

PUBLICATION

Federal Repeal of ACA's Individual Mandate Prompts States to Enact Replacement Policies

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As part of the GOP tax bill passed in December 2017, Congress repealed the Affordable Care Act's (ACA) individual mandate penalty, effective January 1, 2019. The individual mandate requires adults to maintain health coverage that meets minimum essential coverage requirements or pay a penalty equivalent to 2.5 percent of annual household income or \$695 per adult and \$347.50 per child, whichever is higher. Preliminary rate filings suggest that insurers intend to increase individual market premiums significantly for 2019, driven in part by concerns that the repeal of the individual mandate penalty and the expansion of short-term and association health plans will siphon off younger and healthier consumers from the marketplace. The Congressional Budget Office estimates that eliminating the individual mandate penalty and corresponding increases in plan premiums will contribute to an increase in the number of uninsured by three million in 2019 and an additional three million by 2021. In response to the uncertain federal regulatory market, rising plan premiums, and variable insurer participation, several states have enacted or are considering enacting state versions of an individual mandate to replace the ACA's individual mandate penalty.

Three states – Massachusetts, New Jersey, and Vermont – and the District of Columbia have already enacted state-based individual mandates for 2019.

Massachusetts: In 2006, under then-Governor Mitt Romney (R), Massachusetts enacted health reforms including guaranteed issue requirements, employer and individual mandates, and health insurance exchanges. These reforms served as a precursor to the federal ACA and remain in effect today, including the individual mandate. The policy requires all adults (age 18+) to maintain health insurance that meets minimum coverage requirements or pay a state income tax penalty equaling 50 percent of the least costly available insurance plan that satisfies such standards.

New Jersey: On May 31, 2018, Governor Phil Murphy (D) signed legislation to enact a state version of the individual mandate beginning January 2019. The policy will require individuals to maintain insurance coverage or pay a penalty of 2.5 percent of a person's annual household income or \$695 per adult and \$347 per child, whichever is greater. The individual mandate penalty revenue will fund the state's reinsurance program.

Vermont: On May 28, 2018, Governor Phil Scott (R) signed legislation to create a state individual mandate, effective January 1, 2020. Vermont will determine the details of the policy during the 2019 legislative session.

District of Columbia: On June 27, the D.C. Council approved an individual mandate, beginning January 2019. The law will establish a District-level requirement that all residents maintain health insurance coverage or pay a penalty of 2.5 percent of annual household income or \$695 per adult, whichever is greater – similar to the ACA's individual mandate penalty. D.C. may use funding from the individual mandate penalty to support outreach for the uninsured, to provide information on health coverage, or to promote activities that increase the availability or affordability of insurance in the individual market. Congress has 30 days to intervene in any law passed in D.C., so federal lawmakers have an opportunity to block D.C.'s individual mandate until July 27.

Several additional states, including Maryland, Rhode Island, California, Connecticut, Hawaii, and Washington, are considering an individual mandate but were unable to enact legislation during the 2018 – 2019 legislative session.

Maryland: During the 2018 legislative session, Democrats proposed legislation to create a down payment plan to replace the ACA's individual mandate. The policy would have required uninsured Maryland residents to pay a penalty intended to serve as a down payment for a health insurance plan. Without Republican support, Maryland failed to approve the legislation in 2018. Democrats intend to introduce the measure again in 2019.

Rhode Island: The state formed the Rhode Island Market Stability Workgroup tasked with recommending individual market stabilization reforms to the state legislature. The workgroup has reached general agreement around implementing a state-level individual mandate, but discussions continue over whether to recommend a similar rule to the ACA's individual mandate or a more tailored approach for the state. The state legislature initially sought recommendations to affect the 2019 plan year but now expects the workgroup to issue recommendations for the 2020 plan year.

California: California's state-based insurance exchange, Covered California, started discussions on a state individual mandate shortly following congressional repeal of the ACA's individual mandate penalty. The California state legislature did not consider bills related to the individual mandate during the 2018 legislative session, but will likely consider such changes for 2019.

Connecticut: State lawmakers introduced two separate bills to establish state versions of the individual mandate during the 2018 legislative session, but both bills failed to advance out of committee. The state legislature will likely consider the measures again during the 2019 legislative session.

- The first bill, introduced by Democratic Governor Daniel Malloy, would require residents to maintain insurance coverage or pay a penalty of \$500 or two percent of their annual income, whichever is greater.
- The second bill, introduced by members of the Insurance and Real Estate Committee, would require residents to maintain insurance coverage or pay a penalty of 4 to 9.66 percent of annual income, capped at \$10,000.

Hawaii: The state senate unanimously passed a bill to enact a state individual mandate during the 2018 legislative session. However, the state house has failed to advance a similar measure.

Washington: State lawmakers introduced legislation in January to create a state individual mandate, but the measure stalled because Washington does not have a state income tax and lawmakers have not reached consensus on how to enforce the mandate penalty. Lawmakers expect to continue consideration in the 2019 legislative session.

With federal market stabilization legislation looking unlikely, states likely will continue to explore their own options for addressing access and affordability challenges. Health care stakeholders should continue to monitor state legislative activity to determine whether these new policies may affect their marketplaces. No single policy option will likely work for all states and all options come with certain implementation hurdles. States' legislative calendars may also create difficulty for implementing state initiatives before the 2019 plan year, when the ACA's individual mandate penalty phases out.

References

"States Consider Their Own Individual Mandates As Federal Mandate Comes To An End." *InsideHealthPolicy*, 22 Jun 2018.