

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.¹ This Alert focuses on the obligations for employers sponsoring group medical coverage and summarizes what we know so far.

Quick Summary

Detailed information for each state/jurisdiction appears after this section, including reporting requirements to covered individuals and the state. For the remainder of this article, our use of the word "state" includes the District of Columbia.

State	Year Effective	Due Date to Participants	Due Date to State
<u>California</u>	2020	January 31, 2021	March 31, 2021
<u>District of Columbia</u>	2019	March 2, 2021	April 30, 2021 (March 30, 2021 if paper filer for ACA forms to IRS)
<u>Massachusetts</u>	2018 (current version)	January 31, 2021	December 15, 2020
<u>New Jersey</u>	2019	March 2, 2021	March 31, 2021
<u>Rhode Island</u>	2020	March 2, 2021	March 31, 2021
<u>Vermont</u>	2020	March 2, 2021	N/A

¹ Other states are considering some form of state individual mandate, including Connecticut, Hawaii, Maryland, Minnesota, and Washington.

Effect on ACA Reporting Relief

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

The state individual mandates generally require automatic distribution of Forms 1095 to the employees/covered individuals covered by the state mandate, which effectively defeats the IRS relief from the same requirement.²

Over-Reporting and Data Privacy Issues

Federal and state data privacy rules (including HIPAA) generally provide exceptions for disclosing protected information if required by law.³ 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 are limited to covered individuals who are residents of that state, and employers should limit reporting to those individuals. If an employer reports information for other non-resident individuals – which may occur if the employer simply provides its entire Form 1095-C reporting file to 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

The reporting and penalty requirements under the individual mandates for California, the District of Columbia, New Jersey, and Rhode Island apply to employers covering their residents under health coverage even when the employer does not maintain a physical presence, employ employees, or otherwise do business in the state.

Each state takes 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. We are not aware of any employer challenging – or successfully challenging – these state mandates for lack of jurisdictional authority.

² This does not apply to Massachusetts which uses its own separate forms for reporting purposes.

³ 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
2020: \$750 per adult 2020: \$375 per child under 18 An adult includes a registered domestic partner These limits are indexed annually	2.5% of yearly household income above the applicable annual filing threshold	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: A married couple both under age 65 with one dependent child have health coverage for eight months during 2020 but do not qualify for an exemption from California's individual mandate for four months. The family's household income for 2020 is \$78,000. The applicable individual mandate penalty is calculated as follows:

$\begin{aligned} \text{Per Person Penalty} &= (\$750 \times 2) + \$375 \\ &= \$1,875 \times (4/12) \\ &= \$625 \end{aligned}$	$\begin{aligned} \text{Income Percentage Penalty} &= (\$78,000 - \$49,763) \\ &= (\$28,237 \times 2.5\%) \times (4/12) \\ &= \$235.31 \end{aligned}$
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The maximum penalty amount is **\$625**, because the Per Person Penalty is greater than the Income Percentage Penalty. This assumes \$625 is lower than the state average premium for bronze coverage for a family of three for four months.

Plan Reporting Requirement to Covered Individuals

Reporting is required for covered individuals who are California residents (including partial year).

Employer-Sponsored Health Coverage	Reporting Entity	How Reported	Due Date for 2020 Reporting
Self-Insured	Employer	IRS Forms 1095-B or 1095-C, as applicable, to covered participants by mail We believe electronic delivery may be used if the primary enrollee consents (California's draft instructions are silent about this)	January 31, 2021 There are no penalties for failing to provide forms by the due date (but see the <i>Note</i> below) There is no reporting requirement for individuals who waived coverage
Fully Insured	Insurance Carrier		

Note: California's draft instructions do not provide an extension (see *Statements to Individuals* in [CA FTB Publication 3895B](#) and [3895C](#)). January 31, 2021 is a Sunday, but the draft instructions do not appear to shift this due date to the next business day. California's Franchise Tax Board informally indicated it does not intend to grant an extension, but it will not assess penalties for failing to provide forms by January 31, 2021.

Plan Reporting Requirement to State

Reporting is required for covered individuals who are California residents (including partial year).

Employer-Sponsored Health Coverage	Reporting Entity	How Reported	Due Date for 2020 Reporting
Self-Insured	Employer	Duplicate IRS Forms 1094-B/1095-B or 1094-C/1095-C, as applicable, filed with the CA Franchise Tax Board	March 31, 2021
Fully Insured	Insurance Carrier	<p>Duplicate IRS Forms 1094-B/1095-B or 1094-C/1095-C, as applicable, filed with the CA Franchise Tax Board</p> <p>Reporting is electronic through the Minimum Essential Coverage Information Reporting (MEC IR) system;</p> <p>Employers filing < 250 forms or who receive a hardship waiver may file by paper (see <i>Electronic Filing</i> in [draft] CA FTB Publication 3895C), but the CA FTB encourages all employers to file electronically</p>	<p>The draft instructions indicate there are no penalties if reporting is completed by or before May 31, 2021</p> <p>There is no reporting requirement for individuals who waived coverage</p>

Reporting Penalties

There is a \$50 per covered individual penalty for failing to timely report to the California Franchise Tax Board, although the draft reporting instructions indicate this penalty will not apply if 2020 reporting is completed by or before May 31, 2021.

The draft reporting instructions suggest this penalty also applies for failing to provide forms to covered individuals. California's Franchise Tax Board informally indicated it will not assess penalties for failing to provide forms to covered individuals by January 31, 2021. It is unclear if this relief has an end date, but we do not recommend assuming the relief will extend past March 2, 2021 (the due date for providing 2020 Forms 1095 for ACA purposes).

Example: 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](#)

[Reporting Procedures for Businesses](#)

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

[California Individual Mandate Penalty Estimator](#)

[Draft] [CA FTB Publication 3895B](#) and [3895C](#)

An employer can sign up for CA health care mandate updates [here](#)

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 or registered domestic partner (if the resident includes the domestic partner on the resident’s [D.C. Form D-40 Individual Income Tax Form](#)), 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
2020: \$695 per adult 2020: \$347.50 per child under 18 An adult includes a registered domestic partner The per person penalty is capped at \$2,085 per family These limits are indexed annually	2.5% of yearly household income above the applicable annual filing threshold * * IRS Publication 501 is still in draft, but the thresholds are correct	The lesser of: 1. The greater of the per person or income percentage penalty method Or 2. The average premium for qualified health plans through D.C. Health Link 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: A married couple both under age 65 with one dependent child have health coverage for eight months during 2020 but do not qualify for an exemption from D.C.’s individual mandate for four months. The family’s household income for 2020 is \$78,000. The applicable individual mandate penalty is calculated as follows:

$\begin{aligned} \text{Per Person Penalty} &= (\$695 \times 2) + \$347.50 \\ &= \$1,737.50 \times (4/12) \\ &= \$579.17 \end{aligned}$	$\begin{aligned} \text{Income Percentage Penalty} &= (\$78,000 - \$24,800) \\ &= (\$53,200 \times 2.5\%) \times (4/12) \\ &= \$443.33 \end{aligned}$
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The maximum penalty amount is **\$579.17**, because the Per Person Penalty is greater than the Income Percentage Penalty. This assumes \$579.17 is lower than the average premium for bronze coverage for a family of three for four months.

Plan Reporting Requirement to Covered Individuals

Reporting is required for covered individuals who are D.C. residents (including partial year).

Employer-Sponsored Health Coverage	Reporting Entity	How Reported	Due Date for 2020 Reporting
Self-Insured	Employer	IRS Forms 1095-B or 1095-C, as applicable, to covered participants Delivery by mail or electronically if individual consents to electronic delivery for ACA reporting	March 2, 2021
Fully Insured	Insurance Carrier		

Plan Reporting Requirement to State

Reporting is required for covered individuals who are D.C. residents (including partial year).

Employer-Sponsored Health Coverage	Reporting Entity	How Reported	Due Date for 2020 Reporting
Self-Insured	Employer	Duplicate IRS Forms 1094-B/1095-B or 1094-C/1095-C, as applicable, filed with the D.C. Office of Tax and Revenue (OTR) Reporting is electronic through MyTaxDC.gov , and there is no paper reporting option (employers who pay D.C. taxes should already be registered)	30 days after IRS Forms 1094/1095 due to IRS for ACA purposes, including any extension granted by the IRS For ACA paper filers: March 30, 2021 (if no IRS extension) For ACA electronic filers: April 30, 2021 (if no IRS extension)
Fully Insured	Insurance Carrier		

Dual Reporting: Fully insured employers that are ACA applicable large employers and required to file Forms 1094-C/1095-C with the IRS must still file these forms with the D.C. OTR.

Note: All employers who sponsor self-insured group health plans must report to OTR if the plan covered at least one D.C. resident during the applicable calendar year. An employer can limit its Form 1095-C reporting to D.C. residents, but it will be required to provide a revised Form 1094-C to reflect the correct number of accompanying Forms 1095-C. Remember that filing Forms 1095-C for non-D.C. residents [might violate a data privacy law](#).

Plan Reporting Penalty

There is no penalty for failing to report or provide forms to covered individuals for 2020.

Additional Resources

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

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

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

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

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.

2020 Individual Mandate Penalties				
Individual Income Category ⁴	>150.1-200% FPL	200.1-250% FPL	250.1-300% 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				
Family Size	150% FPL	200% FPL	250% FPL	300% FPL
1	\$18,735	\$24,980	\$31,225	\$37,470
2	\$25,365	\$33,820	\$42,275	\$50,730
3	\$31,995	\$42,660	\$53,325	\$63,990
4	\$38,625	\$51,500	\$64,375	\$77,250
5	\$45,255	\$60,340	\$75,425	\$90,510
6	\$51,885	\$69,180	\$86,475	\$103,770
7	\$58,515	\$78,020	\$97,525	\$117,030
8	\$65,145	\$86,860	\$108,575	\$130,290
Add for each additional person	\$6,630	\$8,840	\$11,050	\$13,260

⁴ Individuals with incomes less than or equal to 150% of the Federal Poverty Level are not subject to any penalty for non-compliance.

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

$$\begin{aligned} \text{Family Size of 3 and } \$78,000 \text{ of household income} &= >300\% \text{ Federal Poverty Level} \\ \text{Individual Mandate Penalty} &= \$135/\text{month} \times 4 \\ &= \mathbf{\$540} \end{aligned}$$

The Massachusetts individual mandate penalty already factors in the cost of lowest cost bronze-level coverage available through the Massachusetts Connector (exchange) in 2020.

Plan Reporting Requirement

Different reporting requirements apply in Massachusetts for the Form MA 1099-HC and HIRD (includes partial year).

Employer-Sponsored Health Coverage	Reporting Entity for Form MA 1099-HC	How Reported	Due Date for 2020 Reporting
Self-Insured	Employer (or TPA on employer’s behalf)	Mailed to primary enrollee or electronically with consent	February 1, 2021
Fully Insured	Insurance Carrier		

Employer-Sponsored Health Coverage	Reporting Entity for HIRD	How Reported	Due Date for 2020 Reporting
Self-Insured	Employer if employing 6 or more employees in Massachusetts	Reporting is electronic to the MA Department of Revenue through MassTaxConnect , and there is no paper reporting option (employers who pay MA taxes should already be registered)	December 15, 2020
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](#)

[2020 Form MA 1099-HC](#)

[MMA Article on HIRD Reporting](#)

[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
2020: \$695 per adult 2020: \$347.50 per child under 18 These limits are indexed annually	2.5% of yearly household income above the applicable annual filing threshold	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: A married couple both under age 65 with one dependent child have health coverage for eight months during 2020 but do not qualify for an exemption from New Jersey's individual mandate for four months. The family's household income for 2020 is \$78,000. The applicable individual mandate penalty is calculated as follows:

$$\begin{array}{ll}
 \text{Per Person Penalty} = (\$695 \times 2) + \$347.50 & \text{Income Percentage Penalty} = (\$78,000 - \$20,000) \\
 = \$1,737.50 \times (4/12) & = (\$58,000 \times 2.5\%) \times (4/12) \\
 = \$579.17 & = \$483.33
 \end{array}$$

The maximum penalty amount is **\$579.17**, because the Per Person Penalty is greater than the Income Percentage Penalty. This assumes \$579.17 is lower than the average premium for bronze coverage for a family of three for four months.

Plan Reporting Requirement to Covered Individuals

Reporting is required for covered individuals who are New Jersey residents (including partial year).

Employer-Sponsored Health Coverage	Reporting Entity	How Reported	Due Date for 2020 Reporting
Self-Insured	Employer	IRS Forms 1095-B or 1095-C, as applicable, to covered participants (NJ-1095 may be substituted) Delivery by mail or electronically if individual consents to electronic delivery for ACA reporting	March 2, 2021
Fully Insured	Insurance Carrier		

Plan Reporting Requirement to State

Reporting is required for covered individuals who are New Jersey residents (including partial year).

Employer-Sponsored Health Coverage	Reporting Entity	How Reported	Due Date for 2020 Reporting
Self-Insured	Employer	Duplicate IRS Forms 1095-B/1095-C, as applicable, or substitute NJ-1095 filed with the NJ Division of Taxation Reporting is electronic through the DORES MFT system and there is no paper reporting option (employers who pay NJ taxes should already have an account) Employers filing <100 forms may use a 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	March 31, 2021
Fully Insured	Insurance Carrier* <div style="border: 1px solid black; padding: 5px;"> Secondary Liability: If an insurance carrier fails to report, New Jersey holds the employer/plan sponsor liable for reporting and any potential penalties. The employer/plan sponsor may have indemnification rights against the insurance carrier. </div>		

Note: An employer is not required to file Form 1094-B or 1094-C with New Jersey, although New Jersey can accept it as part of the report.

Reporting Penalty

There is a \$50 penalty for each 2020 form not filed with the New Jersey Division of Taxation by the due date, capped at \$50,000 per year. It appears this penalty also applies to failures to timely provide forms to covered individuals.

Additional Resources

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

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

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

[NJ Individual Shared Responsibility Payment](#)

[NJ Individual Mandate Penalty Calculator](#)

Rhode Island

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
2020: \$695 per adult 2020: \$347.50 per child under 18 These limits are indexed annually	2.5% of yearly household income above the applicable annual filing threshold <div style="border: 1px solid black; padding: 5px;"> <p>Note: In Rhode Island, the filing threshold is the standard deduction plus the number of available exemptions for the taxpayer's filing status.</p> </div>	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: A married couple both under age 65 with one dependent child have health coverage for eight months during 2020 but do not qualify for an exemption from Rhode Island's individual mandate for four months. The family's household income for 2020 is \$78,000. The applicable individual mandate penalty is calculated as follows:

$$\begin{aligned}
 \text{Per Person Penalty} &= (\$695 \times 2) + \$347.50 \\
 &= \$1,737.50 \times (4/12) \\
 &= \$579.17
 \end{aligned}$$

$$\begin{aligned}
 \text{Filing threshold} &= \$17,800 + (\$4,150 \times 3) \\
 &= \$30,250
 \end{aligned}$$

$$\begin{aligned}
 \text{Income Percentage Penalty} &= (\$78,000 - \$30,250) \\
 &= (\$47,750 \times 2.5\%) \times (4/12) \\
 &= \$397.92
 \end{aligned}$$

The maximum penalty amount is **\$579.17**, because the Per Person Penalty is greater than the Income Percentage Penalty. This assumes \$579.17 is lower than the state average premium for bronze coverage for a family of three for four months.

Plan Reporting Requirement to Covered Individuals

Reporting is required for covered individuals who are Rhode Island residents (including partial year).

Employer-Sponsored Health Coverage	Reporting Entity	How Reported	Due Date for 2020 Reporting
Self-Insured	Employer	IRS Forms 1095-B or 1095-C, as applicable, to covered participants Delivery by mail or electronically if individual consents to electronic delivery for ACA reporting	March 2, 2021
Fully Insured	Insurance Carrier		

Plan Reporting Requirement to State

Reporting is required for covered individuals who are Rhode Island residents (including partial year).

Employer-Sponsored Health Coverage	Reporting Entity	How Reported	Due Date for 2020 Reporting
Self-Insured	Employer	Duplicate IRS Forms 1095-B/1095-C, as applicable, filed with the RI Division of Taxation Reporting is electronic through a flat file system and there is no paper reporting option	March 31, 2021
Fully Insured	Insurance Carrier*		

Secondary Liability:
If an insurance carrier fails to report, New Jersey holds the employer/plan sponsor liable for reporting and any potential penalties. The employer/plan sponsor may have indemnification rights against the insurance carrier.

Reporting Penalty

At a public hearing held August 20, 2020, Rhode Island indicated that:

- Failing to timely provide forms to covered individuals or file forms with Rhode Island’s Division of Taxation is a violation of Rhode Island law; and
- Rhode Island would review violations and address penalties or other corrective action based on the specific facts and circumstances on a case-by-case basis

Additional Resources

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

[Rhode Island Division of Taxation Reporting FAQs, November 5, 2020](#)

[Public Hearing Notes Including Penalty Discussion, August 20, 2020](#)

[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

The sole responsibility for employers/plan sponsors and insurance carriers is to timely provide IRS Forms 1095-B or 1095-C, as applicable, to covered individuals by the **March 2, 2021** ACA reporting due date. Vermont taxpayers will include a copy of IRS Form 1095 with their Vermont state income tax returns

Reporting Penalty

There is no state penalty for failing to provide forms to covered individuals.

Additional Resources

[Vermont Individual Mandate](#)

[Vermont Individual Mandate FAQ](#)

About the Author



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