

## Deadline for Submitting Gag Clause Attestation is Dec. 31, 2023

Effective Dec. 27, 2020, federal law prohibits health plans and issuers from entering into contracts with health care providers, TPAs or other service providers that contain gag clauses (i.e., clauses restricting the plan or issuer from providing, accessing or sharing certain information about provider price and quality and de-identified claims). For example, if a contract between a TPA and a health plan provides that the plan sponsor's access to provider-specific cost and quality-of-care information is only at the discretion of the TPA, that contractual provision would be considered a prohibited gag clause.

Group health plans and health insurance issuers are required to annually attest they are complying with the federal prohibition on gag clauses. The first gag clause attestation is due by Dec. 31, 2023, covering the period beginning Dec. 27, 2020, through the date of attestation. Subsequent attestations, covering the period since the last attestation, are due by Dec. 31 of each following year.

Employers should ensure their plan-related agreements do not contain prohibited gag clauses. Also, employers should reach out to their health plan service providers and determine what action they may need to take to comply with the gag clause attestation requirement.

- If the issuer for a fully insured health plan provides the attestation, an employer does not also need to provide an attestation for the plan.
- Employers with self-insured health plans can enter into written agreements with their third-party administrator (TPA) or other plan service provider to provide the attestation, but the legal responsibility remains with the health plan. While some TPAs are willing to submit attestations on behalf of their self-insured groups, other TPAs have indicated they are unwilling to do so. In this case, employers may need to submit the attestations for their health plans.

Employers who need to submit their own attestations should review the instructions and user manual for submitting attestations electronically through the Centers for Medicare & Medicaid Services (CMS). Gag clause attestations must be submitted electronically by completing a CMS webform. The Departments have provided instructions for submitting the attestation, a system user manual and FAQs, all of which are available [here](#).

To access the webform, a user must first obtain an authentication code by going to CMS' [website](#) and selecting "Don't have a code or forgot yours?" The user will be asked to provide their e-mail address. The system will then generate an authentication code and send it to the e-mail address provided. The user can then return to the CMS website, enter the e-mail address and code where indicated, and select "Login to the system" to proceed with submitting the attestation.