

COMPLIANCE News to Know

News from July 12 - July 31, 2023 V.2.12



PATRIOT
GROWTH INSURANCE SERVICES
COMPLIANCE ✓

Upcoming...

August 17th - Webinar - 1:30 - 2:15 EST

Nondiscrimination Testing Essentials

[Register Here](#)

September 30 - Summary Annual Report (SAR)

Due to Plan participants for calendar year plans.

As the first pandemic-free summer since 2019 winds down, preparations for "back-to-school" and open enrollment seasons wind up. This newsletter contains a reminder and short summaries of recent news affecting employee benefits. Links to documents and regulations are in bold font for those who want a deeper dive into details.

Gag Clause Prohibition Attestation Reminders

- The first annual **Gag Clause Prohibition Compliance Attestation** is due by group health plans (Plans) & issuers by December 31, 2023. It will be due annually thereafter.
- Submission of the form is required via the government's **HIOS portal**.
- The **CMS** website outlines **instructions**, FAQs, & templates.

What if the Plan Sponsor receives an e-mail from the insurer?

Read them carefully; a few tips:

Fully insured Plans: Issuers may attach a certificate of completion but also state that they are not completing the attestation on behalf of the Plan that they insure.

This may mean the issuer (1) wants the Plan to know (2) did their due diligence by attesting as the issuer and (3) is reminding the Plan Sponsor of their requirement (while attaching the CMS instructions).

The key is confirming whether the issuer has assumed this responsibility. Secure the assurance in writing if not already within an agreement.



Self-funded or partially self-funded Plans: can avoid submitting the attestation directly IF they secure in an agreement with Plan TPAs (including an issuer acting as a TPA) that the TPA(s) will submit it on their behalf.

If the TPA fails to do so, however, the Plan Sponsor retains liability, and therefore violates the requirement. Plans should secure confirmation when this task is completed if agreed in writing.

Reminder: a broker, consultant, or agency cannot complete the attestation on behalf of a Plan, unless they are a Plan fiduciary and can attest as such.



Are there exceptions?

Yes. Per [CMS' Instructions Manual](#):

1.2.1 Attesting on an Issuer's Behalf:

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

1.2.2 Attesting on a Plan's Behalf

A Plan may attest on its own behalf. The statute requires 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 Plan are required to submit a GCPCA with respect to a fully-insured Plan. 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 under Code section 9824, ERISA section 724, and PHS Act section 2799A-9. Issuers can attest for fully-insured Plans, including non-Federal governmental plans and church plans.

Note to Self-Funded Plans

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, 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.

FAQ Part 60: the Affordable Care Act (ACA) & the No Surprises Act (NSA)

This FAQ from Federal departments provides a three question & answer summary of the relationship between the out-of-pocket limits of the ACA & the balance billing provisions of the NSA. Issues pertinent to Plans include (1) a reminder to provide an advanced EOB; (2) review in-network payment arrangements; and (3) understand ER services and the out-of-pocket maximum. Plans with participating providers under the NSA must also be considered in-network providers for purposes of applying the maximum out-of-pocket limit under the ACA and vice-versa.

Government Urges Employers to Amend Plans & Extend Special Enrollment Period

In a July 20, 2023, **letter** from CMS & the Departments of Treasury and Labor, leaders urge employers to consider a Plan amendment to extend the special enrollment period for individuals losing Medicare and CHIP. This request comes on the heels of a tempo-rary extension of the enrollment period on HealthCare.gov that runs from March 31, 2023, through July 31, 2024. Plan Sponsors do not have to amend Plans; if they choose to, however, ERISA's notification requirements apply. **Read the letter** for additional actions the government "encourages" employers to consider.

The Office of Civil Rights (OCR) Says to HIPAA Covered Entities, "Authenticate!"

The OCR is the enforcement arm of the Department of Health and Human Services. They oversee the privacy and security of health data (Protected Health Information, or PHI) created, received, transmitted, or retained by HIPAA Covered Entities (Health Plans, Healthcare Clearinghouses, & Healthcare Providers). Employer-sponsored medical plans are HIPAA Covered Entities. The **June OCR Newsletter** urges Employers to implement authentication technologies to combat cyber criminals who make beaucoup bucks selling PHI to the highest bidder. Self-funded Plans are subject to HIPAA compliance to a greater extent than fully insured Plans. Regardless of size, implementing solid cybersecurity is a best practice. **Read the newsletter** to learn more about authentication tech.

DOL Releases Summary Annual Report (SAR) Sample Templates

The SAR is the narrative report provided to Plan participants containing data about the financial health of the Plan(s). For calendar year Plans, the Form 5500 (containing financial data sent to the DOL via eFAST2) is due annually by July 31st. The SAR is due within 9 months of end of the Plan year, or September 30th. Consider the following as necessary:

- Plan years **beginning in 2022 & earlier** template.
- Plan years **beginning in 2023 & later** template.