



CMS CALL RECORDING REQUIREMENTS

UPDATED: OCTOBER 2022

This is a reminder that the new CMS final rule, including new requirements about call recording, is about to go into effect.

A full overview of the final rule may be accessed here:

<https://www.federalregister.gov/documents/2022/05/09/2022-09375/medicareprogram-contract-year-2023-policy-and-technical-changes-to-the-medicareadvantage-and>

CMS has new Medicare marketing rules and guidelines that apply to MA plans, PDP plans and MAPD plans. And they affect how you work as an agent.

These changes include:

- New requirements and guidelines for third-party marketing organizations like ORS, LLC and its partners
- A new process and procedure for submitting marketing materials to CMS
- A new, broader definition of “marketing” that expands the types of materials that must be submitted to CMS for approval.
- New requirements and guidelines for agents/brokers to record all marketing and enrollment calls with beneficiaries

This Frequently Asked Questions (FAQs) document was created to help you understand how one specific change, the requirement to record client calls, applies to you and how you conduct business.



FREQUENTLY ASKED QUESTIONS

1. DO I HAVE TO RECORD ALL MY MEDICARE CLIENT CALLS?

Yes, you must record all calls with beneficiaries (including clients) in their entirety, including enrollments.

2. ARE THERE NEW REQUIREMENTS FOR LEAD GENERATING ACTIVITIES?

Yes. When conducting lead generating activities, you must:

- Disclose to the beneficiary that they are being transferred to a licensed insurance agent who can help enroll them into a new plan.
- Let the beneficiary know that his or her information will be provided to a licensed insurance agent for future contact.

3. I'VE HEARD THERE'S A SPECIFIC DISCLAIMER I WILL NEED TO PROVIDE TO CLIENTS. WHAT DOES IT SAY?

Yes, that is correct, there is a new disclaimer language for agents. Here's what you will need to say:

“We do not offer every plan available in your area. Any information we provide is limited to those plans we do offer in your area. Please contact Medicare.gov or 1-800 MEDICARE to get information on all of your options.”



4. WHEN IS THE NEW DISCLAIMER REQUIRED?

You must provide the disclaimer:

- Verbally within the first minute of a sales call
- You will also need to provide the disclaimer with a beneficiary through electronic communications as well. This includes email, online, chat, or other electronic communications.
- Prominently and easy to find on your website
- Visually on all marketing materials that you develop, use, or distribute

You are NOT required to use the disclaimer:

- When meeting with a beneficiary or client in person
- If you only sell plans on behalf of one carrier
- If you sell plans on behalf of more than one carrier and you sell ALL commercially available MA or PDP plans in a given service area.

5. IF I AM AN INDEPENDENT AGENT, DO I HAVE TO FOLLOW THESE NEW REQUIREMENTS?

Yes, the requirements apply to all third-party marketing organizations, which include independent agents and brokers. See CMS's definition of what a Third-Party Marketing Organization is below:

"Third-party marketing organization (TPMO) means organizations and individuals, including independent agents and brokers, who are compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment (the steps taken by a beneficiary from becoming aware of an MA plan or plans to making an enrollment decision)."



6. WHAT TYPES OF CALLS DO I NEED TO RECORD?

You are required to record all your calls with every beneficiary and your current clients in their entirety. This includes all inbound and outbound calls along the full chain of enrollment, including lead generation, marketing, and the enrollment process.

- If you are sure that the call will NOT be along the chain of enrollment (calling to see if your client received their ID card and if they have any questions), then the call does not need to be recorded from the beginning. If the call moves towards switching plans or plan benefits, then you need to start recording the call (if technology allows) at that point or call the beneficiary back on a recorded line.
- You should record all calls along the chain of enrollment through enrollment (this includes all calls with prospective enrollees and current clients)
- If you call a current client or receive an inbound call from a current client and you believe there is reasonable possibility that the call may be along the chain of enrollment, then you should record the call from the beginning. Reasonable possibility includes such topics as:
 - Lead generation, marketing, discussing different plans if an individual wants to switch, a mid-year review, Medicare educational discussion of options or annual check-ins, then you should record the call from the beginning.
 - Calls should be recorded from the beginning of the call so you are also recording the individual's consent for the call to be recorded and the reading of the new TPMO disclaimer, that was mentioned above.

7. DO I NEED TO PROVIDE THE SPECIAL DISCLAIMER ON EVERY CALL I MAKE?

No, the disclaimer is only required in the first minute of a marketing call, not in the first minute of all calls.



8. HOW CAN I RECORD CALLS WHILE STAYING IN COMPLIANCE WITH STATE RECORDING LAWS?

Many states require that the consumer is notified that a call is being recorded from the beginning. You may not always know the state in which a beneficiary is located or the law in that state. With that in mind, as a best practice you should get in the habit of:

- Telling the beneficiary at the start of each call that the call is being recorded.
- Making sure the notification is documented on the recording. If a consumer stays on the line, they have consented to the recording.

9. WHAT SHOULD I DO IF A BENEFICIARY DOESN'T WANT THE CALL RECORDED?

In that case, you should either politely inform the consumer that you cannot continue the call, or you may try to get consent by explaining why the call is being recorded.

For example, you might say something like:

“I understand that you do not wish for the call to be recorded. However, new government regulations require certain calls with Medicare beneficiaries to be recorded in their entirety. The purpose is to maintain quality and help ensure that the information that you receive is accurate. Does that make sense now?”

If they say yes, then state, “OK. This call is being recorded,” and continue the call.

If they still don't want the call recorded, you should politely tell the consumer that you cannot continue the call. This appointment would then need to be scheduled for a face-to-face.



10. I DON'T HAVE THE CAPABILITY TO RECORD ALL OF MY CALLS WITH BENEFICIARIES. WHAT RESOURCES DOES ORS FINANCIAL GROUP HAVE TO HELP?

In this day and age of reliable and affordable digital telephony options, ORS, LLC believes that it is most beneficial to brokers to manage their own options for calls and call recording retention. With the numerous phone providers and vendors, combined with the ease of use with the current mobile technology, it makes the most sense for you to control your own calls without having a dependence on an FMO or Upline having a hand in this. More importantly we strongly encourage that you as the broker should have full access and management of your own CRM for this data and call recording retention rather than a particular FMO's CRM, where you have no control over that system and what happens to your data. ORS, LLC recommends using a third-party vendor with flexible options on their calling systems.

11. WHEN WILL I HAVE TO COMPLY WITH THESE NEW CALL RECORDING REQUIREMENTS?

The requirements are effective now for plan enrollments beginning on January 1, 2023. With AEP being the start of marketing for plan year 2023 enrollments, you should record all calls in their entirety beginning on **October 1, 2022.**

12. WHAT DO YOU NEED TO DO NOW?

Here are a few simple steps you should take immediately:

- Add the new disclaimer to your website.
- Add the new disclaimer to the signature line of all your email communications.
- Add the new disclaimer to all your marketing materials and in the first minute of your sales scripts.



- Identify and make a list of all vendors, contractors and subcontractors who perform lead generation, sales, marketing and enrollment-related functions for you. This will help you prepare for reporting and contract updates as needs arise.
- Decide on a voice recording option and get started!

Remember that all marketing materials and sales scripts must be submitted for CMS approval through the HPMS Marketing Module. If you do not have scripts for sales calls, you will need to create scripts and obtain approval.

13. HOW LONG DO I NEED TO KEEP MY CALL RECORDINGS?

You should retain all call recordings for 10 years. You should keep all evidence of permission to contact, including completed business reply cards and online forms, for 10 years as well.

Have more questions about these new CMS Requirements?

- Contact ORS, LLC Broker Services department with any questions that you may have.

