

Consolidated Appropriations Act (CAA) of 2021 Gag Clause Prohibition Compliance Attestation (GCPCA)



What Employers Need to Know

The Consolidated Appropriations Act of 2021 (CAA) includes many benefit and tax provisions affecting group health plans (GHPs). One such provision prohibits plans and issuers from entering into agreements with health care providers, third-party administrators (TPAs) and other service providers that would restrict the plan or issuer from providing, accessing or sharing certain information about provider pricing and quality of care as well as de-identified claims.

Plans and issuers must annually submit an attestation of compliance with these requirements – or “Gag Clause Prohibition Compliance Attestation (GCPCA)” – to the Departments of Labor, Health and Human Services and the Treasury (Departments) using the Centers for Medicare and Medicaid Services’ (CMS) Health Insurance Oversight System (HIOS).



For assistance with submission of the GCPCA, contact the CMS via phone at 855.267.1515 or by email at CMS_FEPS@cms.hhs.gov.

Who Must Report?



Applies to: Fully-insured and self-funded GHPs including grandfathered and non-grandfathered plans, non-federal governmental plans and church plans subject to the Internal Revenue Code

Does not apply to: Excepted benefits (e.g., stand-alone dental or vision plans) or account-based plans (e.g., HRAs, HSAs or health FSAs)

When is the Reporting Due?



Attestations must be filed annually.

The first attestation, covering the period beginning Dec. 27, 2020 through the date of the attestation, must be filed by **Dec. 31, 2023**.

Subsequent reports are due **by Dec. 31 of each year**, covering the period since the last attestation.

What are Potential Penalties?



While there is no specific penalty set forth, the Departments have expressed that plans that do not submit their attestation by the deadlines may be subject to “enforcement action.” There is speculation that the Departments could choose to impose penalties of up to \$100 per day via an excise tax or civil penalty under ERISA.

What Action Steps Should I Take?



- Confirm with vendors that contracts do not contain prohibited gag clauses.
- Determine who will submit the attestation. While most fully-insured carriers will submit on the plan sponsor’s behalf, as there is a carrier requirement as well, many self-funded plans will be responsible for filing their own GCPCA. Plan sponsors should proactively reach out to their carrier/TPA to confirm who will be filing the attestation and what assistance the carrier/TPA will be providing to comply.
- If the carrier/TPA will be submitting the necessary attestation on the plan’s behalf, document this agreement in writing; or
- If a plan sponsor will be submitting its own attestation, designate an individual to complete this task and instruct the “Submitter” to become familiar with the CMS’ [resources](#).

To What Am I Attesting?



By completing the GCPCA, the Submitter is attesting on behalf of the plan that the GHP has not entered into any agreement that directly or indirectly restricts the GHP from:

- Providing provider-specific cost or quality of care information to referring providers, the plan sponsor, participants (including eligible individuals) or beneficiaries;
- Electronically accessing de-identified claims or data, consistent with HIPAA, GINA and the ADA, including financial information, provider information and service codes; or
- Sharing information described above or directing that such data be shared with a business associate, consistent with HIPAA, GINA and the ADA.

If a contract does contain any prohibited gag clause, the plan sponsor should **not** complete an attestation for that plan (but should attest to any other plans that do not contain prohibited language). The Departments urge interested parties to contact CMS to submit a complaint for non-compliant plans. For ERISA plans, individuals may contact the DOL.

How Do I Complete the Attestation?



Completing the attestation is fairly simple. CMS has provided detailed [instructions](#) for this process, as well as a [user manual](#). Technical assistance is also available via phone at 855.267.1515 or by email at CMS_FEPS@cms.hhs.gov.

If a plan sponsor is submitting its own attestation, the Submitter must first create a user account through the CMS’ [Gag Clause Prohibition Compliance Attestation Submission](#) site.

The Submitter will then complete a short list of questions identifying the Submitter (person submitting the form), the Attestor (person authorized to attest and sign on behalf of the plan), the type of reporting entity (GHP) and subtype (ERISA, Church or Non-Federal governmental plan), and the type of provider agreement for which the attestation is being submitted (All, Medical, Pharmacy, Behavioral Health or Other). Submitters completing the GCPCA for multiple plans should populate and upload the information using the [GCPCA Reporting Entity Excel Template](#).