

May 17, 2022

The Honorable Jessica Rosenworcel, Chairwoman
Federal Communications Commission
45 12th Street SW
Washington, DC 20554

***Re: Request relating to enrollment in Medicaid and other governmental health coverage programs -
CG Docket No. 02-278***

Dear Chairwoman Rosenworcel:

The Medicaid Health Plans of America (MHPA) appreciates the opportunity to comment on the Federal Communications Commission's (FCC) Public Notice (CG Docket No. 02-278) seeking comment in response to a request for clarification by the Department of Health and Human Services (HHS) 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 encourage the FCC to clarify its interpretations of the TCPA to remove barriers to Medicaid beneficiary outreach through electronic means; this important action would help protect access to health coverage and minimize coverage gaps for this vulnerable population when the COVID-19 public health emergency (PHE) ends.

MHPA is the only national trade association with a sole focus on Medicaid, representing more than 130 managed care organizations (MCOs) serving more than 43 million Medicaid beneficiaries in 40 states, the District of Columbia and Puerto Rico. MHPA's members include both for-profit and non-profit, national and regional, as well as single-state health plans that compete in the Medicaid market. Nearly three-quarters of all Medicaid beneficiaries receive health care through MCOs, and the association provides research and advocacy services that support policy solutions to enhance the delivery and coordination of comprehensive, cost-effective, and quality health care for Medicaid beneficiaries.

We are greatly concerned that as many as 15.8 million people could lose their Medicaid coverage when the PHE ends and the continuous enrollment requirement is no longer in effect.¹ We agree with HHS, as expressed in their April 28th letter², that these types of messages would be enormously helpful to state and federal efforts to reach enrollees and prevent gaps in health coverage that will happen if individuals do not successfully transition to alternative coverage when their Medicaid enrollment ends. Such outreach would also help ensure that enrollees who rely on Medicaid for critical health coverage and care have sufficient time to reconfirm their eligibility. Our member plans are important state partners in the efforts to facilitate access to health care coverage for vulnerable populations and are uniquely positioned to support states and beneficiaries throughout this process.

¹ https://www.urban.org/sites/default/files/publication/104785/what-will-happen-to-unprecedented-high-medicaid-enrollment-after-the-public-health-emergency_0.pdf; see also, Kaiser Family Foundation study, published May 10, 2022, available at: <https://www.kff.org/medicaid/press-release/kff-analysts-find-that-between-5-3-million-and-14-2-million-people-could-lose-medicaid-coverage-following-the-end-of-the-public-health-emergency-and-continuous-enrollment-requirement-with-an-unknown/> that estimates between 5.3 million and 14.2 million low-income people could lose Medicaid coverage following the end of the PHE's continuous coverage enrollment.

² See Letter from Xavier Becerra, Secretary, U.S. Department of Health and Human Services, to Jessica Rosenworcel, Chairwoman, FCC (April 28, 2022) (filed in CG Docket No. 02-278) (noting that millions of Americans will lose their Medicaid coverage when the public health emergency ends unless they take steps to renew eligibility) (HHS Letter), <https://www.fcc.gov/ecfs/search/search-filings/filing/10429695829926>.

Impact of Coverage Loss

When the PHE ends, states will review their Medicaid rolls and conduct redetermination assessments -- renewals, redeterminations, and verifications -- that were on hold during the federal emergency. Redeterminations and renewals have historically been a source of coverage losses among eligible people due to paperwork barriers and backlogs, respectively, and the potentially sudden, comprehensive nature of COVID-19 PHE redeterminations will make this process uniquely challenging.³ Moreover, further complicating the redetermination process is the number of individuals who have moved or lost housing because of the pandemic or a natural disaster.⁴

A recent Kaiser Family Foundation (KFF) analysis found that a large share of non-elderly adults and children could be at risk of losing coverage, even if many continue to be eligible.⁵ Another KFF study found that individuals with limited English proficiency (LEP) may also be at increased risk of losing Medicaid coverage or experiencing a gap in coverage due to barriers in completing the redetermination processes, even if they remain eligible for coverage.⁶ Considering the impact through a health equity lens, a Manatt analysis noted that since “Black, Latino/a, and other people of color make up the largest share of Medicaid enrollees, they will necessarily bear the most significant impact of any large-scale coverage losses at the end of the PHE.”⁷ We have also seen first-hand the challenge of the redeterminations process with the Children’s Health Insurance Program (CHIP) in Utah where the state was unable to locate many of the families with this health coverage, and 41 percent of children enrolled in CHIP were dropped from the program.⁸

MHPA has previously shared our concerns with the Centers for Medicare and Medicaid Services (CMS)⁹ that the sudden stoppage of policies in place for the duration of the PHE or changes made without appropriate notice and timing could have ramifications for the administration of the Medicaid program, as well as potentially lead to confusion and uncertainty for Medicaid beneficiary access to care. We appreciate the guidance and support provided by CMS throughout the COVID-19 pandemic. CMS' ongoing efforts to facilitate a smooth transition from the COVID-19 policies that provided flexibilities during the PHE have focused on preventing or minimizing any potential disruption in the continued delivery of quality health care for Medicaid beneficiaries.

With the unwinding of the PHE flexibilities expected in the near term, we believe it is critical to continue to take steps to protect Medicaid beneficiaries from coverage loss or gaps that can have serious health consequences for populations that are particularly vulnerable.

³ Kinda Serafi, Cindy Mann, and Nina Punukollu, “The Risk of Coverage Loss for Medicaid Beneficiaries as the COVID-19 Public Health Emergency Ends,” *To the Point* (blog), Commonwealth Fund, Sept. 23, 2021. <https://doi.org/10.26099/zaz5-5z07>

⁴ Ibid.

⁵ Bradley Corallo, Robin Rudowitz, and Jennifer Tolbert, “Unwinding the PHE: What We Can Learn From Pre-Pandemic Enrollment Patterns,” KFF Issue Brief, May 10, 2022. <https://www.kff.org/medicaid/issue-brief/unwinding-the-phe-what-we-can-learn-from-pre-pandemic-enrollment-patterns/>

⁶ Sweta Haldar, Samantha Artiga, Robin Rudowitz, and Anthony Damico “Unwinding of the PHE: Maintaining Medicaid for People with Limited English Proficiency,” KFF Issue Brief, Mar. 3, 2022. <https://www.kff.org/medicaid/issue-brief/unwinding-of-the-phe-maintaining-medicaid-for-people-with-limited-english-proficiency/>

⁷ Patricia Boozang and Adam Striar, Manatt Health, “The End of the COVID Public Health Emergency: Potential Health Equity Implications of Ending Medicaid Continuous Coverage,” State Health and Value Strategies, , Sept. 17, 2021. <https://www.shvs.org/the-end-of-the-covid-public-health-emergency-potential-health-equity-implications-of-ending-medicaid-continuous-coverage/>

⁸ McChesney, M., Nelson, J., and Vandehey, J., “Panel Discussion: Update on Restarting Medicaid Eligibility Redeterminations,” Medicaid and CHIP Payment and Access Commission (presentation, January 20, 2022), pg. 101, available at https://www.macpac.gov/public_meeting/january-2022-macpac-public-meeting/

⁹ MHPA website, available at: <https://medicaidplans.org/regulations/>

Outreach via Modern Modalities – Texting & Automated, Pre-Recorded Voice Calls

Outreach and communication are critical tools for helping to address the potential for disruption in care and unnecessary churn for Medicaid beneficiaries. Innovations in technology have changed how information is delivered and received and consumer expectations related to communication, including health care-related information, have evolved. The vast majority (97%) of Americans with incomes under \$30,000 a year own a cellphone of some kind, with 75% of those being smartphones.¹⁰ Text messaging has emerged as an important means of communication. A recent study on the use of texting to provide updates on surgery postponements found that texting updates were viewed as an efficient way to communicate with patients during the COVID-19 pandemic.¹¹

The ability of Medicaid MCOs to communicate with Medicaid beneficiaries in the way the beneficiary prefers (mobile/text, email, mail) presents an opportunity to support and reinforce state eligibility determination and redetermination outreach efforts. Moreover, the Medicaid population is more transient than the general population, and unlike mailed letters, a text message or pre-recorded voice call is linked to the mobile phone number and not to a potentially outdated mailing address.

Using multiple modes of communication including mail, phone, text, and email helps increase the likelihood of reaching and connecting with a beneficiary.

TCPA Interpretation

In their April 28th letter, Secretary Becerra and Administrator Brooks-LaSure wrote: “...we would like to see the millions of Americans who are eligible for and have gained access to health coverage...remain covered and continue to have the peace of mind that comes with having health coverage...” The letter set forth a strategy to support states “to facilitate renewals, limit additional requests for information from enrollees, and reduce coverage terminations due to enrollee non-response” that includes the use of text messages and automated, pre-recorded calls.

Educating, engaging, and empowering Medicaid beneficiaries is key to ensuring uninterrupted health coverage and access to care. We believe that texting and automated, pre-recorded voice calls are viable modalities for beneficiary outreach. We also believe that federal regulations broadly allow states and health plans to assume member implied prior consent for such communications. The prior consent assumption is derived from the beneficiary’s provision of their phone number and signature acknowledging the terms stated on the application form in the context/scope of their health benefit enrollment. We also note that in a decision from April 1, 2021, the U.S. Supreme Court found that texting numbers associated with known individuals does not fall under the definition of “auto-dialer” under the TCPA.¹² We support the removal of barriers and increased flexibility related to member outreach through electronic means, including text messaging and automated, pre-recorded voice calls, that are intended to engage beneficiaries and help minimize disruptions of care. Therefore, we join with HHS and respectfully request that the FCC clarify that this interpretation is consistent with provisions in the TCPA.

¹⁰ Pew Research Center, “Mobile Fact Sheet,” Apr. 7, 2021. <https://www.pewresearch.org/internet/fact-sheet/mobile/>

¹¹ Kevin Campbell, et al. “Evaluating the Utility of Using Text Messages to Communicate With Patients During the COVID-19 Pandemic,” *Journal of the American Academy of Orthopaedic Surgeons*. Global research & reviews vol. 5,6 e21.00042. Jun. 15, 2021, doi:10.5435/JAAOSGlobal-D-21-00042

¹² U.S. Supreme Court, *Facebook, Inc. v. Duguid et al.*, decided April 1, 2021. https://www.supremecourt.gov/opinions/20pdf/19-511_p86b.pdf

We also note that in an adjudicatory ruling from February 12, 2021, the Commission noted that federal and state government contractors may qualify for forms of derivative immunity in certain circumstances when they are making calls on behalf of the federal government or state government.¹³ We would ask the FCC to address the specific types of immunity that are being referenced in this ruling and to clarify under what circumstances the immunity would or would not apply. We also respectfully request clarification about what immunity is available and when it would or would not apply to MCOs, and, if applicable, their parent companies, and their contractors, when the MCO provides coverage to Medicaid enrollees under contract with a state agency and deliver text messages and automated, pre-recorded calls to individuals with the state's authorization. It would also be helpful to articulate any terms and conditions required for such authorization as clearly as possible.

Thank you for providing this opportunity to comment on this important issue. The simultaneous processing of vast numbers of eligibility determinations will prove operationally challenging for states and potentially put millions of individuals at risk of losing their Medicaid coverage, even when they remain eligible.

We believe the FCC's clarification of allowances and immunities under the TCPA will support efforts by HHS, states, and MCO partners to protect access to health coverage and minimize coverage gaps for Medicaid beneficiaries when the PHE and continuous enrollment requirement ends.

Please feel free to reach out to me directly at sattanasio@mhpa.org with any questions or should you need any additional information.

Sincerely,

/s/

Shannon Attanasio
Vice President, Government Relations and Advocacy

¹³ 86 FR 9299 through 9301 (February 21, 2021).