

2023 CMS Compliance Regulations

OVERVIEW

On May 9, 2022, the Centers for Medicare and Medicaid Services (CMS) issued new requirements for third-party organizations (TPMOs) with an effective date of June 28, 2022, and an applicability date of January 1, 2023. CMS has interpreted the applicability date to apply to all marketing materials beginning Jan 1, 2023.

CMS has clarified the definition of TPMOs as 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. TPMOs may be a first tier, downstream or related entity (FDR), but can also be entities that are not FDRs but provide services to an MA plan or an MA plan's FDR.

WHAT ARE THE CHANGES?

Among the new requirements, there are **two critical changes** that apply to all independent agents, call center agents and brokers:

1. Whenever an agent or broker communicates with an existing or prospective beneficiary about a Medicare Advantage (MA) or Medicare Advantage Prescription Drug (MAPD) product in a sales and/or enrollment situation, he or she must communicate the following standard disclaimer:

"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."

This disclaimer must be verbally read in all sales and/or enrollment situations within the first 60 seconds of every conversation. Likewise, this disclaimer is required on **all marketing materials and websites** owned and operated by TPMOs as defined above.

2. Whenever an agent or broker communicates with an existing or prospective beneficiary about an MA or MAPD product in a sales and/or enrollment situation over the phone, he or she must do both of the following :
 - a. Record the entire call.
 - b. Store the recording of the call for 10 years.

Please note: the call recording and storage requirements pertain to all calls associated with an enrollment, including any initial and follow-up calls.

WHEN DO THESE CHANGES GO INTO EFFECT?

While CMS' new requirements carry an applicability date of Jan. 1, 2023, **these two changes, specifically, are now effective for the current Medicare Annual Enrollment Period (AEP).** These changes will apply to all AEP-related MA or MAPD sales and/or enrollment actions, including materials you may be preparing for AEP lead generation.

DOES THE CALL RECORDING REQUIREMENT IMPACT FACE-TO-FACE INTERACTIONS WITH EXISTING OR PROSPECTIVE BENEFICIARIES?

While it remains best practice to keep accurate records of all beneficiary interactions, face-to-face interactions do not need to be recorded, even if the interaction includes guiding a beneficiary through an online enrollment.

Should CMS change or evolve its requirements, YourMedicare will assess its own position and may revise its guidance accordingly and as part of its scheduled Compliance-related updates.

(Please note: An earlier version of YourMedicare's guidance confirmed that these interactions would have to be recorded. YourMedicare has since reassessed its interpretation of the requirement.)

WHAT IF I CHOOSE TO USE ZOOM OR A SIMILAR VIDEO CONFERENCING SERVICE TO CONDUCT MY SALES CALLS?

Whether agents choose to use Zoom or any other third-party video conferencing service, agents must still record and store all of their calls pertaining to each enrollment in accordance with these requirements. Additionally, agents should be strongly cautioned that any platforms outside of those provided by their TPMOs may not comply with HIPAA regulations.

WHAT ARE THE EXPECTATIONS FOR AGENTS TO PROVIDE CALL RECORDINGS TO CARRIERS IF REQUESTED?

This will vary among carriers. Typically, carriers will give agents five to seven days to provide call recordings. However, some carriers have asked for as little as a 24-hour turnaround time. We will share further guidance from our carrier partners as we receive it.

HOW DO THESE NEW REQUIREMENTS IMPACT EXISTING MARKETING RULES?

All existing marketing rules still apply. This means that if you are marketing to new or existing beneficiaries about an MA or MAPD product and your materials include "...items intended to draw a beneficiary's attention to an MA plan or plans and include or address content regarding plan premiums, cost sharing or benefit information, including those items not mentioning a specific plan by name...", your marketing materials will require CMS approval.

Remember: In order to receive CMS approval, your marketing materials must be filed properly with CMS and opted into by carriers. Only those marketing materials that carriers have opted into may be used to market MA and MAPD products offered by that carrier.

HOW DO I GET MY MARKETING MATERIALS APPROVED BY CMS AND CARRIERS?

Please send your marketing materials along with a completed CMS Material Submission Form (available here) to Compliance@YourMedicare.com. We strongly encourage you to also use our Compliance Checklist (available here) before submitting your materials.

Pre-review by carriers takes approximately 14-21 days (depending on carrier), followed by up to 45 days for approval by CMS. As such, YourMedicare is unable to guarantee a specific turnaround time or return date for your materials. **As a reminder, you may not use any marketing materials until Compliance has explicitly notified you of CMS and carrier approvals.**

DO THESE NEW REQUIREMENTS APPLY TO MY DOWNLINES AND VENDOR PARTNERS?

Yes. In fact, you are not only responsible for your organization's compliance, but also that of your downlines and vendor partners (including lead vendors).

Should you or any of your downlines and vendor partners fail to comply with these requirements, you will be held liable and may be subject to disciplinary action, including receiving a Corrective Action Plan (CAP) and/or termination of your carrier contracts.

DOES YOURMEDICARE HAVE A SOLUTION IN PLACE TO MEET THESE NEW REQUIREMENTS?

Sunfire and MyMedicareBot provide licensed agents with free telephonic call recording and storage capabilities in line with these new call recording requirements and available now. Additionally, for agents that don't use an online enrollment platform, call recording solution Dialpad is available at a discounted rate. For more information on these solutions, agents should contact their marketer or IMO.

YourMedicare remains in close contact with its carrier partners to better understand their own call-recording capabilities relative to these new requirements. We will share more as information becomes available.

Please be on the lookout for additional communications and resources to be released over the coming weeks related to this topic, in addition to our regularly scheduled Compliance bulletins to keep you informed as this important matter evolves.

As always, should you have any questions, please reach out to Compliance@YourMedicare.com.