

Patient Protection and Affordable Care Act and Amendment to the HIPAA opt-out provision (formerly section 2721 (b) (2) of the Public Health Service Act)

Source: Department of Health & Human Services, September 21, 2010

Prior to enactment of the Patient Protection and Affordable Care Act (Affordable Care Act) on March 23, 2010, sponsors of self-funded, non-federal governmental plans were permitted to elect to exempt those plans from "opting out" of certain provisions of title XXVII of the Public Health Service (PHS) Act. This election was authorized under section 2721(b) (2) of the PHS Act. The Affordable Care Act made a number of changes, with the result that sponsors of self-funded, non-federal governmental plans can no longer opt out of as many requirements of Title XXVII.

Prior to the enactment of the Affordable Care Act, sponsors of self-funded nonfederal governmental plans could elect to "opt out" of all seven of the following categories:

1. Limitation on pre-existing condition exclusion periods
2. Requirements of 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 of 2008)
4. Standards relating to benefits for newborns and mothers
5. Parity in the application of certain limits to mental health and substance use disorder (including requirements of the Mental Health Parity and Addiction Equity Act of 2008)
6. Required coverage for reconstructive surgery following mastectomies
7. Coverage of dependent students on a medically necessary leave of absence

The sponsor of a self-funded non-federal governmental plan can no longer choose to exempt the plan from the first three categories listed above, but may continue to exempt the plan from requirement categories 4 through 7.

Because of the timing of this guidance, Health and Human Services will not take any enforcement actions with respect to opt-out elections for plan years beginning prior to April 1, 2011 on the following provisions:

- limitations on preexisting condition exclusion periods;
- special enrollment periods; and
- the prohibitions against discrimination against individual's participants and beneficiaries based on health status.

Submit Questions to:

OCIO

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