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Can Self-Insured State and Local Governmental Plans Still Opt Out of Complying With Certain Group Health Plan Mandates?

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QUESTION: Is an opt-out election still available to exempt self-insured state and local governmental plans from compliance obligations under certain group health plan mandates?

ANSWER: Originally, self-insured group health plans of state and local governments could opt out of a wide range of group health plan mandates, including certain HIPAA portability requirements (e.g., special enrollment periods and health status nondiscrimination), the mental health parity rules, standards related to newborns and mothers, reconstructive surgery following mastectomies, and coverage for dependent students on medically necessary leaves of absence (Michelle's Law). The opt-out right has since been eliminated for certain group health plan mandates, but it is still available for others.

The Affordable Care Act (ACA) eliminated the ability of self-insured plans of state and local governments to opt out of the HIPAA portability requirements for plan years beginning on or after September 23, 2010. And the Consolidated Appropriations Act, 2023 eliminated the election to opt out of compliance with the mental health parity requirements as of December 29, 2022. (No new mental health parity opt-out elections may be made on or after that date, and elections expiring on or after June 27, 2023, may not be renewed. Limited extensions are available for plans subject to multiple collective bargaining agreements.) Still, the opt-out election remains available with respect to three other group health plan mandates: standards related to newborns and mothers, reconstructive surgery following mastectomies, and Michelle's Law (now obsolete for most plans due to the ACA's requirement to cover dependent children to age 26). Detailed election and notification requirements apply for plans wishing to rely on the opt-out.

For more information, see EBIA's Group Health Plan Mandates manual at Section IV.F ("Governmental Employers"). See also EBIA's Self-Insured Health Plans manual at Section III.D.3 ("Plans Sponsored by Certain Governmental Entities"), EBIA's Health Care Reform manual at Section V.H ("Governmental Group Health Plans"), and EBIA's HIPAA Portability, Privacy & Security manual at Section VI.H.1 ("Group Health Plans of State and Local Governmental Employers").

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