ASSEMBLY, No. 3380

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED FEBRUARY 12, 2018

Sponsored by:
Assemblyman JOHN F. MCKEON
District 27 (Essex and Morris)
Assemblywoman CAROL A. MURPHY
District 7 (Burlington)
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District 6 (Burlington and Camden)

Co-Sponsored by:
Assemblyman Mukherji, Assemblywomen Pinkin and Jasey

SYNOPSIS

“New Jersey Health Insurance Market Preservation Act.”

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 4/6/2018)
AN ACT requiring health insurance coverage and supplementing Title 54A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. This act shall be known and may be cited as the “New Jersey Health Insurance Market Preservation Act.”

2. As used in this act:
   "Affiliated company" means a company in the same corporate system as a parent, an industrial insured or a member organization by virtue of common ownership, control, operation or management.
   “Applicable individual” means the same as defined in 26 U.S.C. s. 5000A(d)(1).
   “Carrier” means any entity that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a hospital or health service corporation, a multiple employer welfare arrangement, an entity under contract with the State Health Benefits Program or the School Employees’ Health Benefits Program to administer a health benefits plan, or any other entity providing a health benefits plan. For purposes of this act, carriers that are affiliated companies shall be treated as one carrier.
   “Minimum essential coverage” means the same as defined in 26 U.S.C. s.5000A(f)(1).
   “Taxpayer” means a resident taxpayer as defined in N.J.S.54A:1-2.

3. a. A taxpayer shall, for each month beginning after December 31, 2018, ensure that the taxpayer, if an applicable individual, and any dependent of the taxpayer who is an applicable individual, is covered under minimum essential coverage for that month.
   b. In the case of any taxpayer who fails to meet the requirements of subsection a. of this section, there shall be imposed a State shared responsibility tax equal to a taxpayer’s federal penalty that would apply for the taxable year under section 5000A

4. The rules for determining the State shared responsibility tax under section 3 of this act shall reflect the following changes relative to the rules for determining the federal shared responsibility payment under 26 U.S.C. s.5000A:

a. The amount of the tax imposed by this section shall be determined, if applicable, using the State average premium for bronze-level plans rather than the national average premium for bronze-level plans;

b. For purposes of this section, “minimum essential coverage” shall include, in addition to the types of coverage included under 26 U.S.C. s.5000A, the coverage required pursuant to the New Jersey Individual Health Coverage Program;

c. Instead of the United States Secretary of Health and Human Services, in coordination with the United States Secretary of the Treasury, the Commissioner of Banking and Insurance, in coordination with the State Treasurer, shall have the authority to recognize additional health benefits coverage as “minimum essential coverage;”

d. For purposes of the exemption for individuals who cannot afford coverage:

(1) the required contribution for an individual eligible for minimum essential coverage under both an eligible employer-sponsored plan and a qualified health plan is the lesser of the amounts that the individual would have to pay for coverage of each type;

(2) the income threshold for coverage to be considered unaffordable shall be determined by the Commissioner of Banking and Insurance, in consultation with the State Treasurer;

e. No tax shall be imposed under this section with respect to any applicable individual for any month during a calendar year if the taxpayer’s gross income for the taxable year is below the minimum taxable income threshold established in N.J.S.54A:2-4 and N.J.S.54A:8-3.1;

f. No tax shall be imposed by this section with respect to any applicable individual for any month during which the individual is a bona fide resident of another state;

g. Determinations as to hardship exemptions shall be made by the Commissioner of Banking and Insurance under this act rather than by the U.S. Secretary of Health and Human Services under 42 U.S.C. s.18031(d)(4)(H);

h. A grandfathered plan, as defined in 42 U.S.C. s.18011(e), shall qualify as minimum essential coverage only if it satisfies the requirements that apply to non-grandfathered plans sold in the market in which the grandfathered plan is sold;
i. If a taxpayer is subject to both the tax imposed by this section and the federal penalty under 26 U.S.C. s.5000A for a taxable year, the amount of the taxpayer's State income tax is reduced, but not below zero, by the amount of the taxpayer's federal penalty payment; and

j. Health coverage provided under a plan obtained through an association, trust, or multiple employer arrangement, including an out-of-state trust or association, shall not qualify as minimum essential coverage unless the plan complies with the requirements of one or more of the following New Jersey statutes, as applicable to a carrier and health benefits plans offered in the relevant individual, small employer, or large employer markets:

(1) P.L.1938, c.366 (C.17:48-1 et seq.);
(2) P.L.1940, c.74 (C.17:48A-1 et seq.);
(3) P.L.1985, c.236 (C.17:48E-1 et seq.);
(4) N.J.S.17B:26-1 et seq.;
(5) N.J.S.17B:27-26 et seq.;
(6) P.L.1973, c.337 (C.26:2J-1 et seq.);
(7) P.L.1992, c.161 (C.17B:27A-2 et seq.);
(8) P.L.2001, c.352 (17B:27C-1 et seq.);
(9) P.L.1997, c.1972 (C.26:2S-1 et seq.); or
(10) P.L.1992, c.162 (C.17B:27A-17 et seq.).

5. The tax imposed by this act shall be assessed and collected in the same manner as under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.

6. a. Except as otherwise provided in this section, any federal regulations implementing 26 U.S.C. s.5000A, as that section and those regulations are in effect on December 15, 2017, shall apply as though incorporated into this act. Federal guidance interpreting these federal regulations shall similarly apply.

   b. The State Treasurer shall adopt regulations implementing this section, which shall include modifications necessary to reflect the differences between this act and 26 U.S.C. s.5000A, and other differences between the "New Jersey Gross Income Tax Act" and the Internal Revenue Code of 1986.

7. a. The Commissioner of Banking and Insurance shall establish a program for determining whether to grant a certification that an individual is entitled to an exemption from either the individual responsibility requirement pursuant to subsection a. of section 3 of this act or the tax imposed pursuant to subsection b. section 3 of this act by reason of religious conscience or hardship.

   b. The commissioner shall make the determination whether to grant an exemption pursuant to this section and shall notify the individual granted an exemption and the State Treasurer of any such
8. a. The Legislature finds that:

(1) The reporting requirement provided for in this section is necessary for the successful implementation of the tax imposed by this act. In particular, this requirement provides the only widespread source of third-party reporting to help taxpayers and the State Treasurer verify whether an applicable individual maintains minimum essential coverage. There is compelling evidence that third party reporting is crucial for ensuring compliance with tax provisions.

(2) The tax imposed by this act, and therefore the reporting requirement in this section, is necessary to protect the compelling State interest of protecting the health and welfare of its residents.

(3) The tax imposed by this act, and therefore the reporting requirement in this section, is necessary to protect the compelling State interest of fostering economic stability and growth in the State.

(4) The tax imposed by this act, and therefore the reporting requirement in this section, is necessary to protect the compelling State interest of ensuring a stable and well-functioning health insurance market. There is compelling evidence that, without an effective tax in place for those who go without coverage, there would be substantial instability in health insurance markets, including higher prices and the possibility of areas without any insurance available. Ensuring the health of insurance markets is a responsibility reserved for states under the McCarran-Ferguson Act and other federal law.

(5) The reporting requirement in this section has been narrowly tailored to support compliance with the tax imposed by this act while imposing only an incidental burden on reporting entities. In particular, the information that must be reported is a subset of the information that must already be reported under a similar federal reporting requirement under 26 U.S.C. s.6055. In addition, this section provides that its reporting requirement may be satisfied by providing the same information that is currently reported under that federal requirement.

b. For purposes of administering the tax on individuals who fail to maintain minimum essential coverage under section 3 of this act, every applicable entity that provides minimum essential coverage to an individual during a calendar year shall, at the time the State Treasurer prescribes, make a return described in subsection c. of this section. In a manner consistent with requirements under 26 U.S.C. s.6055, a copy of the return shall be provided to the individual and the State Treasurer.

c. (1) Except as provided in paragraph (2) of this subsection, a return shall be in such form as the State Treasurer may prescribe,
and contain the name, address and Social Security number or taxpayer identification number of the primary insured and the name and Social Security number or taxpayer identification number of each other individual obtaining coverage under the policy, the dates during which that individual was covered under minimum essential coverage during the calendar year, and such other information as the State Treasurer may require.

(2) Notwithstanding the requirements of paragraph (1), a return shall not fail to be a return described in this section if it includes the information contained in a return described in 26 U.S.C. s.6055, as that section is in effect and interpreted on December 15, 2017.

(3) In the case of coverage provided by an applicable entity that is any governmental unit or any agency or instrumentality thereof, the officer or employee who enters into the agreement to provide that coverage, or a person appropriately designated for purposes of this section, shall be responsible for the returns and statements required by this section. An applicable entity may contract with third-party service providers, including insurance carriers, to provide the returns and statements required by this section.

d. As used in this section:

“Applicable entity” shall include the following:

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

(2) The Department of Human Services with respect to the NJ FamilyCare Program.

(3) Carriers licensed or otherwise authorized to offer health coverage with respect coverage they provide that is not described in paragraphs (1) or (2) of this subsection.

9. Not earlier than November 1 nor later than November 30 of each year, the State Treasurer, in consultation with the Commissioner of Banking and Insurance, shall send a notification to each taxpayer who files a gross income tax return indicating if the taxpayer or one of the taxpayer’s dependents is not enrolled in minimum essential coverage as required by this act. That notification shall contain information on the services available to obtain coverage, including through the federally-facilitated health insurance Exchange established pursuant to the Affordable Care Act.

10. The State Treasurer, in consultation with the Commissioner of Banking and Insurance shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in order to effectuate the purposes of this act.

11. This act shall take effect on October 1, 2018 and shall apply to taxable years beginning after December 31, 2018. The State
Treasurer and Commissioner of Banking and Insurance may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

STATEMENT

This bill, entitled the “New Jersey Health Insurance Market Preservation Act,” restores the recently repealed shared responsibility tax provided under the Affordable Care Act (ACA), which requires most individuals, other than those who qualify for certain exemptions, to obtain health insurance or pay a penalty. The bill is intended to ensure that health insurance markets in New Jersey remain robust and affordable by ensuring that individuals who can afford to purchase insurance participate in the market.

Specifically, the bill requires that every resident taxpayer of the State obtain health insurance coverage that qualifies as minimum essential coverage under the bill. If the taxpayer does not obtain coverage, the bill imposes a State shared responsibility tax equal to a taxpayer’s federal penalty under the ACA prior to the repeal of that provision.

To determine the State shared responsibility tax, the bill largely adopts the rules adopted pursuant to the ACA, with the following changes:

(1) The amount of the tax imposed is determined, if applicable, using the State average premium for bronze-level plans rather than the national average premium for bronze-level plans;

(2) “Minimum essential coverage” includes, in addition to the types of coverage included under the ACA, the coverage required pursuant to the New Jersey Individual Health Coverage Program;

(3) Instead of the United States Secretary of Health and Human Services, in coordination with the United States Secretary of the Treasury, the Commissioner of Banking and Insurance, in coordination with the State Treasurer, has the authority to recognize additional health benefits coverage as “minimum essential” coverage;

(4) For purposes of the exemption for individuals who cannot afford coverage:

- the required contribution for an individual eligible for minimum essential coverage under both an eligible employer-sponsored plan and a qualified health plan is the lesser of the amounts that the individual would have to pay for coverage of each type;

- the income threshold for coverage to be considered unaffordable shall be determined by the Commissioner of Banking and Insurance, in consultation with the State Treasurer; and

- no tax shall be imposed under this section with respect to any applicable individual for any month during a calendar year if
the taxpayer’s gross income for the taxable year is below the State’s minimum taxable income threshold;

(5) No tax shall be imposed with respect to any applicable individual for any month during which the individual is a bona fide resident of another State;

(6) Determinations as to hardship exemptions shall be made by the Commissioner of Banking and Insurance;

(7) A grandfathered plan shall qualify as minimum essential coverage only if it satisfies the requirements that apply to non-grandfathered plans sold in the market in which the grandfathered plan is sold;

(8) If a taxpayer is subject to both the tax imposed by this section and the federal penalty, the amount of the taxpayer’s State income tax is reduced, but not below zero, by the amount of the taxpayer’s federal penalty payment; and

(9) Health coverage provided under a plan obtained through an association, trust, or multiple employer arrangement, including an out-of-State trust or association, shall not qualify as minimum essential coverage unless the plan complies with the requirements of applicable New Jersey law.

Additionally, the tax imposed by the bill is to be assessed and collected in the same manner as under the "New Jersey Gross Income Tax Act." N.J.S.54A:1-1 et seq.

The Commissioner of Banking and Insurance will establish a program for determining whether to grant a certification that an individual is entitled to an exemption from either the individual responsibility requirement or the tax by reason of religious conscience or hardship.

The bill also expresses the Legislature’s intent as to the collection of data necessary for the successful implementation of the tax imposed by the bill. The bill provides that the reporting requirement is necessary to protect various compelling State interests.

Accordingly, the bill provides that, for purposes of administering the tax on individuals who fail to maintain minimum essential coverage, every applicable entity, including employers and insurers, that provide minimum essential coverage to an individual during a calendar year shall, at such time as the State Treasurer may prescribe, make a return with information about individuals and their coverage. The return is to be in the form the State Treasurer prescribes, and contain the name, address and Social Security number or taxpayer identification number of the primary insured and the name and Social Security number or taxpayer identification number of each other individual obtaining coverage under the policy; the dates during which that individual was covered under minimum essential coverage during the calendar year and such other information as the State Treasurer may require. To minimize
the reporting burden, the return may also be in the form of a return
under the ACA.

The bill also provides that not earlier than November 1 nor later
than November 30 of each year, the State Treasurer, in consultation
with the Commissioner of Banking and Insurance, shall send a
notification to each taxpayer who files a gross income tax return
indicating if the taxpayer or one of the taxpayer’s dependents is not
enrolled in minimum essential coverage as required by this bill.
That notification shall contain information on the services available
to obtain coverage.

The bill takes effect on October 1, 2018 and applies to taxable
years beginning after December 31, 2018.