

Do We Have to File a Gag Clause Prohibition Compliance Attestation Every Year?

EBIA Weekly (October 24, 2024)

QUESTION: We filed a Gag Clause Prohibition Compliance Attestation (GCPCA) for our self-insured group health plan in 2023 for the first time, as required. Do we need to file it again this year?

ANSWER: Yes, the GCPCA submission must be made annually. The GCPCA attests to a health plan's (or insurer's) compliance with the prohibition against "gag clauses" in any agreements with providers, provider networks, or entities offering provider network access. (A gag clause is any contractual term directly or indirectly restricting the plan or insurer from disclosing specified data and information, such as cost or quality of care data.) A group health plan with more than one benefit package may submit a single attestation even if some coverage types are insured and others are self-insured. For employers that sponsor multiple group health plans, a separate attestation is required for each plan.

An attestation must be made by December 31 each calendar year. Submissions are made through CMS's Health Insurance Oversight System ([HIOS](#)) and are accepted throughout the year. After the initial attestation, each subsequent attestation covers the period from the date of the prior attestation through the date of the subsequent attestation. For example, if a plan submitted its first GCPCA on November 30, 2023, and submits its second GCPCA on November 15, 2024, the second GCPCA's "attestation period" would be December 1, 2023, to November 15, 2024, and the "attestation year" would be 2024.

You should make sure that the plan annually files a GCPCA (and of course that the plan complies with the underlying prohibition). An [agency webpage](#) provides detailed instructions and other resources. You may engage a service provider to make the submission for your self-insured plan, but keep in mind that the legal obligation remains with the plan.

For more information, see EBIA's Self-Insured Health Plans manual at Sections XXIX.D.5 ("Gag Clause Prohibition Compliance Attestation") and XXIII.B ("Contracting With Service Providers"). See also EBIA's ERISA Compliance manual at Sections XXI.C.1 ("Other Reporting Requirements") and XXX.E.16 ("Prohibition on Gag Clauses in Group Health Plan Agreements").

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