



STATE OF WISCONSIN
Department of Employee Trust Funds
 A. John Voelker
 SECRETARY

Wisconsin Department
 of Employee Trust Funds
 PO Box 7931
 Madison WI 53707-7931
 1-877-533-5020 (toll free)
 Fax 608-267-4549
etf.wi.gov

Correspondence Memorandum

Date: October 11, 2023

To: Group Insurance Board

From: Korbey White, Health Program Manager
 Office of Strategic Health Policy

Laura Brauer, Attorney
 Office of Legal Services

Subject: Gag Clause Attestation Delegation

The Department of Employee Trust Funds (ETF) requests the Group Insurance Board (Board) delegate authority to ETF’s Secretary to submit the Gag Clause Prohibition Compliance Attestation (GCPCA) required by the Consolidated Appropriations Act (CAA) for the Group Health Insurance Program (GHIP).

Background

The CAA of 2021 applies to group health plans and health insurance issuers offering group health insurance coverage as a means to provide health care cost transparency to consumers. The CAA’s GCPCA provisions prohibit group health plans and health insurance issuers offering group health insurance coverage from entering into an agreement with a health care provider, network or association of providers, third-party administrator (TPA), or other service provider offering access to a network of providers that would directly or indirectly restrict a plan or issuer from:

- Providing provider-specific cost or quality of care information or data to referring providers, the plan sponsor, participants or other eligible individuals,
- Electronically accessing de-identified claims and encounter information or data for each participant, beneficiary, or enrollee in the plan or coverage upon request and consistent with Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Genetic Information Nondiscrimination Act of 2008 (GINA), and the Americans with Disabilities Act of 1990 (ADA) protections, or
- Sharing information or data, or directing such information be shared, with a business associate, as defined in 45 CFR 160.103, consistent with applicable

Eileen K Mallow

Reviewed and approved by Eileen Mallow, Director, Office of Strategic Health Policy
 Electronically Signed 10/25/2023

Board	Mtg Date	Item #
GIB	11.15.23	9

privacy regulations promulgated pursuant to section 264(c) of HIPAA, GINA, and the ADA¹.

The CAA further requires that plans submit attestations each year to affirm that they are compliant with these requirements.

Attestations Requirements

Plans and issuers must annually submit an attestation of compliance with these requirements to the Departments of Labor, Health and Human Services, and the Treasury (collectively, the Departments). The Centers for Medicare & Medicaid Services is collecting GCPCAs on behalf of the Departments.

The gag clause attestation requirement applies to the Board's health-related benefits, excluding excepted benefits. This means that the Board is required to provide attestation for medical and pharmacy benefits and is not required to provide attestation for wellness, dental and vision benefits.

There are two ways the Board can submit an attestation of compliance. The Board can have the vendors attest on its behalf, or the Board may attest compliance on its own behalf.

If the Board chooses to have vendors attest on its behalf, there are a few things to consider:

- The Board remains responsible for ensuring these attestations are made. A Program Agreement amendment would be needed to address continued Board liability.
- The Board would need to keep track of which providers have submitted attestations for each benefit because providers may attest to their fully and self-funded benefits under a single attestation.

If the Board chooses to attest on its own behalf, an important issue to note is that some of the information the Board would be attesting to would be based on previously submitted information supplied by vendors. In the 2024 Program Agreement, ETF added a section that explains assistance with compliance is expected and any federal or other penalties incurred due to vendor action or inaction will become the financial responsibility of the vendor, not ETF.

It is because of the of the administrative burden the Board would encounter by choosing to have vendors attest on its behalf that ETF is recommending that Board delegate authority to the ETF Secretary to submit the annual GCPCA on behalf of the Board.

¹ This information is being provided by the Centers for Medicare & Medicaid Service available at CMS.gov.

Gag Clause Attestation Delegation

October 11, 2023

Page 3

The first GCPCA is due no later than December 31, 2023. Subsequent attestations are due by December 31 of each year thereafter.

Staff will be at the Board meeting to answer any questions.