

## 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.<sup>1</sup> This article 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. 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
<a href="#"><u>California</u></a>	2020	Yes, to CA Franchise Tax Board (FTB)	March 31st of the following year
<a href="#"><u>District of Columbia</u></a>	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
<a href="#"><u>Massachusetts</u></a>	2018 (current version)	Yes, to MA Department of Revenue	December 15th of the current year
<a href="#"><u>New Jersey</u></a>	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
<a href="#"><u>Rhode Island</u></a>	2020	TBD, but to RI Department of Taxation	TBD
<a href="#"><u>Vermont</u></a>	2020	TBD, but to VT Department of Taxes	TBD

<sup>1</sup> 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](#) for failing to automatically distribute 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 automatically distributing Forms 1095 to the employees/covered individuals covered by the state individual mandate reporting requirement, which effectively defeats the IRS relief from automatically distributing forms.<sup>2</sup>

## 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.<sup>3</sup> 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, 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.

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<sup>2</sup> This does not apply to all of the states (e.g. Massachusetts), although further guidance and requirements are still pending.

<sup>3</sup> 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  *indexed annually	2.5% of yearly household income above the <a href="#">applicable annual filing threshold</a> <sup>4</sup>	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 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:

Per Person Penalty = (\$750 x 2) = \$1,500 x (4/12) = \$500	Income Percentage Penalty = (\$78,000 - \$36,485 <sup>4</sup> ) = (\$41,515 x 2.5%) x (4/12) = \$345.96
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The maximum penalty amount is \$500 (assuming this is lower than the state average premium for bronze coverage for a married couple for four months).

<sup>4</sup> 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 FTB  Reporting will be done electronically through the <a href="#">Minimum Essential Coverage Information Reporting (MEC IR) system</a> and registration for the MEC IR is scheduled to begin October 5, 2020.  An employer can sign up for CA health care mandate updates <a href="#">here</a> .	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](#)

[Reporting Procedures for Businesses](#)

[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 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
<p>\$695 per adult</p> <p>\$347.50 per child under 18</p> <p>The per person penalty is capped at \$2,085 per family</p>	<p>2.5% of yearly household income above the <a href="#">applicable federal annual filing threshold</a></p>	<p>The lesser of:</p> <ol style="list-style-type: none"> <li>1. The greater of the per person or income percentage penalty method</li> </ol> <p>Or</p> <ol style="list-style-type: none"> <li>2. The state average premium for qualified health plans that have a bronze level of coverage for the applicable household size involved</li> </ol>

**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:

<p>Per Person Penalty = (\$695 x 2) = \$1,390 x (4/12) = \$463.33</p>	<p>Income Percentage Penalty = (\$78,000 - \$24,400) = (\$53,600 x 2.5%) x (4/12) = \$446.67</p>
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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 1094-B/1095-B or 1094-C/1095-C, as applicable, will be filed with the D.C. Office of Tax and Revenue (OTR)	June 30, 2020 for 2019 reporting year
Fully Insured	Insurance Carrier  ACA applicable large employers (ALEs) who are required to file Forms 1094-C/1095-C with the IRS are also reporting entities	Reporting is done electronically through <a href="https://mytaxdc.gov">MyTaxDC.gov</a> 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 1094/1095 due to IRS (including any extension granted by the IRS)

**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. ALEs that are fully insured must still file Forms 1094-C/1095-C with the OTR. 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.

## 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 \(Code\)](#)

## 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 <sup>5</sup>	<150.1-200% FPL	200.1-250% FPL	250.1-300% FPL	>300% FPL
<b>Penalty</b>	\$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
<b>Add for each additional person</b>	\$6,630	\$8,840	\$11,050	\$13,260

<sup>5</sup> Individuals with incomes less than or equal to 150% of the Federal Poverty Level are not subject to any penalty for non-compliance.

## Plan Reporting Requirement

Different reporting requirements apply in Massachusetts for the Form MA 1099-HC and HIRD.

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 <a href="#">MassTaxConnect</a> 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  *indexed annually	2.5% of yearly household income above the <a href="#">applicable annual filing threshold</a>	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 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. For reporting purposes, a New Jersey resident is any enrollee who lived in New Jersey for at least 15 days in any calendar month.

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 <a href="#">DORES MFT SecureTransport system</a> 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 <a href="#">contacting DORES</a>  Employers who are required to file fewer than 100 forms may use <a href="#">Fillable Form NJ-1095</a> 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 <sup>st</sup> 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 Shared Responsibility Payment](#)

[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 <a href="#">applicable annual filing threshold</a> *  *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

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

### Reporting Penalty

To be determined

### 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

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

### Reporting Penalty

To be determined

## Additional Resources

[Vermont Individual Mandate](#)

[Vermont Individual Mandate FAQ](#)

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## About the Author



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