

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

Frequently Asked Questions (FAQs) for EmblemHealth Clients Regarding Gag Clause Attestations

On Dec. 27, 2020, Section 201 of the Consolidated Appropriations Act, 2021 (CAA) went into effect to ban gag clauses in contracts between providers and health plans that prevent enrollees, plan sponsors, or referring providers from seeing provider cost and quality data.

On Feb. 23, 2023, Centers for Medicare & Medicaid Services (CMS) issued a frequently asked questions (FAQ) document on the submission of an attestation of compliance with the gag clause prohibition, CAA Title II, Section 201. The first attestation was due by Dec. 31, 2023, and annually thereafter. The CMS FAQ features an option, but not a requirement, for plans to use a third party to attest on a plan's behalf.

What is EmblemHealth doing to comply with the CAA?

After the CAA was passed, we provided notice to providers that we would not enforce any gag clauses as defined by the CAA if they were contained within our contracts. Since then, we have not identified any prohibited gag clauses in our provider contracts. In addition, we will not enter into any provider contracts that would prohibit the disclosure of information outlined in Section 201 of the CAA.

Will EmblemHealth provide gag clause attestations for clients?

Insured clients

EmblemHealth will submit the gag clause attestation on behalf of our insured clients by the Dec. 31, 2024, deadline. There is no action required of these clients. (Also applies to Minimum Premium plan.)

ASO (self-funded) clients

Administrative services only (ASO) clients should complete their own attestation through the CMS HIOS portal by the Dec. 31, 2024, deadline, and annually thereafter. They should also work with any third-party or carveout vendor they have for any portion of their data requiring attestation, such as a carveout prescription benefit manager (PBM). We encourage our ASO clients to visit the [Gag Clause Prohibition Compliance Attestation | CMS](#) page that outlines steps to ensure compliance with this section of the regulation. With this FAQ, EmblemHealth provides the following confirmation of compliance for business we administer and information we maintain:

EmblemHealth represents that the administrative services provided under its administrative services only (ASO) agreements, including provider contracts, are consistent with the requirements set forth in Section 201 of the Consolidated Appropriations Act, 2021.

All other clients

All other affected clients should complete their own attestation through the CMS HIOS portal by Dec. 31, 2024, deadline, and annually thereafter. They should also work with any third-party or carveout vendor they have for any portion of their data requiring attestation. We encourage our clients to visit the [CMS Gag Clause Prohibition Compliance Attestation | CMS](#) page that outlines steps to ensure compliance with this section of the regulation.

EmblemHealth represents to its clients that the services provided under its agreements, including provider contracts, are consistent with the requirements set forth in Section 201 of the Consolidated Appropriations Act, 2021.

If you have additional questions, contact your account manager.

