

## New Jersey Signs “Individual Mandate” Bill into Law; Other States Likely to Follow Suit

June 4, 2018

On May 30, 2018, New Jersey Governor Phil Murphy signed into law a bill that will require all New Jersey residents to have health insurance or pay a penalty. The new law, [The New Jersey Health Insurance Market Preservation Act, S.1877](#), closely mirrors the Individual Shared Responsibility provisions of the federal Affordable Care Act (ACA), provisions commonly referred to as the “Individual Mandate.” While the law is primarily focused on the individual health insurance market in New Jersey, it will impose reporting requirements on employers that provide health insurance coverage to New Jersey residents in 2019.

### Background on ACA Individual Mandate:

Since 2014, the ACA’s Individual Mandate requires that individuals obtain at least Minimum Essential Coverage (MEC) or else pay a tax penalty. For individuals (or their dependents) who do not have MEC in 2018, the ACA Individual Mandate tax penalty is equal to the greater of \$695 or 2.5% of an individual’s income after applicable exemptions and standard deductions. The penalty is capped at the national average of the annual cost of a bronze level health insurance plan, for the applicable family size, offered through the Exchanges.

Since 2016, individuals began receiving a Form 1095-B (from health insurers) or Form 1095-C (from sponsors of self-insured health plans) if they were enrolled in MEC during the previous year. This reporting is also made by such coverage providers to the IRS in order to administer and enforce the individual mandate. Specifically, employers sponsoring self-insured health plans have to complete Part III of the Form 1095-C (which requests information on enrolled employees and their dependents), and then file that form with the IRS.

As discussed in our prior e-Alert (available [here](#)), the 2017 federal tax reform law, the Tax Cuts and Jobs Act, will reduce to zero (\$0) the penalty for noncompliance with the Individual Mandate, beginning with the 2019 calendar year. Accordingly, the IRS is expected to eliminate and simplify ACA information

reporting requirements on the Form 1095-C for the 2019 calendar year in light of the elimination of the Individual Mandate penalty.

### Background on New Jersey Individual Mandate & Other State Individual Mandate Laws:

Democratic lawmakers in New Jersey drafted the bill in response to Congress’ decision to eliminate the ACA Individual Mandate tax penalty. These lawmakers feared that the repeal of this federal tax penalty would drive healthier people out of the state’s Exchanges and cause premiums to spike. They designed the New Jersey Individual Mandate law to fix this problem by imposing a tax penalty on New Jersey resident taxpayers that is almost identical to the ACA’s Individual Mandate tax penalty. The tax revenue generated from the state’s penalty will be paid into a state reinsurance program that will help the state’s Exchanges with offering affordable health insurance coverage to low-income residents.

While New Jersey is technically the second state to impose an individual mandate (Massachusetts imposed one in 2006 that was used as a model for the ACA), New Jersey is the first state to do this after the ACA was signed into law.

Other state legislatures, including those in Vermont, Maryland and Connecticut have also been considering their own state “Individual Mandate” laws in light of similar fears. While Vermont Governor Phil Scott already signed such a bill into law on May 28, the details, including the financial penalty and enforcement mechanisms, will be determined during the 2019 legislative session, and the law won’t go into effect until January 1, 2020.

*Details are yet to be released by the New Jersey Treasurer. Corporate Synergies will monitor clarifications and provide additional guidance to employers.*

## What are the Requirements of the New Jersey Individual Mandate?

The New Jersey Individual Mandate, effective January 1, 2019, uses almost exactly the same standards and penalty amounts as the ACA's Individual Mandate described above, with a few exceptions. For example, while the New Jersey law uses the same "flat dollar amount" and "2.5% of income" penalty calculations, the New Jersey penalty is capped at the cost of the New Jersey average annual premium for bronze-level plans, rather than the national average annual premium for such plans.

**Employer Reporting Requirements:** The statute's reporting requirements appear to apply broadly to all employers offering health insurance coverage to New Jersey residents. Specifically, the law's reporting requirements apply to all "applicable entities." An applicable entity is defined as: "an employer or other sponsor of an employment-based health plan with respect to employment-based minimum essential coverage." Applicable entities are allowed to contract with third-party vendors, including insurance carriers, to complete the required reporting.

As explained in the New Jersey law, employers will be in compliance with the state law's reporting requirements if they comply with the ACA's reporting requirements that are currently applicable to "MEC coverage providers" under Code § 6055. These ACA requirements include the requirement to report on information requested on Part III of the Form 1095-C. Specifically, the law explains that if an employer completes a return that meets the requirements of Code § 6055, and then files it with the State Treasury, and furnishes it to the applicable individual employee, then the employer will be in compliance.

The language of the statute leaves a lot of the relevant details (including filing and furnishing deadlines) to the State Treasurer to clarify in subsequent regulations. Accordingly, it's important that employers offering health insurance coverage to residents of New Jersey keep an eye out for such regulations.

## How Will this Impact Employers?

Employers with self-insured health plans offering benefits to New Jersey residents will need to report to the New Jersey Treasury in 2019 the same information that they currently report to the IRS (in 2017 and 2018) about individuals that are enrolled in their plan. While the ACA requirement of reporting to the IRS on such enrolled individuals will likely get eliminated or simplified for 2019, employers will still have to complete this reporting for New Jersey in 2019 in the same manner that they did it before.

Employers with fully-insured health plans offering benefits to New Jersey residents will need to report to the New Jersey Treasury in 2019 information about enrolled employees and their dependents on their medical plan. This type of information, currently required to be reported by sponsors of self-insured plans under Code § 6055 (and by carriers for sponsors of fully-insured plans), includes social security numbers of employees' dependent spouses and children enrolled in the medical plan, which is information that sponsors of fully-insured health plans may not be tracking.

## What Should Employers Do Next?

Employers with self-insured health plans offering benefits to New Jersey residents should continue to keep track of all enrolled individuals on their medical plans in the same manner that they did under the ACA, and be prepared to complete information reporting returns on such individuals in the same manner that they currently do, even as they go into the 2019 calendar year, a year in which federal/ACA information reporting is likely to get easier.

Employers sponsoring fully-insured plans should take action well in advance of 2019 to determine the methods and cost of tracking and reporting this new information about enrolled employees and their dependents.

Additionally, since a lot of the details are yet to be released about how this new law will work, employers sponsoring both fully-insured and self-insured plans should keep on the lookout for clarifying regulations issued by the New Jersey Treasurer.

**If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.**

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