

GROUP HEALTH PLAN SPONSORS REQUIRED TO SUBMIT FIRST ATTESTATION OF COMPLIANCE WITH GAG CLAUSE PROHIBITION

Hodgson Russ Employee Benefits Alert
March 16, 2023

The Consolidated Appropriations Act of 2021 prohibits so-called “Gag Clauses” in group health plan contracts to achieve transparency in cost and quality of care information for plan participants. To implement the rule against Gag Clauses, group health plans and health insurance issuers must submit an annual attestation of compliance, known as a Gag Clause Prohibition Compliance Attestation (GCPCA) on or before December 31, 2023.

The prohibition against Gag Clauses became effective December 27, 2020. The rule prohibits group health plans from entering into agreements with providers, networks, third-party administrators, or other service providers that would directly or indirectly restrict the plan from:

1. Providing provider-specific cost or quality of care data to referring providers, the plan sponsor, enrollees, or individuals eligible to become enrollees of the plan;
2. Electronically accessing de-identified claims information for each enrollee in the plan; or
3. Sharing information described above, or directing that such data be shared, with a business associate.

The GCPCA requirement applies broadly to group health plans and health insurance issuers, including non-federal governmental plans and church plans. However, it does not apply to coverage consisting entirely of excepted benefits. In addition, through FAQ guidance issued February 23, 2023 (Q/A 8), the relevant federal agencies state they are exercising enforcement discretion to exempt Health Reimbursement Arrangements (HRAs) and other account-based group health plans from complying with the attestation requirement.

The first GCPCA will cover the period from December 27, 2020 through December 31, 2023. Subsequent attestations are due by December 31, of each year thereafter. Group health plan administrators should coordinate with insurance carriers, third-party administrators, or pharmacy benefits managers to determine if the carrier or service provider will file the annual attestation on behalf of the plan. Failure to timely submit the attestation may subject the plan to excise taxes under Code

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Section 4980D of \$100 per day.

Materials to prepare the required attestation are available [here](#). [This website](#) is utilized to submit the attestation.

Please contact a member of the [Employee Benefits Practice](#) if you have questions or concerns regarding your group health plan's compliance with the Gag Clause attestation requirements.