

The Rise of State Individual Mandates

Restoring an Affordable Care Act (ACA) Requirement

As of 2019, the Tax Cut and Jobs Act of 2017 reduced the ACA's individual mandate penalty to \$0. In reaction, several states and the District of Columbia have enacted their own ACA-style individual mandates requiring taxpayers to provide proof of health coverage to avoid financial penalties. This article focuses on the obligations for employers sponsoring group medical coverage and summarizes what we know so far.

Note: We intend to update this article as new or additional state individual mandate guidance becomes available. This article is current as of the publication date appearing at the top of this page.

Quick Summary

More detailed information for each state/jurisdiction appears after this section. For the remainder of this article, our use of the word "state" includes the District of Columbia.

State	Effective	Plan Reporting Requirement	Reporting Requirement Due Date
California	2020	TBD, to CA Franchise Tax Board	March 31st of the following year
District of Columbia	2019	Yes, to D.C. Office of Tax and Revenue	June 30, 2020 for 2019 reporting year For later years, 30 days after federal forms 1095 due to IRS
Massachusetts	2018 (current version)	Yes, to MA Department of Revenue	December 15th of the current year
New Jersey	2019	Yes, to NJ Department of Revenue and Enterprise Services	May 15, 2020 for 2019 reporting year For later years, March 31st of the following year
Rhode Island	2020	TBD, but to RI Department of Taxation	TBD
Vermont	2020	TBD, but to VT Department of Taxes	TBD

Effect on ACA Reporting Relief

In late 2019, the [IRS granted penalty relief](#) for failing to automatically distribute Forms 1095-B to covered individuals provided certain criteria is met. This relief is also available under very limited circumstances for distributing Forms 1095-C.

The state individual mandates generally¹ require Forms 1095 also be provided to the employees/covered individuals covered by the state individual mandate reporting requirement, which effectively defeats the IRS relief from automatically distributing forms.

Excess Reporting and Data Privacy Issues

Federal and state data privacy rules (including HIPAA) generally provide exceptions for disclosing protected information if required by law.² These exceptions enable employers to report the information required under the state individual mandates without violating data privacy laws.

The reporting requirements for each of the state individual mandates is limited to covered individuals who are residents of that state, and employers should limit its reporting to those individuals. If an employer reports information for other non-resident individuals – which may occur if the employer simply files its entire Form 1095-C reporting file with the state – the additional disclosures may be violations of one or more data privacy laws. We realize it may be administratively difficult for an employer to separate and report only those records required by a state individual mandate.

Minimum Contact and Jurisdiction

As currently written, the reporting and penalty requirements under the individual mandates of California, the District of Columbia, and New Jersey apply to employers covering their residents under self-insured health coverage even when the employer does not maintain a physical presence, employ employees, or otherwise do business in the state. Rhode Island has not addressed its reporting and penalty requirements yet, but it appears it will also follow suit.

Each state is taking the position that merely covering a resident is sufficient minimum contact for the state to assert jurisdiction over an employer. While we do not recommend any out-of-state employer ignore these mandates, it remains to be seen if a state can enforce its reporting penalties against an employer whose sole contact with that state is providing health coverage to residents who cross into another state where the employer conducts business.

¹ This does not apply to all of the states (e.g. Massachusetts), although further guidance and requirements are still pending.

² For example, [45 CFR §164.512\(a\)](#) of the HIPAA regulations permits a HIPAA-covered entity to use or disclose protected health information to the extent that such use or disclosure is required by law and complies with and is limited to the relevant requirements of such law. A similar exception can be found in California's Confidentiality of Medical Information law at [California Civil Code Section 56.20\(c\)\(1\)](#).

California

Effective Date

California's individual mandate is effective as of January 1, 2020.

Individual Mandate and Penalty

To avoid a penalty, California residents are required to maintain health coverage for themselves, any spouse or registered domestic partner, and any dependent(s) for each month of the calendar year unless an exemption applies.

Per Person Penalty Method	Income Percentage Penalty Method	Maximum Penalty Amount
\$695 per adult \$347.50 per child under 18	2.5% of yearly household income above the applicable annual filing threshold ³	The lesser of: <ol style="list-style-type: none"> The greater of the per person or income percentage penalty method <p style="text-align: center;">Or</p> <ol style="list-style-type: none"> The state average premium for qualified health plans that have a bronze level of coverage for the applicable household size involved

Note: The penalty amount is pro-rated by the number of months without coverage.

Example 1: A married couple both under age 65 have health coverage for eight months during 2020 but do not qualify for an exemption from California's individual mandate for the first four months. The family's household income for 2020 is \$78,000. The applicable individual mandate penalty is calculated as follows:

$$\begin{aligned}
 \text{Per Person Penalty} &= (\$695 \times 2) \\
 &= \$1,390 \times (4/12) \\
 &= \$463.33
 \end{aligned}$$

$$\begin{aligned}
 \text{Income Percentage Penalty} &= (\$78,000 - \$36,485^3) \\
 &= (\$41,515 \times 2.5\%) \times (4/12) \\
 &= \$345.96
 \end{aligned}$$

The maximum penalty amount is \$463.33 (assuming this is lower than the state average premium for bronze coverage for a married couple for four months).

³ This is the applicable 2019 threshold. The 2020 thresholds are not yet available.

Plan Reporting Requirement

Reporting is required for covered individuals who are California residents.

Employer-Sponsored Health Coverage	Reporting Entity	How Reported	Due Date
Self-Insured	Employer	Duplicate IRS Forms 1095-B/1095-C will be filed with the CA Franchise Tax Board Reporting procedures are TBD	March 31st of the following year (March 31, 2021 for the 2020 reporting year)
Fully Insured	Insurance Carrier		

Plan Reporting Penalty

Employers with self-insured coverage are subject to a \$50 per covered individual penalty for failing to report.

Example 2: If an employer fails to file a duplicate IRS Form 1095-C with the CA Franchise Tax Board that reflects coverage for an employee, spouse, and two dependent children, the employer is subject to a \$200 penalty (\$50 x 4).

Additional Resources

[California Franchise Tax Board Individual Mandate Information](#)

[California Individual Mandate \(Code\)](#)

[California Individual Mandate Penalty Estimator](#)

District of Columbia

Effective Date

The District of Columbia's individual mandate is effective as of January 1, 2019.

Individual Mandate and Penalty

To avoid a penalty, D.C. residents are required to maintain health coverage for themselves, any spouse, and any dependent(s) for each month of the year unless an exemption applies.

Per Person Penalty Method	Income Percentage Penalty Method	Maximum Penalty Amount
\$695 per adult \$347.50 per child under 18	2.5% of yearly household income above the <u>applicable federal annual filing threshold</u>	The lesser of: 1. The greater of the per person or income percentage penalty method Or 2. The state average premium for qualified health plans that have a bronze level of coverage for the applicable household size involved

Note: The penalty amount is pro-rated by the number of months without coverage.

Example 1: A married couple both under age 65 have health coverage for eight months during 2020 but do not qualify for an exemption from D.C.'s individual mandate for the first four months. The family's household income for 2020 is \$78,000. The applicable individual mandate penalty is calculated as follows:

$$\begin{aligned}
 \text{Per Person Penalty} &= (\$695 \times 2) \\
 &= \$1,390 \times (4/12) \\
 &= \$463.33
 \end{aligned}$$

$$\begin{aligned}
 \text{Income Percentage Penalty} &= (\$78,000 - \$24,400) \\
 &= (\$53,600 \times 2.5\%) \times (4/12) \\
 &= \$446.67
 \end{aligned}$$

The maximum penalty amount is \$463.33 (assuming this is lower than D.C.'s average premium for bronze coverage for a married couple for four months).

Plan Reporting Requirement

Reporting is required for covered individuals who are D.C. residents.

Employer-Sponsored Health Coverage	Reporting Entity	How Reported	Due Date
Self-Insured	Employer	Duplicate IRS Forms 1095-B/1095-C will be filed with the D.C. Office of Tax and Revenue (OTR)	June 30, 2020 for 2019 reporting year
Fully Insured	Insurance Carrier (see note below)	Reporting is done electronically through MyTaxDC.gov and there is no paper reporting option (employers who pay D.C. taxes should already be registered)	For later years, 30 days after federal forms 1095 due to IRS

Note: It is unclear under existing D.C. guidance if an employer must report anything if coverage is solely fully insured, but this is implied since an employer would not have coverage information to report.

Guidance from OTR indicates an employer with fewer than 50 full-time employees (including at least one in D.C.) during the reporting year does not have a reporting requirement. This is not consistent with the D.C. statute which does not excuse smaller employers with self-insured coverage.⁴ OTR is the enforcing agency, so smaller employers with self-insured coverage should not be subject to penalties for failing to report. This means employees of smaller employers with self-insured coverage may need to substantiate their own coverage to avoid a D.C. individual mandate penalty.

Plan Reporting Penalty

There is no penalty for failing to report.

Additional Resources

[D.C. Health Link Individual Mandate](#)

[D.C. Office of Tax and Revenue Guidance](#)

[D.C. Office of Tax and Revenue PowerPoint Presentation](#)

[MyTaxDC.gov \(for reporting\)](#)

[D.C. Individual Mandate \(Code\)](#)

⁴ The ACA also requires small employers with self-insured coverage to report using IRS Forms 1094-B/1095-B

Massachusetts

Massachusetts has long required residents to maintain health coverage that meets the Massachusetts Creditable Coverage (MCC) standard and required plans to report to covered individuals whether the plan met the MCC standard using Form MA 1099-HC.

Massachusetts also revived the health insurance responsibility disclosure (HIRD) in 2018. This HIRD is different from the version used from 2007 – 2013, and is used to provide information about employer-sponsored insurance to help the state administer the MassHealth Premium Assistance Program.

Effective Date

Massachusetts has maintained an individual mandate requirement since July 1, 2007. The first revived HIRD was due November 30, 2018 (but note a different annual due date applies for later years).

Individual Mandate and Penalty

To avoid a penalty, Massachusetts residents are required to maintain MCC for themselves, any spouse, and any dependent(s) for each month of the year unless an exemption applies. The penalties scale based on income and are indexed annually.

MCC Penalties for 2020				
Individual Income Category*	>150-200% FPL	>200-250% FPL	>250-300% FPL	>300% FPL
Penalty	\$22/month \$264/year	\$43/month \$516/year	\$65/month \$780/year	\$135/month \$1,620/year
*Use the chart below to determine the applicable federal poverty level (FPL) based on family size				
Schedule Reflects 2019 FPL Standards for 2020 Eligibility				
Family Size	150% FPL	200% FPL	250% FPL	300% FPL
1	\$18,210	\$24,280	\$30,350	\$36,420
2	\$24,690	\$32,920	\$41,150	\$49,380
3	\$31,170	\$41,560	\$51,950	\$62,340
4	\$37,650	\$50,200	\$62,750	\$75,300
5	\$44,130	\$58,840	\$73,550	\$88,260
6	\$50,610	\$67,480	\$84,350	\$101,220
7	\$57,090	\$76,120	\$95,150	\$114,180
8	\$63,570	\$84,760	\$105,950	\$127,140

Each add'l person add:	\$6,480	\$8,640	\$10,800	\$12,960
-------------------------------	---------	---------	----------	----------

Plan Reporting Requirement

Different reporting requirements apply in Massachusetts.

Employer-Sponsored Health Coverage	Reporting Entity for Form MA 1099-HC	How Reported	Due Date
Self-Insured	Employer (or TPA on employer's behalf)	Mailed to primary enrollee or electronically with consent	January 31st of the following year
Fully Insured	Insurance Carrier		

Employer-Sponsored Health Coverage	Reporting Entity for HIRD	How Reported	Due Date
Self-Insured	Employer if employing 6 or more employees in Massachusetts	Reporting is done electronically through MassTaxConnect to the MA Department of Revenue and there is no paper reporting option (employers who pay MA taxes should already be registered)	December 15th of the current year
Fully Insured			

Reporting Penalties

Employers with self-insured coverage are subject to a \$50 penalty for each individual it failed to provide with a Form MA 1099-HC, capped at \$50,000 per year.

Employers who fail to file or knowingly falsify a HIRD are subject to a penalty of \$1,000 – \$5,000 for each violation. There are no other penalties related to information provided by an employer in a HIRD.

Additional Resources

[MMA Article on MCC and Form MA 1099-HC](#)

[Mass.gov Information on Form MA 1099-HC](#)

[2019 Form MA 1099-HC](#)

[Mass.gov Information on HIRD Reporting](#)

[Massachusetts 2020 Individual Mandate Penalties](#)

New Jersey

Effective Date

New Jersey's individual mandate is effective as of January 1, 2019.

Individual Mandate and Penalty

To avoid a penalty, New Jersey residents are required to maintain health coverage for themselves, any spouse, and any dependent(s) for each month of the year unless an exemption applies.

Per Person Penalty Method	Income Percentage Penalty Method	Maximum Penalty Amount
\$695 per adult \$347.50 per child under 18	2.5% of yearly household income above the applicable annual filing threshold	The lesser of: <ol style="list-style-type: none"> The greater of the per person or income percentage penalty method <p style="text-align: center;">Or</p> <ol style="list-style-type: none"> The state average premium for qualified health plans that have a bronze level of coverage for the applicable household size involved

Note: The penalty amount is pro-rated by the number of months without coverage.

Example 1: A married couple both under age 65 have health coverage for eight months during 2020 but do not qualify for an exemption from New Jersey's individual mandate for the first four months. The family's household income for 2020 is \$78,000. The applicable individual mandate penalty is calculated as follows:

$$\begin{aligned}
 \text{Per Person Penalty} &= (\$695 \times 2) \\
 &= \$1,390 \times (4/12) \\
 &= \$463.33
 \end{aligned}$$

$$\begin{aligned}
 \text{Income Percentage Penalty} &= (\$78,000 - \$20,000) \\
 &= (\$58,000 \times 2.5\%) \times (4/12) \\
 &= \$483.33
 \end{aligned}$$

The maximum penalty amount is \$483.33 (assuming this is lower than New Jersey's average premium for bronze coverage for a married couple for four months).

Plan Reporting Requirement

Reporting is required for covered individuals who are New Jersey residents.

Employer-Sponsored Health Coverage	Reporting Entity	How Reported	Due Date
Self-Insured	Employer	Duplicate IRS Forms 1095-B/1095-C will be filed with the NJ Department of Revenue and Enterprise Services (DORES)	May 15, 2020 for 2019 reporting year
Fully Insured	Insurance Carrier* *New Jersey's guidance indicates an employer may be held liable for penalties if the insurance carrier fails to report	Reporting is done through the DORES MFT SecureTransport system used for reporting Forms W-2 and there is no paper reporting option (employers who pay NJ taxes should already have an account) Employers may request an account or a bulk filing account by contacting DORES Employers who are required to file fewer than 100 forms may use Fillable Form NJ-1095 to electronically file one form at a time which may be a practical solution for employers who only need to file a few forms	For later years, March 31 st of the following year

Reporting Penalty

New Jersey indicates it intends to implement regulations specifying a \$50 penalty for each missed form that should have been reported to DORES up to a maximum annual penalty of \$50,000.

Additional Resources

[New Jersey Health Insurance Mandate Information for Employers](#)

[DORES MFT SecureTransport system \(for reporting\)](#)

[New Jersey Individual Mandate \(Code\)](#)

[NJ Individual Mandate Penalty Calculator](#)

[2019 NJ-1040 Excerpt \(shared responsibility payment\)](#)

Rhode Island

Rhode Island enacted an individual mandate, but it remains a work-in-progress and guidance addressing plan reporting requirements and penalties has not been issued.

Effective Date

Rhode Island's individual mandate is effective as of January 1, 2020.

Individual Mandate and Penalty

To avoid a penalty, Rhode Island residents are required to maintain health coverage for themselves, any spouse, and any dependent(s) for each month of the year unless an exemption applies.

Per Person Penalty Method	Income Percentage Penalty Method	Maximum Penalty Amount
\$695 per adult \$347.50 per child under 18	2.5% of yearly household income above the applicable annual filing threshold * *In Rhode Island, the filing threshold is the standard deduction plus the number of available exemptions for the taxpayer's filing status.	The lesser of: 1. The greater of the per person or income percentage penalty method Or 2. The state average premium for qualified health plans that have a bronze level of coverage for the applicable household size involved

Note: The penalty amount is pro-rated by the number of months without coverage.

Example 1: A married couple both under age 65 have health coverage for eight months during 2020 but do not qualify for an exemption from Rhode Island's individual mandate for the first four months. The family's household income for 2020 is \$78,000. The applicable individual mandate penalty is calculated as follows:

$$\begin{aligned} \text{Per Person Penalty} &= (\$695 \times 2) \\ &= \$1,390 \times (4/12) \\ &= \$463.33 \end{aligned}$$

$$\begin{aligned} \text{Filing threshold} &= \$17,800 + (\$4,150 \times 2) \\ &= \$26,100 \end{aligned}$$

$$\begin{aligned} \text{Income Percentage Penalty} &= (\$78,000 - \$26,100) \\ &= (\$58,000 \times 2.5\%) \times (4/12) \\ &= \$483.33 \end{aligned}$$

The maximum penalty amount is \$483.33 (assuming this is lower than Rhode Island's average premium for bronze coverage for a married couple for four months).

Plan Reporting Requirement

TBD, but we know reporting will be made to Rhode Island's Department of Taxation.

Reporting Penalty

TBD

Additional Resources

[Rhode Island Department of Taxation Health Coverage Mandate Page](#)

[Individual Mandate Information from HealthSource RI \(RI Public Insurance Marketplace\)](#)

[Rhode Island Individual Mandate \(found in 2020 budget bill beginning on page 316\)](#)

Vermont

Vermont enacted an individual mandate, but it remains mostly a statement of intent.

Effective Date

Vermont's individual mandate is effective as of January 1, 2020.

Individual Mandate and Penalty

There is no individual mandate penalty for 2020. Vermont intends to use the data to communicate coverage options to the uninsured. Penalties may apply in later years.

Plan Reporting Requirement

TBD, but we know reporting will be made to Vermont's Department of Taxes.

Reporting Penalty

TBD

Additional Resources

[Vermont Individual Mandate](#)

About the Author



Christopher Beinecke is the Employee Health & Benefits National Compliance Leader for Marsh & McLennan Agency.

The information contained herein is for general informational purposes only and does not constitute legal or tax advice regarding any specific situation. Any statements made are based solely on our experience as consultants. Marsh & McLennan Agency LLC shall have no obligation to update this publication and shall have no liability to you or any other party arising out of this publication or any matter contained herein. The information provided in this alert is not intended to be, and shall not be construed to be, either the provision of legal advice or an offer to provide legal services, nor does it necessarily reflect the opinions of the agency, our lawyers or our clients. This is not legal advice. No client-lawyer relationship between you and our lawyers is or may be created by your use of this information. Rather, the content is intended as a general overview of the subject matter covered. This agency is not obligated to provide updates on the information presented herein. Those reading this alert are encouraged to seek direct counsel on legal questions. © 2020 Marsh & McLennan Agency LLC. All Rights Reserved.