

## FAQs for Compliance

- Are any calls excluded? At what point is the recording necessary -- for example, when collecting preliminary pre-enrollment information about their health, drugs and financial status or just when discussing enrollment options?
  - All calls need to be recorded. However, all calls to beneficiaries who enroll into a plan need to be retained. Therefore, preliminary pre-enrollment information, as described above, will need to be recorded and retained for those beneficiaries who enroll in the plan.
- *Confused? We are too!*
  - *CMS is saying that all calls should be recorded, but only calls that lead to enrollment should be “retained”. So, calls that don’t lead to an enrollment don’t have to be saved.*

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- *All calls incoming and outgoing? Even if I’m on the road between clients?*
  - *Yes, all calls. If you get a call on your cell phone and are driving between clients without the ability to record you will need to arrange to follow up with the beneficiary in a manner that can be recorded if the subject of the call could lead to an enrollment.*
- *Really, all calls?!*
  - *Yes, all calls that could lead to an enrollment. If an enrollment has been made and the beneficiary is calling with follow up questions about providers in network, drug coverage, or needs a new plan card those “service” calls do not need to be recorded.*
- *Even my current clients?*
  - *Yes, even your current clients if leading to an enrollment.*

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- Does the storage for the recordings need to be HIPAA-compliant or follow the maintenance-of-records rules?
  - Calls need to be meet all privacy and HIPAA rules. It is up to the plan/agent to determine the best way to meet those requirements.
- *Recordings and storage must be HIPAA compliant.*
  - *If the plan you work with offers recording assistance, ask if it is HIPAA compliant.*
  - *If you are putting a recording system in place, check with the vendor to be sure the system is HIPAA compliant and can retain recordings for 10 years.*

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- Do Zoom meetings have to be recorded?
  - Yes, they are considered telephonic
- *NAHU has seen differing guidance on this from carriers. We specifically asked CMS this question because of that. They do not consider Zoom meetings face to face, they are considered telephonic and must be recorded and retained if the conversation leads to an enrollment.*

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- Does the Disclaimer have to read at the beginning of every call?
  - The Disclaimer only needs to be said once, but at the beginning of an enrollment call, not a call setting up an appointment.
- *The Disclaimer doesn't need to be read on every call, but does need to be read on the first call with a client that begins the enrollment process. We know this can last over several phone calls so it only needs to be read at the beginning of the call.*
- *You are also able to explain the Disclaimer after you read it. We know many NAHU members are concerned because they do actually work with all plans in the area. You are able to explain that this is a requirement of the federal government, and which plans you work with.*

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- If I am a captive agent and only work for one plan do the recording and disclaimer requirements apply to me?
  - Yes, they apply to all TPMOs, included independent agents and brokers, regardless of how many plans you work with.

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- How will enforcement work?
  - Breaches of security will be overseen by the Office of Civil Rights
  - CMS will randomly audit complaints and take action with state insurance departments regarding licensure of the agent depending on the severity of the violation