WARNER

November 2026 Edition

COMPLIANCE CHRONICLE

REGULATIONS | POLICIES | STANDARDS | REQUIREMENTS | LAWS

Q4 COMPLIANCE: DEADLINES AND RESPONSIBILITIES



As we approach the end of the year, there are important compliance deadlines that employers and their advisers and broker partners should be prepared for. This month's Compliance Chronicle takes a dive into the December 31 Gag Clause Attestation deadline, continues our Level Funding Corner series with a focus on stop-loss protection, and breaks down additional compliance requirements related to Level Funded health plans.

THIS EDITION'S KEY TAKEAWAYS

GAG CLAUSE ATTESTATION

Note: Dec. 31 deadline.

Employers should verify who is filing, which plans are covered and whether compliance is documented.

LEVEL FUNDING CORNER

Stop-loss protection focus: Learn how specific and aggregate coverage protect against different types of claims risk.

COMPLIANCE REQUIREMENTS

Level Funded plans can offer greater flexibility, but it comes with additional reporting, privacy and fiduciary responsibilities.

1 GAG CLAUSE ATTESTATION:

Supporting Your Clients Through Filing



WHAT: The Consolidated Appropriations Act, 2021 (CAA) prohibits group health plans and health insurance issuers from entering into agreements that restrict access to certain healthcare-cost, quality and claims information. These prohibited restrictions are commonly referred to as "gag clauses."

Importantly, a contract does not need to explicitly prohibit disclosure to be problematic. Provisions that have the effect of restricting access to required information may also violate the law.

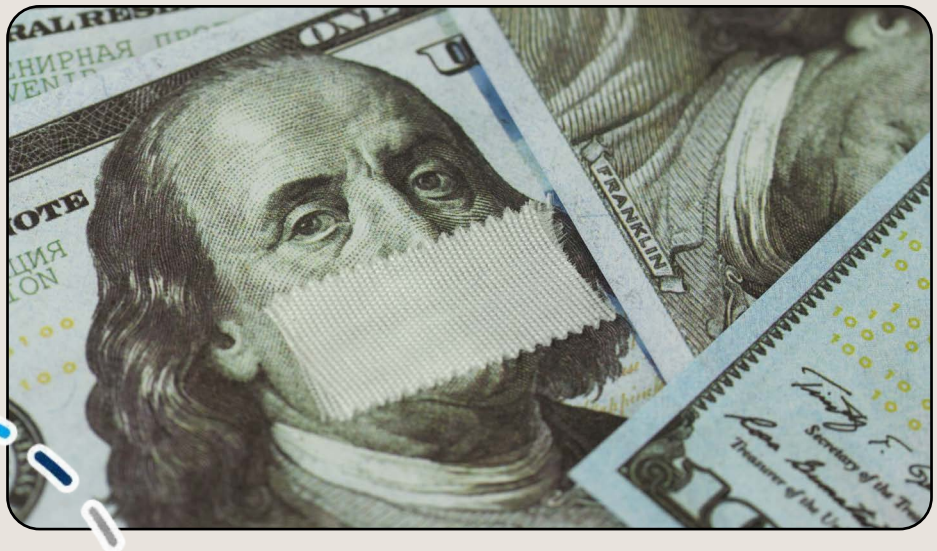
An attestation that no gag clauses are present in an employers health plans must be filed each year by December 31st.

UPCOMING COMPLIANCE DEADLINE: DECEMBER 31, 2026

Who files?

Plan Type	Filed By
Fully Insured	Insurance carrier often files
Self-Funded	Third-party administrator (TPA) or authorized vendor may file
Level Funded	Employer to confirm filing arrangement

Regardless of who the responsible filing party is, employers should maintain records identifying who is responsible for filing, any compliance representations received from vendors and confirmation that the attestation was completed.



Does this apply to small employers?

Yes.

Small employers sponsoring group medical coverage may still be subject to the rules, even when they are not subject to the ACA employer mandate if they are not fully insured.

THREE-STEP COMPLIANCE CHECK

1. **CONFIRM**
Identify who is submitting the attestation and verify that all applicable health plans are included.

2. **REVIEW**
Ask carriers, TPAs and other authorized vendors whether agreements contain restrictions.

3. **DOCUMENT**
Retain vendor confirmations, compliance representations and proof of attestation submissions.



Why it Matters!

MORE THAN A REPORTING REQUIREMENT

The CAA's gag clause provisions were designed to ensure that health plans have access to meaningful claims, cost and quality information. For employers exploring alternative funding arrangements, reviewing plan performance, or evaluating renewal strategies, access to this information can be particularly valuable.

THE BOTTOM LINE

Most employers that sponsor group medical coverage should be paying attention to this requirement. ***The key question is often not whether the requirement applies, but rather who is responsible for submitting the attestation and documenting compliance.***



Employers should never assume the filing has been completed without verification.

2 LEVEL FUNDING CORNER

Practical Answers to Common Level Funded Questions



WHAT'S PROTECTING YOUR CLIENT FROM UNEXPECTED CLAIMS COSTS?

Last month, we explored how Level Funded plans provide predictable monthly costs while limiting claims exposure. But what makes that predictability possible?

The answer lies in **stop-loss protection.**

Two Types of Stop-Loss Protection

Specific Stop-Loss	Aggregate Stop-Loss
Protects the employer against large claims incurred by a single covered individual.	Protects the employer when total claims across the covered population exceed a predetermined annual threshold. Can limit the employer's total annual claims exposure, sometimes referred to as the claims maximum.

SPECIFIC STOP-LOSS EXAMPLE

$250,000 in covered claims with a $20,000 specific deductible

$20,000
Employer claims responsibility

$230,000
Stop-loss reimbursement

TOTAL COVERED CLAIMS **$250,000**

Employer Responsibility: $20,000 ■ **Stop-Loss Reimbursement: $230,000**

Generally Speaking:

- Lower deductibles = less employer risk
- Higher deductibles = lower cost, but more risk

For many small groups, lower specific deductibles provide great stability.

3 COMPLIANCE REQUIREMENTS
For Level Funded Plans



While Level Funded health plans can provide more flexibility and lower monthly costs than Fully Insured plans, they come with additional compliance requirements.

Employers who move from a Fully Insured health plan to a Level Funded plan should understand they are taking on additional compliance responsibilities.

Level Funded plans can provide greater flexibility, reduce unpredictability, and lead to potential cost savings, but employers moving from Fully Insured plans to Level Funded plans should be aware of compliance responsibilities.

Four Areas Employers Need to Understand

1. NONDISCRIMINATION RULES	2. ACA HEALTH COVERAGE REPORTING
Internal Revenue Code Section 105(h) prohibits self-insured health plans from discriminating in favor of highly compensated individuals with respect to eligibility or benefits. Employers should review their eligibility and benefit structures for compliance.	Applicable large employers have ACA reporting responsibilities regardless of funding arrangement. Smaller employers sponsoring Level Funded plans generally also have reporting obligations related to self-insured coverage, including reporting covered individuals.
3. PCORI FEES	**4. HIPAA PRIVACY & SECURITY**
Employers sponsoring Level Funded plans are generally responsible for reporting and paying the annual Patient-Centered Outcomes Research Institute fee, calculated using average covered lives. The annual filing deadline is July 31.	Employers with Level Funded plans have additional responsibilities under HIPAA's Privacy and Security Rules. Employers should work with carriers and TPAs to understand what safeguards, documentation and resources are required.



Don't Overlook Surplus Funds

Employers with Level Funded health plans should be aware of ERISA's fiduciary rules regarding the use of surplus refunds from their carrier or TPA. As a general rule, ERISA requires that plan assets be used exclusively for the benefit of the plan's participants and beneficiaries, not the employer's own purposes.



BROKER CHECKLIST

- ✓ Has your client reviewed the nondiscrimination requirements (Section 105 (h))?
- ✓ Has your client identified who will prepare and submit ACA reporting?
- ✓ Has your client determined who will assume responsibility for calculating and paying PCORI fees?
- ✓ What HIPAA support is available for clients to understand safeguards and documentation?
- ✓ Is there a plan for potential surplus refunds handled under ERISA?

BROKER OPPORTUNITY

Use renewal conversations to talk with your employer clients about the financial structure and compliance responsibilities employers should be aware of when considering a transition.

You can support your clients in making informed decisions by reviewing reporting, nondiscrimination, privacy and fiduciary responsibilities before transitioning.





Ask Janet!



Have compliance, regulatory or legislative questions? Submit them here!

Check out all of our compliance and legislative resources here.