

**America's Health
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June 10, 2015

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Rules and Regulations Implementing the Telephone Consumer
Protection Act (CG Docket No. 02-278)

Submitted via the Electronic Comment Filing System

Dear Ms. Dortch:

America's Health Insurance Plans (AHIP) is writing to submit *ex parte* comments regarding the application of the Telephone Consumer Protection Act (TCPA) to certain health care communications made by health care providers and health insurance plans. We understand this issue is on the agenda for the Federal Communications Commission's next scheduled meeting. In particular, we are writing in support of the Petition for Declaratory Ruling filed by the American Association of Healthcare Administrative Management (AAHAM) (CG Docket No. 02-278, filed October 21, 2014).

AHIP is the national trade association representing the health insurance industry. Our member health insurance plans provide health and supplemental benefits to more than 200 million Americans, offering a wide range of insurance and health coverage options to consumers, employers, and government purchasers. AHIP strongly supports initiatives to improve the health and wellbeing of individuals, including important health care communications made to patients and enrollees in health plans offered by our members. We have previously submitted comments to the FCC on the application of the TCPA to health care communications made to mobile telephones (Comments by America's Health Insurance Plans in Support of United Healthcare Services, Inc. Petition for Declaratory Relief, CG Docket No. 02-278, filed March 10, 2014).

AHIP's prior FCC comments and the AAHAM petition describe the important role that health care communications such as prescription refill and physician office visit reminders, care coordination messages, home healthcare information, and pre- and post-operative instructions play in helping improve health outcomes. Numerous clinical studies – cited by AHIP, AAHAM, and others that have filed comments with the FCC – support the benefits of such communications. For example, a recent analysis by the Commonwealth Fund noted the growing

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adoption of cell phone interventions by community health centers and clinics for chronic disease management.¹

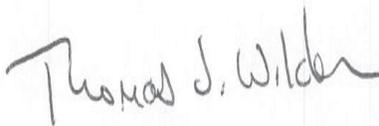
We understand the concerns raised by some that have submitted FCC comments that consumers should not be subject to unwarranted and unsolicited phone and text messaging contacts. The core goal of the TCPA is to protect consumers against, “(u)restricted telemarketing [which] can be an intrusive invasion of privacy and, when an emergency or medical assistance telephone line is seized, a risk to public safety.” (Telephone Consumer Protection Act of 1991, Section 2(5), Pub. Law 102-243) (*see: Mims v. Arrow Financial Services, LLC*, 565 US ___, 132 S. Ct. 740, 181 L. Ed. 2d 881 (2012)).

In enacting the TCPA, however, Congress also recognized that certain communications to consumers were permissible – notably where the called party has provided “prior express consent” (47 U.S.C. §227(b)(1)(B)). We agree with the Petition submitted by AAHAM that provision of a phone number by an individual to a health care provider or health plan is clear evidence of their prior consent to receive non-telemarketing, health care-related communications. We ask the FCC to issue guidance or rulemaking that clarifies this provision of the TCPA with respect to such communications.

Communicating health care-related information to patients and health insurance plan enrollees – such as reminders to pick up prescriptions or to take certain actions before or after surgery – cannot in any sense be considered “telemarketing.” These types of messages are intended to help consumers with their health and wellbeing and should be permitted if the individual has previously provided their telephone number to the health care provider or health insurance plan.

AHIP appreciates the opportunity to provide comments to the FCC on this important issue.

Sincerely,



Thomas J. Wilder
Senior Counsel

¹ *Mobile Health and Patient Engagement in the Safety Net: A Survey of Community Health Centers and Clinics*, The Commonwealth Fund, May 2015 accessed at: <http://www.commonwealthfund.org/publications/issue-briefs/2015/may/mobile-health-and-patient-engagement-in-the-safety-net>