

COMPLIANCE ALERT

Deadline for CAA “Gag Clause” Reporting Nears

December 6, 2024

Action Required:

- **Confirm that no prohibited “gag clause” provisions remain in service agreements.**
- **Ensure submission of the GCPCA form by Dec. 31, 2024.**

It’s that time of year again when the annual Gag Clause Prohibition Compliance Attestation (GCPCA) form is required to be submitted to the Centers for Medicare & Medicaid Services’ (CMS) Health Insurance Oversight System (HIOS) portal. This attestation, which is next due on December 31, 2024, and which is required under the Consolidated Appropriations Act, 2021 (CAA), provides confirmation that health plan service providers, including TPAs and other vendors, have not included any “gag clauses” in their contracts.

What Are “Gag Clauses”? How are Gag Clause Attestations Submitted to CMS?

Gag clauses are provisions of group health plan agreements that prevent plan service providers from sharing certain cost, quality and claims information with plan participants. The CAA prohibits group health plan agreements from precluding disclosure of this information. As background,

on February 23, 2023, the Departments of Labor, Health and Human Services, and the Treasury issued [FAQ Guidance](#) (“Guidance”) under the CAA requiring group health plans and insurers to annually attest that they have not included any “gag clauses” in their contracts with healthcare providers, TPAs and other plan service providers. The first filing of the GCPCA form was due at the end of last year on December 31, 2023, and is now due on December 31 annually. Additional information about this attestation requirement and the Guidance can be found in our previous E-Alert ([here](#)).

Submitting the GCPCA Form:

The GCPCA attestation forms are submitted through the CMS Health Insurance Oversight System ([HIOS](#)) portal. Detailed instructions, a user manual, and a reporting template are provided on a CMS [GCPCA webpage](#) and are also linked in a DOL/EBSA [bulletin](#).

What Should Employers and Plan Sponsors Do Next?

Most of the gag clause provisions in plan agreements have likely been removed since the gag clause prohibition first took effect on December 27, 2020. Additionally, most carriers and TPAs have taken responsibility for the submission of the GCPCA form, but in some cases, insurers and TPAs are not completing the form. If this is the case, then the requirement to submit would fall to the plan sponsor of the group health plan.

Nevertheless, employers and plan sponsors should still review their plans’ service agreements to confirm that no prohibited provisions remain in their agreements and ensure that submission of the GCPCA form will be completed in a timely manner by December 31, 2024.

Your Corporate Synergies Account Manager can assist in confirming if the TPA or insurer intends to complete the attestation. **If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.**