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Health Plan Mandate Opt-Out Elections for Self-Funded, Non-Federal Governmental Plans

A non-federal governmental employer that provides self-funded group health plan coverage to its employees (coverage that is not provided through an insurer) may elect to exempt its plan from certain group health plan mandates.

By way of background, before healthcare reform, sponsors of self-funded, non-federal governmental plans (those sponsored by state or local government employers) were permitted to elect to exempt those plans from (“opt out of”) all of the following requirements:

1. Limitations on preexisting condition exclusion periods.
2. Requirements for special enrollment periods.
3. Prohibitions against discriminating against individual participants and beneficiaries based on health status, but not including provisions added by the Genetic Information Nondiscrimination Act (GINA).
4. Standards relating to benefits for newborns and mothers (NMHPA).
5. Parity in the application of certain limits to mental health and substance use disorder benefits, including requirements of the Mental Health Parity and Addiction Equity Act (MHPAEA).
6. Required coverage for reconstructive surgery following mastectomies (WHCRA).
7. Coverage of dependent students on a medically necessary leave of absence (Michelle’s Law).

After healthcare reform, sponsors of these plans can no longer opt out of the first 3 requirements above, but may continue to exempt the plan from the other group health plan mandates listed above (requirements 4 through 7). The change applies regardless of grandfathered status and is generally effective for plan years beginning on or after September 23, 2010.

Detailed election requirements apply for plans wishing to rely on the opt-out. Information regarding the amended opt-out provisions and the opt-out election materials is available [here](#). The opt-out election materials include an explanation of the procedures and requirements for making an opt-out election, as well as a model election document and model notice to enrollees. An election applies for a single specified plan year, or, in the case of a plan provided pursuant to a collective bargaining agreement, for all plan years encompassed by the agreement. A plan sponsor may renew an opt-out election in writing for a subsequent plan year (or period of plan coverage).

Sponsors of self-funded, non-federal governmental plans considering an opt-out election will want

to familiarize themselves with these materials. Note that no opt-out election is available for healthcare reform's mandates (e.g., coverage for children under age 26) or with respect to administrative simplification (i.e., HIPAA's privacy, security and EDI rules). State and local governmental plans that wish to use the opt-out election should consult experienced legal counsel.

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