

PROHIBITION ON GAG CLAUSES FOR GROUP HEALTH PLANS AND REQUIRED ANNUAL ATTESTATION OF COMPLIANCE

Advisory
3.29.23

The Consolidated Appropriations Act, 2021, generally prohibits group health plans and health insurance issuers from entering into an agreement or contract with a health care provider that would prevent the disclosure of cost or quality of care information or data, and certain other information to active or eligible participants, beneficiaries, and enrollees of the plan or coverage, plan sponsors, or referring providers, or restrict the plan or issuer from sharing such information with a business associate, consistent with applicable privacy regulations (the "Anti-Gag Clause Provisions"), effective as December 27, 2020. Certain reasonable restrictions on public disclosure of such information is permitted.

Annual Attestation of Compliance with the Applicable Anti-Gag Clause Provisions

Group health plans and health insurance issuers must attest that they are in compliance with the Anti-Gag Clause Provisions by submitting annually a Gag Clause Prohibition Compliance Attestation (GCPCA) to the Departments of Labor, Health and Human Services, and the Treasury. The initial GCPCA must be submitted by December 31, 2023, for the period covering December 27, 2020 through December 31, 2023. Group health plans that are required to attest by submitting a GCPCA include ERISA plans, nonfederal governmental plans, church plans, and grandfathered group health plans. Account-based plans, such as health reimbursement arrangements (HRAs), are not required to submit a GCPCA.

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A group health plan may attest on its own behalf, or, for fully-insured plans, the issuer of the insurance coverage under the plan may attest on behalf of the group health plan. Self-funded and partially self-funded plans may enter into a written agreement under which the plan's service provider attests on the plan's behalf.

The annual attestation must be satisfied by submitting a GCPCA via the webform at <https://hios.cms.gov/HIOS-GCPCA-UI> by December 31st of each year.

FAQs about the Anti-Gag Clause Provisions may be found at <https://www.cms.gov/files/document/aca-part-57.pdf>.