

ALERT EMPLOYMENT & LABOR



CAA Gag Clause Attestation Deadline Soon Approaching

Employers and plan sponsors: December 31, 2023 is the deadline for submission of the inaugural Section 201 Gag Clause Prohibition Compliance Attestation (Attestation) to the Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments). The federal government passed the Consolidated Appropriations Act in 2020 (CAA) with the goal of improving price and quality transparency in healthcare. Specifically, Section 201 of the CAA prohibits employers/plan sponsors from entering into contractual arrangements that contain “gag clauses”, i.e. contractual provisions that would prevent a plan from accessing provider cost and quality information for plan participants. To ensure compliance, Section 201 requires that plans submit an annual attestation that the plan did not enter any agreements that contain gag clauses. This requirement applies to ERISA plans, non-federal governmental plans, church plans, grandfathered group health plans, and plans sold on the health insurance marketplace.

The Attestation can be completed online on CMS’s website either by the plan, on its own behalf, or a third party – typically, a TPA or health insurer. Submissions require an authentication code generated by the federal government to access the webform where the attestation can be made which is available here: <https://hios.cms.gov/HIOS-GCPCA-UI>.

The individual submitting the Attestation (Submitter), whether it be an authorized representative of the plan or a third-party, should be prepared to provide the following information to complete the Attestation:

- Submitter’s name and contact information;
- The Reporting Entity’s, i.e. Plan’s, information including a point of contact that can respond to the Departments’ questions about compliance with the prohibition on gag clauses;
- A certification that the Reporting Entity is in compliance with the prohibition on gag clauses and has not entered into an agreement with a provider, network, or association of providers, TPA, or other service provider offering access to a network of providers that would directly or indirectly restrict Reporting Entity from disclosing information on cost, quality of care data, and certain other information to participants, beneficiaries or enrollees.¹

Thereafter, plans must file an Attestation annually by December 31. Now is the time to confirm with your TPA or health coverage issuer(s) if they will be filing the Attestation on your plan’s behalf or to make arrangements to make the filing on behalf of your health plan. If you have any questions about the Section 201 reporting requirements in the CAA, please contact Jenn Malik at 412.525.6755 or jmalik@babstcalland.com.

¹ If they have not done so already, Plan Sponsors should immediately review their agreements with their TPAs and carriers to ensure that their contracts do not contain gag clauses. To the extent that an agreement contains a gag clause, immediate steps should be taken to have those provisions removed so that the Plan Sponsor may comply with the Section 201 Attestation requirement.

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