

### Recording Calls: Which Calls?

#### **Who does this requirement apply to?**

- The requirement applies to all organizations and individuals that fall under the definition of TPMO as defined in 42 CFR §§ 422.2260 and § 423.2260. The definition of TPMO includes all 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 (FDRs).

#### **Does this new requirement to record calls apply only to call centers?**

- No. This requirement applies to all organizations and individuals that fall under the definition of TPMO as defined in 42 CFR §§ 422.2260 and § 423.2260.

#### **Does the requirement to record calls pertain to captive agents?**

- Yes. Captive agents fall under the definition of a TPMO as defined in 42 CFR §§ 422.2260 and § 423.2260.

#### **Is it now a requirement for an agent to record all calls with enrollees, even calls that are outside the scope of the chain of enrollment?**

- Yes. Plans must ensure that all calls between a TPMO and a beneficiary are recorded.

#### **Does this requirement to record calls apply to both inbound and outbound calls?**

- Yes.

#### **Are Zoom calls and conversations through other virtual platforms required to be recorded?**

- Yes. Zoom calls and other calls using virtual presence technology between a Medicare beneficiary and an organization or individual who meets the definition of a TPMO must be recorded.

#### **Does the requirement to record calls apply to in-person interactions?**

- No. CMS does not require recording of in-person interactions.

#### **We have received multiple questions from agents who want to know what they should do when a beneficiary is refusing to have the call recorded, but still want to enroll in our plan. Are there exceptions to the call recording requirement if a beneficiary refuses to be recorded?**

- No. There are no exceptions to this requirement. If a beneficiary declines to be recorded, the call must end.

#### **Can an agent complete a sale over the phone if the enrollee declines to be recorded?**

- No. If a beneficiary declines to have their call with a TPMO recorded, the sales agent must end the call.

### Recording Calls: When and How?

#### **When do we have to start recording calls between TPMOs and beneficiaries?**

- The recording requirement went into effect on October 1, 2022, and it applies to enrollments made for a January 1, 2023, effective date and beyond.

#### **What technology or mechanism should we use to record calls between TPMOs and beneficiaries?**

- CMS cannot recommend a particular brand or mechanism. TPMOs should work with the plans for whom they sell to determine the method/format of recording and the mechanism by which the recordings are maintained. *HFG/OLA recommends using a service like Medicare Center which records all inbound and outbound calls while enabling online enrollment tools/use.*

**We never had to record calls like this before. We are not set up to record calls with beneficiaries. How does CMS expect us to do this?**

- The requirement to record telephonic enrollments has been in place for some time. If a TPMO engages in telephonic enrollment, they would have been required, under existing policy, to record calls with beneficiaries prior to the implementation of this regulatory requirement. As such, we would expect TPMOs to leverage their existing process for recording telephonic enrollments when recording all calls with beneficiaries.

**Many smaller agents/brokers do not have the infrastructure to record conversations, placing them at a severe disadvantage. What flexibility is there for smaller agents/brokers to adhere to the regulation?**

- CMS is treating all agents and brokers the same. Smaller agents and brokers are not exempt from any requirement based on size. CMS does not believe it is appropriate, or even possible, for the purpose of applying regulatory requirements, to distinguish between independent agents who work for a “large call center” versus those agents who do not. CMS recommends smaller agents/brokers that are concerned about their ability to record their calls with beneficiaries speak to the plans with whom they contract to get assistance in recording and maintaining calls. *HFG/OLA recommends using a service like Medicare Center which records all inbound and outbound calls while enabling online enrollment tools/use.*

**Isn't the recording of calls with beneficiaries prohibited by HIPAA?**

- Uses and disclosures of protected health information are permitted under the HIPAA Privacy Rule if they are “required by law” (45 CFR 164.103, 164.512(a)). For any concerns about this requirement, CMS recommends reaching out to the U.S. Department of Health and Human Services Office for Civil Rights (<https://www.hhs.gov/ocr/about-us/contact-us/index.html>).

**Recording Calls: Retention?**

**Do these recorded calls between TPMOs and beneficiaries fall under the ten-year storage requirements for other documentation as outlined in Chapter 11 of the Medicare Managed Care Manual?**

- It depends on the nature of the call. The CMS requirement to maintain certain records for ten years applies to all calls between beneficiaries and plans, including TPMOs, that pertain to the sales and enrollment processes. If a recorded call does not apply to either process (e.g., the beneficiary is calling to make a sales appointment or to find out the times and locations of sales meeting events, or an enrollee is calling to update an ID card), the plan does not need to ensure that the recording is retained. If, however, such a call becomes a sales call at any point (e.g., if the beneficiary begins asking about products), then the recording of the call would need to be retained.

The guidance set forth in this document is subject to change as policy, communications, technology, and industry marketing practices evolve.