

LEGAL UPDATE



DOL Issues Gag Clause Attestation Resources for 2024

On May 24, 2024, the U.S. Department of Labor (DOL) issued various resources to assist health plans and health insurance issuers in annually submitting their attestation of compliance with the Consolidated Appropriations Act's (CAA) gag clause prohibition. These resources can be used to submit the next gag clause attestation, which is due by Dec. 31, 2024.

Background

Effective in 2020, the CAA prohibits health plans and issuers from entering into contracts with health care providers, third-party administrators (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).

Plans and issuers must annually submit an attestation of compliance with the CAA's gag clause prohibition to the Departments of Labor, Health and Human Services, and the Treasury (Departments). The first attestation was due by Dec. 31, 2023. Subsequent attestations are due by Dec. 31 of each following year.

2024 Resources

The DOL has published instructions for submitting the next attestation, a system user manual and a template for 2024, as follows:

- [2024 Annual Submission Instructions](#)
- [2024 User Manual](#)
- [2024 Template](#)

Instructions and a user manual for submitting prior attestations were [previously made available](#) by the Centers for Medicare & Medicaid Services.

Action Steps

Employers should review their contracts with issuers, TPAs or other health plan service providers to confirm they do not contain prohibited gag clauses. Also, employers should review what action they may need to take to comply with the gag clause attestation requirement:

- An employer does not need to provide an attestation for a fully insured health plan if the issuer for the plan provides the attestation.
- Self-insured employers can enter into written agreements with their TPAs 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.

Employers who need to submit their own attestations should review the latest instructions and user manual for submitting attestations.

IMPORTANT DATES

Health plans and issuers must submit an annual attestation of their compliance with the CAA's gag clause prohibition.

The Departments may take enforcement action against plans and issuers that do not timely submit the required attestations. The deadlines are as follows:

Dec. 31, 2023

The first attestation was due by this date, covering the period beginning Dec. 27, 2020, through the date of attestation.

Dec. 31, 2024

The second attestation is due by this date, covering the period since the last attestation.