STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Wood and Kalra	Sponsor:	Bill Number: AB 2530
	Related Bills: See Legislative History	Introduced: February 17, 2022 Amended: June 20, August 1, and August 18, 2022

SUBJECT

Health Benefit Exchange Financial Assistance

SUMMARY

This bill would add a provision to the Government Code (GC) requiring the California Health Benefit Exchange (Exchange) to administer a financial assistance program for individuals who lose their health benefits due to a labor dispute.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

This bill, as introduced, would require the Exchange to administer financial assistance for individuals who lose their health benefits due to labor disputes.

The June 20, 2022, amendments added the requirement that financial assistance be administered beginning July 1, 2023, that the individual would receive the same premium assistance and cost-sharing reductions as an individual with a household income of 133% of the federal poverty level, and beginning January 1, 2024, the individual would not pay a deductible for any covered benefit. In addition, these amendments removed the reconciliation requirement for these subsidies and added a coauthor.

The August 1, 2022, amendments added that individuals must otherwise meet all eligibility requirements; that for household income, rather than 133% of the federal poverty level not being taken into account, would be 138%; that the individual would be screened for eligibility for Medicaid; and that the monthly notice that Covered California must provide to enrollees under this program must also include the state and federal income tax impact of any employer benefit reinstatement.

The August 18, 2022, amendments clarified that any amount received under this program would be excluded from California taxable income; revised that the household income, rather than 138% of the federal poverty level not being taken into account, would be 138.1%; and that the monthly notice that Covered California must provide to enrollees must include the state and federal income tax impact of any amount received under this program.

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

REASON FOR THE BILL

The reason for the bill is to help individuals who lose health benefits due to labor disputes.

ANALYSIS

Beginning July 1, 2023, this bill, upon appropriation by the Legislature, would require the Exchange to administer a financial assistance program to help individuals receive health benefits through the Exchange if they lose employer-provided health care coverage because of a labor dispute. Any amount received under this program would be excluded from California gross income.

On a monthly basis, the Exchange would be required to notify any enrollee receiving financial assistance under this program that they would be required to notify Covered California if their household income changes, or the coverage provided by the enrollee's employer is reinstated. The notice would also be required to include information relating to the potential state and federal income tax impact of any amount received under this program.

Effective/Operative Date

This bill, upon appropriation by the Legislature, would be effective January 1, 2023, and specifically operative beginning July 1, 2023.

Federal/State Law

Federal Law

Under the Affordable Care Act, for taxable years beginning after December 31, 2013, individuals must be covered by a health plan that provides minimum essential coverage (MEC) or they will be subject to a federal tax (also referred to as a penalty), known as the Individual Responsibility Payment (IRP). With law changes over the years, this penalty has since been reduced to zero; so, the penalty effectively no longer applies for federal purposes. The mandate requires that coverage must be obtained from government-sponsored programs (e.g., Medicare, Medicaid, etc.), eligible employer-sponsored plans, individual market plans, grandfathered group health plans, or grandfathered health insurance coverage.

Starting in 2014, the federal premium tax credit (also referred to as the federal subsidy), has been available, which is a refundable credit and payable in advance directly to the insurance provider to help eligible individuals and families cover the premiums for their insurance purchased through the health insurance marketplace. In addition, the advance payment is a payment made during the tax year to the taxpayer's insurance provider for part or all the premiums for qualifying coverage. (The marketplace also refers to the advanced payment as the "subsidy," "tax credit," and an "advance payment.")

If an advanced payment is made on the taxpayer's behalf, the taxpayer must reconcile the advanced payment and, in general, repay any excess or receive a refundable credit if too little subsidy was provided.

Existing federal laws provide that gross income includes all income from whatever source derived, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded. However, the federal subsidy is specifically excluded from the individual's gross income.

Law changes in the American Rescue Plan Act (ARPA) resulted in larger subsidies and expanded the pool of eligible recipients. Recent law changes in the Inflation Reduction Act of 2022 (IRA) generally extended the ARPA provisions for another three taxable years.

There are no federal income tax laws comparable to the provisions of this bill.

State Law

For taxable years beginning on or after January 1, 2020, California requires residents and their dependents to maintain qualifying health care coverage, unless they qualify for one of eleven exemptions, e.g., religious conscience, affordability, etc. Individuals who are required but do not maintain coverage for any month during the taxable year are subject to the Individual Shared Responsibility (ISR) penalty. The ISR penalty applies to each month of the year that the taxpayer, their spouse, or their dependents does not have coverage and does not meet an exemption. The taxpayer must pay any ISR penalty that applies to the taxpayer, their spouse, and their dependents for the entire year when they file their tax return.

To provide Californians access to affordable health care options, California also provides financial assistance in the form of the Premium Assistance Subsidy (PAS). The California subsidy is payable in advance directly to the insurance provider to help individuals pay premiums for coverage purchased through the California health insurance marketplace.

Individuals who receive an advanced payment of the subsidy must file a California income tax return, regardless of the annual filing threshold requirements, and reconcile the amount of the advanced subsidy received based on their projected household income, with the actual subsidy based on their actual household income, less the federal subsidy. If the advanced payment exceeds the amount of California subsidies allowed, any excess must be repaid by the taxpayer; or if the advanced payment is less than the amount of the allowed subsidies, the amount is refunded.

Existing state laws provide that gross income includes all income from whatever source derived, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded. However, the California subsidy is specifically excluded from California gross income.

The expansion of the federal subsidy effectively reduced the California subsidy amount to zero effective January 1, 2021, and ongoing.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

Companion bills AB 1878 (Wood, 2021/2022) and SB 944 (Pan, 2021/2022) would, under the GC, require Covered California to provide affordability assistance to reduce cost-sharing including copays, coinsurance, and maximum out-of-pocket costs, and to eliminate deductibles for all benefits. AB 1878 has been held under submission by the Senate Appropriations Committee. SB 944 has been ordered to the Assembly for a third reading.

SB 184 (Senate Committee on Budget and Fiscal Review, Chapter 47, Statutes of 2022) among other items, indefinitely extended the PAS program and the Administrative Procedure Act exemptions.

AB 133 (Assembly Budget Committee, Chapter 143, Statutes of 2021), the omnibus health budget trailer bill, which among other provisions, established the Health Care Affordability Reserve Fund and transferred $333,400,000 from the General Fund to this fund, to support health care affordability programs operated by the Covered California, and required Covered California to report on options for providing cost-sharing reduction subsidies for low- and middle-income Californians. AB 133 also established a $1 premium subsidy program in Covered California to subsidize the $1 per month premium required for the cost of providing abortion services, for which federal funding is prohibited.

AB 237 (Gray, Chapter 740, Statutes of 2021) prohibited California public employers, as specified, from discontinuing employer contributions for health care coverage for employees who, during the duration of a strike, fall below the minimum hours worked to qualify for employee health care coverage.

AB 80 (Assembly Budget Committee, Chapter 12, Statutes of 2020), the public health omnibus budget trailer bill, among other provisions, under the Health and Safety Code and the Insurance Code, changed the actuarial value of the bronze level of coverage established under the federal Patient Protection and Affordable Care Act (PPACA), for non-grandfathered individuals and small groups from "plus 4 percent to minus 2 percent" to "plus 5 percent to minus 2 percent."

AB 414 (Bonta, Chapter 801, Statutes of 2019) required the FTB to report to the Legislature specified information regarding the MEC Individual Mandate, the ISR penalty, and the state financial assistance paid for health care coverage.

SB 78 (Senate Committee on Budget and Fiscal Review, Chapter 38, Statutes of 2019) among other items, required taxpayers to maintain MEC or verify their exemption from the MEC Individual Mandate. Individuals who do not have coverage or an exemption are required to pay the ISR penalty on their tax return. In addition, the bill created the PAS program to provide financial assistance to individuals.

PROGRAM BACKGROUND

Beginning January 1, 2020, California residents and their dependents must maintain qualifying MEC for each month during the taxable year unless they qualify for one of 14 exemptions. Most exemptions can be claimed on the tax return, e.g., income is below the tax filing threshold, health coverage is considered unaffordable, families' self-only coverage combined cost is unaffordable, short coverage gap of three consecutive months or less, etc. However, the individual must apply with Covered

California for exemptions for religious conscience, affordability hardship, and general hardships. Additionally, individuals may qualify for a federal and California health care subsidies to assist them in maintaining MEC.

On FTB's public website, there is a webpage for individuals, tax professionals, and insurance providers and employers, providing information about the Minimum Essential Coverage Individual Mandate, the subsidy, the ISR penalty, relevant tax forms and instructions, an ISR Penalty tool that can be used to estimate the penalty, instructional videos, news articles, and useful website links.

FISCAL IMPACT

The Exchange is administered by Covered California. Although the FTB is not directed to perform any tasks under the provisions of this bill, the FTB may experience increased taxpayer contacts. Currently, the department does not anticipate additional costs to implement this bill. However, volumes are uncertain, and costs could change if workload demands resulting from this program later increase.

ECONOMIC IMPACT

Revenue Estimate

To determine the revenue impact to the General Fund, both the number of taxpayers who will lose essential coverage because of strike, lockout or other labor dispute and the frequency of these disputes must be known. Because it is difficult to predict the number of taxpayers affected and the frequency of labor disputes, the revenue impact is unknown.

However, it is expected that for every $100,000 of income excluded and applying an average tax rate of 6%, the revenue loss would be approximately $6,000.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

As per the Senate Floor Analysis of AB 2530 dated August 13, 2022, the following support was noted; and as per the Assembly Floor Analysis of AB 2530 dated August 25, 2022, no opposition was noted.

Introduced February 17, 2022
Amended June 20, August 1, and August 18, 2022

Support

California Labor Federation (co-source)
Los Angeles County Federation of Labor (co-source)
United Food and Commercial Workers, Western States Council (co-source)
ACCESS Reproductive Justice
American Federation of State, County and Municipal Employees
California Federation of Teachers
California IASTE Council
California Nurses Association
California Pan-Ethnic Health Network
California Professional Firefighters
California School Employees Association
California State Legislative Board, Sheet Metal Air Rail and Transportation Workers
California Teachers Association
California Teamsters Public Affairs Council
California-Nevada Conference of Operating Engineers
Courage California
Health Access California
Indivisible CA: StateStrong
National Association of Social Workers, California Chapter
Unite Here!

ARGUMENTS

As per the Assembly Floor Analysis of AB 2530 dated August 25, 2022, the following arguments in support were noted.

Proponents

"California Labor Federation (CLF) and the Los Angeles County Federation of Labor, co-sponsors of this bill, write that this bill will ensure that no worker who exercises their legal right to strike will lose access to health coverage. According to CLF, the Governor signed AB 237 (Gray), Chapter 740, Statutes of 2021, the Public Employee Health Protection Act, which prohibits public employers from terminating the health care coverage of employees and their families during a strike. However, AB 237 only applies to public employers. The right to strike is embodied in several areas of law, most notably in Section 7 of the National Labor Relations Act (NLRA). Under the NLRA, workers may lawfully strike on economic grounds (higher wages, shorter hours, better working conditions) or unfair labor practice grounds. Strikes are a tool of last resort and inflict significant hardship on the workers and their families. Last year, workers from all over the country exercised this right to ensure workplace safety and fair wages. In Iowa, John Deere threatened to take away the health care benefits from the 10,000 members of the UAW and their families who were on strike last fall. Similarly, companies like Kellogg's used this strike-breaking tactic among the 1,400 striking workers at their cereal plants last year. It is a matter of statewide concern that access to health and other medical care continue, particularly in the wake of a worldwide pandemic. The temporary loss of coverage during a strike harms not only the striking worker, but also harms dependent family members, and further strains the public social safety net. Employers weaponize health benefits to discourage workers from going on strike or to push workers to end a strike without winning needed concessions. Although striking workers are eligible to apply for health insurance through Covered California, many barriers remain including, delays in coverage and affordability. Covered California provides a subsidy to cover the cost of monthly premiums, this means that if the worker's income goes up following a strike, the worker may owe money on their federal income taxes. If a family member has an offer of "affordable" coverage from the family member's employer, then the worker is locked out of Covered California. This bill will make coverage under Covered California more accessible and affordable by allowing workers who lose coverage because of a labor dispute to receive the same premium assistance and cost-sharing reductions as an individual with a household income of 133% of the FPL, with no deductibles, and make coverage available immediately upon application. The COVID-19 pandemic demonstrated unmistakably that public health impacts everyone. There should never be any incentive to eject people from their health coverage because the consequences, to them, to their families, and to the entire population, can be disastrous."

Opponents

No known opposition to this bill.

LEGISLATIVE CONTACT

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