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FREQUENTLY ASKED QUESTIONS

2020 CALIFORNIA INDIVIDUAL MANDATE

Is it true that CA will have an Individual Mandate?
Yes, Governor Newsom approved SB 78 on 6/27/2019 which includes a new state individual coverage mandate for CA residents officially called "Minimum Essential Coverage Individual Mandate." It goes into effect on 1/1/2020.

What is considered "Minimum Essential Coverage"?
Minimum Essential Coverage (MEC) includes the following (click here for details):

1) Medicare Part A or C (Part B not listed)
2) Full scope Medi-Cal
3) Children's Health Insurance Program (CHIP)
4) TRICARE
5) UC Student Health Insurance Plan & UC Voluntary Dependent Plan
6) Eligible employer sponsored plans (including grandfathered plans)
7) Coverage under an individual health care service plan contract or individual health insurance policy, (including grandfathered plans).

Is there a penalty for failure to maintain MEC?
Yes, there is a penalty officially named "Individual Shared Responsibility Penalty (ISRP)" for failure to maintain MEC as determined by the Franchise Tax Board (FTB) in collaboration with the Exchange (i.e. Covered California).

What is the monthly penalty?
This is a complex question. It is vital to carefully review this response especially noting the **"greater of"** and **"lesser of"** designations.

We recommend reviewing Word & Brown's CA Individual Shared Responsibility Penalty Infographic for a visual snap shot of the monthly and annual penalty calculations processing.

The monthly penalty amount is equal to the **greater o**f either 1 or 2 below.

1) An amount equal to 1/12th of the ***lesser of*** A or B below:
   A) The sum of $695* (age 18 & over) plus $347.50* (if not attained age 18 at beginning of month) for all applicable household members who failed to enroll in & maintain MEC.
   B) 300% of $695*
2) 2.5% of excess of applicable household income for taxable year over amount of gross income that would trigger the requirement to file a state tax return.

*$695 & $347.50 will increase according a specific formula each year. For more information click here.

Important Note: As of 1/1/2019 the federal Individual Mandate Penalty is reduced to $0. However, if future legislation reinstates this federal penalty, there is a stipulation in AB 78 that If FTB determines a federal penalty applies the CA penalty will be reduced by the amount paid for the federal penalty but not below $0.

Is there any limitation on the total amount of assessment for a tax year?
We recommend reviewing Word & Brown's CA Individual Shared Responsibility Penalty Infographic for a visual snapshot of the monthly and annual penalty calculations processing.

Yes, the tax year assessment by the FTB will be the **lesser of** either 1 or 2 below:

1) Sum of monthly penalty amounts (see response to previous monthly penalty question)
2) Amount equal to 1/12 of the state average premium for a bronze level Qualified Health Plan (QHP) for applicable household size offered through Exchange (i.e. Covered California) times number of months of failure to maintain MEC.

Are there any situations in which no penalty will be assessed by FTB?
Yes,

1) If there is only one break in MEC coverage of **3 months or less** (not "less than 3 months" as in federal regulations)
2) If the required contribution for employer-sponsored coverage exceeds 8.3% of household income for the taxable year.
3) If the required contribution (post application of subsidy for lowest cost bronze level plan available in the Exchange (i.e. Covered California) in the rating area in which the individual resides exceeds 8.3% of household income for the taxable year.

Note: For #2 & #3 above, household income increases for any portion of required contribution made through a salary reduction arrangement (e.g. Premium Only Plans).

2020 CALIFORNIA INDIVIDUAL MANDATE

What are the new reporting requirements?
"Applicable entities" that provide MEC to an individual must file specific returns to FTB; regardless of the size of the entity. The IRS Section 6055 reporting forms (1094-B & 1095-B) will be acceptable reporting to the FTB. **A carrier can do this FTB reporting on behalf of an employer-sponsored plan**.

We are surveying CA carriers to find out if they plan on doing this FTB reporting for their employer customers. We will share the results of the survey, as soon as possible, knowing this is a very important matter to CA employers.

"Applicable entities" must also provide a statement to the covered individual and dependents by 1/31 of the following year. Failure to provide: $50 penalty per individual.

We are surveying CA carriers to find out if the plan to provide this required statement to employees. We will share the results of the survey, as soon as possible, knowing this is a very important matter to CA employers.

"Applicable entities" means any of the following:

(1) A carrier licensed or otherwise authorized to offer health coverage with respect to minimum essential coverage.
(2) An employer or other sponsor of an employment-based health plan that provides employment-based minimum essential coverage.
(3) The State Department of Health Care Services and county welfare departments with respect to coverage under a state program.
(4) The Exchange (e.g. Covered California) with respect to individual health plans, except catastrophic plans, on the Exchange.
(5) Any other provider of minimum essential coverage, including the University of California with respect to coverage under a student health insurance program.

Is anyone exempt from the MEC Individual Mandate requirement?
Yes,

(1) An individual who has in effect a certificate of exemption for hardship or religious conscience issued by the Exchange (i.e. Covered California) for that month.
(2) An individual who is a member of a health care sharing ministry for that month.
(3) An individual who is incarcerated for that month, other than incarceration pending the disposition of charges.
(4) An individual who is not a citizen or national of the United States and is not lawfully present in the United States for that month.
(5) An individual who is a member of an Indian tribe during that month.
(6) An individual for whom that month occurs during a period described in subparagraph (A) or (B) of Section 911(d)(1) of the Internal Revenue Code of 1986 that is applicable to the individual.
(7) An individual who is a bona fide resident of a possession of the United States for that month.
(8) An individual who is a bona fide resident of another state for that month.
(9) An individual who is enrolled in limited or restricted scope coverage under the Medi-Cal program or another health care coverage program administered by and determined to be substantially similar to limited or restricted scope coverage by the State Department of Health Care Services for that month.

Glossary

(In this section, any text that is in blue font is a hyperlink that will take you to an external website where the information was referenced)

California Resident

(a) "Resident" includes:

(1) Every individual who is in this state for other than a temporary or transitory purpose.

(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

(b) Any individual (and spouse) who is domiciled in this state shall be considered outside this state for a temporary or transitory purpose while that individual:

(1) Holds an elective office of the government of the United States, or

(2) Is employed on the staff of an elective officer in the legislative branch of the government of the United States as described in paragraph (1), or

(3) Holds an appointive office in the executive branch of the government of the United States (other than the armed forces of the United States or career appointees in the United States Foreign Service) if the appointment to that office was by the President of the United States and subject to confirmation by the Senate of the United States and whose tenure of office is at the pleasure of the President of the United States.

(c) Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

(d) For any taxable year beginning on or after January 1, 1994, any individual domiciled in this state who is absent from the state for an uninterrupted period of at least 546 consecutive days under an employment-related contract shall be considered outside this state for other than a temporary or transitory purpose.

(1) For purposes of this subdivision, returns to this state, totaling in the aggregate not more than 45 days during a taxable year, shall be disregarded.

(2) This subdivision shall not apply to any individual, including any spouse described in paragraph (3), who has income from stocks, bonds, notes, or other intangible personal property in excess of two hundred thousand dollars ($200,000) in any taxable year in which the employment-related contract is in effect. In the case of an individual who is married, this paragraph shall be applied to the income of each spouse separately.

(3) Any spouse who is absent from the state for an uninterrupted period of at least 546 consecutive days to accompany a spouse who, under this subdivision, is considered outside this state for other than a temporary or transitory purpose shall, for purposes of this subdivision, also be considered outside this state for other than a temporary or transitory purpose.

(4) This subdivision shall not apply to any individual if the principal purpose of the individual's absence from this state is to avoid any tax imposed by this part.

CA Definition of Minimum Essential Coverage

(a) "Minimum essential coverage" means any of the following:

(1) Coverage under any of the following government-sponsored programs:

(A) The Medicare program under Part A or Part C of Title XVIII of the federal Social Security Act.

(B) Full scope coverage under the Medi-Cal program, including the Medi-Cal Access Program and Medi-Cal for Pregnant Women, and other full scope health coverage programs administered and determined to be minimum essential coverage by the State Department of Health Care Services.

(C) The Medicaid program under Title XIX of the federal Social Security Act.

(D) The CHIP program under Title XXI of the federal Social Security Act or under a qualified CHIP look-alike program, as defined in Section 2107(g) of the federal Social Security Act.

(E) Medical coverage under Chapter 55 of Title 10 of the United States Code, including coverage under the TRICARE program.

(F) A health care program under Chapter 17 or Chapter 18 of Title 38 of the United States Code.

(G) A health plan under Section 2504(e) of Title 22 of the United States Code, relating to Peace Corps volunteers.

(H) The Nonappropriated Fund health benefits program of the Department of Defense, established under Section 349 of the National Defense Authorization Act for Fiscal Year 1995.

Glossary *(cont.)*

(I) Refugee Medical Assistance, supported by the Administration for Children and Families, which is authorized under Section 412(e)(7)(A) of The Immigration and Nationality Act.
(J) A successor program to one of the above programs, as determined by the department or, pursuant to subparagraph (B), by the State Department of Health Care Services.
(2) The University of California Student Health Insurance Plan and the University of California Voluntary Dependent Plan.
(3) Coverage under an eligible employer-sponsored plan, including grandfathered plans and policies. "Eligible employer-sponsored plan" means a group health plan offered in connection with employment to an employee or related individuals, including a governmental plan within the meaning of Section 2791(d)(8) of the federal Public Health Service Act (42 U.S.C. Sec. 201 et seq.) or any other plan, group health care service plan contract, or group health insurance policy offered in the small or large group market within the state.
(4) Coverage under an individual health care service plan contract or individual health insurance policy, including grandfathered contracts and policies, or student health coverage that substantially meets all the requirements of Title I of the Affordable Care Act pertaining to nongrandfathered, individual health insurance coverage.
(5) Any other health benefits coverage similar in form and substance to the benefits described in this subdivision that is determined by the department to constitute minimum essential coverage pursuant to this section.

(b) **"Minimum essential coverage" does not include health coverage as follows:**
(1) Coverage of the following excepted benefits:
(A) Coverage only for accident or disability income insurance, or a combination of the two.
(B) Coverage issued as a supplement to liability insurance.
(C) Liability insurance, including general liability insurance and automobile liability insurance.
(D) Workers' compensation or similar insurance.
(E) Automobile medical payment insurance.
(F) Credit-only insurance.
(G) Coverage for onsite medical clinics.
(H) Other similar health coverage, under which benefits for medical care are secondary or incidental to other health benefits.
(2) Coverage of the following excepted benefits, if offered separately:
(A) Limited scope dental or vision benefits, or benefits limited to any other single specialized area of health care.
(B) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.
(C) Other similar, limited benefits.
(3) Coverage of the following excepted benefits if offered as independent, noncoordinated benefits.
(A) Coverage only for a specified disease or illness.
(B) Hospital indemnity or other fixed indemnity insurance.
(4) Coverage of the following excepted benefits if offered as a separate contract for health care coverage:
(A) Medicare supplemental health insurance, as defined under Section 1395ss(g)(1) of Title 42 of the United States Code.
(B) Coverage supplemental to the coverage provided under Chapter 55 (commencing with Section 1071) of Title 10 of the United States Code.
(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department, or the State Department of Health Care Services, may implement, interpret, or make specific this section by means of guidance or instructions, without taking regulatory action.

Formula for Annual Increase to $695 & $347.50 Penalty Amounts

In the case of a calendar year beginning after 2019, the applicable dollar amount shall be equal to six hundred ninety-five dollars ($695) and increased as follows:
(1) An amount equal to six hundred ninety-five dollars ($695) multiplied by the cost-of-living adjustment determined pursuant to paragraph (2).
(2) A cost-of-living adjustment for a calendar year is an amount equal to the percentage by which the California Consumer Price Index for all items in the preceding calendar year exceeds the California Consumer Price Index for all items for the 2016 calendar year.
(3) If the amount of an increase under paragraph (1) is not a multiple of fifty dollars ($50), that increase shall be rounded down to the next multiple of fifty dollars ($50).

Glossary *(cont.)*

(4) No later than August 1 of each year, the Department of Industrial Relations shall annually transmit to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, inclusive.

Required Contribution

The term "required contribution" means either of the following:

(A) In the case of a responsible individual eligible to purchase minimum essential coverage consisting of coverage through an eligible employer-sponsored plan, the portion of the annual premium that would be paid by the responsible individual, without regard to whether paid through salary reduction or otherwise, for self-only coverage.

(B) In the case of a responsible individual eligible only to purchase minimum essential coverage in the individual market, the annual premium for the lowest cost bronze plan available in the individual market through the Exchange in the rating area in which the individual resides, reduced by any premium assistance for the taxable year determined as if the responsible individual was covered by a qualified health plan offered through the Exchange for the entire taxable year.

Applicable Entities

"Applicable entity" means the following:

(1) A carrier licensed or otherwise authorized to offer health coverage with respect to minimum essential coverage, including coverage in a catastrophic plan, that is not described in paragraph (3) or (4).

(2) An employer or other sponsor of an employment-based health plan with respect to employment-based minimum essential coverage

(3) The State Department of Health Care Services and county welfare departments with respect to coverage under a state program.

(4) The Exchange with respect to individual health plans, except catastrophic plans, on the Exchange.

(5) Any other provider of minimum essential coverage, including the University of California with respect to coverage under a student health insurance program.

Subparagraph (A) or (B) of Section 911(d)(1) of the Internal Revenue Code of 1986

Qualified individual The term "qualified individual" means an individual whose tax home is in a foreign country and who is—

(A) a citizen of the United States and establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(B) a citizen or resident of the United States and who, during any period of 12 consecutive months, is present in a foreign country or countries during at least 330 full days in such period.