

# Navigating the Consolidated Appropriations Act

## Frequently Asked Questions

**Q: What size employers does CAA apply to?**

A: ERISA governed employer health plans with 2 or more employees.

**Q: What are the chances the payers are going to provide full data files to fiduciaries even if gag clauses are removed from their contracts?**

A: This is a subjective question. The onus is on the fiduciary to only be party to contracts with no gag clause that restricts their ability to access their cost and quality health plan data. Confirming compliant contracts and agreements is the first step, the next step is actually accessing plan data. If the TPA or PBM (data source) refuses to provide data, the Fiduciary must document this and take affirmative action to work with a new vendor who will provide such data and support CAA transparency.

Note, most employers are not equipped to accept or analyze data. It is important for the plan sponsor to assess and engage data platforms to own and store their data.

**Q: Should my broker be helping me with gathering this information?**

A: YES. If your benefit advisor / broker is your source for guidance on Employee Benefit plan regulation, they should be very proactive in supporting your responsibilities to CAA and protecting the interests of your participants.

Be advised that many Benefit advisory firms are not proactive with CAA education, transparency regulations and fiduciary process. This may be a function of conflicts of interest they have with non-transparent revenue streams tied to your plan.

Understand the CAA is employer law. The liability for compliance rests 100% with the employer, not the Benefit advisor.

**Q: How do you handle carriers like recent Cigna stating that they are not sharing attestation and state that they don't have gag rules?**

A: What the National Carriers, including CIGNA, say is relevant but not conclusive. Trust but verify. The onus is on the employer as Fiduciary to confirm relevant legal agreements with TPA's PBM's and Networks do not contain gag clauses. It is best practice to confirm CAA compliant language in writing, document your process and assessments. You must read your agreements or retain counsel to assist you. Your benefit advisor is a candidate to do this as well.

As relates to attestation, most TPA's and PBMs and Network (PPO) administrators (BUCA), agree the attestation function rests with all Self-funded health plan sponsors. For Fully insured

## Navigating the Consolidated Appropriations Act

plans, many of these entities are offering to attest to Gag Clause Prohibition Compliance on behalf of the employer. Trust but verify. Get a copy. Screenshot, confirm your plan has been attested by you or a third party.

**Q: If you have a PBM and the PBM had a Gag clause with the network pharmacy, not with the Plan, are you in violation?**

A: CAA GCPC applies to contract to which the Fiduciary is a party. Not those contracts between BUCA, TPA, and PBMs.

To the extent a vendor is pointing at a 3<sup>rd</sup> party agreement as an excuse to provide data, push harder for your access to data. If they refuse, you need to document this. Then take action to move on from that vendor relationship to a CAA compliant data sharing vendor.

**Q: Are enforcement activities/litigation retroactive back to 2021 or go forward? (Same question for penalties)**

A: Enforcement is retroactive to the compliance dates missed. The best practice to mitigate enforcement and litigation risk is a documented Fiduciary process. Creating an affirmative defense.

**Q: Are municipalities exempt?**

A: Municipalities are generally governed by State Law, not ERISA (Federal). CAA Amends ERISA so State Public Entities are not the primary purview of CAA. That said, most states have a strong fiduciary standard for health plan sponsors. Confirm with your state as it relates to Fiduciary duties for Cities, Counties, School Districts and State Colleges etc.

**IMPORTANT: All health plan sponsors will benefit from a prudent fiduciary process to** expose, assess, and remove unnecessary costs.

The best reason to activate a data driven fiduciary process is to pay less for healthcare.

**Q: What other CAA providers exist? How is HPFid different and what is the cost for the HPfid service?**

A: We see 2-3 similar offerings in the marketplace. Two versions are a product of Retirement Plan Fiduciary consulting. Healthcare Plans are very different than Retirement plans, we believe it is critical that the Health Plan Fiduciary Process be led by Health Care Experts. Understanding the depth of the specific conflicts of interest, funding methods, Health plan cost and quality data etc. HPfid.com was created by Health Care Strategy, Compliance, and Health Claim data experts who are also Fiduciary Guides and consultants.

Plan sponsors need to discern the most qualified guides to remove cost and conflicts of interest within their health plans.

# Navigating the Consolidated Appropriations Act

**Q: Will implementing a medical price transparency technology partner satisfy the fiduciary responsibility for Plan Sponsors?**

A: In and of itself this does not pass the standard of a CAA compliant, documented fiduciary process. Plan Sponsor Fiduciaries need to perform specific duties, and document their process, with a repeatable fiduciary process each year. This process will certainly **include** price transparency.

**Q: Can you talk about what fiduciaries can do to provide employees with the necessary information to make smart healthcare decisions and protect themselves from lawsuits?**

A: Two topics here: 1. Smart participant decisions and Protection from lawsuits. The best protection from lawsuits and or enforcement penalties is a Documented, CAA compliant fiduciary process that includes a timely attestation. See the Four Pillars of CAA + Gag Clause Prohibition Compliance Attestation.

A Documented compliance FID process creates an affirmative defense to litigation and penalties.

**Q: Can the employer sue the TPA for violating the CAA?**

A: CAA is Employer Law. The party of interest in most lawsuits will be the plan sponsor and its Fiduciaries. The CAA is not aimed at TPA's. They will comply with Gag Clause Prohibition and provide access to data on their own accord.

**Q: Does CAA apply to nonprofits?**

A: Yes, if they sponsor an ERISA Health Plan.

**Q: CAA is only for medical, not dental/vision?**

A: Technically Medical, Dental, and Vision are considered Health and Welfare plans under ERISA. The CAA Amends ERISA. SO yes, they are subject to a prudent Fiduciary process. That said, the conflicts of interest and hidden fees that are so common in medical plans are not as relevant in Dental and Vision plans. For this reason, the focus of CAA 2023 is on Medical, PBM, and PPO Network agreements.

**Q: How long does it take for me to complete the CAA process with HPfid? Days, Weeks, Months?**

A: Two answers: in 2023, then 2024.

2023: Most employers who follow **HPfid Complete 2023** will guide an employer to create a good faith compliance effort on the four pillars and be in a defensible position to complete the Gag Clause Prohibition Attestation within four hours or so between now and the 12-31-23 deadline.

# Navigating the Consolidated Appropriations Act

2024: Building on the Foundation of CAA 2023, plan sponsors should budget 2-3 hours per quarter for Fiduciary meetings and process. Using HPfid.com as their guide with secure documentation of their process.

Beyond the investment of time and resources to comply, 2024 is the opportunity to expose unnecessary cost layers and pay less for healthcare moving forward. As much as 20-30% less.

**Q: Employers have been working hard to provide HC benefits for their employees. Why penalize the employer vs. the carries who have been making money behind a curtain?**

**A:** CAA Fiduciary process is not a penalty. It is simply the responsibility of health plan sponsors who oversee benefit design, unit cost, vendor selection, legal agreements, and cost sharing on their health plan. Due to conflicts in Big Healthcare, Employers need to perform these functions with a prudent and critical eye to hidden costs and conflicts of interest in their health plan structures, to protect the wellbeing and financial assets of the plan, employee participants, and enrolled dependents.

The penalties and lawsuits only apply to employers who fail to activate and document a prudent fiduciary process (that protects participants). The employer is not a victim, they have a duty that has been part of ERISA since 1974. CAA Activates this duty because Big Healthcare, national TPA's and PBMs evolved to create cost and revenue streams that do not add value and prevent affordable care.

**Q: Can you please clarify that this applies to all plans fully insured and all other funding contracts?**

**A:** CAA applies to all funding types of ERISA governed health plans. Fully Insured, Self-Insured, Level Funded.