



# The Enrollment Coalition

The Honorable Jessica Rosenworcel  
Chair  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

## **RE: CG Docket No. 02-278, FCC Consumer and Governmental Affairs Bureau Seeks Comment on Request Relating to Enrollment in Medicaid and Other Governmental Health Coverage Programs**

Chair Rosenworcel,

Thank you for soliciting comments on the request filed by the U.S. Department of Health and Human Services (HHS) seeking clarification that certain automated calls and text messages or prerecorded voice calls relating to enrollment in state Medicaid and other governmental health coverage programs are permissible under the Telephone Consumer Protection Act (TCPA). The Enrollment Coalition supports HHS' interpretation that texts and automated calls from Managed Care Organizations (MCOs) are allowable under TCPA because prior express consent is obtained on enrollment forms with a signature from the applicant, and this is extended from states to MCOs with state approval of messaging so that MCOs can obtain needed information to help validate enrollee eligibility. The Enrollment Coalition also requests clarification from the Federal Communication Commission (FCC) to eliminate the existing ambiguity preventing this important outreach.

The Enrollment Coalition is a group of organizations across the health care community, including consumer advocates, patient advocates, health plans, health care providers, employers, and technology and data organizations. Our mission is to collaboratively identify, develop, and advance actionable policy recommendations for federal policymakers aimed at improving enrollment data, systems, and processes to foster the enrollment of uninsured Americans under age 65 into existing health coverage plans and programs for which they are otherwise eligible.

As HHS noted in its letter to the FCC, the expected end of the COVID-19 public health emergency (PHE) will create an enormous challenge for resuming determinations of Medicaid eligibility for tens of millions of Americans. Effective communication to enrollees, including calls and texts, will be critical as millions could face the loss of their health insurance coverage if they are not fully informed about renewals and their coverage options. Calls and text messages are some of the most effective ways MCOs can remind enrollees to update their mailing address, contact their state Medicaid agency, or take other steps to prevent coverage losses. Guidance from the Centers for Medicare and Medicaid Services (CMS) promoting the use of text messaging to reduce coverage losses in unwinding the PHE is a positive step. Clarification from the FCC that these activities are permissible under the TCPA would support efforts to eliminate coverage losses as well as promote health equity.

Text messaging is particularly promising for enrollment and medical activities, such as reminders of renewal requirements and health care appointments, assistance with navigating plan benefits, and health education. Culturally and linguistically appropriate text messaging can also reduce health disparities and improve health outcomes by reminding enrollees about available health benefits such as preventive screenings and immunizations. However, the lack of clarity around whether TCPA applies to these activities is preventing communications about important resources and services including:

- Screening tools for social determinants of health,
- Invitations to new member orientation to assist in accessing care (i.e. Health Navigation),
- Availability of telehealth services,
- Options and availability of after hour care (Nurse Advice Line, Urgent Care),
- Availability of asthma remediation programs,
- Importance of diabetes care, and
- scheduling follow-up appointments for critical care such as pre-natal and postnatal care.

Providing the clarification sought by HHS will advance health equity by helping to remove many of the barriers that limit health care entities' ability to connect with their members in a meaningful and valuable way. The ability to receive timely health communication is a health equity issue. As such, we strongly believe the FCC should take expeditious steps to allow health care entities to communicate with Medicaid members, comprised of the most vulnerable populations in the US, to provide members with the opportunity to attain the health care services they need.

Clarification from the FCC that non-marketing calls and texts are allowed under the TCPA is also consistent with President Biden's Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government to improve the customer experience<sup>1</sup>, and the Office of Management and Budget's recent guidance instructing agencies to "consider policy, communication, technological, and design reforms that can make it easier for the public to access services."<sup>2</sup>

Text messaging is an effective means of communication with Medicaid enrollees as 92% of adults earning less than \$30,000 a year own a mobile phone<sup>3</sup> and 97% of low-income phone owners

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<sup>1</sup> Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government, December 13, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/13/executive-order-on-transforming-federal-customer-experience-and-service-delivery-to-rebuild-trust-in-government/>.

<sup>2</sup> April 13, 2022, OMB Announces New Action to Improve Government Services, <https://www.whitehouse.gov/omb/briefing-room/2022/04/13/omb-announces-new-action-to-improve-government-services/>.

<sup>3</sup> Eileen Cianciolo, "3 Member Engagement Pitfalls Health Plans Should Avoid," Fierce Healthcare, 3/3/2019, <https://www.fiercehealthcare.com/payer/industry-voices-3-member-engagement-pitfalls-health-plans-should-avoid>.

use text messaging.<sup>4</sup> Text messaging is a promising strategy for contacting enrollees experiencing homelessness and provides additional flexibility and privacy for individuals working in hourly positions that limit taking personal calls.

The Enrollment Coalition believes health care entities should be able to contact consumers to support the consumer's enrollment in health coverage, including critically important information on both coverage (such as when patients may be at risk of losing coverage), and medical care and health care services (such as immunization reminders). Although texting has been successful when used in limited circumstances and is the preferred form of contact for many enrollees, many health care entities will not conduct outreach through text for fear of violating the TCPA. Timely guidance from the FCC clarifying that these activities are allowed under the TCPA would further advance efforts to reduce costly churn in health insurance coverage and eliminate health disparities.

A simple and equitable solution to effectuate HHS's request for clarification would be to clarify the FCC's TCPA 2015 Omnibus Declaratory Ruling and Order<sup>3</sup>, as sought in a Joint Petition filed by Anthem, Inc., Blue Cross Blue Shield Association, Wellcare Health Plans, Inc., and the American Association of Healthcare Administrative Management in 2016<sup>4</sup>. The Joint Petition sought clarification from the FCC of the following:

- 1) That the provision of a phone number to a "covered entity" or "business associate" (as defined under HIPAA) constitutes prior express consent for non-telemarketing calls allowed under HIPAA for the purposes of treatment, payment or health care operations; and
- 2) That the prior express consent clarification in paragraph 141 of the 2015 Omnibus Declaratory Ruling and Order and the non-telemarketing health care message exemption granted in paragraph 147 of the 2015 Omnibus Declaratory Ruling and Order, be clarified to include HIPAA "covered entities" and "business associates."

These clarifications would be consistent with the Commission's treatment of other health care-related TCPA exemptions and allow for needed healthcare-related outreach.<sup>5</sup> While needed expeditiously as related to the PHE, the clarifications should not be time limited, but rather should be a permanent resolution.

We thank the FCC for demonstrating a commitment to the health and well-being of the people we serve by requesting comment on how the TCPA impacts their coverage and care. We are also happy to answer any additional questions the Commission may have on this matter.

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<sup>4</sup> Aaron Smith, "U.S. Smartphone Use in 2015," Pew Research Center, 4/1/2015, <https://www.pewresearch.org/internet/2015/04/01/us-smartphone-use-in-2015/>.

<sup>5</sup> See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 27 FCC Rcd. 1830, 1852-56 (2012) ("2012 Report and Order")

Sincerely,  
**The Enrollment Coalition**

American Academy of Family Physicians  
Association for Community Affiliated Plans  
Alliance of Community Health Plans  
American Heart Association  
Amputee Coalition  
Benefits Data Trust  
Centene Corporation  
Community Catalyst  
Health Care Service Corporation  
Healthcare Leadership Council  
March of Dimes  
SameSky Health