

SENATE BILL REPORT

SB 5840

As of February 13, 2019

Title: An act relating to requiring maintenance of minimum essential health care coverage.

Brief Description: Requiring maintenance of minimum essential health care coverage.

Sponsors: Senators Cleveland and Kuderer.

Brief History:

Committee Activity: Health & Long Term Care: 2/13/19.

Brief Summary of Bill

- Requires residents of Washington, unless exempted, to ensure that they and any of their dependents maintain minimum essential health care coverage (MEC) for each month.
- Requires, beginning in January 2021, residents who are not eligible for an exemption and who do not maintain MEC for each month of the year, to pay a shared responsibility penalty.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Staff: Evan Klein (786-7483)

Background: Affordable Care Act. The Patient Protection and Affordable Care Act (ACA) requires individuals, unless they meet a specific exemption, ensure that they and any of their dependents maintain minimum essential health care coverage for each month. Anyone not exempted from the minimum essential coverage requirement or exempted from having to pay the penalty, must pay a taxpayer penalty for failing to meet the coverage requirements for one or more months in a year. The penalty is calculated based on the following formula:

- 2.5 percent of an individual's yearly household income, or \$695, whichever is greater; and
- Capped at the national average premium for a bronze level health plan.

Persons with certain religious affiliations, those not lawfully present in the United States, and incarcerated individuals are exempt from the requirement to maintain coverage. Certain individuals who are otherwise not exempt from the coverage requirement, are exempt from

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having to pay the taxpayer penalty, including individuals whose required contribution for coverage would exceed 8 percent of the individual's household income, taxpayers with income below the filing threshold, members of Indian tribes, individuals with short coverage gaps, and individuals with certain hardships.

Minimum essential coverage includes coverage through government sponsored coverage programs, employer-sponsored health plans, individual market health plans, grandfathered health plans, and other coverage such as state health benefits risk pools.

Tax Cuts and Jobs Act. On December 22, 2017, the President signed the Tax Cuts and Jobs Act (TCJA) into law. Beginning January 1, 2019, the TCJA reduces all penalties for failing to maintain minimum essential health care coverage to zero.

Summary of Bill: Requirement to Maintain Coverage. Beginning January 2020, every applicable resident must maintain MEC, unless they are eligible for an exemption.

Applicable residents include anyone who is domiciled in Washington State. MEC includes government sponsored health care, employer-sponsored health care, individual market health plans, grandfathered health plans, and other coverage recognized by the insurance commissioner (commissioner).

The following are exempt from the shared responsibility penalty:

- individuals who have a religious exemption as defined by the Internal Revenue code;
- members of a health care sharing ministry;
- individuals not lawfully present in the United States;
- individuals who are incarcerated, other than incarcerated pending the disposition of charges;
- individuals who cannot afford coverage;
- individuals who have income below the federal income tax filing threshold;
- members of an Indian tribe;
- individuals who have a hardship exemption as defined by the Internal Revenue Code or by the Health Benefit Exchange (Exchange); and
- individuals under the age of eighteen and over the age of sixty-four.

Penalty Assessment. Beginning January 2021, if an individual does not have MEC or meet an exemption for any month, the individual must pay a shared responsibility penalty. Individuals are liable for any dependents who owe a penalty. Individuals who file a joint federal income tax return are jointly liable with their spouse for any penalties. The amount of the penalty owed is calculated using the following formula:

- 2.5 percent of an individual's yearly household income, or \$695, whichever is greater;
- capped at the average premium for a bronze level health plan in Washington; and
- reduced by any amounts owed to the federal government for purposes of paying the federal shared responsibility payment.

Individuals may contest a penalty levied on them by the Department of Revenue (DOR) within 60 days of receiving notice of owing the penalty. If DOR determines that the individual still owes the penalty, then the individual has 30 days from the determination to

pay. Individuals who fail to pay a penalty that is owed when due, must pay DOR interest. Shared responsibility penalties and any interest collected, must be deposited into a newly created Shared Responsibility Trust Account.

Outreach. The Exchange must contact individuals who, based on available reliable data, were applicable residents for the year and for whom the state has no record of them being enrolled in MEC or being eligible for an exemption. The Exchange must notify them that:

- it appears that the individual is a Washington resident;
- the state has no record of them having enrolled in MEC or meeting an exemption;
- if the individual had MEC or an exemption for any months of the year, than the individual should respond providing that information;
- if the individual does not respond and is found to not have MEC or an exemption, than the individual may be assessed a penalty;
- they may contact DOR to pay the penalty; and
- the individual should contact the Exchange regarding options for enrolling in MEC.

Based on responses from individuals, the Exchange must determine whether individuals for whom they performed outreach qualified for an exemption for any months of the year. Annually, the Exchange must make a list of applicable residents for whom there is no record of them being enrolled in MEC or being eligible for an exemption, available to DOR.

Data Sharing. Reliable data sources may include records maintained by the Department of Licensing (DOL); Consolidated Technology Services (CTS); Department of Corrections; Medicaid and Children's Health Program records; individual marketplace enrollment records; and information provided by other federal, state, or local agencies.

The following information must be provided to the commissioner:

- drivers' license and identification card records from DOL;
- the jury source list that CTS compiles; and
- returns that include name, address, taxpayer identification numbers, dates of coverage under MEC, and other information required by the commissioner, from applicable entities—this information may be provided in the same form as an applicable entities provides the same return to the federal government pursuant to requirements in the Internal Revenue Code, and must be provided to the commissioner by January 31st of the year following the calendar year for which the return was required to be made.

An applicable entity includes:

- an employer or other sponsor of an employment-based health plan with respect to employment-based MEC;
- the Health Care Authority;
- health carriers; and
- the Exchange.

Data Security. All information obtained by the commissioner, Exchange, or DOR for purposes of administering the minimum essential coverage mandate is confidential and privileged, and only may be disclosed as authorized in the act, as required by other state or federal law, or to improve the customer experience in the Washington Health-Plan-Finder.

Account. The Shared Responsibility Trust Account is created in the state treasury. All receipts from the shared responsibility penalty and any interest collected must be deposited into the account. The account may only be used for:

- administration of the penalty program;
- engaging in outreach to uninsured residents;
- providing information to residents on options for health insurance coverage; and
- engaging in activities to increase the availability of health insurance options or increase the affordability of insurance premiums in the individual market.

Contingency. For any year in which the federal advance premium tax credits or equivalent state-based premium assistance becomes unavailable, as determined by the commissioner in consultation with the Exchange, the state shared responsibility penalty must not be enforced.

Appropriation: None.

Fiscal Note: Requested on February 6, 2019.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is aimed at protecting health care for Washingtonians. The ACA led to significantly increased coverage in Washington State. The individual mandate helped increase those who are covered, and decrease premiums for individuals enrolled in health care coverage. This bill is intended to protect the stability of premiums in Washington State, and to ensure that individuals in the state remain healthy. Several other states, including California, are considering individual mandates at this time. An individual mandate helps target outreach and reduce the uninsured population, which helps reduce uncompensated care in the state. The mandate would also increase state revenue. All other individual mandates are enforced through an income tax provision. Since Washington does not have an income tax system, this model was chosen. The approach in this bill is both innovative and realistic. Applying similar rules as were required under the federal individual mandate will make compliance simple for all of the parties required to report as part of the program. The removal of cost sharing reductions, reinsurance, and the mandate penalty, have reduced the size of the individual market and have created a very difficult situation for the market. A package of tools will be necessary to stabilize the individual market, but this bill is one tool that has been used by other states and could work in Washington. This bill leverages existing technology and data sources. There are some improvements that could be made around protecting data and ensuring the data collected under the bill could be used only for purposes of enforcing the mandate.

Persons Testifying: PRO: Senator Annette Cleveland, Prime Sponsor; Meg Jones, Association of Washington Healthcare Plans; Sean Graham, Washington State Medical Association; Jason Levitis, citizen; Pam McEwan, HBE; Jane Beyer, OIC; Mel Sorensen, America's Health Insurance Plans.

Persons Signed In To Testify But Not Testifying: No one.