

Gag Clause Prohibition Compliance Attestation (GCPCA)

Frequently Asked Questions (FAQs)

FAQ ID	Question	Date Published
PDF-25	FAQ PDF File (2025)	January 14, 2025
PDF-23	FAQ PDF File (2023)	February 23, 2023
PDF-21	FAQ PDF File (2021)	August 20, 2021
25799	Overview	January 14, 2025
25800	Will the Departments be issuing regulations addressing the prohibition on gag clauses?	August 20, 2021
24699	What is a “gag clause”?	February 23, 2023
24700	How do Code section 9824, ERISA section 724, and PHS Act section 2799A-9 prohibit group health plans and issuers offering group health insurance from entering into agreements that include gag clauses?	February 23, 2023
24701	How does PHS Act section 2799A-9 prohibit the contracts of issuers offering individual health insurance coverage from including gag clauses?	February 23, 2023
24702	Is a term in a contract a prohibited gag clause if that term functions to restrict (but does not explicitly restrict) a plan or issuer from providing, accessing, or sharing the information described in Code section 9824, ERISA section 724, and PHS Act section 2799A-9?	February 23, 2023
24703	What is the Gag Clause Prohibition Compliance Attestation?	February 23, 2023
24704	What is the due date for the Gag Clause Prohibition Compliance Attestation?	February 23, 2023
24705	How should plans and issuers submit an attestation?	February 23, 2023
24706	Which entities are required to submit a Gag Clause Prohibition Compliance Attestation?	February 23, 2023
24707	Can another entity, such as a pharmacy benefit manager (PBM), managed behavioral health organization, TPA, or other service provider attest on behalf of a self-insured group health plan or a health insurance issuer?	February 23, 2023
24708	Can an issuer that both offers group health insurance and acts as a TPA for self-insured group health plans submit a single Gag Clause Prohibition Compliance Attestation on behalf of itself, its fully-insured group health plan policyholders, and its self-insured group health plan clients? Will the submission requirement be satisfied for the issuer and its group health plan policyholders and clients?	February 23, 2023
24709	Who may attest to compliance on behalf of a plan or issuer?	February 23, 2023
24710	Are there any technical requirements for using the Gag Clause Prohibition Compliance Attestation user interface?	February 23, 2023
24711	What should an interested party do if they suspect a violation of the gag clause prohibition or related requirements regarding attestation?	February 23, 2023
25795	A plan or issuer may contract with a TPA or other service provider that offers access to a network of providers. In turn, the TPA or other service provider may have separate agreements with entities other than the plan or issuer (downstream agreements) to provide or administer the plan’s or issuer’s network. If such a downstream agreement restricts the plan or issuer from providing, electronically accessing, or sharing the information or data specified in Code section 9824, ERISA section 724, and PHS Act section 2799A-9, is this restriction prohibited under the Gag Clause Prohibition?	January 14, 2025

254796	Does the Gag Clause Prohibition prohibit a plan or issuer from entering into an agreement with a health care provider, network or association of providers, TPA, or other service provider offering access to a network of providers that restricts the plan or issuer from providing de-identified claims data ^{48F49} to a business associate, except at the discretion of the health care provider, network or association of providers, TPA, or other service provider offering access to a network of providers?	January 14, 2025
254797	What is considered a restriction on access to de-identified claims and encounter information or data that is prohibited by the Gag Clause Prohibition?	January 14, 2025
254798	Plans and issuers must annually submit an attestation of compliance with the requirements of Code section 9824(a), ERISA section 724(a), and PHS Act section 2799A-9(a) to the Departments through a GCPCA. Are plans and issuers required to complete and submit the required annual attestation even if they are aware that they have entered into an agreement that would violate the Gag Clause Prohibition?	January 14, 2025

REGTAP:

If you want to receive an email when new FAQs are posted, create a Registration for Technical Assistance Portal (REGTAP) account at <https://regtap.cms.gov>. Click “Sign up for REGTAP Update Notification” in your account settings. Select the checkbox “REGTAP Update Notifications for Gag Clause Prohibition Compliance Attestation (GCPCA)”.

Resources:

The GCPCA attestation instructions, user manual, responsible entity template, and other resources are available on the CMS website at <https://www.cms.gov/marketplace/about/oversight/other-insurance-protections/gag-clause-prohibition-compliance-attestation>

Help Desk:

If you need help with your submission, contact our help desk at CMS_FEPS@cms.hhs.gov. Include “GCPCA” in the body of your email for faster service. You can typically expect a response within the same day and a full resolution within 1-3 weeks. During periods of high volume, response times may be significantly longer.