

Legislative Brief

Opt-Out Election for Self-Funded, Non-Federal Government Plans

Sponsors of self-funded, non-federal governmental plans may opt out of complying with certain benefit mandates, such as the parity requirements for mental health and substance use disorder benefits. The Health Care Reform law narrowed the scope of the opt-out election for these plans. To address the Health Care Reform change, the Department of Health and Human Services (HHS) provided procedures and model election materials for sponsors of self-funded, non-federal governmental plans to use to opt out of certain federal benefit mandates.

OPT-OUT ELECTION

Before Health Care Reform

Prior to Health Care Reform, sponsors of self-funded, non-federal governmental plans were permitted to opt out of the following federal benefit mandates:

- HIPAA portability provisions, including limitations on pre-existing condition exclusions and special enrollment requirements;
- HIPAA nondiscrimination requirements, but not including provisions added by the Genetic Information Nondiscrimination Act (GINA);
- Standards for newborns and mothers under the Newborns' and Mothers' Health Protection Act (NMHPA);
- Parity in mental health and substance use disorder benefits, including requirements of the Mental Health Parity and Addiction Equity Act (MHPAEA);
- Coverage for reconstructive surgery following mastectomies under the Women's Health and Cancer Rights Act (WHCRA); and
- Coverage of dependent students on medically necessary leaves of absence (Michelle's law).

However, sponsors of self-funded, non-federal governmental plans could not opt out of providing HIPAA certificates of creditable coverage.

Opt-Out Election for Self-Funded, Non-Federal Government Plans (continued)

After Health Care Reform

Under Health Care Reform, sponsors of self-funded, non-federal governmental plans **may no longer elect to opt out of HIPAA's portability and nondiscrimination requirements**. However, the opt-out election remains available for any or all of the following requirements:

- Standards for newborns and mothers under the NMHPA;
- Parity in mental health and substance use disorder benefits, including requirements of the MHPAEA;
- Coverage for reconstructive surgery following mastectomies under the WHCRA; and
- Coverage for dependent students on medically necessary leaves of absence (Michelle's law).

For non-collectively bargained plans, the Health Care Reform change for opt-out elections is effective for plan years beginning on or after **Sept. 23, 2010**. For plans maintained pursuant to a collective bargaining agreement that was ratified before **March 23, 2010**, the Health Care Reform change for opt-out elections is generally effective for the first plan year following the expiration of the collective bargaining agreement.

This change applies regardless of grandfathered plan status. However, HHS announced it would not take enforcement action with respect to opt-out elections **for plan years that began prior to April 1, 2011**.

ELECTION PROCEDURES AND MATERIALS

HHS provided guidance regarding the procedures that sponsors of self-funded, non-federal governmental plans should follow to opt out of compliance with any or all of the federal benefit mandates outlined above. The procedures highlight the following requirements:

- If the plan sponsor decides to opt out of compliance with one or more of the federal benefit mandates, it must notify HHS of its election in writing. The opt-out is not automatic.
- An election applies for a single plan year for non-collectively bargained plans. For collectively bargained plans, the election applies for all years covered by the agreement.
- A plan sponsor can renew an election for a subsequent plan year by notifying HHS of its election in writing.

Opt-Out Election for Self-Funded, Non-Federal Government Plans (continued)

- Under an opt-out election, the plan must provide a **notice to enrollees** regarding the election. The notice must be provided annually and at the time of enrollment. The annual notice must be provided before the plan year begins for the plan's initial exemption election and, for renewals, for any requirement the plan was not exempt from during the immediately preceding plan year.

HHS has provided a Model Exemption Election and a Model Notice to Enrollees. HHS recommends, but does not require, that plan sponsors use the model documents.

ADDITIONAL RESOURCES

For a copy of HHS's fact sheet regarding the opt-out election, see:

http://cciio.cms.gov/resources/factsheets/non_federal_governmental_plans_04072011.html

For a copy of the procedures for making an opt-out election, see:

http://cciio.cms.gov/resources/files/hipaa_exemption_election_instructions_04072011.html

For a copy of the Model Exemption Election, see:

http://cciio.cms.gov/resources/files/model_exemption_election_letter_04072011.pdf

For a copy of the Model Notice to Enrollees, see:

http://cciio.cms.gov/resources/files/model_enrollee_notice_04072011.pdf

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