

RECORDED SALES CALL SUMMARY GUIDANCE

August 17, 2022

Summary: CMS issued new guidance requiring that all sales calls with beneficiaries be recorded in their entirety, including the enrollment process. National Contracting Center (NCC) is issuing this summary guidance to our agents to assist you with complying and implementing the new requirement.

While CMS guidance states that all sales calls must be recorded in their entirety, CMS does not offer any clarifications on exceptions to this rule. To that end, and recognizing that it is not realistic to employ a “one size fits all” approach given the complexity of the sales process, this guidance provides further details on the types of calls that must be recorded and calls that would fall under an exception.

Effective Date: The technical effective date is **June 28, 2022**. However, we believe that CMS will give the industry an opportunity to implement the requirement and will not enforce the change until **October 1, 2022** applicable to **2023 AEP**.

Changes to this Summary Guidance: Because this is a new CMS requirement and new for the industry, this Summary Guidance may be subject to change if CMS issues further clarification.

Standard: The following parameters will determine if the calls must be recorded:

1. *Intent:* The purpose of the call is to solicit the enrollee to make an enrollment decision;
2. *Content:* The conversation of the call is sales-related, enrollment process-related¹, or have a high likelihood that the call will turn into a sales-related or enrollment process-related conversation. The sales-related or enrollment process-related call must be recorded regardless of whether it resulted in an actual enrollment submission; and
3. *Telephonic:* The call is telephonic. This includes calls conducted using Teams, Skype, Zoom or other similar technologies. This does not include non-telephonic mediums, such as in-person or online chat.

Responsibility: The individual agent or broker is responsible for ensuring that the appropriate calls are recorded and retained for the applicable retention period.

Record Retention: Recorded calls must adhere to the following record retention policy:

CALL TYPE	RETENTION PERIOD
Sales calls resulting in an enrollment	10 years
Sales calls not resulting in an enrollment	1 year
Customer service calls not related to sales	NA

¹ CMS currently requires that all telephonic enrollments be recorded. The new requirement expands on this current requirement by requiring that all enrollment processes, such as paper and online enrollment, be recorded if the conversation occurs through telephonic means.

Recording Technology: NCC is currently exploring different technology solutions that will allow our agent partners to record the calls. We will provide further direction and training on the technology solutions in the near future.

Reference:

- [https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-422#p-422.2274\(g\)](https://www.ecfr.gov/current/title-42/chapter-IV/subchapter-B/part-422#p-422.2274(g))

FAQ

1. Must a sales call that does not result in an actual enrollment application be recorded? If so, what is the value of recording the sales call when the beneficiary does not enroll?

Yes. All sales calls, including unsuccessful calls not resulting in an actual enrollment, must be recorded. The recording is necessary to maintain proof that the sales agent acted appropriately, provided accurate information and did not use high-pressure tactics in the event a beneficiary makes an allegation during the course of the conversation.

2. Why is the record retention period only 1 year for sales calls not resulting in an enrollment, but 10 years for sales calls that result in an enrollment?

Sales calls that do not result in an enrollment are significantly lower in risk. Beneficiaries who do not end up enrolling are less likely to file a complaint alleging misinformation. These beneficiaries are not signed up for a particular plan and thus are less exposed to issues giving rise to a complaint, such as having their claims denied or not getting access to a network provider or formulary drug.

3. Must calls conducted via Teams, Skype or Zoom or other similar technologies be recorded?

Yes. Even though conversations held through Teams, Skype or Zoom are technically not “telephonic”, they are conversations nevertheless. The intent of the rule is to maintain an audit trail in the event of a beneficiary complaint. The only way to provide evidence of the conversation is to record the meeting.

4. Must conversations conducted via non-telephonic mediums be recorded?

No. Non-telephonic conversations, such as in-person or online chat, do not have to be recorded.

5. What are the major differences between a sales/enrollment call versus a customer service/administrative call?

The intent or purpose of a sales call is to encourage a beneficiary to enroll in a particular plan. This includes discussing plan benefits, premium, cost-share, provider network or formulary. The purpose of an enrollment call is to take the beneficiary through the enrollment process.

Customer service and administrative calls, on the other hand, do not involve the discussing of plan benefits, premium, cost-share, provider network or formulary. They also do not involve taking the beneficiary through the enrollment process.

6. Not all conversations with a beneficiary are sales or enrollment-related. Sometimes these conversations start off as a customer service call and later transition to a sales call. At what point must the call be recorded?

The moment the agent believes the call has been or will be transitioned to a sales or enrollment call, it must be recorded.

7. Is it considered a sales call if the beneficiary is the one who initiated the conversation?

Yes. Even if the conversation was initiated by the beneficiary, or the beneficiary proactively reached out to the sales agent, it is still considered a sales call and thus must be recorded.

8. Is it a sales call if the agent is only providing factual information per the beneficiary's request (such as benefits, cost-share, premium, provider network and plan rules) rather than trying to steer the beneficiary towards a particular plan?

Yes. The mere act of providing benefits information would deem it a sales call and thus must be recorded. Even though there is no intent to steer the beneficiary towards a particular plan, there is intent to get the beneficiary to enroll in Medicare.

9. If beneficiary calls the agent multiple times in the course of the transaction before making a final decision to enroll, must all calls be recorded?

This will be situational but as a general rule all sales and enrollment conversations that are part of the larger transaction must be recorded. This is to ensure that there is a complete picture of the end-to-end transaction.

For example:

Call 1: Agent calls beneficiary to discuss Plan A details such as benefits, cost-share, premium, provider network and plan rules. Beneficiary expresses strong interest but would like to look over the information before making a final decision. Call must be recorded.

Call 2: Beneficiary is confused about which drugs are covered/not covered and calls agent back to go over her 5 medications she is currently taking. Agent walks her through the formulary. Call must be recorded.

Call 3: Beneficiary calls agent back to express concerns that Plan A's \$50 premium is too high. Agent recommends Plan B that offers \$0 premium and the same formulary that covers all of her 5 medications. Call must be recorded.

Call 4: Beneficiary calls agent back to get reassurance that Plan B is indeed \$0 premium and would cover her 5 medications. Agent provided reassurance and confirmation. Call must be recorded.

Call 5: Beneficiary calls agent back to make a final decision to enroll. Call must be recorded.

Call 6: Agent calls beneficiary 30 days after her enrollment effective date to see how her new plan is working out. She expresses satisfaction with her new coverage. Recording not necessary.

10. What are some sample scripting that I may use when informing the member the call is being recorded? What if the member objects to being recorded?

For states that have a *one party consent* rule:

- *“Before proceeding, I did want to let you know that this call is being recorded for quality purposes”*. Agent then proceeds with the call.
 - [If the member objects to be recorded]: *“Federal law requires us to record all sales and enrollment calls. This is to ensure that we are only enrolling you into a plan that you have selected and that our conversation today is accurately documented. Please rest assure that all recordings are only used for this purpose.”*
 - [Use at the agent's discretion]: *“May I ask why you are uncomfortable being recorded?”*
 - [Agent should address the member's concerns. This will be situational]
 - [If the member continues to object to being recorded]: *“Unfortunately, I cannot discuss any details of your plan options. If you prefer, we may meet in-person to discuss your plan options.”*

For states that have a *two (or more) party consent* rule:

- *“Before proceeding, I did want to let you know that this call is being recorded for quality purposes. Do I have your permission to proceed?”*.
 - [If the member agrees, then proceed with the call]
 - [If the member objects to be recorded]: *“Federal law requires us to record all sales and enrollment calls. This is to ensure that we are only enrolling you into a plan that you have selected and that our conversation today is accurately documented. Please rest assure that all recordings are only used for this purpose.”*
 - [Use at the agent's discretion]: *“May I ask why you are uncomfortable being recorded?”*

- [Agent should address the member's concerns. This will be situational]
- [If the member continues to object to being recorded]:
Unfortunately, I cannot discuss any details of your plan options. If you prefer, we may meet in-person to discuss your plan options."

APPENDIX: RECORDED CALL EXAMPLES

Call Classification: For the purpose of determining whether a call must be recorded, all calls are classified based on two categories:

1. *Sales & Enrollment:* All calls containing sales or enrollment content must be recorded. These calls pertain to a sales or enrollment discussion.

A sales discussion occurs when the agent is persuading the caller to enroll in a particular plan or discussing plan information such as benefits, cost-share, premium, provider network and plan rules.

An enrollment discussion occurs when the agent is taking the caller through the enrollment process.

2. *Customer Service & Administrative:* Non-sales or non-enrollment discussions that are customer service or administrative in nature do not have to be recorded. The topic of discussion for these calls usually pertain to service excellence, courtesy calls, wellness check and other administrative activities.

CALL CLASSIFICATION	SCENARIO	REQUIREMENT
Non-Telephonic	1. Enrollee meets with a sales agents in-person to discuss different plan options.	Recording not necessary. Call recording only applies to telephonic conversations or conversations via Teams/Skype/Zoom.
Sales & Enrollment	2. Agent calls a lead with the intention of soliciting an enrollment.	Must record at the start of the call.
Sales & Enrollment	3. Agent calls a former client who recently disenrolled with the intention of soliciting a new enrollment.	Must record at the start of the call.
Sales & Enrollment	4. Enrollee makes an inbound call to the sales agent to go over her different plan options.	Must initiate the recording the moment the sales agent realizes that the conversation will be about discussing different plan options.
Sales & Enrollment	5. Agent and enrollee discusses various options during the call. At the end of the conversation, the enrollee decided not to enroll in any plan.	Must record the call regardless of whether an actual enrollment resulted from the call.

		Must retain the recorded call for a period of 1 year.
Sales & Enrollment	6. Enrollee makes an inbound call to initiate an enrollment. The enrollee has already decided on a particular plan and no sales topic is ever discussed.	Must record the call. Even though so sales conversation is occurring, the enrollment process must be recorded.
Sales & Enrollment	7. Enrollee has already decided on a particular plan and asks the sales agent to call her back another time to start the enrollment process. The sales agent makes an outbound call to start the enrollment process.	Must record the call at the start of the outbound call.
Sales & Enrollment	8. Agent meets with the enrollee via Teams/Skype/Zoom to go over different plan options. Once the enrollee decides on a plan, the sales agent proceeds with the enrollment process.	Must record the call at the start of the meeting.
Sales & Enrollment	9. Agent <u>initiated</u> the <i>paper enrollment/online enrollment</i> for the enrollee while the enrollee is on the phone. The sales agent will be submitting the paper enrollment on the enrollee's behalf.	Must record the call at the start of the enrollment process.
Sales & Enrollment	10. Enrollee is attempting to complete a <i>paper enrollment/online enrollment</i> <u>on her own</u> but is having trouble and calls the sales agent for assistance. The sales agent walks her through the process over the phone.	Must record the call at the start of the enrollment process. Even though the agent is not performing a sales function, the agent is assisting with the enrollment process, which must be recorded.
Sales & Enrollment	11. Agent returns the enrollee's voicemail asking the agent to call her back and there is a <i>high likelihood</i> that the conversation will be sales-related.	Must record at the start of the outbound call.
Sales & Enrollment	12. Agent calls a former client who recently disenrolled with the intention of soliciting a new enrollment. During the call, the enrollee asks the agent to go over some plan options.	Must record at the start of the outbound call.
Customer Service & Administrative	13. Agent calls a current client to discuss how her plan is working out. During the call, the client mentions that she has a neighbor who could benefit from enrolling in a	Recording not necessary.

	Medicare Advantage plan. The agent took her neighbor's information down and intend to mail a brochure to her.	
Customer Service & Administrative	14. Agent calls a former client who recently disenrolled with the intention of understanding her rationale rather than trying to get the client to re-enroll.	Recording not necessary.
Customer Service & Administrative	15. Agent calls an enrollee to check up on how her new plan is working after she has enrolled for quality assurance purpose.	Recording not necessary.
Customer Service & Administrative	16. Enrollee makes an inbound call to the sale agent to request a copy of the Evidence of Coverage be mailed to her.	Recording not necessary.
Customer Service & Administrative	17. Enrollee makes an inbound call to the sales agent to express dissatisfaction with her current plan.	Recording not necessary if the call is customer service in nature.
Customer Service & Administrative	18. Enrollee makes an inbound call to schedule/confirm an in-person sales appointment. The paper Scope of Appointment is filled out over the phone and is presented to the enrollee to sign during the in-person meeting.	Recording not necessary.
Customer Service & Administrative	19. Enrollee makes an inbound call to schedule/confirm an in-person sales appointment. There is no paper Scope of Appointment. The SOA is verbally read out over the phone and the enrollee's agreement is obtained verbally.	Must record.
Customer Service & Administrative	20. Enrollee makes an inbound call to schedule/confirm a telephonic sales appointment. There is no paper Scope of Appointment. The SOA is verbally read out over the phone and the enrollee's agreement is obtained verbally.	Must record.
Customer Service & Administrative	21. Agent returns the enrollee's voicemail asking the sales agent to call her back. The sales agent is unsure what the conversation is about.	Recording not necessary at the start of the outbound call. If at any point the conversation turns into a sales call, the sales agent must initiate the recording.
Customer Service & Administrative	22. Enrollee is attempting to complete a <i>paper enrollment/online enrollment on her own</i> but is having trouble and meets with the sales agent for assistance. The sales agent walks her through the process <i>in-person</i> .	Recording not necessary. Call recordings are not required since the interaction with the enrollee is in-person.

Customer Service & Administrative	<p>23. Enrollee makes an inbound call to the sales agent to request a copy of the Evidence of Coverage be mailed to her.</p> <p>During the conversation, the sales agent asks the enrollee if she is happy with her current coverage because there are new plan options available in her area that recently came onto the market.</p> <p>The caller declines the offer.</p>	Recording not necessary. While the sales agent had the intention of discussing sales and enrollment, the caller declined and no such conversation occurred.
Customer Service & Administrative → Sales & Enrollment	<p>24. Agent calls the enrollee to check up on how her new plan is working with the intention of providing quality service.</p> <p>During the call the enrollee expresses dissatisfaction with her current plan and wishes to enroll in a new plan.</p>	Must record the call the moment the call turns into a sales/enrollment call.
Customer Service & Administrative → Sales & Enrollment	<p>25. Enrollee makes an inbound call to the sales agent to request a copy of the Evidence of Coverage be mailed to her.</p> <p>During the conversation, the sales agent asks the enrollee if she is happy with her current coverage because there are new plan options available in her area that recently came onto the market.</p> <p>The caller expresses interest and the sales agent proceeds to go over the plan details.</p>	Must record the call the moment the call turns into a sales call.
Customer Service & Administrative → Sales & Enrollment	<p>26. Enrollee makes an inbound call to the sales agent to express dissatisfaction with her current plan.</p> <p>During the call, the enrollee wishes to enroll in a new plan.</p>	Must record the call the moment the call turns into a sales/enrollment call.