

MHPAEA Exemption Ends for Self-Funded Governmental Health Plans

The Centers for Medicare and Medicaid Services (“CMS”) released guidance to states, counties, school districts, municipalities, and other non-federal governmental entities that sponsor a self-funded group health plan, concerning the end of the optional exemption from the Mental Health Parity and Addiction Equity Act (“MHPAEA”).

According to the CMS guidance, sponsors of a self-funded non-federal governmental group health plan that had previously opted out of MHPAEA are generally required to comply with the MHPAEA requirements beginning with the first plan year commencing on or after June 27, 2023. However, a special rule applies to collectively bargained plans which can result in a delay to the sunset date for a limited time if certain requirements are met.

■ Background

The sponsor of a self-funded non-federal governmental group health plan is generally permitted under the Health Insurance Portability and Accountability Act (“HIPAA”) and the Affordable Care Act to make an election to opt-out of the following four requirements of the Public Health Services Act:

- Standards relating to benefits for newborns and mothers
- Required coverage for reconstructive surgery following a mastectomy
- Coverage for dependent students on a medically necessary leave of absence
- MHPAEA requirements

The Consolidated Appropriations Act of 2023, which was enacted into law on December 29, 2022, included a sunset provision that eliminates the ability of self-funded non-federal governmental group health plans to opt out of compliance with MHPAEA. As a result, sponsors of a self-funded non-federal governmental group health plan may only continue to opt out of the first three requirements of the Public Health Services Act set forth above. (Opt-out elections are not available for fully insured group health plans sponsored by a non-federal government entity.) MHPAEA generally requires that a group health plan provide mental health and substance use disorder benefits in parity with medical and surgical benefits in the same classification.

■ Sunset Date for the Opt-Out Election

According to the CMS guidance, no election to opt out of compliance with MHPAEA may be made by the sponsor of a self-funded non-federal governmental group health plan on or after December 29, 2022.

In addition, the CMS guidance states that no election to opt out of MHPAEA that expires on or after June 27, 2023 may be renewed, except as permitted under the special rule for collectively bargained plans.

■ Special Rule for Collectively Bargained Plans

The CMS guidance contains a special rule that applies to self-funded non-federal governmental group health plans that meet both of the following requirements:

- The plan is subject to multiple collective bargaining agreements of varying lengths; and
- The plan made an opt-out election for MHPAEA that was in effect on December 29, 2022, and that expires on or after June 27, 2023.

Under the special rule, collectively bargained plans that meet the above requirements may extend their election to opt out of MHPAEA until the date on which the term of the last collective bargaining agreement expires. To take advantage of this special rule, the sponsor must follow these steps:

1. The sponsor must send an email to CMS at HipaaOptOut@cms.hhs.gov, along with copies of the collective bargaining agreements and the self-funded group health plan document; the email must identify the effective date and termination date for each collective bargaining agreement, and the provisions which indicate that the collective bargaining agreements encompass the self-funded plan.
2. CMS will review the email and documents and notify the sponsor of its decision regarding application of the special rule to the sponsor's self-funded plan.
3. The sponsor must then submit a renewal opt-out (for MHPAEA) to CMS via HIOS by a specified date to extend the plan's existing opt-out. The renewal must be filed with CMS via HIOS before the first day of the plan year governed by the collective bargaining agreement, or by the 45th day after the latest applicable date of the term of the collective bargaining agreement (if the 45th day falls on or after the first day of the plan year).
4. The sponsor must also continue to comply with all other opt-out requirements, including the requirement to provide proper notice to enrollees.

■ Employer Action

The sponsor of a self-funded non-federal governmental group health plan that previously made an election to opt out of compliance with MHPAEA should take steps to make sure that the plan complies with MHPAEA's requirements by the sunset date for the opt-out election.

If the self-funded plan is subject to multiple collective bargaining agreements, the sponsor should work with its attorney or legal consultant to determine whether the special rule for a temporary extension of the opt-out election can apply to the plan. If the special rule can apply, the sponsor should follow the procedures outlined above to extend the opt-out election.