AmeriHealth Caritas

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September 19, 2016

Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554
Submitted electronically to the Federal Communications Commission's website:
https://www.fcc.gov/ecfs/fillings

RE: [CG Docket No. 02-278]

Dear Commissioners:

On behalf of the AmeriHealth Caritas Family of Companies, I am writing to add our support to the *Joint Petition of Anthem, Inc., Blue Cross Blue Shield Association, WellCare Health Plans, Inc., and the American Solicitation of Healthcare Administrative Management for Expedited Declaratory Ruling and/or Clarification of the 2015 Telephone Consumer Protection Act ("TCPA") 2015 Omnibus Declaratory Ruling and Order (the "2015 Declaratory Order) (CG Docket No. 02-278)* filed on July 28, 2016.

With more than 30 years of experience, AmeriHealth Caritas is one of the nation's leaders in health care solutions for those most in need. Operating in 19 states and the District of Columbia, AmeriHealth Caritas serves more than 5.4 million Medicaid, Medicare and CHIP members through its integrated managed care products, pharmaceutical benefit management and specialty pharmacy services, behavioral health services, and other administrative services. Due to the population we serve, we are supportive of the efforts our colleagues have undertaken to get the necessary clarification that will enable our associates the ability to do outreach via mobile device, to our members.

Background on the issue: A Medicaid Perspective

At AmeriHealth Caritas, one of the greatest challenges we face is keeping our members engaged so they continue to receive necessary health care treatments and services. The transient nature of a large number of our members makes contact by mobile phone the most effective way to reach-out and stay in touch to ensure they can participate in their health care.

Outreach efforts are an essential component of our ability to engage members in their health care, as well as a requirement of the government agencies we serve. Our contracts require ongoing case management for identified populations, reminders for health screening and follow-up for identified health care needs. The mobile phone has become the ideal mechanism for these efforts.

AmeriHealth Caritas does not take for granted that all of our members have access to a mobile phone. We support the continuation of the Lifeline program, and submitted comments to the Federal Communications Commissioners on the importance of the program to our members last year. The success we have had with

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members in the Lifeline program continues to be instrumental in our ability to provide our members with the health care services they need. Maintaining contact and following up with members who do not have a phone of their own or access to a phone is extremely difficult. With the Lifeline program, we are able to assist members to get a mobile phone, leading to better communication between AmeriHealth Caritas, the member and the member's health care providers.

Supporting the Petition

As noted in the petition, we request that "the Commission should clarify and confirm the regulation of the use of health plan member telephone numbers under the TCPA with the regulation of the same use under the Health Insurance Portability and Accountability Act ("HIPAA"). In doing so, the Commission should protect non-telemarketing calls allowed under HIPAA in light of their unique value to and acceptance by consumers. The *2015 Declaratory Order* could be interpreted in a way that discourages and burdens important health care communications that are allowed by more specific HIPAA regulation, and encouraged by federal and state public health policies."

AmeriHealth Caritas believes non-telemarketing calls allowed under HIPAA serve a vital support to our members. The guidance we currently follow allows us to stay in touch with our members to help them receive needed preventive care services and encourage their adherence to treatment regimens. Our outreach is through phone calls or text messages, which communicate reminders to schedule doctor's appointments or refill prescriptions, coordinate needed care following hospitalization or emergency room visits, and provide education on preventive screenings, prenatal/postpartum care and well-child visits.

Further, as noted in the petition, "empirical studies demonstrate that health care-related texts and calls lead to more engaged patients, better patient outcomes, and lower health care costs for consumers. These are critical public health goals." We strongly agree with this assessment and can provide examples of its impact to date.

One such example is a member our community health workers met, "Anthony", who was referred to the team due to his categorization as being a high utilizer. Upon initial conversation with him, the team realized that "Anthony" was deaf. The team was able to work with the Lifeline program to equip him with a phone that provided a text message connection between "Anthony" and his new care manager, who was also deaf. With this technology improvement, "Anthony" was able to communicate more effectively with our community health workers and others in his care team – taking him off the high utilizers list.

Understanding that there are concerns around security, AmeriHealth Caritas relies on HIPAA's comprehensive privacy and security requirements associated with communications between Covered Entities, Business Associates, patients, members, and other key stakeholders in the health care ecosystem. We support the Petitioners' request that the Commission should ensure harmony between the TCPA, its prior decisions and rulings, and HIPAA. We agree that there is a need to clarify and confirm that the

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provision of a phone number to a "covered entity" or "business associate" (as those terms are defined under HIPAA) constitutes prior express consent for non-telemarketing calls allowed under HIPAA for the purposes of treatment, payment or health care operations. This clarification should extend to all HIPAA "covered entities" and "business associates", so that each use of the term "healthcare provider" is interpreted to read "HIPAA covered entities and business associates".

To ensure ongoing consumer protection, AmeriHealth Caritas also supports ensuring that a consumer retains the right to revoke consent to non-telemarketing health care communications as defined under HIPAA.

As our colleagues request in their petition, we respectfully request that the Commissioners take action on this critical issue to avoid further confusion and prevent detrimental health outcomes that are not in the public interest. Once again, AmeriHealth Caritas supports the Petitioners request that the Federal Communications Commission issue an expedited declaratory ruling and/or clarification of the *TCPA 2015 Declaratory Order*.

If you have any questions concerning this letter, please contact me at 215-937-8324 or by email at agelzer@amerihealthcaritas.com.

Sincerely,

Andrea Gelzer, MD, MS, FACP
Senior Vice President & Corporate Chief Medical Officer