

Initial California Healthcare Reporting Guidance Released

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The California Franchise Tax Board has released preliminary guidance on mandatory reporting of healthcare coverage of California residents for calendar year 2020. The guidance applies to (1) employers and other entities that sponsor self-funded group medical plans, and (2) insurance carriers for fully insured group medical plans. The reports for calendar year 2020 must be furnished to California residents by January 31, 2021, and filed with the Franchise Tax Board electronically (or, in some cases, with paper forms) by March 31, 2021, using the same Forms 1095-C and 1095-B that are already required under the Affordable Care Act.

■ Background

California Senate Bill No. 78, which was signed into law on June 27, 2019, requires all California residents to have minimum essential coverage (“MEC”) for every calendar month beginning on or after January 1, 2020. Unless the resident is otherwise exempt, a tax penalty applies to those residents who fail to comply with the state’s individual healthcare mandate for one or more months of the calendar year.

SB 78 imposes two separate reporting obligations on employers and other plan sponsors:

- **Furnishing reports to covered individuals.** SB 78 requires employers and other entities that sponsor an employment-based health plan to furnish proof of healthcare coverage (using IRS Form 1095-C or 1095-B) to all California residents covered by the plan. The form will enable residents to prove they had MEC during the calendar year, thereby helping them avoid penalties under the state’s individual healthcare mandate. The deadline for furnishing the form to residents for calendar year 2020 is January 31, 2021.
- **Reporting to the Franchise Tax Board.** SB 78 also requires employers and other plan sponsors to file reports (using IRS Form 1095-C or 1095-B) with the Franchise Tax Board regarding all state residents covered by the plan. These reports will enable state tax authorities to determine whether a resident is subject to a penalty under the state’s individual healthcare mandate. The deadline for filing reports with the Franchise Tax Board for calendar year 2020 is March 31, 2021.

Important exceptions: If the group medical plan is fully insured, and an insurance carrier has provided MEC reports (using IRS Form 1095-B) to state residents covered under the plan and to the Franchise Tax Board, then the employer or other plan sponsor does not have to provide a duplicate MEC report to those same state residents or to the Franchise Tax Board. In addition, an employer or other entity sponsoring a group medical plan is permitted under state law to enter into a contract with a third-party service provider (such as an insurance carrier or third-party administrator) to provide the required MEC reports to state residents covered under the plan and/or to the Franchise Tax Board.

Employers and other plan sponsors that fail to file the required reports with the Franchise Tax Board are subject to a penalty of \$50 per individual.

■ Preliminary Guidance on Mandatory Reporting

The Franchise Tax Board has released the following information to assist employers, insurance carriers and other plan sponsors in fulfilling their reporting obligations under California's individual healthcare mandate:

- An official government website
- Draft versions of two government publications (California Publications 3895C and 3895B)
- Document entitled "FTB (Franchise Tax Board) File Exchange System – MEC (Minimum Essential Coverage) IR (Information Reporting) Registration and Enrollment Guide 2020"

Refer below for hyperlinks to these materials.

In most cases, an employer or other entity that sponsors a self-funded group medical plan will prepare IRS Form 1095-C (including Parts I, II, and III) to identify the employees and family members covered under the plan during the calendar year (along with other information). The Franchise Tax Board requires the employer or other sponsor of a self-funded plan to file all Forms 1095-C relating to California residents (along with the Form 1094-C transmittal form) with the Board as part of the mandatory reporting obligation.





In some cases, an employer with a self-funded group medical plan will prepare IRS Form 1095-B to identify the individuals covered under the plan during the year. This procedure may be followed for COBRA qualified beneficiaries who were not employed by the employer at any time during the year, or for retirees covered under a self-funded retiree medical plan who were not employed by the employer at any time during the year. The Franchise Tax Board requires the employer or other sponsor of a self-funded plan to file all Forms 1095-B relating to California residents (along with the Form 1094-B transmittal form) with the Board as part of the mandatory reporting obligation.

The following chart summarizes the preliminary guidance from the Franchise Tax Board for reporting by employers and other plan sponsors on Forms 1095-C and 1095-B:

	Form 1095-C	Form 1095-B
What is the deadline for furnishing forms to state residents for calendar year 2020	January 31, 2021	January 31, 2021
What is the deadline for filing forms with the Franchise Tax Board for calendar year 2020?	March 31, 2021	March 31, 2021
Can the employer or other plan sponsor submit the required forms to the Franchise Tax Board on paper?	Yes, if the employer or other plan sponsor is required to file fewer than 250 Forms 1095-C with the Franchise Tax Board for 2020	Yes, if the employer or other plan sponsor is required to file fewer than 100 Forms 1095-B with the Franchise Tax Board for 2020
Is the employer or other plan sponsor required to submit the required forms to the Franchise Tax Board electronically?	Yes, if the employer or other plan sponsor is required to file 250 or more Forms 1095-C with the Franchise Tax Board for 2020	Yes, if the employer or other plan sponsor is required to file 100 or more Forms 1095-B with the Franchise Tax Board for 2020
Can the employer or other plan sponsor obtain a hardship waiver from the electronic filing requirement?	Yes, by applying to IRS on Form 8508	Yes, by applying to IRS on Form 8508

For employers or other plan sponsors required to file electronically, the California MEC Information Reporting Program is similar to the federal Affordable Care Act Information Returns (AIR) Program. Organizations need to register online (starting October 5, 2020), submit an enrollment form, and complete a testing cycle, before transmitting actual taxpayer data to the Franchise Tax Board.

■ Employer Action

All group medical plans – whether fully insured or self-funded – covering California residents, the employer or other plan sponsor should (as a best practice) include information about the state’s individual healthcare mandate and penalty as part of the new-hire enrollment materials and annual open enrollment materials distributed to California residents.

Fully insured group medical plans - covering California residents, the employer or other plan sponsor should confirm with the insurance carrier on an annual basis that the carrier has furnished MEC reports to state residents and has filed MEC reports with the Franchise Tax Board. The employer or other plan sponsor is not required to furnish duplicate MEC reports to state residents or file duplicate MEC reports with the Franchise Tax Board.

Self-funded group medical plans (including self-funded retiree medical plans) - covering California residents, the employer or other plan sponsor should coordinate with the third-party administrator or other vendor regarding whether the third party will be furnishing MEC reports to state residents and filing MEC reports on behalf of the plan with the Franchise Tax Board. If the third party accepts that responsibility, the employer or other plan sponsor will still need to cooperate with the third party in making sure that the reporting obligation is fulfilled (for example, by providing whatever electronic or paper signature may be necessary).

- California Franchise Tax Board File Exchange System/ MEC IR Registration and Enrollment Guide for 2020, <https://www.ftb.ca.gov/file/business/report-mec-info/ftb-file-exchange-system-mec-ir-registration-and-enrollment.pdf>

■ Resources

- California SB 78, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB78
- California Franchise Tax Board website on healthcare reporting by employers, <https://www.ftb.ca.gov/about-ftb/newsroom/health-care-mandate/businesses.html>
- California Publication 3895C (draft version), <https://www.ftb.ca.gov/file/business/report-mec-info/2020-3895c-publication-draft.pdf>
- California Publication 3895B (draft version), <https://www.ftb.ca.gov/file/business/report-mec-info/2020-3895b-publication-draft.pdf>