

May 17, 2022

The Honorable Jessica Rosenworcel
Chairwoman
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

Chairwoman Rosenworcel,

The national and state associations signing this letter represent the nation's health plans, providing coverage to tens of millions of individuals with Medicaid coverage. Collectively, we thank the Federal Communications Commission (FCC) for soliciting comments on the U.S. Department of Health and Human Services' (HHS) request for 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). We are pleased to offer these comments for your consideration.

The TCPA prohibits certain communications without prior consent to wireless cell phone numbers, and the FCC has concluded that the TCPA's protections encompass both voice calls and text messages. While the FCC has held that benefits-renewal calls relating to Medicaid can be made for emergency purposes, many of the organizations represented on this letter have long sought clarity regarding which health-related communications are allowable.¹ The undersigned organizations strongly support HHS' interpretation that texts and automated calls from local, state, and federal government employees that operate Medicaid programs, Children's Health Insurance Programs (CHIP), Basic Health Programs (BHP), or health insurance Marketplaces are allowable under the TCPA because prior express consent is obtained on enrollment forms with a signature from the applicant. We also agree that this consent extends to managed care organizations (MCOs) contracting with state and federal governments to provide health coverage under these programs.

As such, we urge the FCC to issue guidance to clarify the TCPA to avoid barriers to health coverage-related communications to Medicaid and other health program enrollees.

We have compiled several examples of plan communications to individuals that are hindered by current TCPA restrictions on text messaging:

- Importance of Health Screenings

¹ Consumer and Governmental Affairs Bureau Clarification on Emergency COVID-19 Related Calls. CG Docket No. 02-278. July 28, 2020. <https://www.fcc.gov/document/cgb-clarification-emergency-covid-19-related-calls>.

- Invitations to new member orientation to assist in accessing care (ie. Health Navigation)
- Availability of telehealth services
- Options and availability of after hour care (Nurse Advice Line, Urgent Care)
- Importance of and availability of receiving flu vaccines
- Availability of asthma remediation programs
- Importance of diabetes care
- Maternal care messaging (relating to both mental and primary care resources and services).
- Completion of required individual care plans (ICPs)
- Automated calls/text reminders for prescription refills, physician appointments, and to schedule follow up appointments for critical care such as pre-natal and postnatal care.
- Messaging during flu season promoting vaccination
- Redetermination reminders
- Links to SDOH screening tools (via text)

Our request for clarity is particularly urgent as we approach the end of the Public Health Emergency (PHE). HHS Secretary Xavier Becerra and CMS Administrator Chiquita Brooks-LaSure assert in their letter that MCOs are important partners to states. Currently, our health plan members are preparing to support states and counties as they conduct eligibility redeterminations for the millions of individuals who have retained their coverage because of the continuous enrollment maintenance of effort (MOE) requirement in place since 2020. In its efforts to minimize unnecessary loss of Medicaid coverage at the end of the MOE, CMS has urged Medicaid health plans to employ all modalities – including texting – in reaching out to enrollees to ensure timely eligibility redeterminations. As indicated in the HHS letter, “coverage losses can be avoided if state agencies and their partners are able to communicate more easily with enrollees about the steps required to retain their enrollment.” Medicaid MCOs seek assurances that these actions are explicitly permissible under the TCPA.

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 Telecommunications Consumer Protection Act (TCPA) impacts their coverage and care.

Sincerely,

The Alliance of Community Health Plans
 Association for Community Affiliated Plans
 Coalition of New York State Public Health Plans
 Local Health Plans of California
 Medicaid Health Plans of America
 Michigan Association of Health Plans
 Minnesota Association of County Health Plans
 Pennsylvania’s Medicaid Managed Care Organizations
 Texas Association of Community Health Plans