

# COMPLIANCE CHRONICLE

REGULATIONS | POLICIES | STANDARDS | REQUIREMENTS | LAWS

Navigating the ever-evolving landscape of compliance can be challenging and time-consuming. Warner Pacific is happy to share monthly updates to help your organization stay informed about new requirements and minimize compliance risks. Let us handle the complexities, so you can focus on what matters most – your business.

## SIMPLIFYING THE GAG CLAUSE PROHIBITION: YOUR GUIDE TO COMPLIANCE

Warner Pacific is committed to helping you and your groups navigate the complex landscape of the Gag Clause. Our goal is to give you the guidance you need to help your clients comply.



### What Is the Gag Clause?

Established by the Consolidated Appropriations Act (CAA) of 2021, the Gag Clause has significant implications for health plans, third-party administrators (TPAs) and insurance issuers.

The CAA generally prohibits group health plans and issuers offering group health insurance from entering into agreements with healthcare providers, TPAs or other service providers that include certain gag clause language.

## Restrictions Include:

- **Provider-specific information:** Health plans can't be prevented from providing data on provider-specific costs or quality of care to plan sponsors, participants, beneficiaries or enrollees.
- **Claims information access:** Health plans must allow electronic access to de-identified claims and encounter data for each participant, beneficiary or enrollee upon request.
- **Sharing information:** The Gag Clause doesn't permit contracts that prevent the sharing of information as described above, including sharing with a business associate.

For instance, if a contract stipulates that the plan sponsor's access to provider-specific cost and quality-of-care information is solely at the discretion of the TPA, this provision is considered a prohibited gag clause.

## Deadlines & Obligations for Employers:

Employers should check contracts with TPAs and other healthcare service providers to ensure they don't violate the prohibition on gag clauses. This is important for employers with fully insured or self-insured health plans, as they are responsible for submitting compliance attestations by December 31, 2025.

It's important to note that if the issuer of a fully insured health plan submits the attestation, the plan itself is not required to provide a separate one.

### Don't Assume. Ask the Question.

For self-insured health plans, written agreements can be established with TPAs to submit the attestation, but the ultimate responsibility for compliance rests with the health plan.

**The first GPCCA was due no later than December 31, 2023.**

Subsequent attestations are due by December 31 of each year thereafter.

## Streamlining Compliance Through Issuers and TPAs

In the case of fully insured group health plans, when the issuer of a fully insured group health plan submits a compliance attestation on behalf of the plan, it satisfies the attestation submission requirement for both parties.

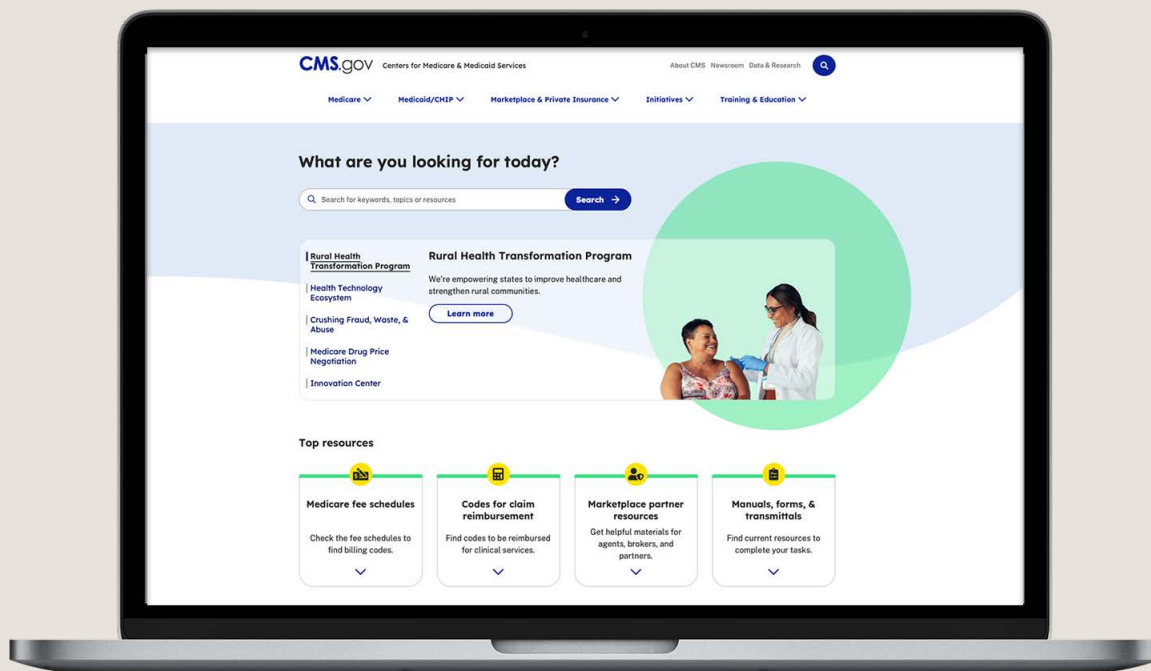
For employers with self-insured health plans, compliance can be achieved through written agreements. By entering into an agreement where the plan's service provider, such as a TPA, submits the attestation, employers can fulfill their obligations. It's important to note that even with this arrangement, the responsibility for providing a timely attestation remains with the health plan.

## Who Must Submit Attestations?

The attestation requirement applies to a wide range of health plans, including fully insured and self-insured group health plans, such as ERISA plans, non-federal governmental plans, and church plans. This requirement extends to both grandfathered and non-grandfathered plans under the Affordable Care Act (ACA).

However, it's worth noting that plans offering excepted benefits, like life and disability insurance, and account-based plans like health reimbursement arrangements (HRAs), are exempt from the attestation requirement.

**Understanding whether your plan falls under this requirement is essential for compliance.** To review a list of who the attestation requirement does and does not apply to, please click [here](#).



## How and Where to Submit Attestations

The Centers for Medicare and Medicaid Services (“CMS”) have released their updates to the Gag Clause Prohibition Compliance Attestation materials, including the instructions, the user manual, and the template for completing the attestation.

## Stay Informed With Warner Pacific

The regulatory landscape is ever evolving, and compliance requirements may change. Warner Pacific is dedicated to keeping you informed with up-to-date information from carriers and TPAs.

To view more information on this subject, visit our webpage [here](#).

**We understand the importance of staying current with compliance obligations, and we’re here to assist you.**

**Check out all of our compliance and legislative resources at [warnerpacific.com](https://warnerpacific.com).**

### Sources:

GO COMPASS, U.S. Department of the Treasury, U.S. Department of Labor,  
U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services