

U.S. Department of the Treasury
U.S. Department of Labor
U.S. Department of Health & Human Services



Gag Clause Prohibition Compliance Attestation

Annual Submission Instructions

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1 Overview

1.1 Gag Clause Prohibition Compliance Attestation (GCPCA) Basics

Group health plans (or “plans”) and health insurance issuers (or “issuers,” also known as “insurers”) offering group or individual health insurance coverage must annually submit a Gag Clause Prohibition Compliance Attestation (GCPCA) to the Departments of Labor, Health & Human Services, and the Treasury (collectively, the “Departments”). A GCPCA is an attestation of compliance with Internal Revenue Code (Code) section 9824, Employee Retirement Income Security Act ([ERISA](#)) section 724, and Public Health Service (PHS) Act section 2799A-9, added by the Consolidated Appropriations Act, 2021 (CAA), as applicable. These statutory provisions became effective December 27, 2020.

These statutory provisions generally prohibit plans and issuers from entering into an agreement that directly or indirectly restricts the plan or issuer from making certain data and information (including cost or quality of care data and claims information) available to certain other parties (i.e. gag clauses). Specifically, plans and issuers may not enter into an agreement that:

- prevents the plan or issuer from disclosing 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
 - the plan sponsor
 - referring providers
- electronically accessing de-identified claims and encounter information or data for each participant or beneficiary in the plan or coverage, upon request and consistent with the relevant privacy regulations, or
- restricts the plan or issuer from sharing such information with a business associate, consistent with applicable privacy regulations.

By submitting a GCPCA to the Departments, a plan or issuer is attesting that, for the period of the attestation, it has not entered into any agreement that violates Code that violates Code section 9824, ERISA section 724, and PHS Act section 2799A-9.

A health care provider, network or association of providers, or other service provider may place reasonable restrictions on the public disclosure of information that otherwise may not be the subject of a gag clause under Code section 9824, ERISA section 724, and PHS Act section 2799A-9.

In order to satisfy the requirement to submit an annual attestation of compliance, plans and issuers should submit their attestation via the webform provided by the Centers for Medicare & Medicaid Services (CMS). The webform is on the GCPCA home page, which is <https://www.cms.gov/marketplace/about/oversight/other-insurance-protections/gag-clause-prohibition-compliance-attestation>. Scroll to the bottom of the page and select the link “Enter Webform Now for a GCPCA”.

1.2 Agreements Subject to an Attestation of Compliance

The statutory prohibition on gag clauses applies to agreements entered into by plans (fully insured or self-funded) and issuers (offering group or individual health insurance coverage) with:

- health care providers
- a network or association of providers
- third-party administrators (TPAs), or
- other service providers (including vendors) offering access to a network of providers

1.3 Attestation Period and Attestation Year

Responsible Entities are required to submit a GCPCA annually. The “Attestation Period” generally begins as of the day immediately following the date of the prior attestation and extends to the date of the current attestation. The year in which the attestation is submitted is the “Attestation Year”. For example, an attestation submitted on October 10, 2024, for a Responsible Entity that submitted its GCPCA for the prior Attestation Year on November 30, 2023, would have an Attestation Period of December 1, 2023, to October 10, 2024, and an Attestation Year of 2024.

1.4. Entities Required to Submit a GCPCA

Definition of a Responsible Entity¹

A **Responsible Entity** is a plan or issuer that is subject to Code section 9824, ERISA section 724, and/or PHS Act section 2799A-9, as applicable, and has directly or indirectly—generally through a third-party administrator (TPA) or another vendor, such as a Pharmacy Benefit Manager (PBM), Independent Practice Association (IPA), or Behavioral Health Manager (BHM)—entered into an agreement(s) with health care providers, a network or association of providers, TPAs, or other service providers offering access to a network of providers.

The Responsible Entity is responsible for ensuring it annually attests, or that another party (such as its TPA or vendor) attests on its behalf, and that the Responsible Entity complies with the prohibition on gag clauses.

A group health plan is a plan offered by an employer to provide for the payment of medical care for employees and/or their dependents, directly or through insurance, reimbursement, or otherwise. Group health plans may be fully insured (where the benefits are guaranteed by a policy or contract of insurance and are paid by a health insurance company) or self-funded (where the employer assumes the financial risk of providing health benefits to its employees but may hire a company to administer its claims).

¹ Prior versions of these instructions used the term “Reporting Entity.”

An employer that sponsors a single group health plan that offers more than one benefit package within the group health plan (such as a Health Maintenance Organization (HMO) and a Preferred Provider Organization (PPO)) is a single plan/Responsible Party and may submit a single attestation (see [Option A](#)). Such an entity may submit a single attestation even if one or more coverage types are fully insured and the others are self-funded.

If an employer sponsors more than one group health plan (and, in the case of plans subject to ERISA, has more than one ERISA plan number), each such plan is a Responsible Entity and each plan must attest (see [Option B](#)). The term “ERISA plan” refers to an employee welfare benefit plan (including a group health plan) established or maintained by a private-sector employer, or by a private-sector employee organization (such as a union), or both, that provides medical or certain other benefits for participants or their dependents directly or through insurance, reimbursement, or otherwise.

Entities Required to Attest (Responsible Entities)	Entities Not Required to Attest
<ul style="list-style-type: none"> ○ Issuers offering individual health insurance coverage, including: <ul style="list-style-type: none"> ○ Student health insurance plans ○ Grandfathered² and grandmothered³ plans ○ Policies sold on or off Exchanges ○ Policies sold through an association 	<ul style="list-style-type: none"> ● Self-employed individuals without employees, or “groups of one” ● Account-based plans, such as health reimbursement arrangements (HRAs)⁴, including individual coverage HRAs ● Retiree-only group health plans ● Issuers that do not have any provider or service agreements in the US

Continued on next page

² In general, health coverage is considered grandfathered if it was in existence and has continuously provided coverage for someone (not necessarily the same person, but at all times at least one person) since March 23, 2010, provided the plan (or its sponsor) or the issuer has not taken certain actions resulting in the plan relinquishing grandfathered status, as more fully described at 26 CFR 54.9815-1251, 29 CFR 2590.715-1251, and 45 CFR 147.140.

³ Grandmothered plans are non-grandfathered plans in the individual and small group market that were issued prior to January 1, 2014, and for which CMS announced it will not take enforcement action with respect to certain market requirements. See Bulletin: Extended Non-Enforcement of Affordable Care Act-Compliance With Respect to Certain Policies, available at <https://www.cms.gov/files/document/extension-limited-non-enforcement-policy-through-calendar-year-2022.pdf>

⁴ HRAs are generally group health plans that are subject to the group market reforms in the Code, ERISA, and the PHS Act, including the prohibition on certain gag clauses and the requirement to submit a GCPCA under Code section 9824, ERISA section 724, and PHS Act section 2799A-9. However, the Departments are not requiring GCPCAs from HRAs, or other account-based group health plans, as described in 26 CFR 54.9815-2711(d)(6)(i), 29 CFR 2590.715-2711(d)(6)(i), and 45 CFR 147.126(d)(6)(i). The Departments are exercising enforcement discretion with respect to HRAs (including individual coverage HRAs) and other account-based group health plans until the Departments can exempt such plans from the requirements of Code section 9824, ERISA section 724, and PHS Act section 2799A-9 through rulemaking. This approach is consistent with many other requirements that apply to group health plans and the existing applicability provisions in 26 CFR 54.9816-2T, 29 CFR 2590.716-2, and 45 CFR 149.20 with respect to other requirements of Division BB of the CAA.

Entities Required to Attest (Responsible Entities)	Entities Not Required to Attest
<ul style="list-style-type: none"> ○ Issuers offering group health insurance coverage, including: <ul style="list-style-type: none"> ○ Grandfathered and grandmothered plans ○ Policies sold on or off Exchanges ○ All other group health insurance plans ○ Group health plans, both self-funded and fully insured, including the following to the extent they are considered group health plans: <ul style="list-style-type: none"> ○ ERISA plans⁵ (or sponsors of ERISA plans)⁶ ○ (Non-Federal) governmental plans⁷, such as plans sponsored by state or local governments ○ Church plans⁸ ○ Tribal health plans that qualify as ERISA plans or state or local government plans⁹ 	<ul style="list-style-type: none"> ● Issuers and group health plans that offer only excepted benefits coverage¹⁰, including, but not limited to: <ul style="list-style-type: none"> ○ Hospital indemnity or other fixed indemnity insurance ○ Disease-specific insurance ○ Stand-alone dental, vision, and long-term care ○ Employer on-site health clinics ○ Accident-only, disability, and workers' compensation ● Issuers that offer only short-term, limited-duration insurance ● Medicare and Medicaid plans ● State children's health insurance program plans ● Basic Health Program plans

⁵ The term "ERISA plan" refers to an employee welfare benefit plan established or maintained by a private-sector employer or by a private-sector employee organization (such as a union), or both, that provides medical or certain other benefits for participants or their dependents directly or through insurance, reimbursement, or otherwise.

⁶ If an entity files a Form M-1: Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs) and is properly designated as a Plan MEWA on the form, the Plan MEWA is the Responsible Entity. In this case, the Responsible Entity should list the EIN reported on the Form M-1. If the entity is properly designated as a Non-Plan MEWA, each individual employer sponsors a Responsible Entity and the EIN of each employer plan sponsor should be entered.

⁷ PHS Act section 2791(d)(8)(C) defines the term "non-Federal governmental plan" as a governmental plan that is not a Federal governmental plan. Examples of non-Federal governmental plans include plans that are sponsored by states, counties, school districts, and municipalities. See https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/01302019_Non_Fed_101_Slides.pdf.

⁸ The term "church plan" refers to a plan established and at all times maintained for its employees by a church or by a convention or association of churches that is exempt from tax under section 501(a) of the Internal Revenue Code, provided that the plan meets the requirements of section 501(b) and (if applicable) section 501(c)..

⁹ See ERISA Section 3(32).

¹⁰ See Code Section 9832(c), ERISA Section 733(c), and PHS Act 2791(c).

1.4.1. Attesting on Behalf of an Issuer

An issuer can attest on its own behalf, as well as on behalf of other issuers in the same controlled group.¹¹ Additionally, an issuer that contracts with a third party, such as a PBM or a repricer, to enter into provider agreements on the issuer's behalf, may have that third party attest on the issuer's behalf as to such provider agreements.

1.4.2 Attesting on Behalf of a Plan

A plan may attest on its own behalf. The statute requires group health plans and health insurance issuers offering group health insurance coverage (as well as individual health insurance coverage) to annually submit a GCPCA. This means both the issuer and group health plan, whether fully insured or self-funded, are required to submit a GCPCA. However, if coverage under a plan consists of group health insurance coverage, and the issuer of that coverage submits a GCPCA on behalf of the plan, the Departments will consider both the plan and issuer to have satisfied the attestation submission requirement. Issuers can attest for fully insured plans, including church plans and non-Federal governmental plans, such as those sponsored by states, counties, school districts, and municipalities.

A self-funded or partially self-funded plan may satisfy the requirement to provide an attestation by entering into a written agreement under which the plan's service provider, such as a TPA (including an issuer acting as a TPA), attests on the plan's behalf. If the plan utilizes more than one TPA, with each administering a subset of covered plan benefits, each TPA may attest on the plan's behalf with respect to the subset of benefits it administers. However, such a written agreement does not, by itself, satisfy the self-funded plan's attestation requirement. If a self-funded plan chooses to enter into such an agreement and a TPA fails to submit the plan's attestation to the Departments as required, the plan violates the requirement to provide an attestation of compliance.

1.5. One Attestation on Behalf of Multiple Responsible Entities

If you are an issuer or a TPA attesting on behalf of more than one Responsible Entity, complete and submit one Excel Template. List each Responsible Entity on a separate row of the

Definition of Attester

The **Attester** is an individual with the legal authority to act on behalf of the Responsible Entity for purposes of the requirements of Code section 9824, ERISA section 724, and PHS Act section 2799A-9, and who is authorized to electronically sign the GCPCA via the CMS webform.

For an issuer, a TPA, benefits agent/broker, or other individual or entity that is authorized to attest on behalf of a Responsible Entity, the **Attester** is an individual given the responsibility to sign the GCPCA on behalf of the Responsible Entity.

Responsible Entity Excel Template, as instructed in sections 2.3 and 2.3.1. Save the template first

¹¹ Any controlled group of corporations or trades or businesses under common control within the meaning of Code section 414(b) and (c) and related regulations.

in Excel (in case edits are needed), and then as a tab-delimited text file for uploading to the webform.

The Departments understand that any given Attester may be attesting for Responsible Entities that were clients of the Attester for only a portion of the time covered by the attestation, or to a subset of covered plan benefits or agreements covered by the written agreement with the plan.

Definition of Attesting Entity

The **Attesting Entity** is the entity that employs the Attester. The Attesting Entity may be the Responsible Entity (such as a plan or issuer), or an entity that contracts with the Responsible Entity to attest on behalf of the Responsible Entity (such as a TPA).

This can happen, for example, for time periods when the Attester was not under contract with the Responsible Entities on whose behalf it is attesting, or when the Attester provided the network for only some plan offerings while other entities provided the network for other plan offerings. In either case, other entities may attest for the same plan for the remainder of the time period covered by the attestation, or for other product offerings of the plan, as the case may be.

1.6. Deadline for Submitting the GCPCA

The initial deadline for submitting the GCPCA was December 31, 2023. Thereafter, Responsible Entities must attest annually by December 31. GCPCAs are accepted throughout the calendar year. After the initial attestation, each subsequent attestation covers the period from the date of the prior attestation through the date of the subsequent attestation. If an initial attestation is

Definition of Submitter

The Attester may ask someone else to complete the required fields on the webform and upload the tab-delimited text file (if attesting on behalf of more than one Responsible Entity, as described in section 1.2) on the Attester's behalf, subject to the Attester's review and signature. The individual who completes these tasks is the **Submitter**.

In instances where the Submitter also is authorized to sign the attestation on behalf of the Attesting Entity, the same individual is considered both the **Submitter and the Attester**.

made after December 31, 2023, that attestation would cover the period from the later of December 27, 2020, the date the Responsible Entity is first able to attest to compliance with the gag clause prohibition, or the date the Responsible Entity initially becomes a Responsible Entity, through the date of the initial attestation.

2 GCPCA Submission

2.1 Accessing the GCPCA Webform

An authentication code is required to access the webform where the GCPCA is completed and submitted. This access code is system-generated by the Federal government and sent by e-mail to the user who requested it. The code may be obtained by accessing the webform at the bottom of the GCPCA website homepage at <https://www.cms.gov/marketplace/about/oversight/other-insurance-protections/gag-clause-prohibition-compliance-attestation> by selecting “Gag Clause Prohibition Compliance Attestation” and clicking “Enter Webform Now” (located at the bottom of the page). Select “Don’t have or forgot your code?” Enter your name and e-mail address. Once you enter this information, select “Submit.” The code will be sent within 10 minutes to the e-mail address you provided. If you do not receive a code within 10 minutes, you may either return to the home page to make another code request or contact the CMS Marketplace help desk support team at CMS_FEPS@cms.hhs.gov or 1-855- 267-1515.

Once you have received the code, return to the GCPCA home page and, again, select “Enter Webform Now.” Enter your e-mail address and the code to access the GCPCA webform. The code will be active for a period of 14 days. If the Attester requests another code during the 14-day period, a new 14-day use period will begin when the Attester receives the new code.

Once in the webform, as long as you are actively entering information, the webform will remain open. *You should save your information often because your work will not be saved automatically.* When the webform is inactive for 15 minutes, the session will be ended. Your information will be retained as of the last time you saved the submission by selecting the “Save” button. You may re-enter the webform, and access the information you saved, by using your code at any time within the 14-day period. If your code expires before the submission is complete, use the same e-mail address to request a new code. The new code will direct you to your saved webform information.

2.2 How to Complete the Attestation

Option A, single Responsible Entity. An Attesting Entity that is attesting on behalf of only one Responsible Entity should use the GCPCA webform to provide the Responsible Entity’s information and attest. Detailed instructions are given under [Option A](#).

Option	No. of Responsible Entities	Responsible Entity Excel Template Needed
A	One	No
B	Multiple	Yes

Option B, multiple Responsible Entities. An Attesting Entity that is attesting for multiple Responsible Entities must complete both the GPCCA webform and the Excel Template to report information about the Responsible Entities on whose behalf the Attesting Entity is attesting. Detailed instructions are given under [Option B](#). For the detailed steps on using Option B, see Section 2.4.

If attesting on behalf of only one Responsible Entity, follow the steps in Option A, unless the Attester wants to indicate a limitation on the attestation, as described above. If attesting on behalf of multiple Responsible Entities, follow the steps in Option B.

Option A: Information requested in the webform when attesting on behalf of one Responsible Entity, including a plan that offers multiple coverage options, such as a PPO and an HMO.

A

- ✓ Step 1: Enter the Submitter’s contact information
 - a. Select the attestation year from the drop-down menu. If the attestation includes periods from the prior calendar year, select the current year.
 - b. Provide the Submitter’s first and last name, position title, e-mail address, phone number, and employer name.
 - c. Using the check boxes listed on the webform, identify the type of entity for which the Submitter works. **Check all that apply to your employer.**
 - i. Health insurance issuer/insurer
 - ii. ERISA group health plan (GHP) or sponsor of ERISA plan*, including a plan sponsored or established by a union
 - iii. (Non-Federal) governmental group health plan
 - iv. Church plan
 - v. Third-party administrator (TPA)
 - vi. Pharmacy benefit manager (PBM)
 - vii. Behavioral health manager (BHM)
 - viii. Other third-party network or service provider (e.g., agent/broker)

*Note: ERISA is a federal law that governs most group health plans sponsored by private-sector, non-governmental organizations. See the definition of [ERISA Plan](#).

If the Submitter works for, or is, an entity, such as an agent, broker, or attorney, that is not listed, select “Other third-party network or service provider,” and specify the type of entity in the text box.

Examples:

- If the Submitter works for an employer or union that sponsors an ERISA group health plan that is attesting on its own behalf, select “ERISA group health plan (GHP) or sponsor of ERISA plan.” If you are unsure if your health plan is an ERISA plan, contact your benefits counsel.
- If the Submitter works for a PBM and is submitting an attestation on behalf of an issuer whose pharmacy benefits that the PBM administers, select “Pharmacy benefits manager.” Do not select “Health insurance issuer.”
- If the Submitter works for an issuer that is attesting on behalf of a fully-insured group health plan, select “Health insurance issuer.” Do not additionally select the applicable type of group health plan(s) for which the issuer is attesting.

✓ Step 2: Enter the Attester’s contact information

- a. If the Submitter and the Attester are the same individual, select the check box corresponding to this option. The fields for the Attester’s contact information will automatically populate with the contact information provided for the Submitter.
- b. If the Submitter and the Attester are not the same individual, the Attester’s name and other required information must be entered.

✓ Step 3: Enter the Responsible Entity’s information

- a. Select the “No” button in response to the question, “Are you submitting on behalf of more than one plan or issuer (aka, Responsible Entity)?”
- b. Provide the name of the Responsible Entity.
- c. Provide the Responsible Entity’s 9-digit EIN. Include leading zeros if the EIN is fewer than 9 digits. Do not use dashes. Ex: 001234567. Most Responsible Entities, or, for group health plans, plan sponsors, have an EIN. This includes state and local government agencies and nonprofit organizations. If you do not know the Responsible Entity’s EIN, you may be able to obtain this information from the Responsible Entity’s payroll or accounting department. If the Responsible Entity is a group health plan and the group health plan does not have its own EIN, the EIN for the plan sponsor should be entered.
- d. Identify the type of Responsible Entity on whose behalf you are attesting. Select only one option.
 - i. Church plan *
 - ii. ERISA group health plan
 - iii. (Non-Federal) governmental group health plan

iv. Health insurance issuer/insurer

Notes:

* If the Submitter is unsure if the plan is a church plan, contact the Responsible Entity or benefits counsel.

- e. If the Responsible 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, enter three zeros (i.e., 000). Do not enter "Not applicable" or "N/A." Do not enter the group policy number or enrollee member numbers assigned by an issuer/insurer.
- f. Provide the mailing address for the Responsible Entity.
- g. Provide the first and last name of a point-of-contact who works for the Responsible Entity and can respond to the Departments' questions about the GCPCA and the Responsible Entity's compliance with the prohibition on gag clauses.
- h. Provide the e-mail address of the Responsible Entity's point-of-contact.
- i. Provide the phone number of the Responsible Entity's point-of-contact.

✓ Enter Provider and Service Agreement details

- a. For the question, "Are you attesting for all provider agreements?":
 - i. Select the "yes" button if you are attesting for all of the Responsible Entity's provider agreement(s) (i.e., medical, pharmacy, behavioral, and any other agreements) with health care providers. If the Responsible Entity only offers coverage for one category of benefits, such as "Medical," select "All."
 - ii. Select the "no" button if you are attesting for only a subset of provider agreements, or are only attesting for service agreements, such as radiology or laboratory network agreements, administrative services only (ASO) agreements, third party service agreements, and claims re-pricing agreements.
- b. If you selected "no," then, using the drop-down options, specify the specific type(s) of provider or service agreements that is/are covered by your attestation. **Check all that apply.**
 - i. Medical network
 - ii. Pharmacy benefit manager network
 - iv. Behavioral health manager network
 - v. Other

If you are attesting for a specific type(s) of provider or service agreement(s) other than, or in addition to, medical, pharmacy benefit, or behavioral health, select “Other” and enter the type(s) of agreement in the text box.

- c. Additional Information May be Provided. If there are special considerations you want to share with the Departments, you may enter this information in the text box labeled “Additional Information.” Special characters are not accepted in this box other than dashes (-) in dates (such as 2-24-2024).

There is no need to indicate that another party will attest for the remainder of the agreement types.

If there are no special considerations you would like to share with the Departments, there is no need to indicate the name of the entity with whom the Responsible Entity is contracted.

✓ Step 4: Review the completed webform

Confirm that the Submitter’s contact information, the Attester’s contact information, and the Responsible Entity’s information are all entered correctly. If you need to revise previously entered information, use the edit buttons to return to the applicable section and make the necessary changes.

If the Attester and the Submitter are the same individual, proceed to Step 5, Attest.

If the Attester and the Submitter are different individuals, once the Submitter has verified that the information was entered correctly, the Submitter should select the “Notify Attester” button. The GCPCA system will then request confirmation of the Attester’s e-mail address. Verify that the Attester’s e-mail address is correct. Once the Attester’s e-mail address is verified, the GCPCA system will send an e-mail to the Attester notifying them that the submission is ready to be reviewed. This e-mail will include a unique access code that the Attester must use to enter and review the GCPCA webform.

The Submitter should notify the Attester that the Attester will receive an e-mail from submissions@cms.hhs.gov with the Attester’s unique access code. If the Attester does not receive the e-mail and code within 10 minutes, the Attester should contact the CMS Marketplace help desk support team at CMS_FEPS@cms.hhs.gov or 1-855-267-1515 to request a new code.

✓ Step 5: Attest

The next steps must be completed by the Attester. The Attester must open the GCPCA webform using the Attester's e-mail and the Attester's unique access code, review the attestation text to ensure its accuracy, electronically sign the attestation, and submit the attestation.

If the Attester and the Submitter are the same individual, that individual will complete these tasks.

- a. Using the check boxes, the Attester must indicate whether the Attester is attesting on behalf of (1) a group health plan or a health insurance issuer offering group health insurance coverage, or (2) a health insurance issuer offering individual health insurance coverage (or both).
- b. Carefully read the attestation text. Select the check box to certify that the Responsible Entity is in compliance with the prohibition on gag clauses, as detailed in the attestation text, and has not entered into an agreement with a provider, network or association of providers, TPA, or other service provider offering access to a network of providers that would directly or indirectly restrict the Responsible Entity from disclosing information on cost, quality of care data, and certain other information to participants, beneficiaries or enrollees, plan sponsors, or referring providers.
- c. Affirm the Attester has the authority to attest on behalf of the Responsible Entity whose name is entered in the GCPCA webform by selecting the check box.
- d. Select the check box to attest that, to the best of the Attester's knowledge and belief, all information in the submission is accurate.
- e. Enter the first and last name of the Attester to electronically sign the attestation.
- f. Select the "Submit" button to submit the attestation.
- g. The confirmation message may be printed or downloaded to a pdf file. Select "Print" for these options. If you'd like to see all of the responses, you may select the link, "Return to the Dashboard," and select the Submission ID in your dashboard. The questions for all steps and your responses will display on the screen. To save a record of your responses, select "Save or Print".

Option B: Information requested in the Webform when attesting on behalf of multiple Responsible Entities

B

- ✓ Step 1:
 - a. Select the attestation year from the drop-down menu. If the attestation includes periods from 2 calendar years, select the 2nd year.
 - b. Provide the Submitter's first and last name, position title, e-mail address, phone number, and employer name.
 - c. Using the check boxes listed on the webform, identify the type of entity for which the Submitter works. **Check all that apply to your employer.**
 - i. Health insurance issuer/insurer
 - ii. [ERISA](#) group health plan (GHP) or sponsor of ERISA plan*, including a plan sponsored or established by a union
 - iii. (Non-Federal) governmental group health plan
 - iv. Church plan
 - v. Third-party administrator (TPA)
 - vi. Pharmacy benefit manager (PBM)
 - vii. Behavioral health manager (BHM)
 - viii. Other third-party network or service provider

If the Submitter works for an entity that is not listed, such as an agent or broker, please select "Other third-party service provider," and specify the type of entity in the text box.

If the Submitter works for a Responsible Entity that is an insurance company that is attesting both as an issuer and as the sponsor of its own group health plan, select "Health insurance issuer/insurer" and the applicable type of group health plan.

- ✓ Step 2: Enter the Attester's contact information

If the Submitter and the Attester are the same individual, select the check box to indicate this. The fields for the Attester's contact information will automatically populate with the contact information provided for the Submitter.

- a. If the Submitter and Attester are different individuals, provide the Attester's first and last name, position title, e-mail address, phone number, and Attesting Entity (the name of the Attester's employer).

✓ Step 3: Enter each Responsible Entity's details

- a. Select the "Yes" button in response to the question, "Are you submitting on behalf of more than one plan or issuer (i.e., a Responsible Entity)?" At the bottom of the page, you will be prompted to complete and upload the Responsible Entity tab-delimited text file, saved from the Excel Template, that provides the required details for each Responsible Entity on whose behalf you are attesting.
- b. In the Excel Template, provide each Responsible Entity's name, type, point-of-contact, EIN, Plan Number, date range of attestation coverage, mailing, and e-mail addresses. Detailed instructions for completing the Responsible Entity Excel Template and tab-delimited text file are in sections [2.3](#) and [2.3.1](#).

Examples:

- If the Submitter works for a health insurance issuer that also functions as a TPA for self-funded ERISA plans, and the Submitter is submitting an attestation on behalf of the issuer and the self-funded ERISA plans, select both "Health insurance issuer" and "Third-party administrator." In this example, do not select "ERISA plan (or sponsor of ERISA plan)."
 - If the Submitter works for a PBM and is submitting an attestation on behalf of an issuer with respect to the issuer's pharmacy benefits, select "Pharmacy benefits manager." In this example, do not select "Health insurance issuer."
 - If the Submitter works for a Responsible Entity that is attesting on its own behalf, select either the applicable type of group health plan or, if an insurer, "Health insurance issuer."
- c. When completing the fields in the Excel Template, an issuer attesting on behalf of group health plans should report the information applicable to each group health plan, and select "ERISA group health plan (GHP)" as the Responsible Entity Type.
 - d. When the Excel Template is completely filled out, saved as a tab-delimited text file, and successfully uploaded with no errors, e-mail the tab-delimited text file to your Attester.
 - e. If the tab-delimited text file is larger than 50mb, please contact the help desk at cms_feps@cms.hhs.gov for instructions.
 - f. If there are special considerations you would like to share with the Departments, you may enter this information in the text box labeled "Other Considerations." Special characters are not accepted in this box other than

dashes in dates (such as 2-24-2024).

There is no need to indicate that another party will attest for the remainder of the agreement types.

If there are no special considerations you would like to share with the Departments, there is no need to indicate the name of the entity with whom the Responsible Entity is contracted.

- ✓ Step 4: Review the completed webform prior to attesting (or notifying the system to e-mail the attester that the submission is ready to attest to)
 - a. Confirm that the Submitter's contact information and the Attester's contact information are entered correctly on the webform. Verify that the information for all Responsible Entities is correctly entered on the Responsible Entity Excel Template and uploaded on the webform. If you need to revise any of the previously entered information, use the edit buttons to return to the applicable section and make the necessary changes.
 - b. If the Attester and the Submitter are different individuals, once the Submitter has verified that the information was entered correctly, the Submitter selects the "Notify Attester" button. The GCPCA webform will then request confirmation of the Attester's e-mail address. Verify that the Attester's e-mail address is correct. If not, enter the correct e-mail address. Once the Attester's e-mail address is verified, the GCPCA webform will send an e-mail to the Attester. This e-mail will provide the Attester their own unique access code to enter the GCPCA webform and notify them that the submission is ready for them to review, attest, and submit.
 - c. The Submitter should notify the Attester that they will receive an e-mail from submissions@cms.hhs.gov with the Attester's unique access code. If the Attester does not receive the e-mail within 10 minutes, please enter a 2nd request. If the code still doesn't arrive within 10 minutes, contact the CMS Marketplace help desk support team at [CMS FEPS@cms.hhs.gov](mailto:CMS_FEPS@cms.hhs.gov) or 1-855-267-1515.

✓ Step 5: Attest

The next steps must be completed by the Attester. Once the Attester has reviewed the Responsible Entity tab-delimited text file that the submitter e-mailed, the Attester must enter the GCPCA webform, review the attestation text to ensure its accuracy, electronically sign to attest, and submit the attestation.

If the Attester and the Submitter are the same individual, that individual will complete

these tasks.

- a. Using the check boxes, the Attester must indicate whether the Attester is attesting on behalf of (1) a group health plan and/or health insurance issuer offering group health insurance coverage, or (2) a health insurance issuer offering individual health insurance coverage. If you are attesting on behalf of both (1) and (2), check both boxes.
- b. Carefully read the attestation text. Select the check box to certify that the Responsible Entities are in compliance with the prohibition on gag clauses, as detailed in the attestation text, and have not entered into an agreement with a provider, network or association of providers, TPA, or other service provider offering access to a network of providers that would directly or indirectly restrict the Responsible Entities from disclosing information on cost or quality of care information or data, and certain other information to participants, beneficiaries, or enrollees, plan sponsors, or referring providers.
- c. Affirm that the Attester has the authority to attest on behalf of the Responsible Entities entered in the GPCCA webform and listed on the Excel Template by selecting the check box.
- d. Select the check box to attest that, to the best of the Attester's knowledge and belief, all information in the submission is accurate and complete.
- e. Enter the first and last name of the Attester who will electronically sign the attestation. Note that the spelling of the Attester's name must exactly match that on Step 3 in order to submit the form.
- f. Select the "Submit" button to submit the attestation.

The confirmation message may be printed or downloaded to a pdf file. Select "Print" for these options. If you'd like to see all of the responses, you may select the link, "Return to the Dashboard," and select the Submission ID in your dashboard. The questions for all steps and your responses will display on the screen. To save a record of your responses, at this time, you will need to take screenshots and copy/paste them to a separate file on your computer.

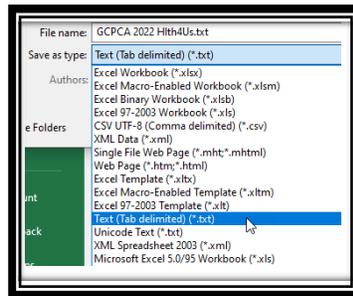
2.3 Responsible Entity Excel Template Detailed Instructions

Option B Attesting Entities should carefully read the following instructions and data element definitions to ensure that their information is transferred without errors:

- Download the Responsible Entity Excel Template provided on the GPCCA website at <https://www.cms.gov/marketplace/about/oversight/other-insurance-protections/gag-clause->

[prohibition-compliance-attestation](#)

- Complete the Responsible Entity Excel Template for each Responsible Entity. Each Responsible Entity's information should be listed on a separate row.
- The first and second rows of the Responsible Entity Excel Template contain the column names. Do NOT make any changes to column titles or rearrange the columns in the Responsible Entity Excel Template.
- Inapplicable fields should be left blank. Do not enter any text in these fields, including "N/A," a space, or a zero.
- Do not include apostrophe/single quotation ('), inequality signs (<>), and asterisks (*) in the cells of your Excel file. If you do so, the file will not save or upload properly. Slashes (/) may only be included when embedded in an e-mail or mailing address inside the file. Marks that are placed directly over letters are allowed, such as tildes (~), umlauts (¨), and accents (é) in cells in your Excel file.



- First, save your file on your computer as an Excel Workbook (*.xlsx). Then save your file on your computer in text, tab-delimited format. A file that is not in tab-delimited text format cannot be uploaded and submitted. A filename that includes the following special characters cannot be uploaded and submitted: ";", ":", ">", "<", "/", "\", 2 periods in a row (".."), "*", "%", or "\$". Instead of spaces in the filename, use dashes.
- The tab-delimited text file can be uploaded at the bottom of Step 3. If the information in the text file is incorrect, a pink box will be shown on your screen. You can see the details of the errors by selecting the "view" icon on the right side of the pink box. Correct the errors in your previously saved Excel file (*.xlsx), then re-save the file, first as an Excel file, and then as a tab-delimited text file. This new file can then be uploaded. If the file contains errors, multiple upload attempts can be made until all errors are corrected and the upload is successful.

2.3.1 Instructions for reporting the Data Elements on the Excel Template

If a column is not applicable, it should be left blank, and the cell will automatically be assigned a blank value. Do not input "N/A," a space, a zero, or any other text. [The only exception to this is where an ERISA plan does not have a plan number and should instead enter three zeros ("000")].

Do not use apostrophes, inequality signs, asterisks, or slashes in your responses.

Issuers attesting for fully insured group health plans should report the information for each such group health plan. For example, if Issuer A is attesting for Plan B, Issuer A would provide the name of Plan B, the Federal Tax, or Employer, Identification Number (EIN) for Plan B, the contact information for Plan B, and other required information.

Note that all data elements are required other for Responsible Entities that are group health plans with the exception of plan number (see instructions, below).

Column Heading	Instructions
Name of the Responsible Entity	Enter the name of the Responsible Entity (i.e., the health insurance issuer or employer-sponsored group health plan), as applicable. Only one name should be included per row.
Employer Identification Number (EIN)	Enter the Responsible Entity's 9-digit EIN. Include leading zeros if the EIN is fewer than 9 digits. Do not use dashes. Ex: 001234567. Most Responsible Entities, including state and local government agencies and non-profit organizations, have an EIN. If you do not know the Responsible Entity's EIN, you may be able to obtain this information from the Responsible Entity's payroll or accounting department. If the Responsible Entity is a group health plan and the group health plan does not have its own EIN, enter the EIN of the plan sponsor.
Responsible Entity Type	Select from the drop-down options or enter one of the following Responsible Entity Types: ERISA plan, Church plan, (Non-Federal) governmental group health plan, Issuer/Insurer. If your plan is not a Church plan, governmental plan or Issuer that sells insurance, it is likely an ERISA plan.
Plan Number	For ERISA plans only, include 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 needs to be included. Instead, enter 3 zeros (000) in the cell for Plan Number.
Date Range for Attestation Coverage	If your attestation does not cover the entire period since the Responsible Entity's most recent attestation (or, in the case of a Responsible Entity that has not previously attested, the entire period since the later of December 27, 2020, or the date of the plan's establishment), you may enter those start and end dates for the period to which the attestation applies. The start and end dates can be in different years, as long as the end date is in the current attestation year. The date format is mm-dd-yyyy.

Column Heading	Instructions
Mailing Address for the Responsible Entity	Enter the complete mailing address where the Responsible Entity can receive correspondence related to the GCPCA.
Name of Responsible Entity Point-of-Contact	Enter the first and last name of an individual who works for the Responsible Entity and can serve as a point-of-contact to respond to questions from the Departments regarding the GCPCA and the Responsible Entity’s compliance with the prohibition on gag clauses.
E-mail Address for Responsible Entity Point-of-Contact	Enter the e-mail address of the Responsible Entity’s point-of-contact.
Phone Number for Responsible Entity Point-of-Contact	Enter the 10-digit phone number, excluding spaces, dashes, or other punctuation, of the Responsible Entity’s point-of-contact. Ex: 2025551989.
Attestation is for All Provider Agreements	If you are attesting to compliance with the gag clause prohibition for <i>all</i> types of provider and service agreements (rather than only for specific types of provider agreement(s)), place a Y in Column K for “Yes”.
Attestation is only for some types of Provider and Service Agreements: Medical, Pharmacy Benefits, Behavioral Health, or Other	<p>If you are attesting only for a specific type(s) of provider or service agreement, mark a Y (for Yes) in the applicable column(s) (L, M, N) of the Responsible Entity Excel Template.</p> <p>If you are attesting for a specific type(s) of provider or service agreement other than medical, pharmacy benefit, or behavioral health, enter the type(s) of provider or service agreement in column O, “Other.” If you are attesting for more than one provider agreement type in column O, separate each type with a semicolon. Do not use commas.</p> <p>If all four of these columns (L– O) are left blank, then column K– “Attestation is for All Provider Agreements” – must be marked with a Y.</p>

2.4 Confirming an Attesting Entity Submitted the GCPCA

After the GCPCA is successfully submitted, a confirmation receipt will automatically populate. The Submitter may then download the confirmation receipt as a PDF file. If the GCPCA was submitted on behalf of a Responsible Entity by a different Attesting Entity, the Responsible Entity should contact the Attesting Entity directly to request proof of submission.

2.5 Examples

Example 1: The Responsible Entity, Maple Treats, directly contracts with all providers and attests on its own behalf for all benefits and agreements. Traci, who works for Maple Insurance, is the Submitter and the Attester. In this scenario, Traci provides her contact information in the “Enter the Submitter’s Contact Information” section. In the “Enter the Attester’s Contact Information” section, Traci checks the box to indicate that the Submitter and Attester are the same individual. Traci then completes the required fields on the webform regarding Maple Insurance. Traci selects the “yes” button in response to the question, “Are you attesting for all types of provider agreements?” Traci reviews the submission and confirms all of the information entered is accurate. Traci then reviews the attestation text, checks the attestation boxes, electronically signs to attest, and submits the attestation. A window will open with a confirmation that the attestation was successfully submitted. On the top right of the window, Traci can choose to print or save the confirmation.

Example 2: The Responsible Entity, City of Springfield Employees Health Plan, is a (non-Federal) governmental plan that offers access to networks for behavioral health, medical and prescription drug benefits. The City of Springfield Employees Health Plan directly contracts with behavioral health and medical providers on its own behalf and has a service agreement with a PBM that provides access to a pharmacy network.

Sierra works for the City of Springfield Employees Health Plan and will serve as both the Submitter and the Attester with respect to the provider agreements for which the plan directly contracts. In this scenario, Sierra provides her contact information in the “Enter the Submitter’s Contact Information” section. In the “Enter the Attester’s Contact Information” section, Sierra checks the check box to indicate that the Submitter and Attester are the same individual. Sierra then completes the required fields on the webform regarding City of Springfield Employees Health Plan. Sierra selects the “no” button in response to the question, “Are you attesting for all types of provider agreements?” Using the drop-down options to specify the types of provider agreements covered by her attestation, she selects “Medical” and “Behavioral health.” Sierra reviews the submission and confirms that all of the information entered is accurate. Sierra then reviews the attestation text, checks the attestation boxes, electronically signs to attest, and submits the attestation. Sierra receives a confirmation e-mail that the attestation was successfully submitted.

Cactus Rx Solutions is the PBM that contracts with pharmacies on behalf of City of Springfield Employees Health Plan. Alex works for Cactus Rx Solutions and will serve as both the Submitter and the Attester for the plan with respect to its attestation for its pharmacy benefits provider network agreement and for its service agreement with the City of Springfield. In this scenario, Alex provides her contact information in the “Enter the Submitter’s Contact Information” section. In the “Enter the Attester’s Contact Information” section, Alex checks the check box to indicate that the Submitter and Attester are the same individual. Alex then completes the required fields on the webform regarding City of Springfield Employees Health Plan. Alex selects the “no” button in response to the question, “Are you attesting for all types of provider

agreements?” Using the drop-down options to specify the provider and service agreements covered by her attestation, she selects “Pharmacy benefits” and “Other.” Alex reviews the submission and confirms that all of the information entered is accurate. Alex then reviews the attestation text, checks the attestation check boxes, electronically signs to attest, and submits the attestation. A window will open with confirmation that the attestation was successfully submitted. On the top right of the window, Alex can download the submission confirmation and e-mail it to Sierra.

Example 3: Acme PBM directly contracts with pharmacies on behalf of multiple issuers and group health plans that are Responsible Entities. The Submitter is Malik, and the Attester is Lupita. In this scenario, Malik enters his contact information in the “Enter the Submitter’s Contact Information” section, and Lupita’s contact information in the “Enter the Attester’s Contact Information” section. Malik populates the Responsible Entity Excel Template with the required information for each issuer and group health plan for which Acme PBM contracts with pharmacies. He enters a “Y” in column M for each row to specify that the attestation covers only pharmacy benefits. Malik saves the completed Responsible Entity Excel Template as a tab-delimited text file and uploads it to the GCPCA webform. Malik reviews the submission and confirms Lupita’s e-mail address is entered correctly. Malik then notifies Lupita that she should receive an e-mail with her unique access code, and the submission is ready for her to attest. Lupita then enters the GCPCA webform using the access code she received via e-mail, reviews the attestation text, checks the attestation check boxes, electronically signs to attest, and submits the attestation. A window will open with a confirmation that the attestation was successfully submitted. On the top right of the window, Malik can download the submission confirmation and mail it to all the Responsible Entities on behalf of whom Acme PBM has made the attestation.

3 Support, Help Desk Inquiries and Other Resources

If you have questions about submitting your Gag Clause Prohibition Compliance Attestation, contact the Centers for Medicare & Medicaid Services (CMS) Help Desk at 1-855-267-1515, or e-mail CMS_FEPS@cms.hhs.gov. To assist CMS with routing your inquiry, please include “GCPCA” in the subject line.

Confirmation receipts are generally sent on the same business day that the inquiry is received. We strive to respond to all inquiries within 2-3 days. However, in some instances, it may be 2 weeks or longer before you receive a response. Please consider this time frame in your submission preparation time.

3.1 Resources that are needed to submit the GCPCA

- The GCPCA Instructions, User Manual, Excel Template and FAQs can be found at the bottom of GCPCA website: <https://www.cms.gov/marketplace/about/oversight/other-insurance-protections/gag-clause-prohibition-compliance-attestation>
- The GCPCA webform for attesting is here: <https://hios.cms.gov/HIOS-GCPCA-UI>

4 Appendix:

4.1 Changes made since 2023

The following modifications were made to the webform and Excel Template and are reflected in these instructions and the User Manual, located at the bottom of this page:

<https://www.cms.gov/marketplace/about/oversight/other-insurance-protections/gag-clause-prohibition-compliance-attestation>.

1. Added webform selection for the “[attestation year](#).” Attestations made in 2024, for example, have an attestation year of 2024 even though the attestation period spans from the end date of the 2023 attestation to the attestation date in 2024.
2. Added webform and template fields for the “[attestation period](#),” or the date range that the attestation covers.
3. Employer plan types in Step 1 expanded to include 3 categories of group health plans (GHP)
 - i. [ERISA](#) group health plan (GHP) or sponsor of ERISA plan,* including a plan sponsored or established by a union
 - ii. (Non-Federal) governmental group health plan
 - iii. Church plan
4. “Reporting Entity” changed to “Responsible Entity.”
5. Step 3, Responsible Entity types expanded in the instructions to clarify that ERISA group health plan (GHP), or sponsor of ERISA plan, includes a plan sponsored or established by a union. Responsible entities also modified to clarify terms:
 - i. Third-party administrator (TPA)
 - ii. Pharmacy benefit manager (PBM)
 - iii. Behavioral health network manager (BHN)
 - iv. Other third-party service provider, such as an agent.
6. Step 3, clarified labels in webform and template regarding types of provider agreements:
 - I. Medical network
 - II. Pharmacy benefit manager network
 - III. Behavioral health network
 - IV. Other
7. Text box added in webform to allow submitter to enter “Other Limitations.”
8. Modified attestation language to remove forward-looking agreement actions.

9. Added Definitions in the appendix, Section 4.2.
10. Modified attestation language to accommodate date range and information provided through the submission process.

4.2 Definitions

Attestation period: begins the day after the prior years' attestation date and extends to the date attestation is submitted.

Attestation year: the year in which the attestation is made. The attestation year covers the period of attestation.

Attester: an individual with the legal authority to act on behalf of the Responsible Entity for purposes of the requirements of Code section 9824, ERISA section 724, and PHS Act section 2799A-9, and who is authorized to electronically sign the GCPCA via the CMS webform.

For an issuer, a TPA, benefits agent/broker, or other individual or entity that is authorized to attest on behalf of a Responsible Entity, the Attester is an individual given the responsibility to sign the GCPCA on behalf of the Responsible Entity.

Attesting Entity: the entity that employs the Attester. The Attesting Entity may be the Responsible Entity (such as a plan or issuer), or an entity that contracts with the Responsible Entity to attest on behalf of the Responsible Entity (such as a TPA).

ERISA plan: an Employee Retirement Income Security Act of 1974 (ERISA) plan is an employee welfare benefit plan (including a group health plan) established or maintained by a private-sector employer, or by a private-sector employee organization (such as a union), or both, that provides medical or certain other benefits for participants or their dependents directly or through insurance, reimbursement, or otherwise.

GCPCA: a Gag Clause Prohibition Compliance Attestation (GCPCA) of compliance with Internal Revenue Code (Code) section 9824, Employee Retirement Income Security Act (ERISA) section 724, and Public Health Service (PHS) Act section 2799A-9, as added by the Consolidated Appropriations Act, 2021 (CAA), as applicable.

These statutory provisions generally prohibit plans and issuers from agreeing to a contractual term (or "gag clause") that directly or indirectly restricts the plan or issuer from making certain data and information available to certain other parties.

Responsible Entity: a plan or issuer that is subject to Code section 9824, ERISA section 724, and PHS Act section 2799A-9, as applicable, and has directly or indirectly—generally through a third-party administrator (TPA) or another vendor, such as a Pharmacy Benefit Manager (PBM), Independent Practice Association (IPA), or Behavioral Health Manager (BHM)—entered into an agreement(s) with health care providers, a network or association of providers, TPAs, or other service providers offering access to a network of providers.

The Responsible Entity is responsible for ensuring it annually attests, or that another party (such as its TPA or vendor) attests on its behalf, and that the Responsible Entity complies with the prohibition on gag clauses.

Submitter: The Attester may ask someone else to complete the required fields on the webform and upload the tab-delimited text file (if attesting on behalf of more than one Responsible Entity, as described in section 1.2) on the Attester's behalf, subject to the Attester's review and signature. The individual who completes these tasks is the Submitter.

In instances where the Submitter also is authorized to sign the attestation on behalf of the Attesting Entity, the same individual is considered both the Submitter and the Attester.