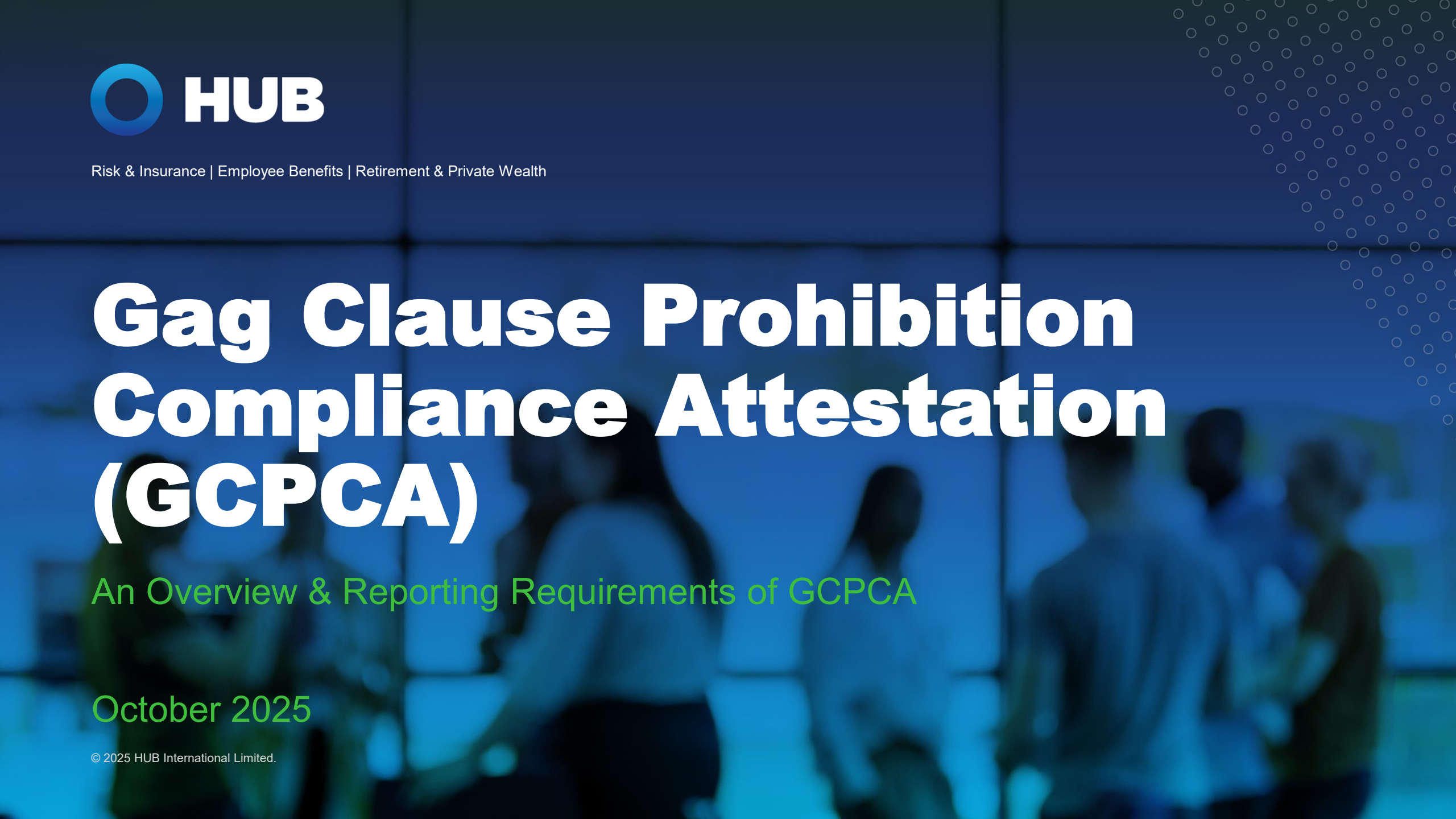

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Risk & Insurance | Employee Benefits | Retirement & Private Wealth

Gag Clause Prohibition Compliance Attestation (GCPCA)

An Overview & Reporting Requirements of GCPCA

October 2025

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Senior Vice President, Employee Benefits Compliance Practice Leader

HUB International

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Compliance Analyst, Employee Benefits Compliance

HUB International

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Agenda

1 Gag Clause Prohibition Attestation (GCPA) Overview

2 GCPA Reporting

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GCPCA Overview

What is it and Who Needs to Comply

Gag Clause – Attestation Requirements

Purpose: Prohibiting health plans from entering contracts with TPAs, insurance carriers, network and service providers or others that inhibit a plan's right to know cost or quality of care information.

When: December 31, 2025, reporting for 2025 calendar year.

What must the plan attest to:

1. Restrictions on the disclosure of provider-specific cost or quality of care information or data to referring providers, the plan sponsor, participants, beneficiaries, or enrollees, or individuals eligible to become participants, beneficiaries, or enrollees of the plan or coverage;
2. Restrictions on electronic access to de-identified claims and encounter information or data for each participant, beneficiary, or enrollee upon request, and
3. Restrictions on sharing information or data described in (1) and (2), or directing that such information or data be shared, with a business associate, as defined in 45 CFR 160.103, consistent with applicable privacy regulations.

How is the attestation submitted?
Via the HIOS site Gag Clause Attestation | Welcome! (cms.gov)

Action Item: Confirm if your medical insurance carrier, medical TPA, PBM, network provider and/or other vendor will file the gag attestation on behalf of your group health plan or if you will have to report on behalf of your plan.

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Gag Clause – Attestation Requirements

Which plans are required to comply with the attestation requirements?

Entities Required to Attest	Entities Exempt from the Attest

• Individual health insurance
 	
• Fully insured group health insurance plans (carrier is usually the reporting entity for all group health plans including grandfathered plans)
 	
• Self-insured and level funded group health plans (including MEC plans) sponsored by:
  • Church plans (governed by the IRC)
  • Grandfathered plans
  • Non-federal governmental plans sponsored by state and local governments
  • Tribal Plans that qualify as ERISA plans or state or local government plans
	• HRAs, ICHRAs
	
	• Group health plans offering excepted benefits including:
	  • Hospital indemnity or other fixed indemnity plans
	  • Disease specific insurance
	  • Dental, vision and Long-term care
	  • Short-term duration insurance
	  • Medicare and Medicaid plans
	  • Basic Health Program Plans

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Gag Clause – NEW Attestation Requirements

Attestation will require plan sponsors to certify that their contracts do not include any of the following provisions (per Tri-Agency Guidance, FAQ 69):

1. Downstream Agreements that limit a plan's access to information: A subcontractor of a vendor rendering services to the plan sponsor may not limit or restrict access or disclosure of de-identified information.

2. Restrictions on sharing de-identified claims data with a business associate: The plan's ability to share de-identified claims data is left to the discretion of the health care provider, network, TPA, association of providers, or other vendor offering access to a network of providers.

3. Restrictions on the Access to De-Identified Claims and Information, or Data, as Part of a Claims Audit or Review. Plan sponsors must ensure that their service agreements do not:
   - Limit access to a statistically significant or the "minimum necessary" number of de-identified claims;
   - Limit the scope of access to the data for specific, narrow purposes (such as limiting access solely to the context of an audit);
   - Unreasonably limiting the frequency of claims reviews (e.g., no more than once per year);
   - Limit the number and types of de-identified claims that a plan or issuer may access;
   - Restrict the data elements of a de-identified claim that a plan or issuer may access; and
   - Provide access to de-identified claims data only on the TPA's or service provider's physical premises.

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Gag Clause – Attestation NEW Requirements

- Plan sponsors are still required to complete the Gag Clause Attestation if one or more contracts include a Gag Clause.
- In Section 3 of the attestation, "**Responsible Entity's Details**", the attester must complete the **Additional Information** box and include the following information:
  - Any prohibited gag clauses that a service provider has refused to remove;
  - The name of the TPA or service provider with which the plan has the agreement containing the prohibited gag clause;
  - Conduct by the TPA or service provider that shows the service provider interprets the agreement to contain a prohibited gag clause;
  - Information that shows that the plan sponsor requested that the prohibited gag clause be removed from the agreement; and
  - Any other steps the plan has taken to come into compliance with the elimination of gag clauses.
- Be succinct as the text box only supports 1000 characters.

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Gag Clause – Next Steps

What does this mean if GHP is Fully Insured vs. Self Funded/Level Funded?

Fully Insured	Self Funded / Level Funded / ASO
• Carriers will usually attest on behalf of the fully insured group health plans. • If the carrier attests on behalf of all programs, no action is required.	• Confirm if TPA, PBM, and other service providers will submit an attestation on behalf of the group health plans. • Complete the intake form and submit it by the deadline established by the vendor (if applicable). *Failure to submit the intake form by the scheduled due date will require the employer/plan sponsor to submit the attestation on their plan's behalf.* • If all vendors are attesting on behalf of the group health plans, no action is required.
• If the insured carrier will not report on your behalf, the employer/plan sponsor will be responsible for submitting the attestation no later than December 31, 2025.	• If TPA/PBM/vendor will not attest on the GHP's behalf, the employer/plan sponsor will be responsible for submitting the attestation no later than December 31, 2025.

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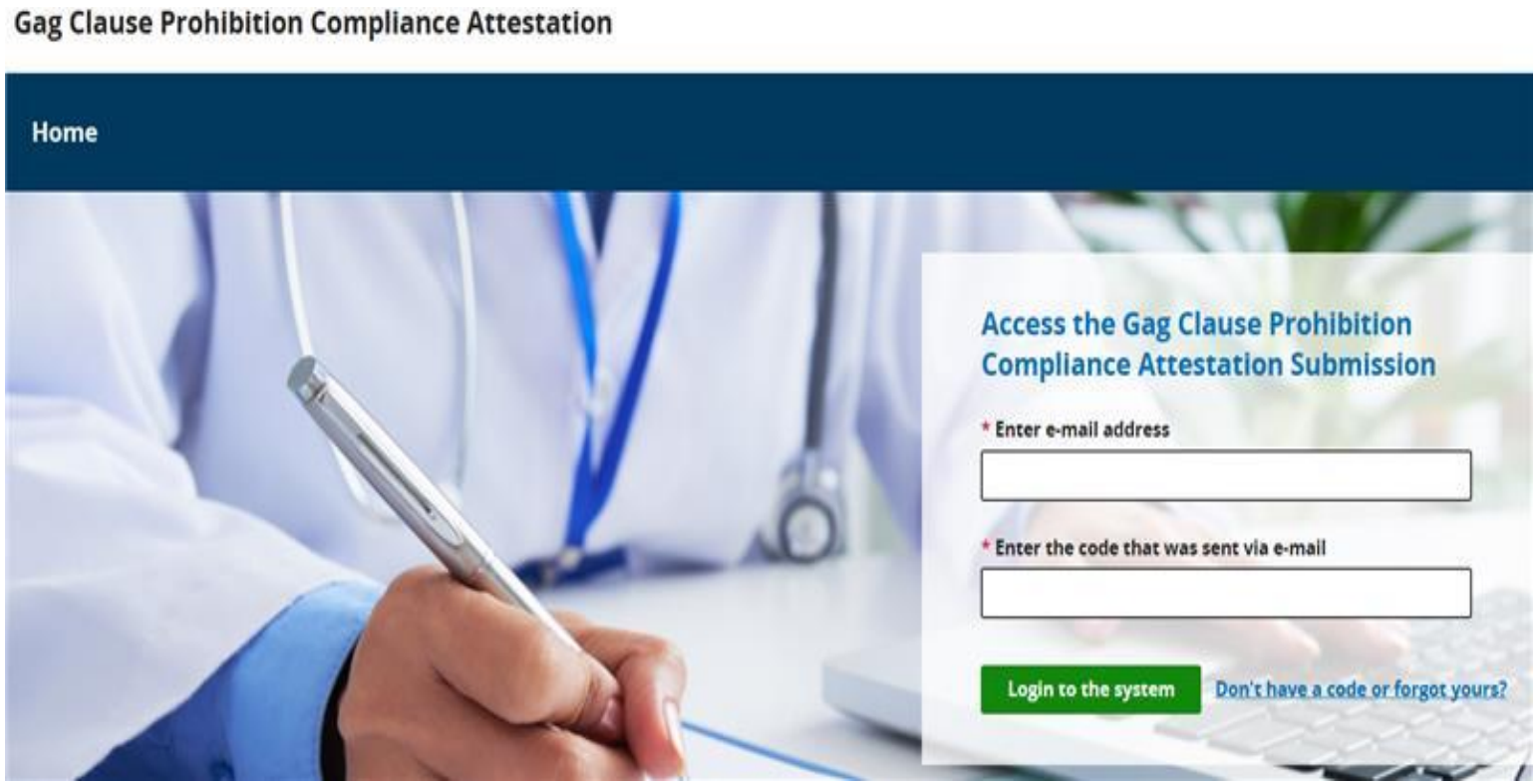
Gag Clause Attestation Reporting

Reporting in HIOS

How to Complete the Attestation

If you have been notified that your TPA, PBM or insurance carrier will not complete the attestation on your behalf, proceed to attest on behalf of your group health plan. Visit the HIOS website to start the attestation process.



Reference Links:

HIOS Website

Frequently Asked Questions (PDF)

Instructions for submitting the GCPCA (PDF)

★ User Manual for submitting the GCPCA (PDF)

GCPCA Responsible Entity Excel Template (XLSX)

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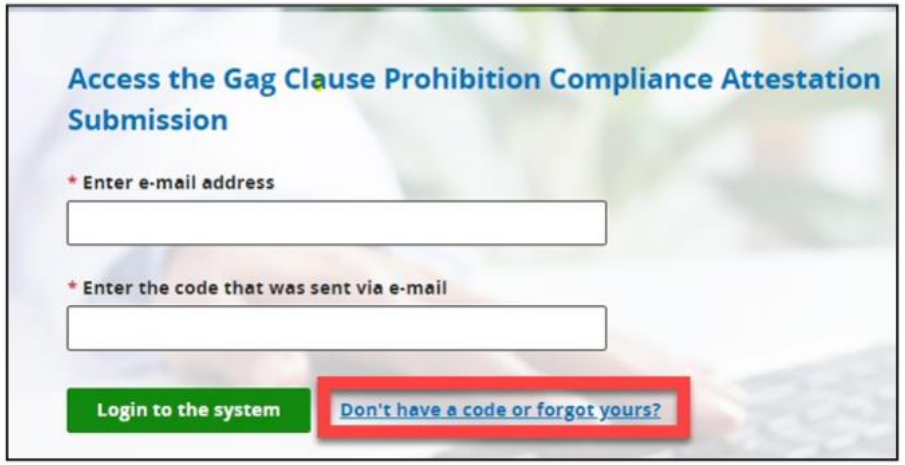
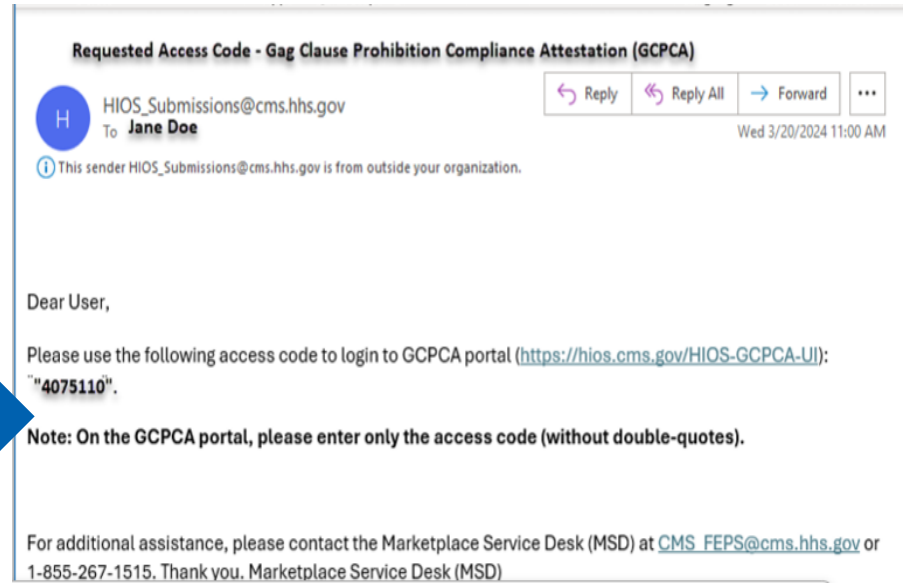
Getting Started GCPCA New and Existing Users





TIPS

- **Returning User or New User:**
  - Enter the e-mail address in the "**Email address**" field that was used last year to submit the attestation.
  - For new users, enter the email of the individual that will act as the main point of contact for the attestation (usually the person completing the attestation).
- Click on **"Don't have a code or forgot yours".**
  - A message will be displayed advising an email was sent to the email address the account was created under.
  - You will receive an email within 10 minutes from HIOS_Submissions@cms.hhs.gov with a unique code. The code will be valid for up to 14 days starting from the date the code is issued.
  - Enter the Code you received via email in the row labeled "**Enter the code that was sent via email**".
- Click **Login** to the system.

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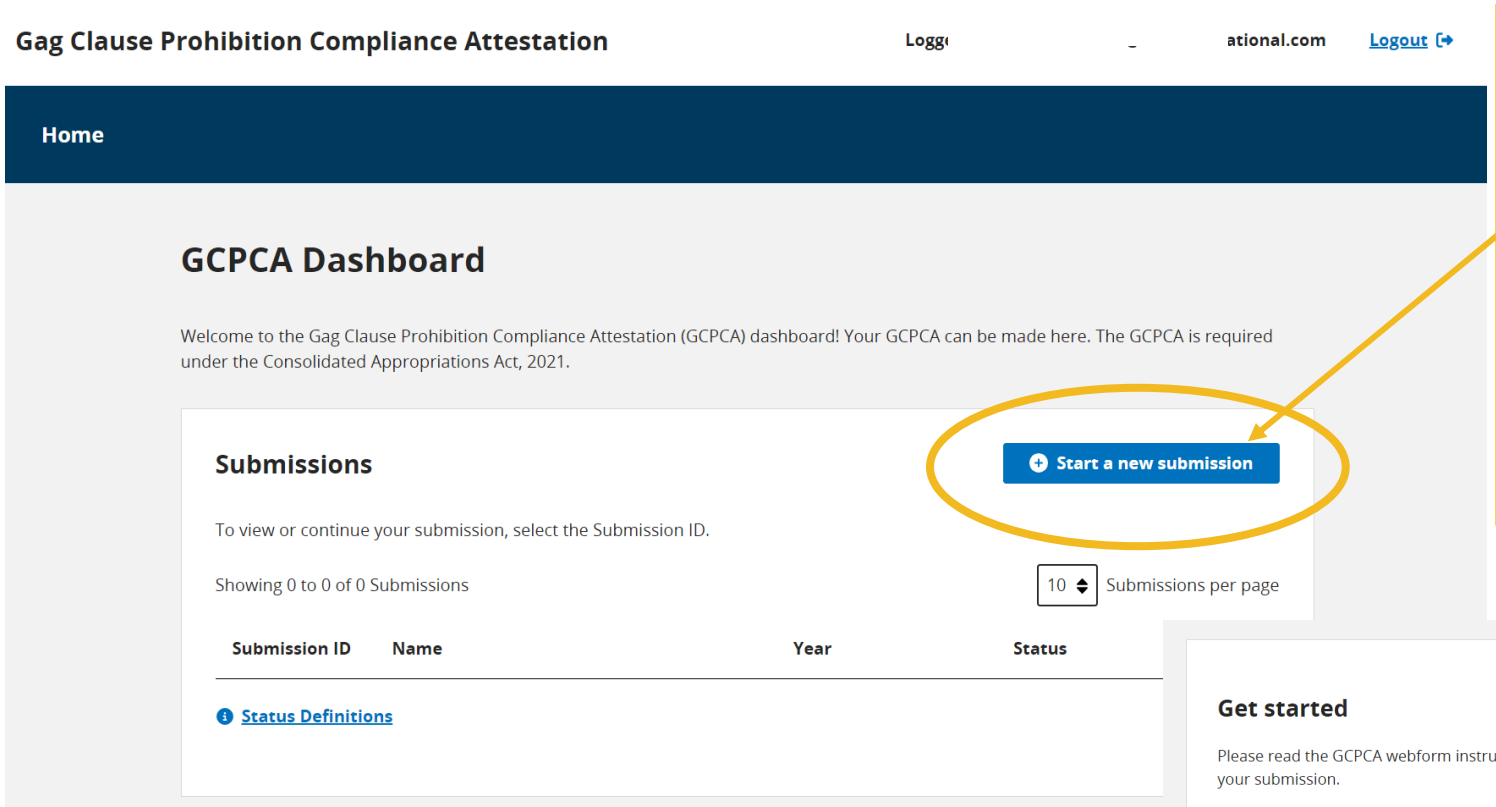
Create Attestation Submission | Dashboard

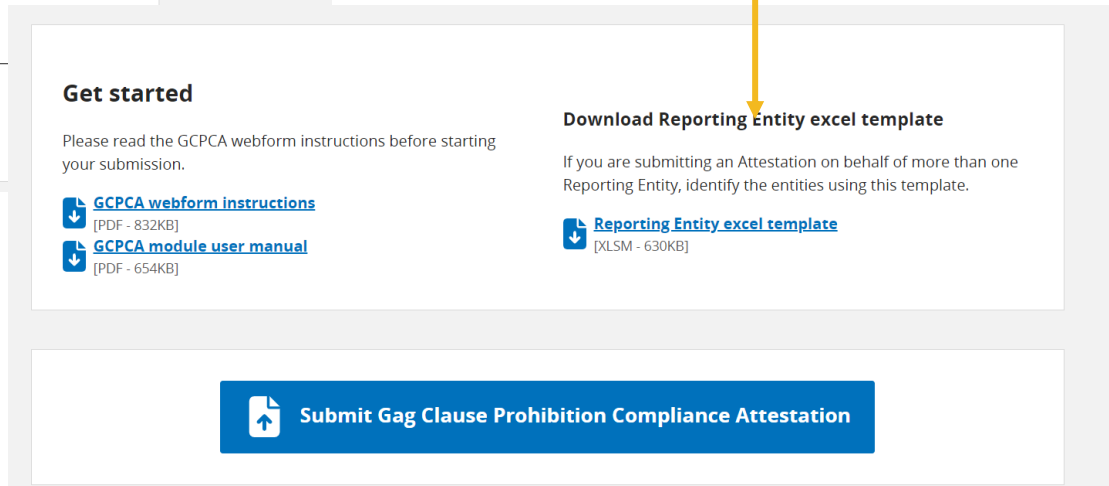


TIPS

- The Dashboard shows any previously submitted attestations.
- Click on **Start a new submission** to report for the 2025 attestation year.

OR

- If reporting for multiple plans refer to the Reporting Entity Excel Template below (e.g., multiple ERISA or non-ERISA plans sponsored by the employer)



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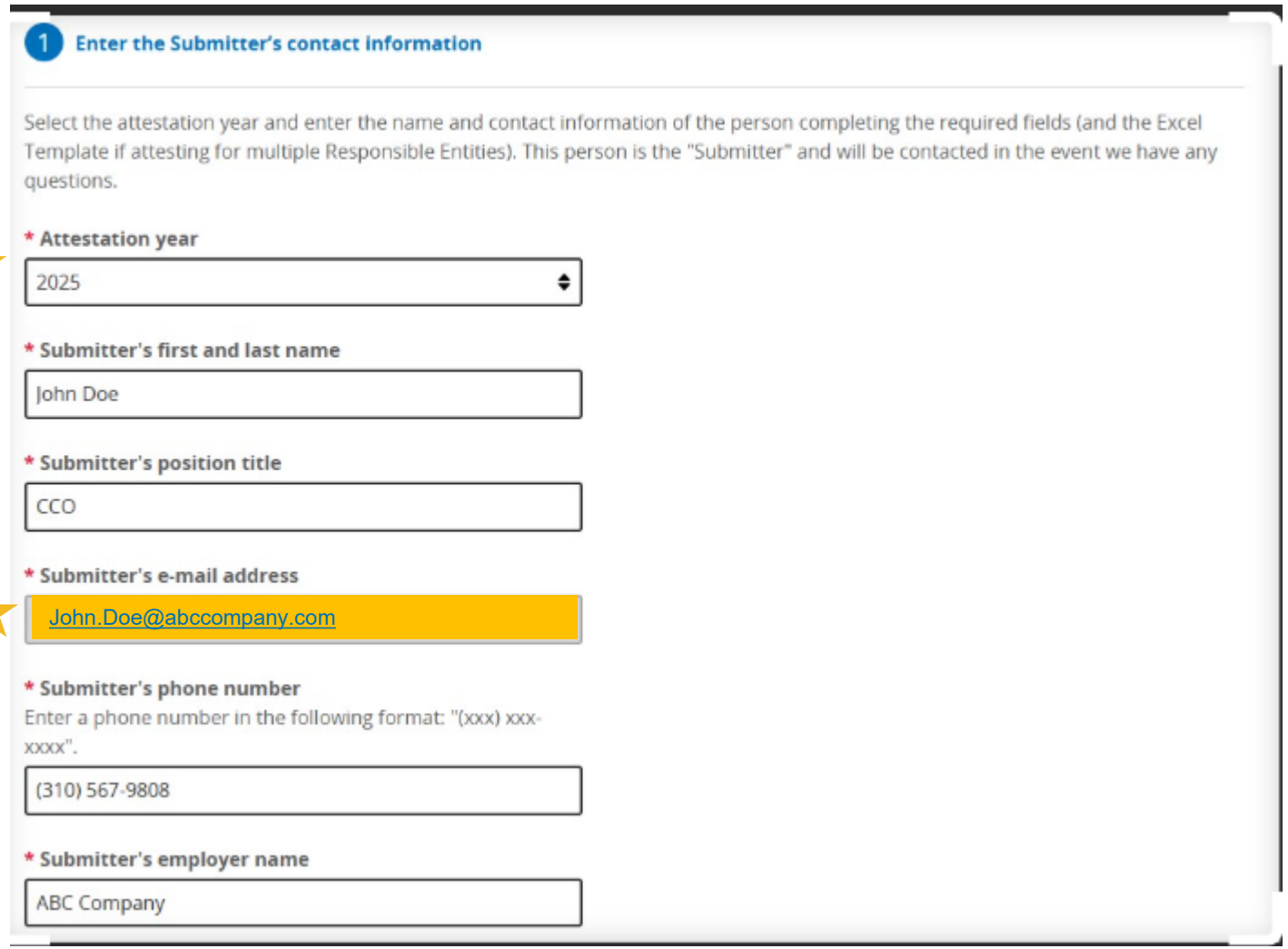
Submitter's Information



TIPS

- **Attestation year:** For the attestation year select 2025.
- **Submitter information**: A submitter and an attester can be the same person. The individual signing the attestation should be an officer or hold an equivalent position at the reporting entity.
- **Submitter's email-address**: The email address used to login into HIOS will automatically pre-populate this box and cannot be edited.

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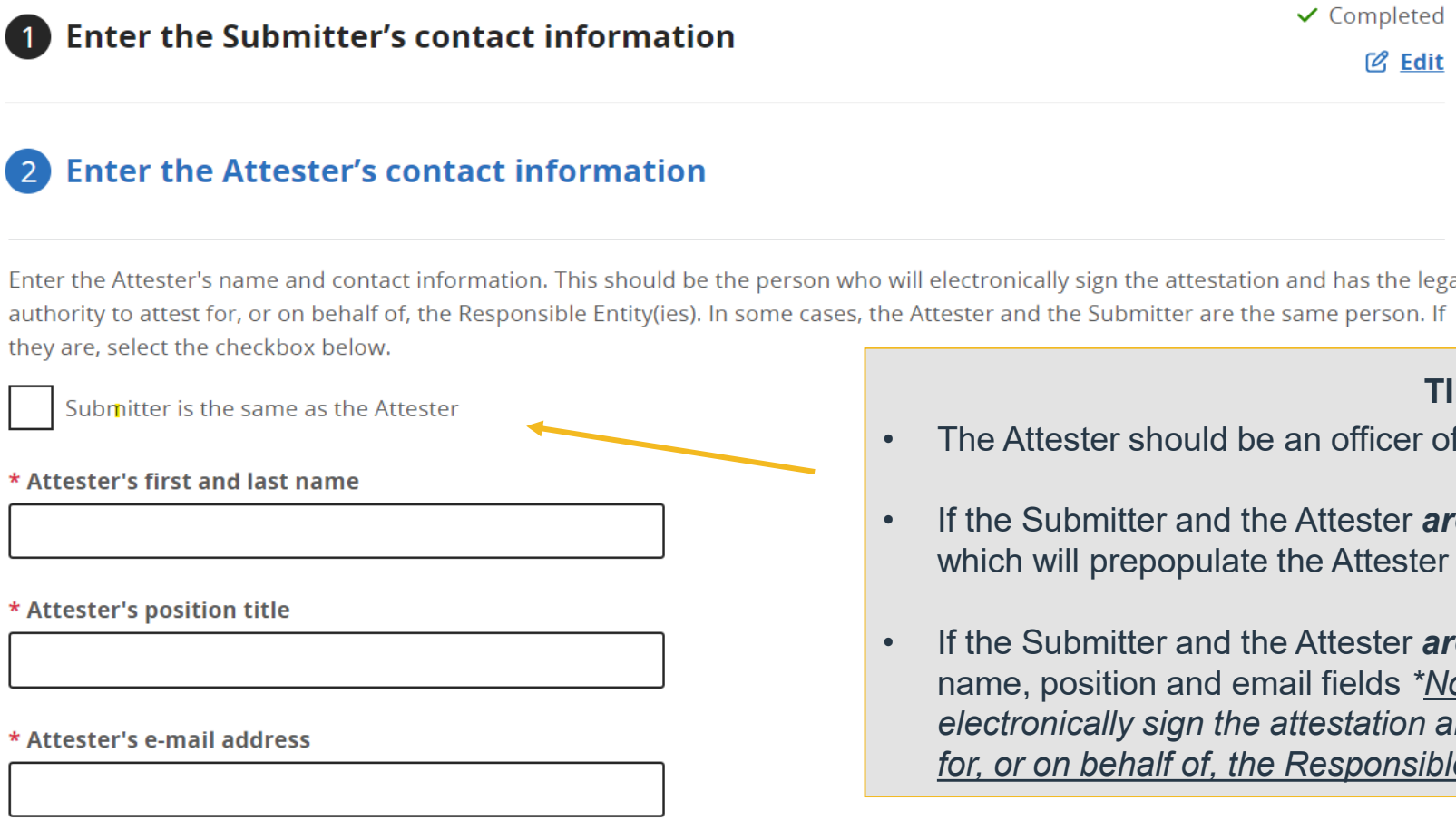
Attester’s Contact Information



TIPS

- The Attester should be an officer of the reporting entity.
- If the Submitter and the Attester ***are*** the same person mark the box, which will prepopulate the Attester fields.
- If the Submitter and the Attester ***are not*** the same person complete the name, position and email fields **Note: This should be the person who will electronically sign the attestation and who has the legal authority to attest for, or on behalf of, the Responsible Entity(ies).*

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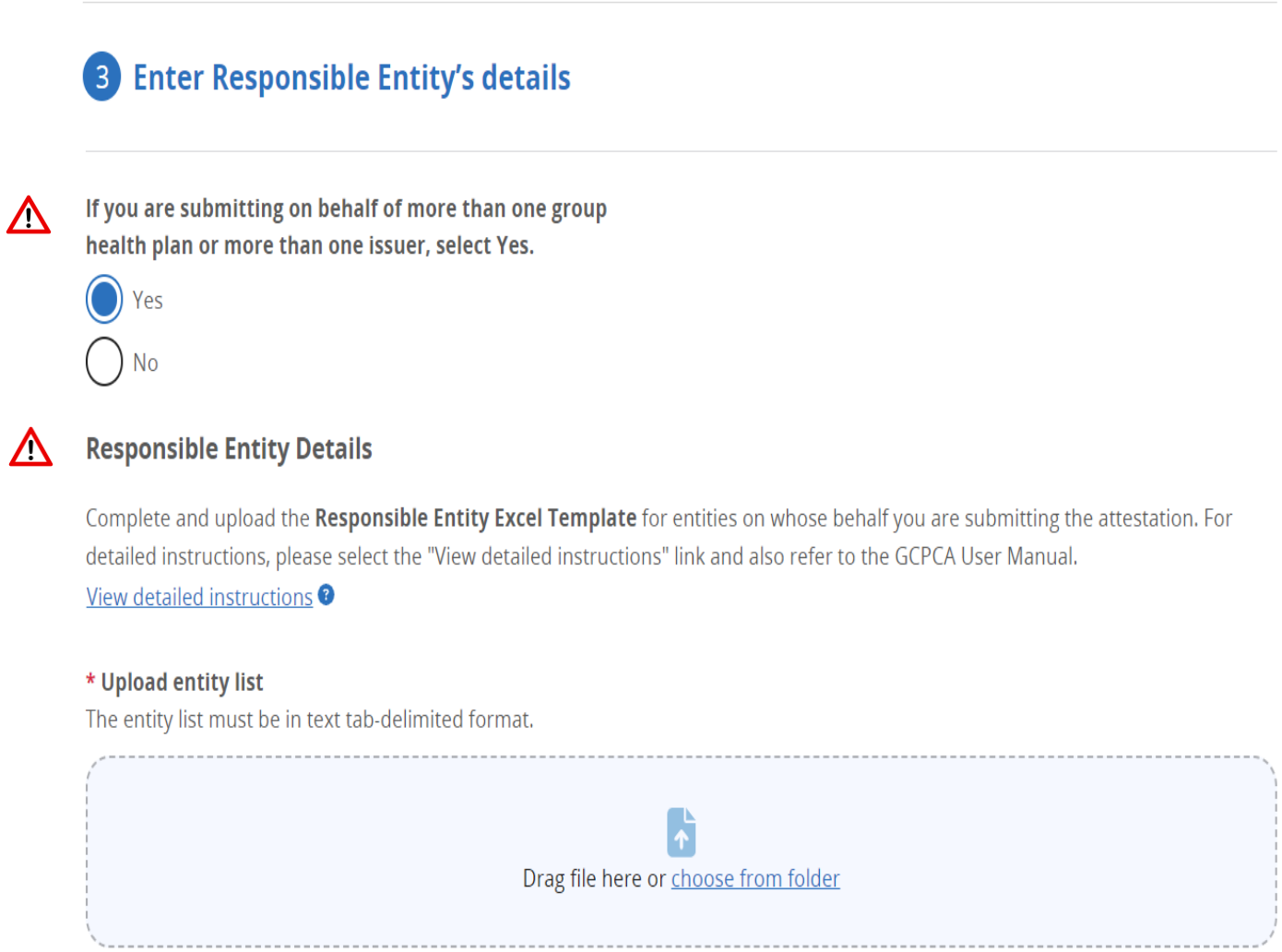
Responsible Entity's Details



TIPS

- Check **YES**, if you are attesting for more than one group health plan.
  - *Example:* Employer is attesting on behalf of separate plans that use a **different** ERISA plan numbers but are sponsored by the same employer (union/nonunion).
- When reporting for multiple Responsible Entities, you will need to complete and upload the Responsible Entity Excel Template.
- Check **NO**, if you are reporting only for one group health plan. ****Note** that a group health plan may include more that one plan type (e.g. HMO, PPO , HDHP, etc.). For ERISA plans, **all plans governed by the same ERISA** plan number are considered one plan.

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Responsible Entity's Details (Continued)

3 Enter Responsible Entity's details

If you are submitting on behalf of more than one group health plan or more than one issuer, select Yes.

- ○ Yes
- ● No

Responsible Entity's Details

Please add the entity details for the entity you are submitting this attestation on behalf of.

Note: If you are submitting on behalf of yourself, the entity details you enter will need to represent your entity.

*** Name of Responsible Entity**

ABC Company

*** Responsible Entity type**

ERISA group health plan (GHP)

*** Name of Responsible Entity's point-of-contact**

John Doe

*** Employer Identification Number**

658970789

*** ERISA Plan Number**

This only applies if you are an ERISA plan.

501

Select from the drop-down menu the type of entity that is completing the attestation.

Responsible Entity Type Help Close

The term **"Church plan"** refers to a plan established and at all times maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501(a) of the Internal Revenue Code, provided that such plan meets the requirements of section 501(b) and (if applicable) section 501(c).

The term **"ERISA Group Health Plan"** refers to an employee welfare benefit plan established or maintained by a private-sector employer or by a private-sector employee organization (such as a union), or both, that provides medical care for participants or their dependents directly or through insurance, reimbursement, or otherwise.

The term **"Non-Federal governmental plan"** refers to a governmental plan that is not a Federal governmental plan. Some examples of non-Federal governmental plans are plans that are sponsored by states, counties, school districts, and municipalities. See https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/nonfedgovplans.

The term **"health insurance issuer/insurer"** means an insurance company, insurance service, or insurance organization (including a health maintenance organization) which is licensed to engage in the business of insurance in a state and which is subject to state law which regulates insurance. This term does not include a group health plan.

Click **Save and Continue** and move along to section 4**: Enter the Attester's Contact Information**

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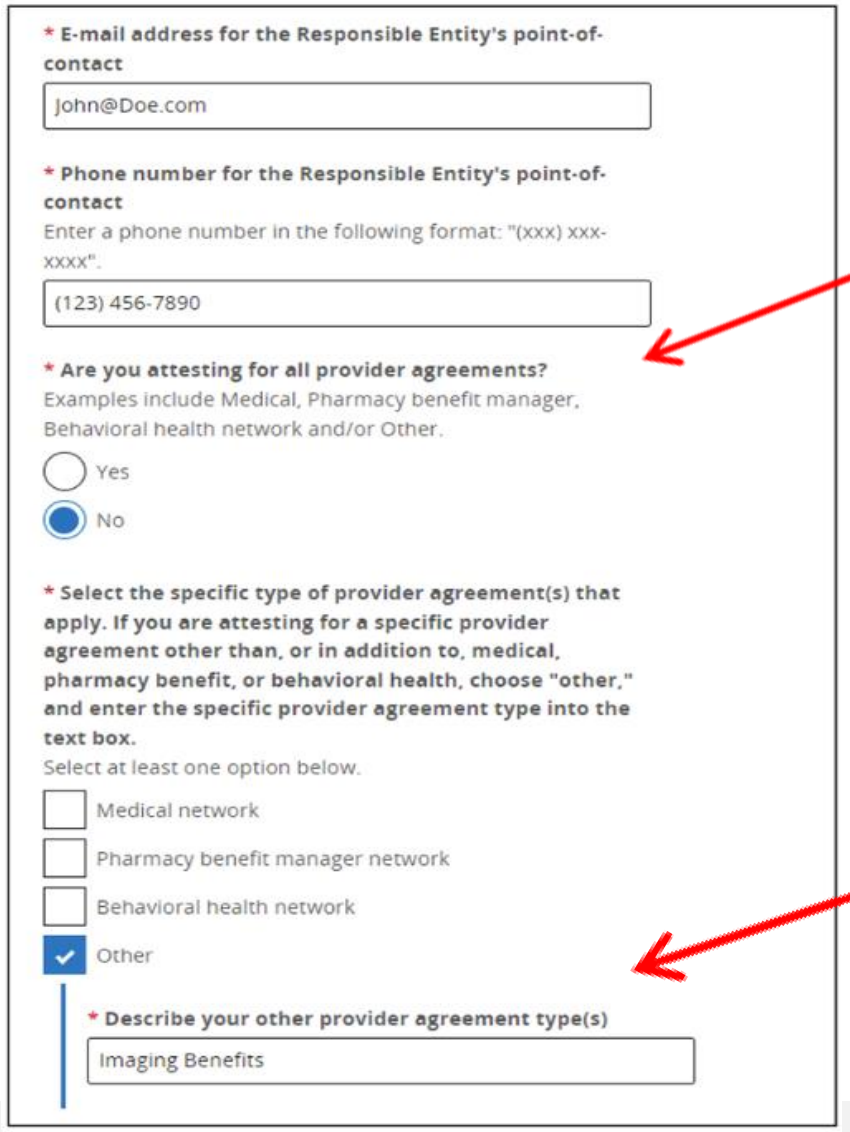
Responsible Entity's Details (continued)



TIPS

Are you attesting for all provider agreements? ***Y/N***

- **"Yes"**- If you are attesting for all provider agreement(s) (i.e., medical, pharmacy, behavioral, network and any other agreements) with health care providers.

- **"No"-** If you are attesting only for only a subset of provider agreements such as medical TPA (ASO agreement), Pharmacy Benefits Manager (PBM), radiology or laboratory network agreements, claims repricing agreements, or other agreements.

    - If you selected "*No*," specify the specific type(s) of provider or service agreements that is/are covered by your attestation. Check ***all*** that apply:
        I. Medical network
        II. Pharmacy benefit manager network
        III. Behavioral health manager network
        IV. Other
            - *"Describe your other provider agreement type(s)" input field will only be displayed if "other" is selected. (For example, radiology or laboratory network agreements, administrative services only (ASO) agreements, third party service agreements, and claims repricing agreements.)*

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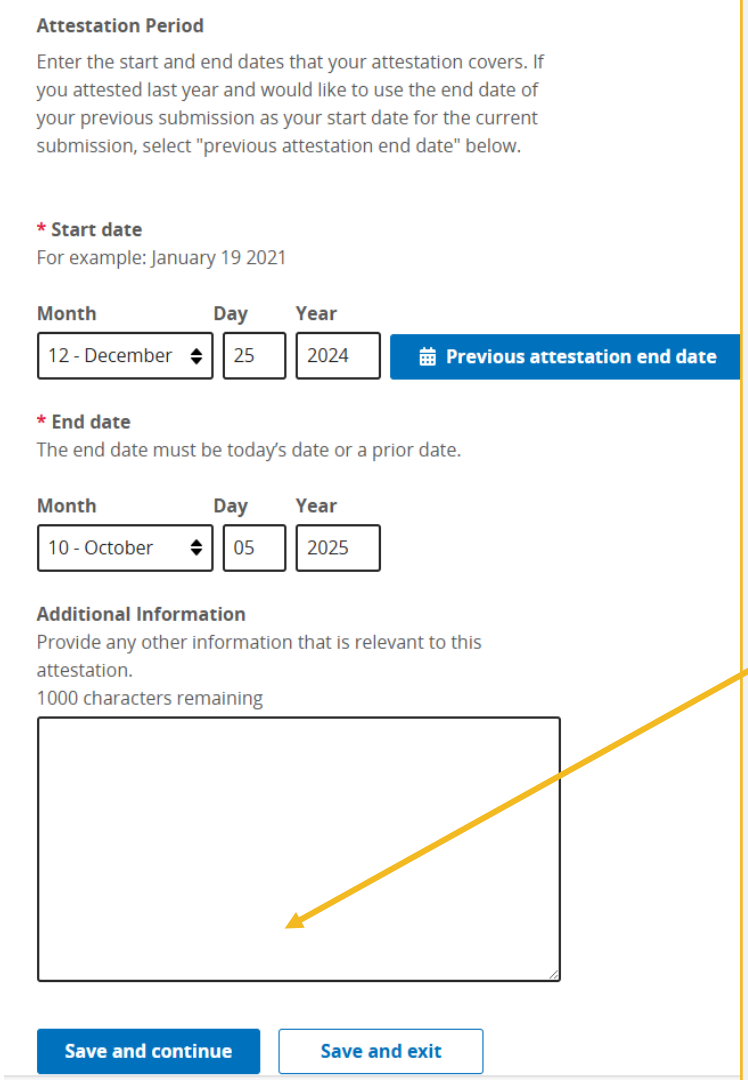
Attestation Period



TIPS

- **The "Attestation Period"** generally begins as of the day immediately following the date the prior attestation was filed and ends on the date the current year's attestation is submitted.
  - **Start date**: If you filed an attestation in 2024, the previous attestation start date is available by clicking on 'Previous attestation end date'. Enter the day after the prior year's attestation was filed.
  - **End date**: The date you submit the attestation for the new attesting year.
    - **Example:** An attestation *submitted* on December 24, 2024, for the *prior* Attestation Year (2024) would have an **Attestation Period** of December 25, 2024, through October 10, 2025, the date the attestation is submitted for the 2025 attesting year.
- **Attestation Year**: The calendar year for which the attestation is being submitted, e.g., 2025.
- **Additional Information-** In this text box enter the following :
  - Any prohibited gag clauses that a service provider has refused to remove; the name of the TPA or service provider with which the plan has the agreement containing the prohibited gag clause;
  - conduct by the TPA or service provider that shows the service provider interprets the agreement to contain a prohibited gag clause;
  - information that shows that the plan sponsor requested that the prohibited gag clause be removed from the agreement;
  - and any other steps the plan has taken to come into compliance with the elimination of gag clauses.
- Click **Save and Continue**

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Review Your Submission and Attest

Submitter's contact information

Edit

Attestation year
2025

Submitter's first and last name
John Doe

Submitter's position title
CCO

Submitter's e-mail address
liliana.salazar@hubinternational.com

Submitter's phone number
(310) 567-9808

Submitter's employer name
ABC Company

Entity
ERISA group health plan (GHP) or sponsor of ERISA plan, including a plan sponsored or established by a union

Attester's contact information

Edit

Attester's first and last name
John Doe

Attester's position title
CCO

Attester's e-mail address
John.Doe@ABC.com

Attester's phone number
(310) 567-9808

Attesting entity (Attester's employer)
ABC Company

Responsible Entity's attestation detail

Edit

Responsible Entity's name
ABC Company

Responsible Entity's type
ERISA group health plan (GHP)

Responsible Entity's point of contact
John Doe

Responsible Entity's EIN
459834567

ERISA Plan Number
501

Responsible Entity's mailing address
600 Street Name, Ste 600

Responsible Entity's e-mail address
liliana.salazar@hubinternational.com

Responsible Entity's phone number
(310) 568-4567

Provider agreement type(s)
Medical network
Pharmacy benefit manager network
Behavioral health network

TIPS

- Review each section of the attestation.
- If you want to edit information, click on the **Edit** button. Make the necessary corrections and save your changes.
- Proceed to Section 5, the Attestation.

4 Review your submission and attest

Completed

Edit

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Attestation Submission | Review & Submit

5 Verify the entity type(s) on whose behalf you are attesting

You must, at a minimum, select that you are either attesting on behalf of a group health plan or insurance issuer. If you are attesting on behalf of both a group health plan, whether fully insured or self-funded, and an issuer of individual health insurance coverage, check both boxes.

Group health plans, including non-federal governmental plans, and health insurance issuers offering group health insurance coverage

I attest that, in accordance with section 9824(a)(1) of the Internal Revenue Code, section 724(a)(1) of the Employee Retirement Income Security Act, and section 2799A-9(a)(1) of the Public Health Service Act and except as provided herein, the group health plan(s) or health insurance issuer(s) offering group health insurance coverage on whose behalf I am signing has not, for the dates specified and as provided in the foregoing information, entered into an agreement with a health care provider, network or association of providers, third-party administrator, or other service provider offering access to a network of providers that would directly or indirectly restrict the group health plan(s) or health insurance issuer(s) from —

1. Providing provider-specific cost or quality of care information or data, through a consumer engagement tool or any other means, to referring providers, the plan sponsor, participants, beneficiaries, or enrollees, or individuals eligible to become participants, beneficiaries, or enrollees of the plan or coverage;
2. 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 the privacy regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the amendments made by the Genetic Information Nondiscrimination Act of 2008 (GINA), and the Americans with Disabilities Act of 1990 (ADA), including, on a per claim basis —
   a. Financial information, such as the allowed amount, or any other claim-related financial obligations included in the provider contract;
   b. Provider information, including name and clinical designation;
   c. Service codes; or
   d. Any other data element included in claim or encounter transactions; or
3. Sharing information or data described in items (1) or (2), or directing that such data be shared, with a business associate as defined in section 160.103 of title 45, Code of Federal Regulations (or successor regulations), consistent with the privacy regulations promulgated pursuant to section 264(c) of HIPAA, the amendments made by GINA, and the ADA.

☐ I'm attesting on behalf of group health plans, including non-federal governmental plans, and/or health insurance issuers offering group health insurance coverage.

TIPS

- As the Attester, read the section, “Group health plans, including non-federal governmental plans and health insurance issuers offering group health insurance coverage.”
- Select “I’m attesting on behalf of group health plans and/or health insurance issuers”.
- Check the box next to “**I attest that all information in this submission is accurate**.”

Attest to the Responsible Entity's compliance with the Gag Clause Prohibition Compliance requirement

I attest that I have the authority to bind the plan(s) or issuer(s) entered/uploaded in the entity attestation details.

☐ I attest that all information in this submission is accurate.

*** To sign this attestation, enter your full name below.**

Signed submission date
10/09/2025 07:47 PM

Submit Start over

TIPS

- Check “**I attest that all information in this submission is accurate**”.
- Enter your name as listed in Section 2 of the Attestation.
- Click “**Submit**”

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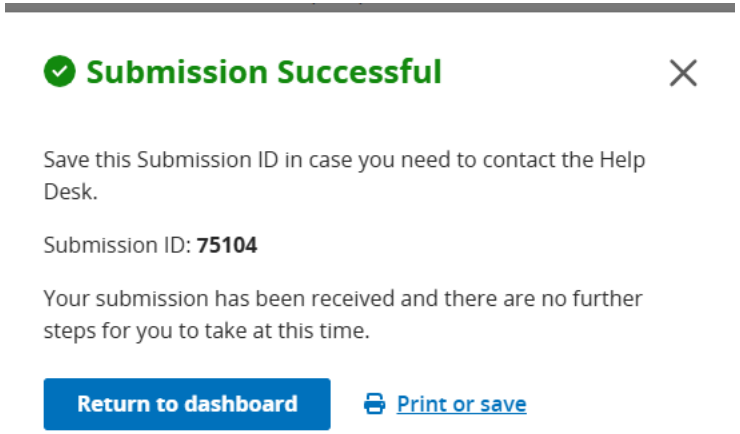
Attestation Submission | New Options Print or Save

After a successful submission, a box will appear that includes a Submission ID and allow you to ***Print or Save*** a copy of the attestation.

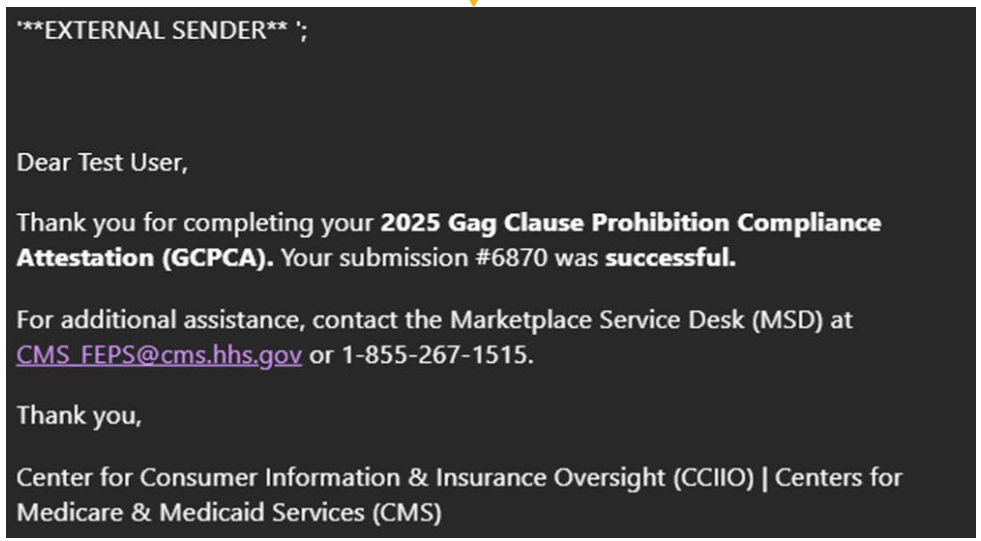


TIPS

- Please keep the **Submission ID** as a record of your submission.
- You will use this number to contact CMS with questions regarding your submission.

TIPS

CMS will send an email confirming a GCPA has been successfully submitted. Please retain a copy of the attestation and the confirmation email for your records.



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GCPCA | Resources and Help Desk

- Frequently Asked Questions (PDF)
- Instructions for submitting the GCPCA (PDF)
- User Manual for submitting the GCPCA (PDF)
- GCPCA Responsible Entity Excel Template (XLSX)
- Enter Webform Now for a GCPCA
- Gag Clause Prohibition Compliance Attestation | CMS

  - If you have questions about submitting your Gag Clause Prohibition Compliance Attestation, contact the Centers for Medicare & Medicaid Services (CMS) Help Desk at 1-855-267-1515, or e-mail CMS_FEPS@cms.hhs.gov. To assist CMS with routing your inquiry, please include “GCPCA” in the subject line.
  - Confirmation receipts are generally sent on the same business day that the inquiry is received. CMS notes they respond to all inquiries within 2-3 days. However, in some instances, it may be 2 weeks or longer before you receive a response. Please consider this time frame in your submission preparation time.

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Thank you

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