

Deadline for Submitting **Gag Clause Attestation** Is Approaching

Group health plans and health insurance issuers are required to annually attest they are complying with the federal prohibition on gag clauses. The next gag clause attestation is due by **Dec. 31, 2024**, covering the period since the last attestation.

Action Steps

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.

Prohibition on Gag Clauses

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.

Submitting the Attestation

Gag clause attestations must be submitted electronically by completing a [webform](#) through the Centers for Medicare and Medicaid Services (CMS). CMS has provided instructions for submitting the attestation, a system user manual and FAQs, all of which are available [here](#).

Contact us for more information.