



We record & analyze communications

Compliance Primer - Healthcare

Centers for Medicare and Medicaid Services

Final Rule 2023: Medicare Recording Requirements



The Centers for Medicare & Medicaid Services (CMS) is the federal agency that provides health coverage to more than 160 million through Medicare, Medicaid, the Children's Health Insurance Program, and the Health Insurance Marketplace in the United States. On June 28, 2022, the CMS enacted new guidelines that directly impact healthcare professionals, insurance vendors, and the healthcare industry at large.

Mitigate Risks with **ASC Technologies'**
Recording and AI Solutions

[Learn more by watching this short video.](#)



Compliance Primer | CMS Final Rule 23: Medicare Recording Requirements



Main Purpose

CMS issued a final rule that was in response to address complaints of inappropriate marketing practices by Medicare Advantage organizations and Third-Party Marketing Organizations (TPMOs). The rule requires all TPMOs to adhere to all applicable laws, regulations and CMS guidelines, including the requirements for conducting lead generation, marketing, selling, and enrollment activities with Medicare beneficiaries as outlined within the 2023 CMS Final Rule released May 9, 2022.



Who Must Comply

Insurance companies and Third-Party Marketing Organizations (TPMOs), including health-care agents and brokers are all required to record all “marketing” calls with beneficiaries in their entirety, including the enrollment process. This rule applies to both new and existing clients. The call recordings must then be stored in a HIPAA-compliant manner **for at least 10 years**.

Which calls are to be recorded?

The requirement applies to all organizations and individuals that fall under the definition of TPMO which 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). The requirement is not exclusive to contact centers, but rather, it applies to all organizations and individuals that fall under the definition of TPMO as defined by Final Rule 23. Agents are now required to record all calls with enrollees, even calls that are outside the scope of the chain of enrollment and covers both inbound and outbound calls, including Zoom calls and conversations through other virtual platforms required to be recorded. When a beneficiary refuses to have the call recorded, the sales agent must end the call.

When are organizations required 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. The CMS does not recommend a particular brand or mechanism and 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.



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How does this work with HIPAA?

Uses and disclosures of protected health information are permitted under the HIPAA Privacy Rule under Title 45 of the Electronic Code of Federal Regulations, Section 164.512(a). ASC makes it secure and easy to comply with the highest data security standards and sets its solutions apart from others.

How long are organizations expected to retain the records of conversations?

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), 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 CMS holds plans responsible for making sure that the recordings of calls between TPMOs and beneficiaries are recorded and that the recordings are maintained. Plans and TPMOs should arrange for recording and storage of the recordings.



How ASC Helps you with Compliance

Aside from compliance regulations like GDPR and HIPAA, companies also need to comply with data security regulations from institutions like the CMS. ASC's AI powered compliance engine ensures that our clients are enabled to work in confidence with the highest data security standards while easily checking off all regulatory recording requirements. Features include:

- AI helps instantly detect potential compliance breaches
- Configurable recording rules, access rights
- Secure and selectable storage & archiving options
- Tenant-specific data encryption / bring your own key
- Approval process for access and replay
- Customizable retention times & secure deletion process
- Audit-log reports

About ASC Technologies

ASC is a worldwide leading provider of software and cloud solutions in the field of omni-channel recording, quality management, and analytics. We offer solutions for recording as well as AI-based analysis and evaluation of all communications – with full flexibility as a cloud service, on-premise or as a hybrid solution. Headquartered in Germany with subsidiaries in 13 countries and experienced system integration partners in over 60 countries, ASC is the #1 Europe-based player in its industry.