RE: Gag Clause Memo

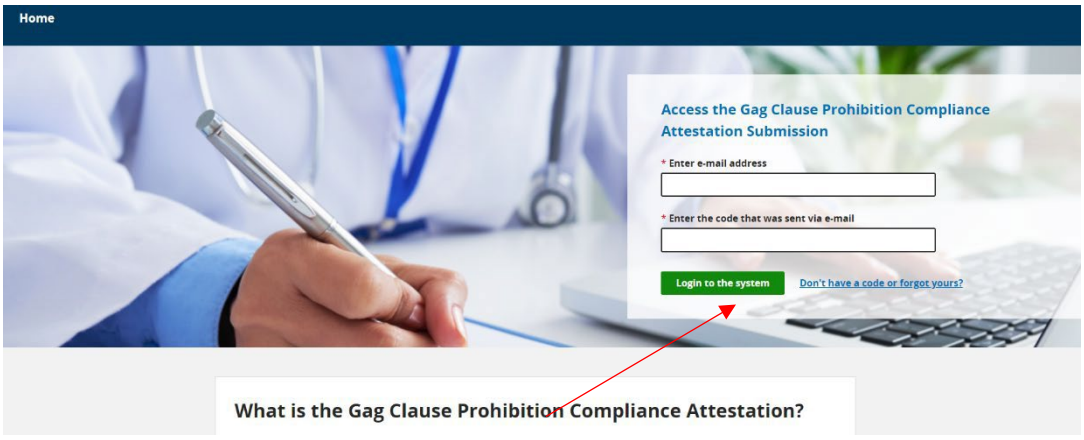
From: 90 Degree Benefits

Gag Clause Prohibition Compliance Attestation

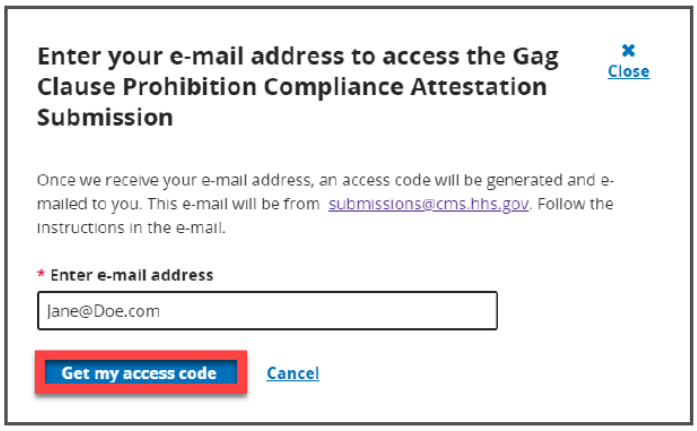
Overview

Group Health Plans and health insurance issuers offering group or individual health insurance coverage must annually submit a Gag Clause Prohibition Attestation. The attestation clause is required to be compliant with the Internal Revenue Code Section 9824, Employee Retirement Security Act Section 724, and Public Health Service Act Section 2799A-9. The attestation gag clause is an attestation that plans or issuers ***do not have clauses in their agreements with providers that would prevent the disclosure of cost or quality of care information or data***, and certain other information to active or eligible participants, beneficiaries, and enrollees of the plan or coverage, plan sponsors, or referring providers, or restrict the plan or issuers from sharing such information.

1. In order to satisfy the requirement to submit the annual attestation of compliance, plans and issuers should submit their attestation using this link. Gag Clause Attestation | Welcome! (cms.gov). The link should lead you to the home page of the Gag Clause Prohibition Compliance Attestation.

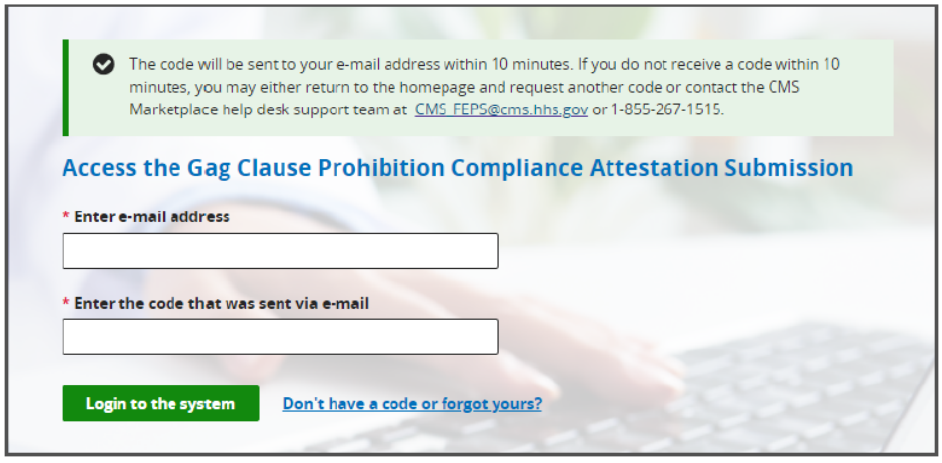


2. To log in, click the “Don’t have a code or forgot yours?” Once you click the “Don’t have a code or forgot yours?” tab, you should see the next scene below.



3. The user should enter their email address into the "Enter email address" and then select "get my unique code."

4. After completing a successful unique code request, the message "Request was successful" displays for the user.



5. The user receives an email with the unique code. This unique code will be valid for 14 days. Users should check their SPAM folders if they do not immediately see this email, but they should wait at least ten minutes before requesting another code. Users should receive the email below.

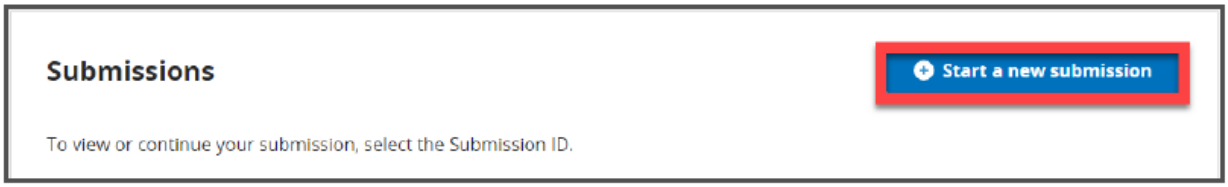
> Dear User,
>
> Please use the following access code to log into the GCPCA portal (https://hios.cms.gov/HIOS-GCPCA-UI):
>
> **Note: On the GCPCA portal, please enter only the access code (without double-quotes).**
>
> Please *DO NOT SHARE* your access code with anyone.

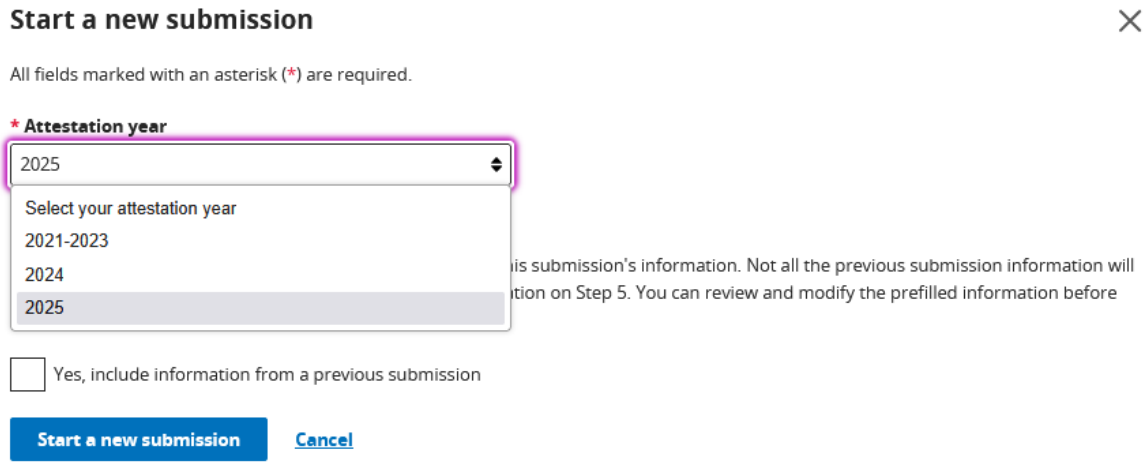
6. To login to the "Gag Clause Prohibition Compliance Attestation Submissions" system, the user enters the same email that was used to request their unique code,

and the associated unique code they received via email. **If you are submitting on behalf of only one health plan, you may skip the Excel spreadsheet instructions and click "Submit Gag Clause Prohibition Compliance Attestation." The reporting entity Excel template is not needed.** If you are submitting on behalf of multiple reporting health plans, download the "Reporting Entity Excel template."

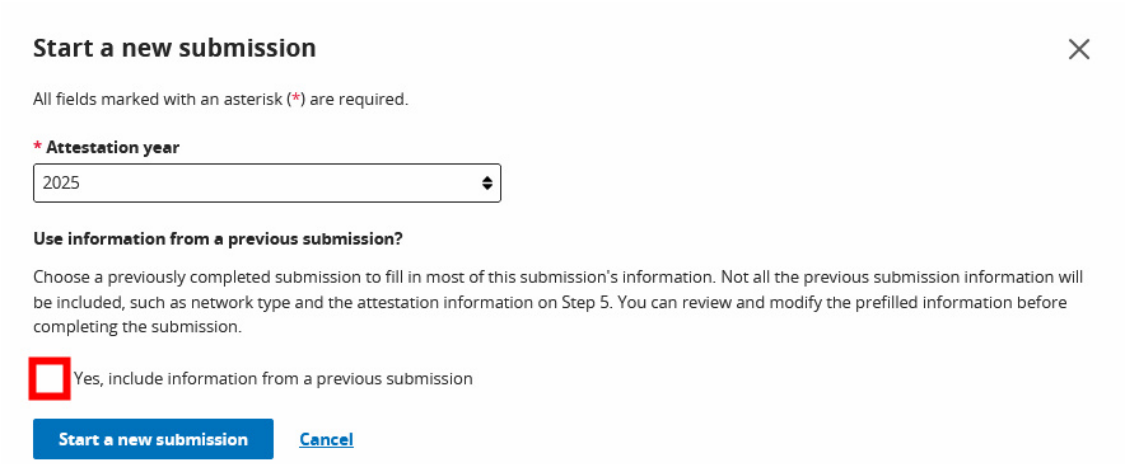
7. If you are reporting on behalf of multiple entities and have completed the Excel spreadsheet, click the button below titled "Submit Gag Clause Prohibition Compliance Attestation." **Once again, if you are not reporting on behalf of multiple health plans, do not worry about the Excel sheet and proceed to the next page.**

8. You will enter the Submitter's Information on the next page below. This person may be contacted in the event of an audit and should be available to answer any questions. The following information is input for submission. For "Attestation Year," please select 2024. Under the question "By what type of entity are you employed?" Select "**ERISA Group Health Plan (GHP) or sponsor of ERISA plan, including a plan sponsored or established by a union.**" If you are classified as a "Church Plan" under ERISA, please select "Church Plan."

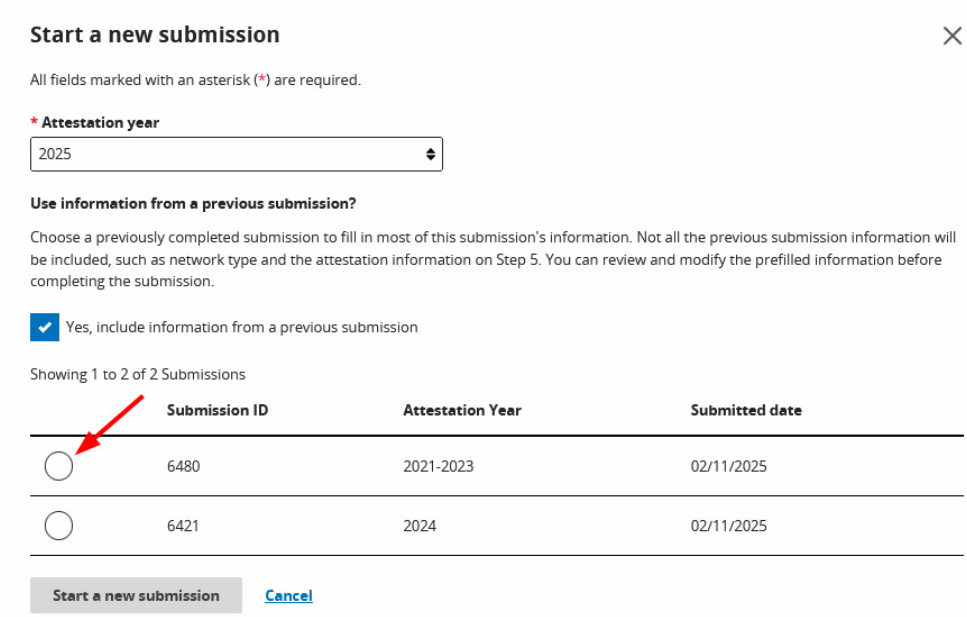


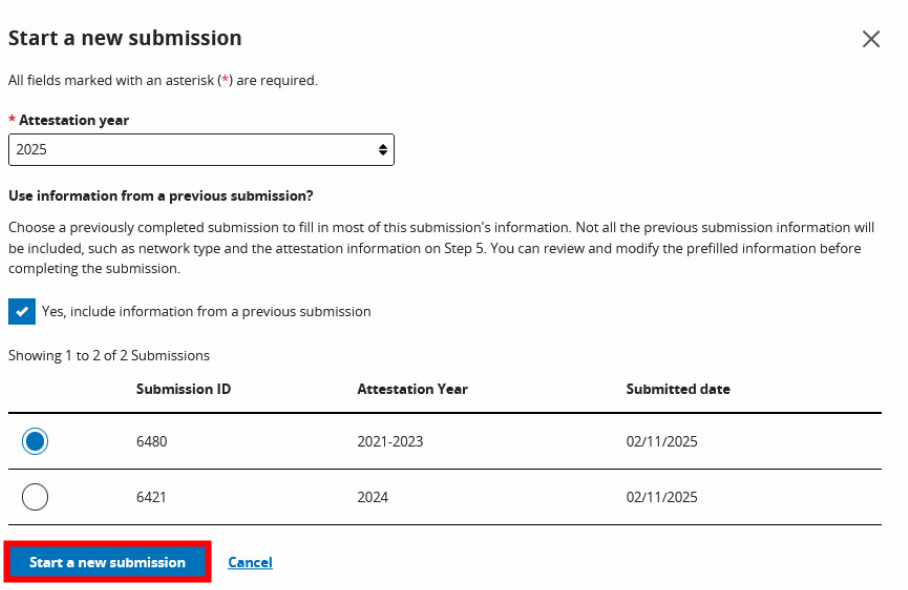


9. This year, you can prepopulate information from a previous year's submission. To do so, check the box in front of "**Yes, include information from a previous submission"**.

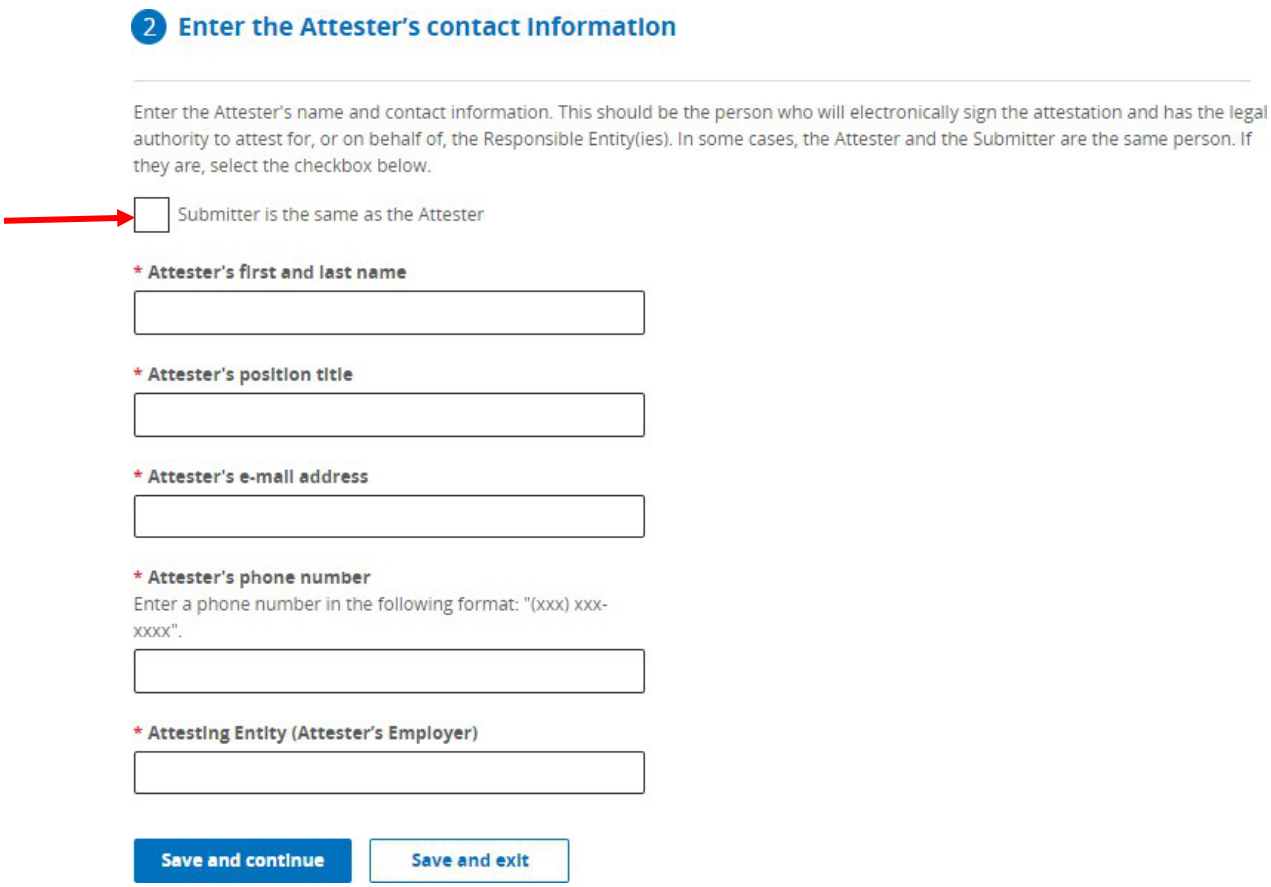


Doing this brings up a listing of all your prior year submissions. Select the radio button in front of the one you want to start with, and then click Start a new submission at the bottom of the screen.



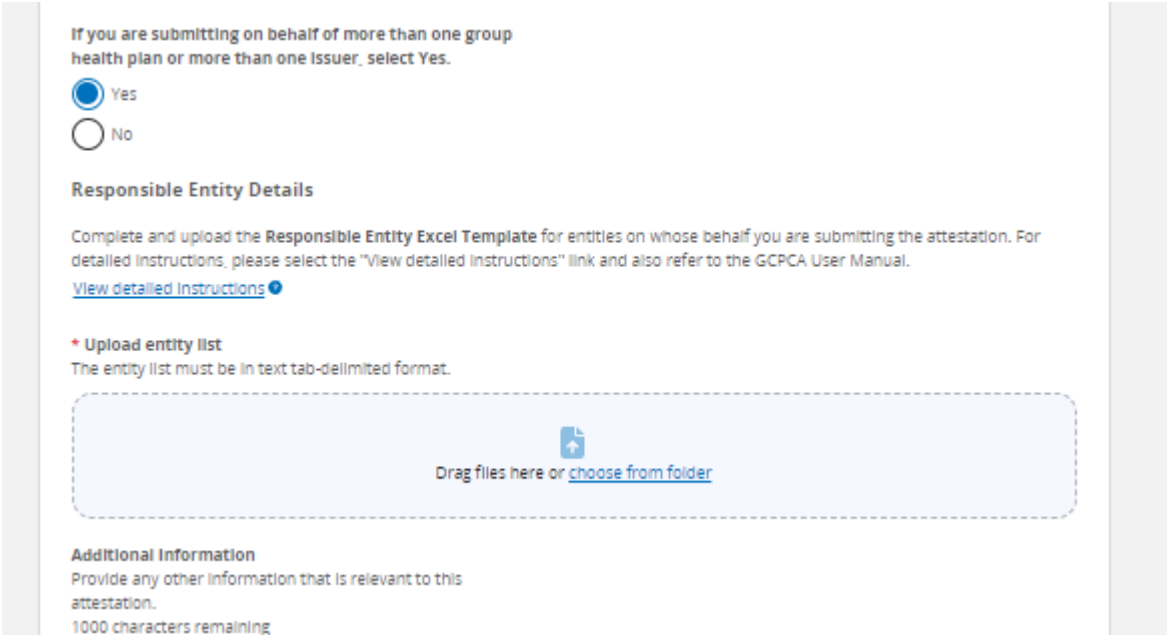


10. Fill in the information for “Step 2” or click “Submitter is the same as the Attester.”

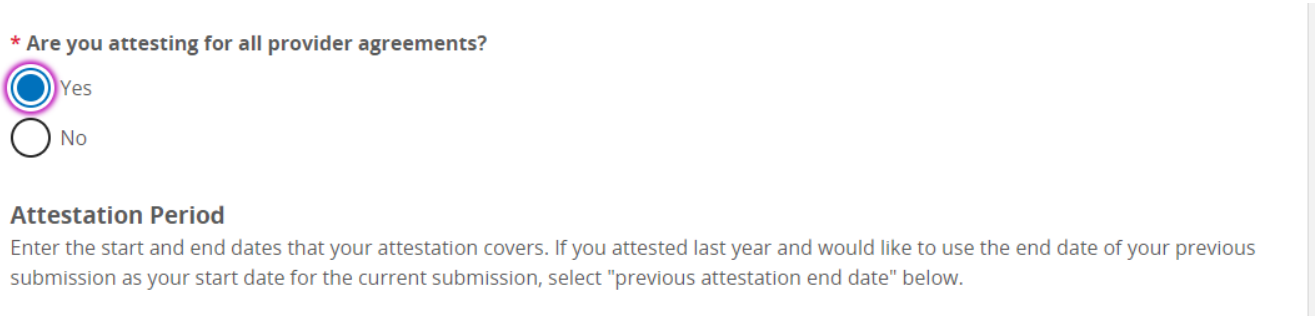


11. Fill in the information below for “Step 3.” For the question “If you are submitting on behalf of more than one plan or one issuer?” If you are only reporting for one health plan, select “No.” After selecting “No,” the screen at the bottom shall appear. If you are submitting for multiple health plans, select ‘Yes.” If you are reporting multiple health plans, please skip to Step 11 of the instructions because a different screen will appear. For the Type of Responsible Entity, click “ERISA Group Health Plan” or “Church Plan” if that applies to your ERISA selection. For the question “ERISA Plan Number,” that number is listed on the last page of your Summary Plan Document. It is either 501 or 505. Please check your Summary Plan Document. For the question “Are you attesting to all provider agreements?” Select “YES.” Then enter the attestation period.

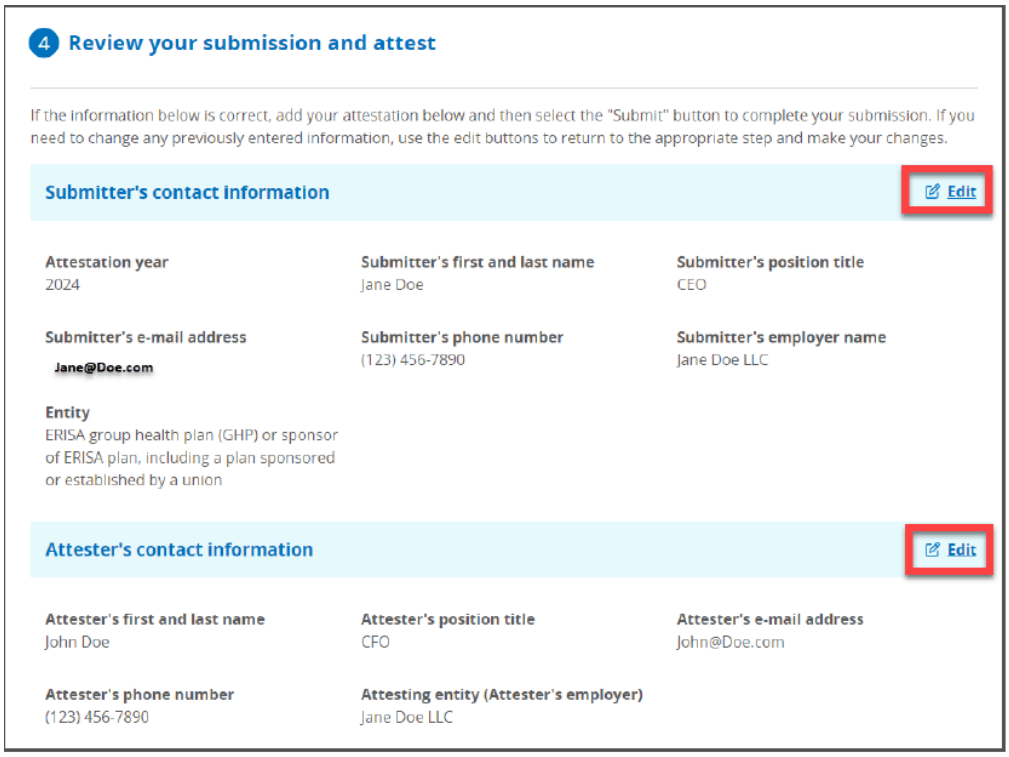
12. The screen below shall appear if you select “Yes” when reporting for multiple health plans. You must complete and upload the Excel sheet under “Upload Entity List.” **Once again, upload the Excel sheet here only if you are reporting on behalf of multiple health plans**. THE GCPCA Webform instructions provide specific guidance on creating the Reporting Entity tab-delimited text file. Only one Health Plan per row is permitted.



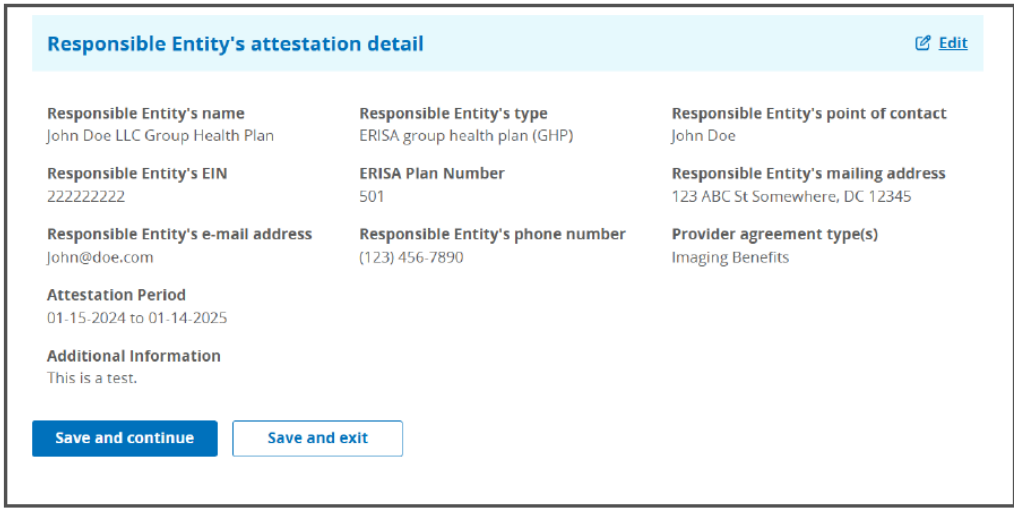
13. After selecting “Save and Continue,” “Step 4”The Submitter will see the “Let’s confirm the Attester’s email address” pop-up asking them to confirm the Attester’s email address to send them a unique code, a link to the GCPCA system, and instructions. Further, on the following pages, review the submission and verify your information.”



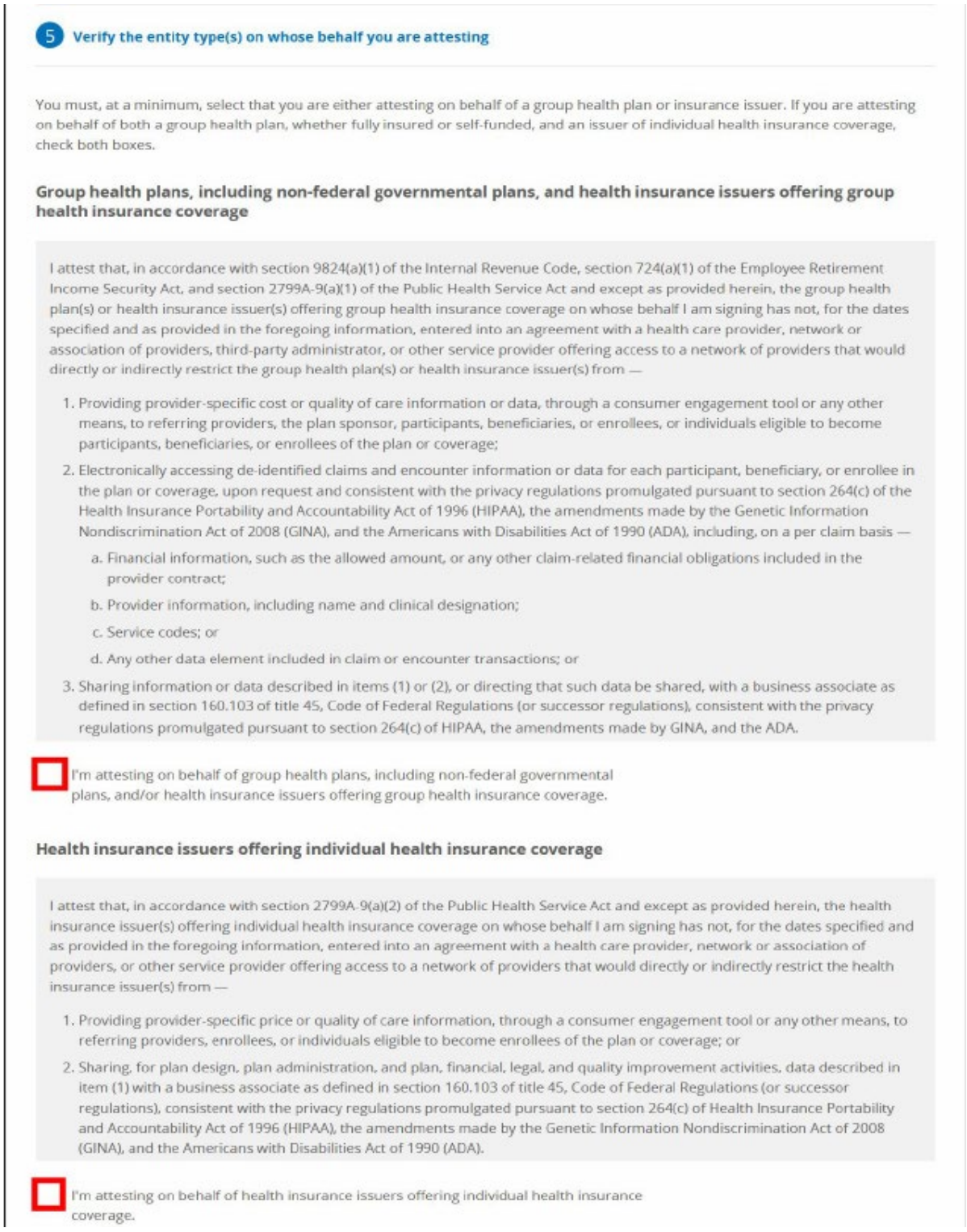
If, after entering all the information, you find there are corrections to make, click the edit button at the top right-hand side of the screen.



Review your submissions and click "Save and Continue."



14. On Step 5, you will check the 1st box that states **"I'm attesting on behalf of group health plans, including non-federal governmental plans, and/or health insurance issuers offering group health insurance coverage"**



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.

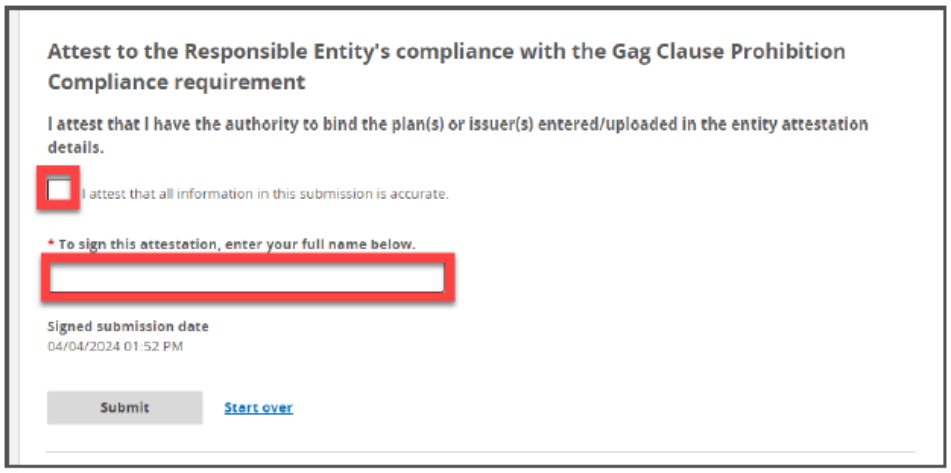
Health insurance issuers offering individual health insurance coverage

I attest that, in accordance with section 2799A-9(a)(2) of the Public Health Service Act and except as provided herein, the health insurance issuer(s) offering individual 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, or other service provider offering access to a network of providers that would directly or indirectly restrict the health insurance issuer(s) from —

1. Providing provider-specific price or quality of care information, through a consumer engagement tool or any other means, to referring providers, enrollees, or individuals eligible to become enrollees of the plan or coverage; or
2. Sharing, for plan design, plan administration, and plan, financial, legal, and quality improvement activities, data described in item (1) 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 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).

☐ I'm attesting on behalf of health insurance issuers offering individual health insurance coverage.

In the same step, you will confirm that the submitted information is accurate :



Lastly, check the box and enter your full name, clicking your final submit at the bottom of the screen.

If you have any questions, issues, or concerns regarding the Attestation Clause, please contact your 90 Degree Benefits office.