



Compliance with the CAA's Gag Clause Prohibition

By Paul Roberts

Sr. Director of Education and Market Development, Word & Brown & VP of Legislation, CAHIP

The Consolidated Appropriations Act (CAA) of 2021 made a number of federal changes to the U.S. health care system, with the goal of increasing transparency.

One of the most immediate changes was the prohibition of gag clauses in contracts between insurance plans, insurance issuers, and providers.

Gag clauses are contractual provisions that restrict plans or issuers from sharing provider-specific cost information or quality-of-care information with patients, other providers, or plan sponsors. They can also prevent plans or issuers from electronically sharing de-identified claims data and other encounter information with patients and providers.

The CAA's gag clause prohibition was designed to ensure that patients have access to the information they need to make informed decisions about their care, especially regarding costs. The prohibition also allows the entirety of the CAA's transparency changes to function.

The gag clause prohibition went into effect on December 27, 2020, but the requirement for plans/issuers to contest their compliance with the law does not go in effect until December 31, 2023. The [Gag Clause Prohibition Compliance Attestation](#) is due on 12/31 annually and must be submitted by group health plans (fully insured and self-funded) and *insurance issuers*. The requirement does not apply to excepted benefits, Account-based plans, standalone Dental plans, or Vision plans.

Self-funded group plans have the greatest burden with this requirement. Employers with such plans may attest themselves or may contract with their Pharmacy Benefits Managers (PBM), Third-Party Administrators (TPA), or Administrative Services Only (ASO) coordinators to facilitate the attestation. Reports must be submitted using CMS's Health Insurance Oversight System (HIOS), and special HIOS registration is required.

For **fully insured group plans**, both the insurance issuer and the plan are considered to be in compliance when the insurance issuer makes its annual attestation. In other words, when the fully insured health insurance carriers inevitably make and file these attestations, both the plan and its sponsors will be in compliance. In general, employers with fully insured group health plans do not need to act unless otherwise notified by the carrier.

Resources are available from General Agents and carriers regarding fully insured issuers' plans for compliance with this law.
