



September 7, 2022

Tim Roe
Director, Division of Surveillance, Compliance and Marketing
Christine M. Reinhard
Technical Advisor, Division of Surveillance, Compliance and Marketing
Centers for Medicare and Medicaid Services
7500 Security Blvd
Baltimore, MD 21244

RE: CMS-4192-P Guidance for Independent Agents and Brokers

Dear Tim and Christine,

The Medicare Annual Enrollment Period is a little less than a month away and we want our agents to be prepared to comply with the new marketing rules for recording. Unfortunately, agents are getting mixed messages from carriers, leading to further confusion. It is our intention to provide as much guidance to our members as possible, through webinars and other communications, on how to be compliant with the new rule.

Below is a list of questions that will help us to ensure a smooth AEP next month:

- 1) What happens if a beneficiary refuses to be recorded?
 - a. Does the decision of the beneficiary need to be documented if they do not wish to be recorded?
- 2) Are any conversations specifically excluded?
- 3) At what point is the recording necessary -- for example, when collecting preliminary pre-enrollment information about their health, drugs and financial status or just when discussing enrollment options?
- 4) There remains great concern about PHI and HIPAA. Does the storage for the recordings need to be HIPAA-compliant or follow the maintenance-of-records rules? What is the agent liability if there is a security breach?
- 5) Do Zoom meetings have to be recorded or does CMS consider this the same as face-to-face?
- 6) Are there requirements for being able to recall a recording? Does the agent need to be able to pinpoint specific conversations in the recordings or will arranging them to be stored by beneficiary be sufficient?
- 7) What type of complaints will trigger an audit?
- 8) Will call centers be audited in the same way as an independent agent?



- 9) Will CMS be providing any further guidance for independent agents on compliance?
10) Will CMS be providing guidance to beneficiaries that they will be asked to record their telephonic enrollments this AEP?

Thank you for the opportunity to share our concerns with the final rule and to request further guidance and action by CMS prior to this year's AEP. If you have any questions or need more information, please do not hesitate to contact me at 202-595-0639 or jtrautwein@nahu.org.

Sincerely,

A handwritten signature in black ink, which appears to read "Janet Stokes Trautwein".

Janet Stokes Trautwein
Executive Vice President and CEO
National Association of Health Underwriters