Millenium Insurance Group
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Gag Clause Attestation Due December 31, 2026

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Insurance carriers and plan sponsors of group health plans must submit information annually to the Centers for Medicare and Medicaid Services ("CMS") attesting that their plans do not include prohibited gag clauses by December 31st each year. The next attestation is due by **December 31, 2026**.

A *gag clause* is a contractual term that directly or indirectly restricts specific data and information that a plan or issuer can make available to another party. These clauses may be found in agreements between a plan or carrier and any of the following parties:

- a health care provider;
- a network or association of providers;
- a third-party administrator ("TPA"); or
- another service provider offering access to a network of providers.

A gag clause may also be found in the downstream agreements of the service provider. A downstream agreement is where the TPA or other service provider that offers access to a network of providers may have separate agreements with entities other than the plan (or carrier) to provide or administer the plan's (or carrier's) network.

Carriers and TPAs are notifying clients how they intend to comply with the Gag Clause Prohibition Compliance Attestation ("GCPCA"). Similar to last year, it seems there is no uniformity as to how the various carriers/TPAs will address the attestation requirements.

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Fully Insured Plans

If the group health plan is fully insured, the plan and the carrier both have the obligation to file an attestation; however, if the carrier submits the attestation on behalf of the fully insured arrangement, no further action should be required by the plan. Plan sponsors should not assume the carrier will submit the attestation on their behalf. The carrier may request information from the employer to enable submission on the employer's behalf or may decline to submit and place the obligation on the employer to file the attestation.

> **Note.** While many carriers may file the attestation on behalf of fully insured group health plans, it is important to confirm your particular carrier's approach.

Self-Funded Plans

A self-funded plan (including level-funded) is responsible for the attestation; however, the plan sponsor may enter into a written agreement with the provider (TPA, PBM) to submit the attestation on behalf of the plan. TPAs may request information from the employer to enable submission on the plan's behalf. That said, some TPAs have indicated they will not submit the attestation for the plan. If that is the case, plan sponsors will need to submit the attestation for their plans and should obtain written confirmation from the TPA and other service providers that the contractual arrangements (including any downstream agreements) do in fact satisfy the gag clause prohibition requirements

Employer Action

- Plan sponsors who will need to file an attestation will submit their attestation via the webform by selecting the link for "Gag Clause Prohibition Compliance Attestation" at https://hios.cms.gov/HIOS-GCPCA-UI.
- CMS has provided a detailed GCPCA User Manual with step-by-step guidelines to assist plan sponsors to complete their attestations, available here: https://regtap.cms.gov/reg_librarye.php?i=5479.
- Plan sponsors should carefully review any communication provided by the carrier or TPA to ascertain what approach they will undertake for the December 31, 2026, submission.

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