STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Schiavo

Sponsor:

Bill Number: AB 1208

Related Bills: See Legislative History

Introduced: February 16, 2023
Amended: March 29, 2023

SUBJECT

Health Care Affordability

SUMMARY

This bill would amend provisions of the Government Code (GOV) to expand financial assistance provided by the California Health Benefit Exchange (Exchange) to include subsidies for cost sharing if the federal premium tax credit continues at the level established for the 2023 program year. This bill would also make the California Premium Assistance Subsidy (PAS) program and gross income exclusion for PAS inoperative in years that the federal premium tax credit is equal to or greater than the level established for the 2023 program year.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The bill, as introduced on February 16, 2023, would have removed the income ceiling of 600% of the federal poverty level for subsidies administered by the Exchange and would have required the program to include subsidies for cost sharing.

The March 29, 2023, amendments added back the 600% of the federal poverty level requirement on subsidies administered by the Exchange and added a sunset date of January 1, 2029, for subsidies for cost sharing.

This is the Franchise Tax Board's (FTB's) first analysis of the bill and only addresses the provisions that would impact the FTB.

REASON FOR THE BILL

The reason for the bill is to reduce health care costs for Californians.

ANALYSIS

This bill would require the Exchange to administer subsidies for cost sharing, including copayments, deductibles, and maximum out-of-pocket cost limits if the federal premium tax credit continues at the 2023 program year level. These additional subsidies would be included in the annual program design adopted to administer financial assistance, including the PAS, for health care coverage provided through the Exchange.

In addition, this bill would provide that the PAS program and gross income exclusion under the GOV would not be operative for any year in which the federal premium tax credit is equal to or greater than the federal premium tax credit provided for at the 2023 program year level.

Effective/Operative Date

This bill would be effective and operative on January 1, 2024. The cost-sharing subsidies would be provided until January 1, 2029.

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 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.

Since 2014 the federal premium tax credit 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 of a tax credit 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 premium tax credit is specifically excluded from the individual's gross income.

Law changes in the American Rescue Plan Act (ARPA) resulted in larger credits and expanded the pool of eligible recipients. Law changes in the Inflation Reduction Act of 2022 (IRA) generally extended the ARPA provisions for another three taxable years through the end of 2025.

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 do not have coverage and do 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 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 PAS is specifically excluded from California gross income.

The three-year expansion of the federal premium tax credit effectively reduced the California PAS amount to zero effective January 1, 2021.

Implementation Considerations

None noted.

Technical Considerations

The department has identified the following technical considerations and is available to work with the author's office to resolve these and other considerations that may be identified.

For clarity, consider the following amendment to GOV section 100805(d), "This section shall not be operative in any year in which *the* federal premium ~~subsidies~~ *tax credit authorized under Section 36B of the Internal Revenue Code is* ~~are~~ equal to or greater than ~~those~~*the federal premium tax credit* provided for the 2023 program year."

GOV section 100805(c) provides a PAS gross income exclusion for amounts received as PAS under the program. Revenue and Taxation Code (RTC) section 17141.1 provides the same gross income exclusion for any PAS amount received under Title 25 (commencing with Section 100800) of the GOV. To provide clarity, consider deleting GOV section 100805(c). Regardless of whether GOV section 100805 applies, the gross income exclusion for PAS under RTC section 17141.1 would apply. Therefore, the addition of the gross income exclusion under GOV section 100805(c) is duplicative.

Policy Considerations

The cost sharing subsidies would not be considered PAS or subject to reconciliation on the individual's income tax return filing. If this is contrary to the author's intent, the author may wish to amend the bill.

RTC section 17141.1 provides that gross income does not include any amounts received as PAS under Title 25 of the GOV, which includes Sections 100800-100825. The cost sharing subsidies described in Sections 100520.5 and 100800 of the bill may not be considered PAS under Title 25, and therefore, may not be excludable from the taxpayer's California gross income. If this is contrary to the author's intent, the author may want to amend the bill.

LEGISLATIVE HISTORY

AB 2530 (Wood and Kalra, Chapter 695, Statutes of 2022) added a provision to the GOV requiring the Exchange to administer a financial assistance program for individuals who lose their health benefits due to a labor dispute.

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 $333.4 million from the General Fund to this fund, to support health care affordability programs operated by 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, 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.

Companion bills AB 1878 (Wood, 2021/2022) and SB 944 (Pan, 2021/2022) would have, under the GOV, required 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 was held by the Senate Appropriations Committee without further action as the provisions of the bill were incorporated into SB 944. SB 944 was vetoed by the governor whose veto message stated in part:

> In my January budget proposal, I indicated that the Administration would work with the Legislature, Covered California, and stakeholders on options to further improve affordability and access to health care coverage, while considering what level of federal subsidies would be available through Covered California. Because of the uncertainty of whether the American Rescue Plan Act's enhanced federal subsidies would be extended beyond the initial two-year period, I proposed approximately $300 million in state-only premium subsidies in 2022-23 to partially offset the loss of federal funds. With the very recent extension of enhanced federal subsidies through the federal Inflation Reduction Act for a new three-year period, the Administration's goal has been to reserve the proposed $300 million state-only premium subsidies for when they would be needed again after the enhanced federal subsidies sunset in 36 months.

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 MEC 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. Assuming the cost sharing subsidies are not PAS and would not be subject to reconciliation, the FTB 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

This bill as amended on March 29, 2023, does not change the way income or franchise tax is calculated under the RTC and would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Support

As per the March 17, 2023, Assembly Health Committee analysis of AB 1208, the following organizations support this bill:

Health Access California (sponsor)
Access Reproductive Justice
AFSCME
Asian American Drug Abuse Program, INC.
California Association of Health Plans
California Pan - Ethnic Health Network
Community Health Councils
Health Access California
LA Care Health Plan
Maternal and Child Health Access
Orange County United Way

Small Business Majority
Thai Community Development Center
The Leukemia & Lymphoma Society
Western Center on Law & Poverty, INC.

Opposition

None on file.

ARGUMENTS

Proponents

As per the same report, the Health Access California (HAC), in support of the bill, writes,

> "That affordability continues to be a major barrier to care, even for Californians with coverage. While premiums are lower than ever for those in Covered California, thanks to federal premium subsidies resulting from the Inflation Reduction Act, OOP costs continue to skyrocket. Sixty percent of Californians report feeling worried about OOP when using health insurance, a greater percentage than those worried about the cost of housing, utilities, or groceries. Half of Californians skipped or delayed care in the past year as a result of costs; for low-income Californians, that percentage increased to a staggering two-thirds. Over the past decade, medical deductibles for Covered California standard Silver plan enrollees will have more than doubled, and maximum OOP have increased to almost $9,000. While Covered California Silver plan deductibles only apply for inpatient hospital and skilled nursing care stays, coverage for that hospital bill doesn't kick in until paying over $4,750. Continuing California's efforts to keep health care affordable, this bill proposes to direct Covered California to provide state subsidies to lower co-pays and deductibles, for as long as enhanced federal affordability assistance continues for premiums. Given our higher cost-of-living, California has a state subsidy program to further help those in our state afford care and coverage in Covered California, and if the federal government supplants those subsidies, those state dollars should continue to go to help reduce cost-sharing. While OOP continue to skyrocket for Californians, our state is meanwhile collecting hundreds of millions in revenue from those who are uninsured, collected as a result of our state individual mandate penalty. With additional federal premium assistance supplanting state subsidies through at least 2025 as a result of Inflation Reduction Act, legislators and advocates have urged that the revenue raised from the individual mandate penalty continue to go affordability assistance, to reduce ever increasing cost-sharing. In the just the first three years of the state mandate from 2020-2022, about $1.3 billion has

been generated from Californians lacking health coverage and paying the penalty. HAC concludes that this assistance would provide real, concrete relief to Californians—to help encourage folks to sign up for coverage and not be dissuaded by a high deductible, to reduce financial obstacles to getting needed care, to remove a big barrier for families to seek hospital care, and to prevent those who do get hospitalized to not have such a financial hit that would wipe out the savings of many families."

Opponents

None on file.

LEGISLATIVE CONTACT

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