

Title 54A.
Chapter 11. (New)
Health Insurance.
§§1-10 -
C.54A:11-1 to
54A:11-10
§11 - Note

P.L. 2018, CHAPTER 31, *approved May 30, 2018*
Assembly, No. 3380 (*First Reprint*)

1 AN ACT requiring health insurance coverage and supplementing
2 Title 54A of the New Jersey Statutes.

3

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

6

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

9

10 2. As used in this act:

11 ¹["Affiliated company" means a company in the same corporate
12 system as a parent, an industrial insured or a member organization
13 by virtue of common ownership, control, operation or
14 management.]¹

15 “Affordable Care Act” means the federal “Patient Protection and
16 Affordable Care Act,” Pub.L.111-148, as amended by the federal
17 “Health Care and Education Reconciliation Act of 2010,”
18 Pub.L.111-152, and any federal rules and regulations adopted
19 pursuant thereto.

20 “Applicable individual” means the same as defined in 26 U.S.C.
21 s.5000A(d)(1).

22 “Carrier” means any entity that contracts or offers to contract to
23 provide, deliver, arrange for, pay for, or reimburse any of the costs
24 of health care services, including a sickness and accident insurance
25 company, a health maintenance organization, a hospital or health
26 service corporation, a multiple employer welfare arrangement, an
27 entity under contract with the State Health Benefits Program or the
28 School Employees’ Health Benefits Program to administer a health
29 benefits plan, or any other entity providing a health benefits plan.

30 ¹For purposes of this act, carriers that are affiliated companies
31 shall be treated as one carrier.

32 “Gross income tax” means the New Jersey gross income tax
33 pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
34 et seq.]¹

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted April 5, 2018.

1 “Minimum essential coverage” means the same as defined in 26
2 U.S.C. s.5000A(f)(1).

3 ¹“Taxpayer” means a resident taxpayer as defined in
4 N.J.S.54A:1-2.¹

5
6 3. a. A taxpayer shall, for each month beginning after
7 December 31, 2018, ensure that the taxpayer, if an applicable
8 individual, and any dependent of the taxpayer who is an applicable
9 individual, is covered under minimum essential coverage for that
10 month.

11 b. In the case of any taxpayer who fails to meet the
12 requirements of subsection a. of this section, there shall be imposed
13 a State shared responsibility tax equal to a taxpayer’s federal
14 penalty that would apply for the taxable year under section 5000A
15 of the Internal Revenue Code of 1986, as in effect on December 15,
16 2017 (26 U.S.C. s.5000A).

17
18 4. The rules for determining the State shared responsibility tax
19 under section 3 of this act shall reflect the following changes
20 relative to the rules for determining the federal shared responsibility
21 payment under 26 U.S.C. s.5000A:

22 a. The amount of the tax imposed by this ¹“~~section~~ act”¹ shall
23 be determined, if applicable, using the State average premium for
24 bronze-level plans rather than the national average premium for
25 bronze-level plans;

26 b. ¹“~~For purposes of this section, “minimum essential~~
27 ~~coverage” shall include, in addition to the types of coverage~~
28 ~~included under 26 U.S.C. s.5000A, the coverage required pursuant~~
29 ~~to the New Jersey Individual Health Coverage Program;~~

30 c.¹ Instead of the United States Secretary of Health and Human
31 Services, in coordination with the United States Secretary of the
32 Treasury, the Commissioner of Banking and Insurance, in
33 coordination with the State Treasurer, shall have the authority to
34 recognize additional health benefits coverage as “minimum
35 essential coverage”;

36 ¹“~~d.~~ c.”¹ For purposes of the exemption for individuals who
37 cannot afford coverage:

38 (1) the required contribution ¹is as follows:

39 (a)¹ for an individual eligible for minimum essential coverage
40 under both an eligible employer-sponsored plan and a qualified
41 health plan ¹“~~is~~”¹ the lesser of the amounts ¹“~~that the individual~~
42 ~~would have to pay for coverage of each type~~ described in 26
43 U.S.C. s.5000A(e)(1)(B)(i) and 26 U.S.C. s.5000A(e)(1)(B)(ii):

44 (b) for an individual only eligible for minimum essential
45 coverage under a qualified health plan the amount described in 26
46 U.S.C. s.5000A(e)(1)(B)(ii)¹;

1 (2) the income threshold for coverage to be considered
2 unaffordable shall be determined by the ¹【Commissioner of
3 Banking and Insurance , in consultation with the¹ State Treasurer
4 ¹in a manner consistent with 26 U.S.C. s.5000A (e)(1)¹;

5 ¹【e.】 d.¹ No tax shall be imposed under this ¹【section】 act¹
6 with respect to any applicable individual for any month during a
7 calendar year if the taxpayer's ¹【gross】 taxable¹ income for the
8 taxable year is below the minimum taxable income threshold
9 established in N.J.S.54A:2-4 and N.J.S.54A:8-3.1;

10 ¹【f.】 e.¹ No tax shall be imposed by this ¹【section】 act¹ with
11 respect to any applicable individual for any month during which the
12 individual is a ¹【bona fide resident of another state】 nonresident
13 taxpayer¹;

14 ¹【g.】 f.¹ Determinations as to hardship exemptions shall be
15 made by the ¹【Commissioner of Banking and Insurance】 State
16 Treasurer¹ under this act rather than by the U.S. Secretary of Health
17 and Human Services under 42 U.S.C. s.18031(d)(4)(H);

18 ¹【h.】 A grandfathered plan, as defined in 42 U.S.C. s.18011(e),
19 shall qualify as minimum essential coverage only if it satisfies the
20 requirements that apply to non-grandfathered plans sold in the
21 market in which the grandfathered plan is sold;

22 ¹【i.】 g.¹ If a taxpayer is subject to both the tax imposed by
23 this ¹【section】 act¹ and the federal penalty under 26 U.S.C.
24 s.5000A for a taxable year, the ¹【amount of the taxpayer's State
25 income】 taxpayer shall be allowed a credit against the¹ tax ¹【is
26 reduced, but not below zero, by】 otherwise due for the taxable year
27 under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et
28 seq., in¹ the amount of the taxpayer's federal penalty payment ¹, but
29 not to exceed the amount of the taxpayer's State tax imposed by this
30 act in the taxable year.

31 The order of priority of the application of the tax credit allowed
32 pursuant to this subsection and any other tax credits allowed by law
33 shall be as prescribed by the Director of the Division of Taxation.
34 The amount of the tax credit applied under this subsection against
35 the tax otherwise due under the "New Jersey Gross Income Tax
36 Act," N.J.S.54A:1-1 et seq., for a taxable year, when taken together
37 with any other payments, credits, deductions, and adjustments
38 allowed by law, shall not reduce the tax liability of the taxpayer to
39 an amount less than zero¹ ; and

40 ¹【j.】 h.¹ Health coverage provided under a ¹【plan obtained
41 through an association, trust, or】¹ multiple employer ¹【welfare】¹
42 arrangement, ¹【including an out-of-state trust or association】 as
43 defined in subsection (40) of 29 U.S.C. s.1002¹, shall not qualify as
44 minimum essential coverage unless the plan complies with the
45 requirements of one or more of the following New Jersey statutes,

1 as applicable to a carrier and health benefits plans offered in the
2 relevant individual, small employer, or large employer markets:

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

13 ¹i. For any taxable year in which federal premium tax credits,
14 available pursuant to 26 U.S.C. s.36B, enacted as part of the federal
15 "Patient Protection and Affordable Care Act," Pub.L.111-148, as
16 amended by the "Health Care and Education Reconciliation Act of
17 2010," Pub.L.111-152 (ACA), become unavailable due to the
18 federal government repealing that section or failing to fund the
19 premium tax credits, the State shared responsibility tax under this
20 act shall not be enforced.¹

21

22 5. ¹a. The tax imposed by this act shall be assessed and
23 collected in the same manner as under the "New Jersey Gross
24 Income Tax Act," N.J.S.54A:1-1 et seq. ¹; provided, however, that
25 any funds collected pursuant to this act shall not be gross income
26 tax revenue for purposes of N.J.S.54A:9-25.

27 b. Any funds collected pursuant to this act shall be deposited in
28 the New Jersey Health Insurance Premium Security Fund created
29 pursuant to P.L. , c. (C.) (pending before the Legislature as
30 Assembly Committee Substitute for Assembly Bill No. 3379 of
31 2018). If the Commissioner of Banking and Insurance does not
32 establish a health insurance reinsurance plan pursuant to P.L. ,
33 c. (C.) (pending before the Legislature as the Assembly
34 Committee Substitute for Assembly Bill No. 3379 of 2018), the
35 funds collected pursuant to this act shall be deposited in the Health
36 Care Subsidy Fund established pursuant to section 8 of P.L.1992,
37 c.160 (C.26:2H-18.58), which may be used to improve and expand
38 children's health insurance in the NJ FamilyCare Program,
39 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.), and, to
40 the extent possible, to maximize federal funding under Title XXI of
41 the federal Social Security Act, subject to the approval of the
42 Director of the Division of Budget and Accounting in the
43 Department of the Treasury.¹

44

45 6. a. Except as otherwise provided in this section, any federal
46 regulations implementing 26 U.S.C. s.5000A, as that section and
47 those regulations are in effect on December 15, 2017, shall apply as

1 though incorporated into this act. Federal guidance interpreting
2 these federal regulations shall similarly apply.

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

8 ¹c. All references in this act to any of the provisions of 26
9 U.S.C. s.5000A shall be to that provision as in effect on December
10 15, 2017.¹

11

12 7. a. The ¹**【Commissioner of Banking and Insurance】** State
13 Treasurer¹ shall establish a program for determining whether to
14 grant a certification that an individual is entitled to an exemption
15 from either the individual responsibility requirement pursuant to
16 subsection a. of section 3 of this act or the tax imposed pursuant to
17 subsection b. ¹of¹ section 3 of this act by reason of religious
18 conscience or hardship.

19 b. The ¹**【commissioner】** State Treasurer¹ shall make the
20 determination whether to grant an exemption pursuant to this
21 section and shall notify the individual granted an exemption ¹**【and**
22 **the State Treasurer of any such determinations in such a time and**
23 **manner as the commissioner, in consultation with the State**
24 **Treasurer, shall prescribe】¹.**

25

26 8. a. The Legislature finds that:

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

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

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

42 (4) The tax imposed by this act, and therefore the reporting
43 requirement in this section, is necessary to protect the compelling
44 State interest of ensuring a stable and well-functioning health
45 insurance market. There is compelling evidence that, without an
46 effective tax in place for those who go without coverage, there
47 would be substantial instability in health insurance markets,

1 including higher prices and the possibility of areas without any
2 insurance available. Ensuring the health of insurance markets is a
3 responsibility reserved for states under the McCarran-Ferguson Act
4 and other federal law.

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

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

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

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

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

43 d. As used in this section:

44 "Applicable entity" shall include the following:

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

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

3 (3) Carriers licensed or otherwise authorized to offer health
4 coverage with respect coverage they provide that is not described in
5 paragraphs (1) or (2) of this subsection.
6

7 9. Not earlier than November 1 nor later than November 30 of
8 each year, the State Treasurer, in consultation with the
9 Commissioner of Banking and Insurance, shall send a notification
10 to each taxpayer who files a gross income tax return indicating if
11 the taxpayer or one of the taxpayer's dependents is not enrolled in
12 minimum essential coverage as required by this act. That
13 notification shall contain information on the services available to
14 obtain coverage, including through the federally-facilitated health
15 insurance Exchange established pursuant to the Affordable Care
16 Act.
17

18 10. The State Treasurer, in consultation with the Commissioner
19 of Banking and Insurance shall adopt rules and regulations,
20 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
21 (C.52:14B-1 et seq.), in order to effectuate the purposes of this act.
22

23 11. This act shall take effect on ¹October 1, 2018 and shall
24 apply to taxable years beginning after December 31, 2018. The
25 January 1, 2019, but the¹ State Treasurer and Commissioner of
26 Banking and Insurance may take such anticipatory administrative
27 action in advance thereof as shall be necessary for the
28 implementation of this act.
29
30

31 _____
32
33 "New Jersey Health Insurance Market Preservation Act."