



CMS CALL RECORDING REQUIREMENTS

## **FREQUENTLY ASKED QUESTIONS**

**BACKGROUND:**

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.

The changes include:

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

**This Frequently Asked Questions (FAQs) document is designed to help you understand how one specific change — the requirement to record client calls — applies to you.** For more details about the other changes, please refer to the comprehensive FAQ document that was sent to your compliance officer.

## FREQUENTLY ASKED QUESTIONS

### 1. DO I REALLY NEED TO RECORD ALL MY CLIENT CALLS?

Yes, you must record all calls with beneficiaries in their entirety, including enrollment.

### 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 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 SPECIAL NEW DISCLAIMER I MAY NEED TO PROVIDE TO CLIENTS. WHAT DOES IT SAY?

You heard right — there is new disclaimer language for agents. Here's what it says:

"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
- Electronically when communicating with a beneficiary through email, online chat, or other electronic communication
- Prominently 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 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. 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.

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

You must record all your calls with every beneficiary 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 outset but if it starts to move towards switching, then you need to start recording the call (if technology allows) at that point or call back on a recorded line.
- You should record all calls along the chain of enrollment through enrollment (this includes all calls with prospective enrollees/clients)
- If you call a current client or receive an inbound call from a current client and you believe there is a reasonable possibility that the call may be along the chain of enrollment, then you should record the call from the outset. 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, annual check-in around summertime or fall), then you should record the call from the outset.

Calls should be recorded from the onset 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.

## 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 sales 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 be notified that a call is being recorded. You may not always know the state in which a consumer is located or the law in that state. With that in mind, as a best practice you should:

- Tell the consumer at the start of each call that the call is being recorded.
- Make 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 CONSUMER DOESN'T WANT TO HAVE 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.

## 10. I DON'T HAVE THE CAPABILITY TO RECORD ALL MY CALLS WITH BENEFICIARIES. WHAT RESOURCES DOES INTEGRITY HAVE TO HELP?

We have great news for you — Integrity is building a call recording capability into MedicareCENTER. This convenient and easy-to-use call recording technology will be **FREE** for all Integrity partners and their downline independent agents and brokers.

## 11. WHAT IF I WANT TO USE A CALL RECORDING RESOURCE OTHER THAN MEDICARECENTER?

Integrity is making call recording technology available to help you stay compliant. However, there's no requirement to use MedicareCENTER — you may choose to use a different vendor if you prefer. Keep in mind that if you do use a different vendor, you are responsible for entering into an agreement with and paying that vendor directly.

**12.**

## WHEN DO I HAVE TO COMPLY WITH THESE NEW REQUIREMENTS?

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

**13.**

## ARE THERE THINGS I CAN DO NOW TO GET A HEAD START?

Absolutely! 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.

**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.

**14.**

## 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.

Here's more great news — MedicareCENTER will have the capability to store call recordings for 10 years. If you choose to use a different call recording resource, make sure it provides you with 10-year access to all your call recordings.

### Have more questions about these new CMS requirements?

Contact your Integrity partner marketing representative or reach out to your compliance support team with any questions.