dollar amount or a percentage of household income above the annual tax-filing threshold, whichever is greater.

In late 2017, the federal Tax Cuts and Jobs Act set the penalty associated with the individual shared responsibility requirement of the ACA to zero beginning in 2019. Some analyses, including the Congressional Budget Office (CBO), conclude that the individual mandate substantially increased insurance coverage and, correspondingly, that the zero-dollar penalty will substantially reduce coverage. The CBO estimated that nationally, the zero-dollar penalty will cause average premiums in the individual market to be about 10 percent higher than they would have been with the mandate in most years of the decade. Health Affairs estimated that California, specifically, could see a 4 percent to 7 percent premium increase due to the zero-dollar penalty.

The federal scale back of the individual mandate penalty payment is prompting some states to enact a state mandate to keep healthcare affordable.

**Other States’ Information**

*Massachusetts* enacted a mandate as part of its 2006 health reform package, and it remains in effect today.

*New Jersey* and the *District of Columbia* recently enacted mandate legislation with rules closely resembling the federal rules, taking effect in 2019.

*Vermont* has enacted a mandate effective 2020, but without an enforcement mechanism.

**Fiscal Impact**

Staff estimates a cost of approximately \$8.2 million in fiscal year 2019-2020; \$11.6 million in fiscal year 2020-2021; \$11.8 million in fiscal year 2021-2022; and \$8.1 million ongoing to administer the Minimum Essential Coverage Individual Mandate and Individual Market Assistance Programs.

**Economic Impact**

Revenue Estimate

In accordance with the bill provisions, staff defers to the Department of Finance to determine the revenue impact of this bill.

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.

**Votes**

Location	Date	Yes Votes	No Votes
Concurrence	June 24, 2019	28	11
Senate Floor	June 24, 2019	27	9
Assembly Floor	April 11, 2019	57	14

**Legislative Staff Contact**

Marybel Batjer  
Agency Secretary, GovOps  
Work (916) 651-9024

Bryan O'Dell  
Assistant Deputy Secretary  
of Legislative, GovOps  
Work (916) 651-9033

Selvi Stanislaus  
Executive Officer, FTB  
Work (916) 845-4543

Jahna Carlson  
Acting Legislative Director, FTB  
Work (916) 845-5386