



Opt-out Election for Self-funded, Non-federal Governmental Plans

Sponsors of self-funded, non-federal governmental plans may opt out of complying with certain benefit mandates, such as the coverage mandates for minimum hospital stays for newborns and mothers and reconstructive surgery following mastectomies.

The Department of Health and Human Services (HHS) has 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.

If a plan sponsor decides to opt out of compliance with one or more of the federal benefit mandates, it must notify HHS of its election. This opt-out election must be submitted electronically. Also, the plan must provide a notice to enrollees regarding the election. The notice must be provided annually and at the time of enrollment. HHS has provided a model notice that employers may use.

LINKS AND RESOURCES

- HHS' [procedures](#) for the exemption election, including links for submitting information through the Health Insurance Oversight System
- [Model notice](#) to enrollees regarding opt-out election
- [Final regulations](#) addressing the opt-out election
- [CMS bulletin](#) regarding the sunset date for opting out of MHPAEA compliance

Opt-out Election

- An exemption for a self-funded, non-federal governmental plan is not automatic.
- If a plan sponsor wants to exempt its plan from certain benefit mandates, it must notify HHS in writing.
- An election applies for a single plan year for non-collectively bargained plans. A plan sponsor can renew an election for a subsequent plan year by notifying HHS of its election in writing.

Notice to Enrollees

- Plan sponsors must provide a notice to enrollees that describes the exemption.
- It must be provided annually and at the time of enrollment under the plan.
- HHS has a model notice that plan sponsors may use.

Opt-out Election

Sponsors of self-funded, non-federal governmental plans may opt out of the following federal benefit mandates:

- Standards for newborns and mothers under the Newborns' and Mothers' Health Protection Act (NMHPA)
- Coverage for reconstructive surgery following mastectomies under the Women's Health and Cancer Rights Act (WHCRA)
- Coverage of dependent students on medically necessary leaves of absence (Michelle's law)

In addition, prior to the changes made by the Consolidated Appropriations Act, 2023 (CAA), sponsors of self-funded, non-federal governmental health plans were able to opt out of the parity requirements for mental health and substance use disorder benefits under the Mental Health Parity and Addiction Equity Act (MHPAEA).

UPDATE: The CAA, which was signed into law on Dec. 29, 2022, sunsets the ability of self-funded, non-federal governmental health plans to opt out of MHPAEA compliance. Due to the CAA's changes, these health plans cannot apply for a new exemption from the MHPAEA after Dec. 29, 2022.

Also, plans with existing MHPAEA exemptions that expire on or after June 2, 2023, cannot be renewed. An exception applies to self-funded, non-federal governmental plans that are subject to multiple collective bargaining agreements (CBAs) with varying lengths and have existing MHPAEA exemptions. These plans may renew their MHPAEA exemptions until the date on which the last CBA expires. A bulletin issued by the Centers for Medicare and Medicaid Services (CMS) provides more information about the sunset rules for opting out of MHPAEA compliance.

Election Procedures and Notice to Enrollees

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. Generally, the election must be filed with HHS **before the first day of each plan year**.
- Plan sponsors must **submit their opt-out elections electronically** through the Non-Federal Governmental Plans Module (Non-Fed Module) in the Health Insurance Oversight System.
- 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.
- 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. Otherwise, renewal notices must be provided no later than the last day of each plan year. Also, a copy of the enrollee notice should be attached to the initial exemption election letter that is submitted to HHS. Renewal opt-out submissions must certify that the notice has been sent.

In addition, HHS clarified that the notice requirement is satisfied if the notice is printed prominently in the summary plan description (SPD) or equivalent description provided to enrollees at the time of enrollment and annually. Notices can be delivered by email if the plan sponsor meets the criteria of the Department of Labor's electronic disclosure safe harbor.

HHS provided a [Model Notice to Enrollees](#). HHS recommends, but does not require, that plan sponsors use the model documents.

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