

RE: Gag Clause Memo

FROM: 90 Degree Benefits

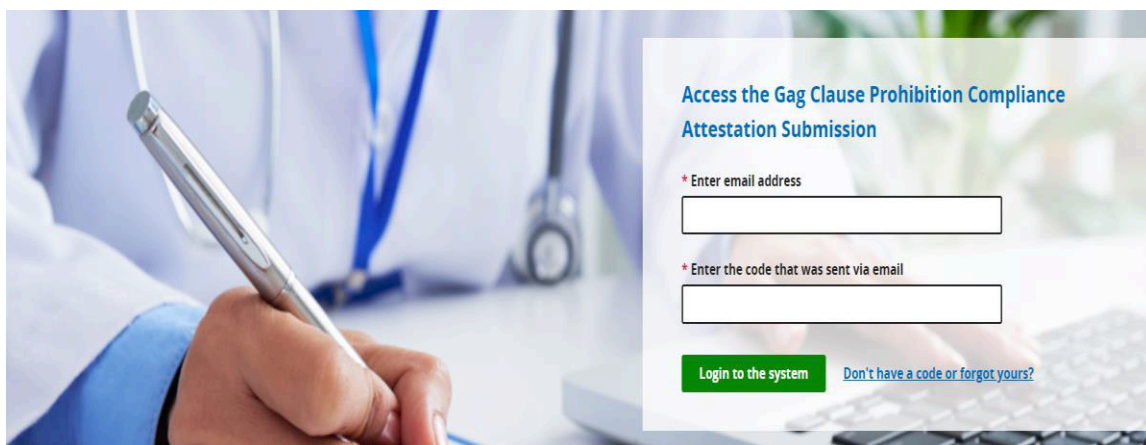
Gag Clause Prohibition Compliance Attestation

OVERVIEW

Group Health plans and health insurance issuers offering group or individual health insurance coverage must annually submit a Gag Clause Prohibition Compliance Attestation. The attestation clause is required to be compliant with the Internal Revenue Code Section 9824, Employee Retirement Security Act Section 724, and Public Health Service Act section 2799A-9. The attestation gag clause is an attestation that plans or issuers **do not have clauses in their agreements with providers that would prevent the disclosure of cost or quality of care information or data**, and certain other information to active or eligible participants, beneficiaries, and enrollees of the plan or coverage, plan sponsors, referring providers, or restrict the plan or issuers from sharing such information.

1. In order to satisfy the requirement to submit an annual attestation of compliance, plans and issuers should submit their attestation at this link. <https://hios.cms.gov/HIOS-GCPA-UI>

This link will lead you to the home page of the Gag Clause Prohibition Compliance Attestation.



- To log in, click “Don’t have a code or forgot yours?” Once you click, you will see the screen below.

Enter your e-mail address to access the Gag Clause Prohibition Compliance Attestation submission

Once we receive your e-mail address, a unique code will be generated and mailed to you. This e-mail will be from submissions@cms.hhs.gov. Follow instructions in the e-mail.

* Enter e-mail address

[Get my unique code](#) [Cancel](#)

- Enter your email address and then select “Get my unique code.”
- After completing the unique code request, the message “Request was successful” will display for the user.

✔ The code will be sent to your e-mail address within 10 minutes. If you do not receive a code within 10 minutes, you may either return to the homepage and request another code or contact the CMS Marketplace help desk support team at CMS_FEPS@cms.hhs.gov or 1-855-267-1515.

- You will then receive an email with the unique code. This unique code will be valid for 14 days. Users should check their SPAM folders if they do not immediately see this email, but wait at least 10 minutes before requesting another code. Users should receive the email below.

Dear User,

Please use the following access code to login to GPCPA portal (<https://hios.cms.gov/HIOS-GPCPA-UI>):

Note: On the GPCPA portal, please enter only the access code (without double-quotes).

- To login to the “Gag Clause Prohibition Compliance Attestation Submissions” system, enter the same email that was used to request the unique code, and the associated unique code received via email. ***If you are submitting on behalf of only one reporting entity, you may skip the instructions regarding the Excel spreadsheet and proceed to click, “Submit Gag Clause Prohibition Compliance Attestation.” The reporting entity Excel template is not needed.*** If you are submitting on behalf of multiple reporting entities, download the “Reporting Entity excel template.”

The screenshot shows the 'Submissions' page of the GPCPA portal. At the top right, there is a blue button labeled 'Start a new submission'. Below this, a message states: 'To view or continue your submission, select the Submission ID.' There is a search input field and a dropdown menu for 'Submissions per page' set to '10'. A table with columns 'Submission ID', 'Name', 'Year', and 'Status' is present but empty. Below the table is a link for 'Status Definitions'. The lower section is titled 'Get started' and contains two columns of links. The left column has 'GPCPA webform instructions' (PDF - 832KB) and 'GPCPA module user manual' (PDF - 654KB). The right column has 'Download Reporting Entity excel template' with a sub-link 'Reporting Entity excel template' (XLSM - 630KB). A note explains that this template is for users submitting on behalf of multiple reporting entities.



- If you are reporting on behalf of multiple entities and have completed the Excel spreadsheet, click the button below titled, "Submit Gag Clause Prohibition Compliance Attestation." **Once again, if you are not reporting on behalf of multiple entities, do not worry about the Excel sheet and proceed to the next page.**

Get started

Please read the GCPA webform instructions before starting your submission.

[GCPA webform instructions](#)
[PDF - 832KB]

[GCPA module user manual](#)
[PDF - 654KB]

Download Reporting Entity excel template

If you are submitting an Attestation on behalf of more than one Reporting Entity, identify the entities using this template.

[Reporting Entity excel template](#)
[XLSM - 630KB]

Submit Gag Clause Prohibition Compliance Attestation

- On the next page shown below, you will enter Submitter's Information. This person may be contacted in the event of an audit and should be available to answer any questions, under the question "By what type of entity are you employed?", select "GHP" and proceed to the next screen.

Figure 9 - Step 1 - Enter the submitter contact information

1 Enter the Submitter's Contact Information

Enter the name and contact information of the person completing the required fields (and the Excel Template if attesting multiple Reporting Entities). This person is the "Submitter" and will be contacted in the event we have any questions.

Submitter first and last name

Submitter position title

Submitter e-mail address

Submitter telephone number
(xxx) xxx-xxxx or x (xxx) xxx-xxxx

Submitter employer name

By what type of entity are you employed?
You should select all options that apply. For example, if you work for a health insurance issuer that also functions as a Third-Party Administrator for self-insured ERISA plans, and you are submitting an attestation for the Issuer and the self-insured ERISA plans, select both "Health Insurance Issuer" and "Third-Party Administrator." In this example, do not select "ERISA Plan (or sponsor of ERISA plan)." As another example, if you work for a Pharmacy Benefits Manager and you are submitting an attestation on behalf of an issuer with respect to the issuer's pharmacy benefits, select "Pharmacy Benefit Manager." In this example, do not select "Health Insurance Issuer." If you work for a health insurance issuer that is attesting on behalf of a fully-insured group health plan, select "Health Insurance Issuer." Do not select the applicable type of group health plan. If you work for a plan or issuer that is attesting on its own behalf, select either "Health Insurance Issuer" or the applicable type of group

- GHP
- Issuer
- Third-party administrator
- Pharmacy benefit manager
- Behavioral health manager
- Other third-party service provider



9. Fill in the information for "Step 2."

Figure 10 - Step 2 - Enter the Attester's contact information

2 Enter the Attester's Contact Information

Enter the Attester's name and contact information. This should be the person who will electronically sign the attestation and has the legal authority to attest for or on behalf of the Reporting Entity(ies).

In some cases, the Attester and the Submitter are the same person. If they are, select the checkbox below.

Submitter is the same as the Attester

Attester first and last Name

Attester Position Title

Attester E-mail Address

Attester Phone Number
(xxx) xxx-xxxx or x (xxx) xxx-xxxx

Attesting Entity (Attester's Employer)

10. Fill in the information below for "Step 3." For the question "If you are submitting on behalf of more than one plan or one issuer?", if you are only reporting for one entity, select "NO." After Selecting "No," the screen at the bottom will appear. If you are submitting for multiple entities, select "YES." If you are reporting for multiple entities, please skip to Step 11 of the instructions because a different screen will appear. Then for the question "Are you attesting to all provider agreements?", select "YES."

If you are submitting on behalf of more than one plan or one issuer, select Yes.

- Yes
 No

Entity/Organization Details

Please add the entity details for the entity you are submitting this attestation on behalf of.

Note: If you are submitting on behalf of yourself, the entity details you enter will need to represent your entity.

*** Name of the reporting entity**

Type in Plan Sponsor Name

Reporting entity type

Please select an option

Most Plans select "ERISA (or Sponsor of ERISA Plan.)" Some Plans may be required to select an alternative entry. If the Reporting Entity is an ERISA plan, provide the three-digit Plan Number that is included on the plan's Form 5500. If the plan is not required to file a Form 5500, no plan number is necessary. Your ERISA plan number can be located in the General Plan Information section of your SPD.

*** Name of reporting entity point-of-contact**

Insert Point of Contact

*** Employer identification number**

11111111

Insert Company EIN

*** Mailing address for the reporting entity**

1234 Any Street

*** E-mail address for the reporting entity point-of-contact**

john.doe@gmail.com

*** Phone number for the reporting entity point-of-contact**

Enter a phone number in the following format: "(xxx) xxx-xxxx".

(123) 555-1010

*** Are you attesting for all provider agreements?**

Medical, PB, BHN, Other

- Yes
 No



11. If you select “YES” on reporting for multiple entities, the screen below will appear. You will need to complete and upload the Excel sheet under “Upload Entity List.” **Once again, only upload the Excel sheet here if you are reporting on behalf of multiple entities.** The GPCCA Web form instructions provide specific guidance on creating the Reporting Entity tab-delimited text file. Only one Reporting Entity per row is permitted.

If you are submitting on behalf of more than one plan or one issuer, select Yes.


- Yes
 No

Reporting Entity Details

Complete the **Reporting Entity Excel Template** for all Reporting Entities on whose behalf you are submitting this attestation. The GPCCA Webform instructions provide specific guidance on creating the Reporting Entity tab-delimited text file in sections 2.3 and 2.31. If you are attesting on behalf of a Reporting Entity that you work for as well as other Reporting Entities, include the information for your entity. Only one Reporting Entity per row is permitted. Once the **Reporting Entity Excel Template** is complete, you must save it as a tab-delimited text file format and upload it here. After successfully uploading the text file, e-mail your completed **Reporting Entity Excel Template** to the Attester for their review.

* Upload Entity List

The entity list must be in text tab delimited format.


Drag files here or [choose from folder](#)

Save and continue

Save and exit

12. After selecting “save and continue,” you will see the “Let’s confirm the Attester’s email address” pop-up which will send you a unique code, a link to the GPCCA system, and instructions. Review the submission and verify your information.
13. On Step 4, review your submission and click “Save and Continue.”



14. On Step 5, click, "I'm attesting on behalf of group health plans, including non-federal governmental plans, and health insurance issuers offering group health insurance coverage." Next, click the box, "I attest that all information in this submission is accurate." Type your name in on the attestation line, and then fill out the screen on the final page.

5 Verify the entity type(s) you are attesting on behalf of

You must, at a minimum, select that you are either attesting on behalf of a group health plan or insurance issuer. If you are attesting on behalf of both a group health plan, whether fully insured or self-funded, and an issuer of individual health insurance coverage, check both boxes.

Group health plans, including non-federal governmental plans, and health insurance issuers offering group health insurance coverage

I attest that, in accordance with section 9824(a)(1) of the Internal Revenue Code, section 724(a)(1) of the Employee Retirement Income Security Act, and section 2799A-9(a)(1) of the Public Health Service Act, the group health plan(s) or health insurance issuer(s) offering group health insurance coverage on whose behalf I am signing will not enter into an agreement, and has not, subsequent to December 27, 2020, entered into an agreement with a health care provider, network or association of providers, third-party administrator, or other service provider offering access to a network of providers that would directly or indirectly restrict the group health plan(s) or health insurance issuer(s) from —

1. Providing provider-specific cost or quality of care information or data, through a consumer engagement tool or any other means, to referring providers, the plan sponsor, participants, beneficiaries, or enrollees, or individuals eligible to become participants, beneficiaries, or enrollees of the plan or coverage;
2. Electronically accessing de-identified claims and encounter information or data for each participant, beneficiary, or enrollee in the plan or coverage, upon request and consistent with the privacy regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the amendments made by the Genetic Information Nondiscrimination Act of 2008 (GINA), and the Americans with Disabilities Act of 1990 (ADA), including, on a per claim basis —
 - a. Financial information, such as the allowed amount, or any other claim-related financial obligations included in the provider contract;
 - b. Provider information, including name and clinical designation;
 - c. Service codes; or
 - d. Any other data element included in claim or encounter transactions; or
3. Sharing information or data described in items (1) or (2), or directing that such data be shared, with a business associate as defined in section 160.103 of title 45, Code of Federal Regulations (or successor regulations), consistent with the privacy regulations promulgated pursuant to section 264(c) of HIPAA, the amendments made by GINA, and the ADA.

I'm attesting on behalf of group health plans, including non-federal governmental plans, and health insurance issuers offering group health insurance coverage.

Attest your submission

I attest that I have the authority to bind the plan(s) or issuer(s) entered/uploaded in the entity attestation details.

I attest that all information in this submission is accurate.

* Please enter your full name to sign this attestation.

Signed submission date

07/18/2023 10:51 AM

If you have any issues, concerns or questions regarding the Attestation Clause, please contact your 90 Degree Benefits office.

