

Consolidated Appropriations Act (CAA), Section 201, Gag Clauses

Cigna Healthcare's Position and Frequently Asked Questions (FAQs) Regarding Gag Clause Attestations - Updated May 7, 2023

This document provides information and answers to questions about Cigna Healthcare's position specifically related to the required submission of attestations.



Section 201 of the CAA banned gag clauses in contracts between providers and health plans (includes network or association of providers, third-party administrators or other service providers offering access to a network of providers) that prevent enrollees, plan sponsors or referring providers from seeing provider-specific cost and quality data. This provision originally went into effect December 27, 2020.

On February 23, 2023, CMS issued an FAQ regarding the submission of an attestation of compliance with the Consolidated Appropriations Act, 2021 ("CAA"), Title II, Section 201's gag clause prohibition. The first attestation is due by December 31, 2023, and then annually thereafter.

What was new in the CMS FAQ?

In the FAQ, the Departments added an *option, but not a requirement*, for plans to use a third party to attest on the plan's behalf.

What is Cigna Healthcare's stance on gag clauses?

Cigna HealthcareSM does not standardly enter into any provider contracts that would prohibit the disclosure of information contemplated by Section 201 of the Consolidated Appropriations Act. Cigna Healthcare's contracts also include compliance with laws or similar provisions that would render ineffective any non-standard language that would be non-compliant with the CAA's gag clause requirement. However, Cigna Healthcare is not aware of any prohibited "gag clauses," as defined by the CAA, that remain in its provider contracts at this time. Such language, if any is identified, will be removed from the contract as soon as practicable. It is important to note that Cigna Healthcare has publicly opposed, and does not engage in, this practice.

What is Cigna Healthcare doing in response to this updated gag clause attestation option?

We have reviewed the new guidance that allows for third-party attestation regarding gag clauses, and accompanying materials detailing attestations submitted on behalf of multiple entities. As a result of our thorough analysis of the required information and associated submission process, Cigna Healthcare is taking the following position:

For fully insured group business, Cigna is obligated to submit an attestation on our own behalf. With Cigna's submission of its Gag Clause Prohibition Compliance Attestation, the Departments will consider BOTH the plan (clients) and the issuer (Cigna) to have satisfied the attestation submission requirement. Therefore, fully insured clients may choose to rely on Cigna's attestation.

For self-funded/ASO business, Cigna's submission on its own behalf is limited to direct provider contracts and contracts between Cigna and its clients. As such, ASO clients must provide their own attestations to ensure that the totality of its contracts are reflected, e.g., carve-out vendors, direct provider contracts, etc.

Why are we not submitting attestations on behalf of our clients?

CMS has created a web form that makes self-attestation simple to complete. Clients have the information they need from Cigna Healthcare and the data about their own entity that is necessary – including contact name, mailing address, email, phone, etc. – to easily complete the required fields in the form for their own attestations. While Cigna's own required attestation will satisfy the attestation requirements of our fully insured clients, self-funded clients also may have contracts with other entities (e.g., other service providers or administrators) that they would need to consider in their attestation, which is information that we don't have and likely are unable to access under the contracts' confidentiality provisions. Without ready access to this level of detail for every client, submitting on behalf of self-funded clients would be much more involved for us than the more straightforward option of self-reporting is for them, and would require an additional written agreement.

What do ASO clients need to do to meet this attestation compliance requirement?

Clients should access the attestation form on the [CMS website](#) to submit prior to the deadline of December 31, 2023. This same form will be available for their completion annually thereafter as well. Clients can also visit the [Gag Clause Prohibition Compliance Attestation](#) page from CMS that outlines the steps to ensure their compliance with this section of the regulation (webform can be accessed from the "Enter Webform Now for a GCPCA" link, at the bottom of the page, with instructions in the "User Manual" link).

The website is up and functioning. Clients need to request access for the attestor, and, once granted, they should be able to submit the attestation in advance of the December 31, 2023 deadline.

