



Rewards Policy Insider 2023-24



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**COMPLIANCE REMINDER: Gag Clause
Attestation Due by December 31, 2023**

Group health plans and health insurance issuers must submit their first annual attestations of compliance with new rules banning certain “gag clauses” in contracts with providers and others by December 31, 2023. The initial attestation will cover the period from December 27, 2020 – when the gag clause prohibition was enacted and took effect – through the date of attestation.

Background

The Consolidated Appropriations Act, 2021 (“CAA 2021”) amended the Code, ERISA, and the Public Health Service Act to prohibit group health plans and group health insurance issuers from entering into agreements with health care providers, a network of providers, third-party administrators (“TPA”) or other service providers offering access to a network of providers that include certain “gag clauses.” For this purpose, a “gag clause” refers to any direct or indirect:

- 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;
- restrictions on electronic access to de-identified claims and encounter information or data for each participant, beneficiary, or enrollee upon request and consistent with HIPAA and other privacy rules; and
- restrictions on sharing any information or data described above, or directing that such information or data be shared, with a business associate pursuant to the HIPAA privacy rule.

Additionally, the rules require group health plans and issuers to submit an annual attestation of compliance – the Gag Clause Prohibition Compliance Attestation – to the Agencies. The initial attestation is due by December 31, 2023, and subsequent attestations will be due annually by December 31.

Completing and Filing the Attestation

The attestation must be submitted by group health insurance issuers, and by fully-insured and self-insured group health plans. This includes ERISA plans, non-federal governmental plans, and Church plans subject to the Code. Group health plans that are “grandfathered” for purposes of the Affordable Care Act are subject to the prohibition on gag clauses, and also must file the annual attestation.

The Departments of Health and Human Services, Labor, and Treasury have established a website to receive the Gag Clause Prohibition Compliance Attestation. Instructions and other information, including a link to the page for submitting the Gag Clause Prohibition Compliance Attestation, is available at: <https://www.cms.gov/ccio/programs-and-initiatives/other-insurance-protections/gag-clause-prohibition-compliance>.

For additional information or assistance, please contact your Deloitte advisor.

Abortion Law Roundup: Recent Developments in Ohio, Texas, and Georgia

Recent developments in three states are shifting the landscape of the nation's abortion laws. In Ohio, voters approved a measure enshrining the right to abortion in the state constitution. In Texas, several counties have passed ordinances cracking down on assistance for individuals who travel to other states for abortions. And in Georgia, the state's highest court upheld a 6-week abortion ban.

Ohio Enacts Constitutional Amendment

On November 7, 2023, nearly 57% of Ohio voters voted to pass "Issue 1," which amends the state's constitution to provide the "right to make and carry out one's own reproductive decisions," including decisions about abortion and contraception. Issue 1 also explicitly permits the state to prohibit abortion after fetal viability, unless the treating physician determines that it is necessary to protect the pregnant patient's life or health. The amendment will go into effect on December 7, 2023.

In September 2022, an Ohio state court temporarily blocked a 2019 law prohibiting abortions after a "fetal heartbeat" is detectable (these laws typically ban abortions after six weeks). With the passage of the constitutional amendment, the fetal heartbeat law will not go into effect. Currently, abortion is generally legal in Ohio up to 20 weeks.

Texas Counties Target Abortion Travel Assistance

In Texas, abortion opponents have taken a relatively unique track to further constrict abortions in the state. Currently, Texas has multiple laws in effect that ban abortion at any stage of pregnancy. In 2021, Texas passed the nation's first law targeting those who aid and abet individuals obtaining an abortion. The law allows any person (other than the government) to bring a civil lawsuit against a person who aids or abets the performance of an abortion, including paying for or reimbursing the costs.

In the same vein as the civil enforcement law, multiple counties in Texas have passed local ordinances prohibiting persons from helping pregnant individuals travel to obtain abortions in states where the procedure is still legal. Most recently, Lubbock County, with a population of over 300,000, [enacted a law](#) prohibiting both abortions at any stage of pregnancy within the county and any conduct that aids or abets an elective abortion, including, among other things: providing transportation to or from an abortion provider; offering or providing money or other resources with the knowledge that it will be used to pay for or reimburse the costs of an abortion; and providing or arranging for insurance coverage of an elective abortion. Other, smaller counties, such as Cochran County, Mitchell County, and Goliad County, have passed similar laws.

These Texas laws should be of particular concern for employers weighing whether and to what extent to pay for or reimburse employees for the costs of traveling to obtain an abortion. Texas has proven to be a trendsetter with

respect to strict abortion laws. For instance, Oklahoma passed a law almost identical to Texas’s own civil enforcement law (discussed above), and other states are considering such laws. It is possible that counties in other states will see the adoption of these ordinances in Texas counties and will consider enacting similar laws.

Georgia Supreme Court Upholds 6-Week Ban

In another ongoing battle over abortion, on October 24, 2023, the Georgia Supreme Court [upheld](#) Georgia’s fetal heartbeat law. The state supreme court addressed only the narrow issue of whether the law should be voided because when it was enacted in 2019, the law clearly violated the Supreme Court’s decision in *Roe v. Wade* and subsequent cases. Relying on the Supreme Court’s landmark decision in *Dobbs v. Jackson Women’s Health Organization*, which overturned the federal constitutional right to an abortion, the Georgia Supreme Court determined that the law is valid. Now, the case heads back to a lower state court for consideration of whether the state constitution protects the right to an abortion.

IRS Issues Inflation-Adjusted Health and Welfare Limits for 2024

Employees will be able to contribute as much as \$3,200 to their health FSAs in 2024, according to IRS [Rev. Proc. 2023-34](#). Other health and welfare plan limits, including the gross income exclusion for mass transit and parking, will be going up as well.

The following table provides a complete summary of inflation-adjusted health and welfare plan limits for 2023 and 2024, including those relating to health savings accounts (HSAs), high-deductible health plans (HDHPs), and others that IRS previously released in separate guidance.

	2023	2024
Affordable Care Act		
OOP Max for Essential Health Benefits -- Single	\$9,100	\$9,450
OOP Max for Essential Health Benefits -- Family	\$18,200	\$18,900
Affordability Threshold for Employer-provided Minimum Essential Coverage	9.12%	8.39%
Health Savings Accounts		
Annual Contribution -- Self	\$3,850	\$4,150
Annual Contribution -- Family	\$7,750	\$8,300
Age 55+ Catch-up Contribution	\$1,000	\$1,000
HDHP Minimum Deductible -- Self	\$1,500	\$1,600
OOP Max -- Self	\$7,500	\$8,050
HDHP Minimum Deductible -- Family	\$3,000	\$3,200
OOP Max -- Family	\$15,000	\$16,100

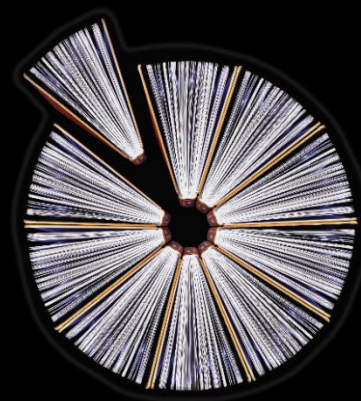
Excepted Benefit HRA		
Maximum Amount that may be made newly available for the plan year	\$1,950	\$2,100
Health FSAs		
Maximum Salary Reduction Contributions	\$3,050	\$3,200
Maximum Carryover	\$610	\$640
Dependent Care Assistance Programs		
Maximum Gross Income Exclusion	\$5,000	\$5,000
Educational Assistance Programs		
Maximum Gross Income Exclusion	\$5,250	\$5,250
Qualified Transportation Fringe Benefit		
Maximum Combined Exclusion for Transit Passes and Commuter Vehicle	\$300/month	\$315/month
Maximum Exclusion for Qualified Parking	\$300/month	\$315/month
Adoption Assistance Programs		
Maximum Gross Income Exclusion for Child with Special Needs	\$15,950	\$16,810
Maximum Gross Income Exclusion for Qualified Adoption Expenses	\$15,950	\$16,810

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