

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of Anthem, Inc.)
Petition for Declaratory Ruling and Exemption) CG Docket No. _____
Regarding Non-Telemarketing Healthcare Calls)
)
Rules and Regulations Implementing the) CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)

**PETITION FOR DECLARATORY RULING AND EXEMPTION
REGARDING NON-TELEMARKETING HEALTHCARE CALLS**

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Anthem, Inc. (“Anthem”) respectfully petitions the Federal Communications Commission for entry of a Declaratory Ruling expressly excepting non-telemarketing health care related calls from the current restrictions that otherwise apply under the Telephone Consumer Protection Act (“TCPA”). Specifically, Anthem urges the Commission to make non-telemarketing health care related calls and text messages from health plans and providers to wireless telephones, as described in Section VI below, subject to an “opt out” rather than an “opt in” prior consent regime.

I. Introduction and Summary

Anthem is one of the largest health benefits companies in terms of medical membership in the United States. It operates nationwide and provides health coverage to nearly 40 million Americans. Anthem makes telephone calls to land lines and cell phones and sends text messages to its members to provide timely and important information about their health care. These calls provide important information to help improve the health and wellbeing of its members.

This Petition seeks a clarification that will protect both health benefit companies (such as Anthem) and health care providers from liability for making certain specifically-identified non-

telemarketing health care related calls and sending non-telemarketing health care related text messages to cell phones. Such calls and messages have been shown repeatedly to result in better health care outcomes, a great majority of consumers welcome such communications, and sound public policy strongly supports a regulatory regime which encourages rather than deters health plans and health care providers to reach out to consumers in ways that empower members to take better care of themselves and their families. An unnecessarily broad application of the TCPA would negatively impact health care outcomes and contravene a growing body of health care policy established by government agencies and other health policy experts promoting communications with members and patients to provide information to positively influence their health care decisions and actions.

Anthem emphasizes that this Petition expressly excludes debt collection and telemarketing calls. This Petition focuses solely on health care related calls and text messages (1) from health care plans or providers (2) to consumers with whom the health plan or provider has existing relationships (3) that are aimed at improving health outcomes.

The unique circumstances of non-telemarketing, health care outreach strongly suggest that the FCC should create a specific, balanced regulatory regime for these notably pro-consumer calls. Such calls and messages provide important information to consumers that can help them improve their health and reduce the risk of death, by advising and enabling members to take simple steps to protect their health and limit avoidable complications or hospitalizations. The ability – or at least the willingness – of health plans and providers to provide such benefits is highly jeopardized, however, by the threat of draconian liability in consumer class actions alleging violations of the TCPA, justifying protective action by the FCC.

Chairman Tom Wheeler has recently announced his proposal to protect Americans from unwanted robocalls, spam text messages, and telemarketing calls.¹ That proposal would “Allow *Very Limited and Specific Exceptions for Urgent Circumstances* – Free calls or texts to, for example, alert consumers to possible fraud on their bank accounts or remind them of important medication refills would be allowed,” and “consumers would have the ability to opt out of even these permitted calls and texts.”² Anthem strongly supports the general thrust of that proposal, provided that the urgent calls exception not be limited to bank fraud and medication refills but also (a) include the additional specific health care calls and text messages described in this Petition (*see* Section VI, below) and (b) provide the opportunity for addition by the FCC of further similar communications to the exception as may be warranted by experience and future developments in technology.

Anthem also emphasizes that it supports the right of consumers to “opt out” from receiving automated telephone dialing system (“ATDS”) calls and texts. While consumer acceptance rates of these types of calls are very high (as discussed below in Section III), Anthem believes that consumers should have the right to control their preferences on how they receive health-related information as part of a balanced “opt out” regulatory regime.

II. Non-telemarketing health care related calls and messages have high consumer benefits.

Anthem makes telephone calls and sends text messages to its members to provide information which empowers them to be engaged in their own health care decisions. Other health plans and providers do likewise. Specific examples of Anthem’s health-care related calls

¹ Fact Sheet: Wheeler Proposal to Protect and Empower Consumers Against Unwanted Robocalls, Texts to Wireless Phones (cited below as “Fact Sheet: Wheeler Proposal”), available at <https://www.fcc.gov/document/fact-sheet-consumer-protection-proposal> (last visited June 10, 2015).

² *Id.*

and text messages, which should be subjected to an “opt out” consent regime as discussed in this Petition, are described in Section VI, below.

Numerous empirical studies published in peer-reviewed journals or conducted by federal agencies or respected non-profit institutions have demonstrated that such calls have high consumer benefits in the form of better health outcomes, including preventing death. The U.S. Department of Health and Human Services (“HHS”) has reported, for example, that “[t]he rapid expansion of mobile health (mHealth) programs through text messaging provides an opportunity to improve health knowledge, behaviors, and clinical outcomes, particularly among hard-to-reach populations.”³ It confirmed, after reviewing more than 100 previous studies of text messaging programs, that

A substantial body of research has shown that health text messaging programs can bring about behavior change to improve short-term smoking cessation outcomes as well as short-term diabetes management and clinical outcomes (increasing frequency of blood glucose monitoring and reducing HbA1c levels). Research has also shown that text messaging improves treatment compliance, including both medication adherence and appointment attendance. Research suggests that text messaging can improve immunization rates, increase sexual health knowledge, and reduce risky behaviors related to HIV transmission, although the literature is less definitive in these areas.⁴

A separate HHS task force also noted the potential for, and promise of, use of outreach to mobile phones to improve health:

Mobile phones and other portable health information technologies offer unprecedented opportunities to improve the health of the U.S. population and reach traditionally underserved subgroups (e.g., rural communities, low-income groups, and ethnic minority populations)... Ethnic minority groups are more likely to own a mobile phone and use mobile phones to access health information.... A growing body of empirical studies suggests that the use of

³ U.S. Department of Health and Human Services, Health Resources and Services Administration, *Using Health Text Messages to Improve Consumer Health Knowledge, Behaviors, and Outcomes: An Environmental Scan*, May 2014 (Abstract), available at <http://www.hrsa.gov/healthit/txt4tots/environmentalscan.pdf> (last visited June 10, 2015).

⁴ *Id.*

mobile phone text messaging can be effective in improving health behaviors and health outcomes.⁵

In addition to the findings of the May 2014 HHS study, a 2014 review found that 77 percent of 60 published studies on the use of text messages to deliver health-care reminders showed improvements in patient compliance. Those studies focused on HIV and diabetes disease management, among others, and improvement measures included increased adherence to medication and recommended treatment as well as attendance at health care appointments.⁶ The results of several additional studies are described at pages 4-6 of Anthem’s April 6, 2015, comment letter in the matter of the American Association of Healthcare Administrative Management’s Petition for Expedited Declaratory Ruling and Exemption Regarding Non-Telemarketing Healthcare Calls, CG Docket No. 02-278.

Recognizing the health care outcome benefits of mobile health processes, state and federal agency policies encourage aggressive use of such programs and use text messaging and ATDS calls. Federally supported text messaging initiatives include Text4baby, which provides information and referral times keyed to the prenatal stage or age and developmental stage of the child⁷; QuitNowTXT, which delivers day-specific quit messages to persons in the process of

⁵ U.S. Department of Health and Human Services, Text4Health Task Force, *Health Text Messaging Recommendations to the Secretary*, available at <https://web.archive.org/web/20130425185731/http://www.hhs.gov/open/initiatives/mhealth/recommendations.html> (last visited June 10, 2015).

⁶ Kati Annisto, Marita Koivunen & Maritta Valimaki, *Use of Mobile Phone Text Message Reminders in Health Care Services: A Narrative Literature Review*, 16(10) J. Med. Internet Res. e222 (2014).

⁷ “Text4baby is the first mobile information service designed to promote maternal and child health through text messaging. Text4baby is a free service of the nonprofit National Healthy Mothers, Healthy Babies Coalition (HMHB) and was created in collaboration with Founding Sponsor Johnson & Johnson, and founding partners Voxiva, The Wireless Foundation, and Grey Healthcare Group (a WPP company).” It is “supported and promoted by a public-private partnership of over 1200 health departments, academic institutions, health plans, businesses, and the federal government.” <https://text4baby.org/index.php/about> (last visited June 10, 2015).

smoking cessation⁸; and Health Alerts On-the-Go, which provides the Centers for Disease Control and Prevention’s health information, including seasonal flu and public health emergencies.⁹

Section 3025 of the Patient Protection and Affordable Care Act (the “ACA”) amended Section 1886 of the Social Security Act, 42 U.S.C. § 1395ww, by creating a new Hospital Readmissions Reduction Program which financially penalizes hospitals that experience “excess readmissions”; and section 2717 of the ACA, 42 U.S.C. § 300gg–17, requires the Secretary of Health and Human Services to develop reporting requirements for use by group health plans “to prevent hospital readmissions through a comprehensive program for hospital discharge that includes patient-centered education and counseling, comprehensive discharge planning, and post discharge reinforcement by an appropriate health care professional.” Hospitals sensibly rely on telephonic contacts with post-discharge patients to carry out their education, counseling, planning, and reinforcement duties under that statute and to avoid financial penalties for excess readmissions. A group of medical scholars has developed a “ReEngineered Discharge (RED) Program,” which has been adopted as a “Safe Practice” by the National Quality Forum, and which relies on telephone reinforcement of a written discharge plan as one method of preventing unnecessary readmissions.¹⁰

⁸ The QuitNowTXT text messaging library was developed by the U.S. Department of Health and Human Services, the National Institutes of Health, and the National Cancer Institute “to provide health departments, academic institutions, and government agencies with an algorithm and database of messages designed to serve as smoking cessation intervention for individuals who are ready to quit smoking. The library includes day-specific messages including keyword response.” See <http://smokefree.gov/health-care-professionals> (last visited June 10, 2015).

⁹ See <http://www.cdc.gov/mobile/registration/learnMore.html> (last visited June 10, 2015).

¹⁰ Brian Jack, MD, et al., *Developing the Tools to Administer a Comprehensive Hospital Discharge Program: The ReEngineered Discharge (RED) Program*, available at <http://www.ncbi.nlm.nih.gov/books/NBK43688/> (last visited June 10, 2015) (see Table 2 to linked pdf version of the article).

Indeed, the trend is to require more, not less, outreach. Anthem administers Medicaid benefits under contract with state Medicaid agencies. On May 26, 2015, the federal Centers for Medicare & Medicaid Services (“CMS”) proposed revisions to rules designed to strengthen managed care regulations for Medicaid and CHIP programs. Under the proposed regulations, health benefit organizations administering Medicaid or CHIP programs would be required to contact new enrollees within 90 days to assess the enrollee’s needs, and to make additional contacts if an initial contact is unsuccessful.¹¹ Moreover, Anthem’s contracts with state Medicaid agencies require Anthem to make telephonic contact for many purposes. For example, Anthem’s contract with the Kansas agency requires it use texts to provide prevention information, Louisiana requires Anthem to promote Text4baby, and Indiana requires Anthem to provide care management services by telephone. Maryland by regulation requires companies administering Medicaid benefits for special needs populations to engage in “documented outreach efforts to contact and educate enrollees who fail to appear for appointments or who have been noncompliant with a regimen of care” including, specifically, “by telephone.”¹²

Anthem’s support of Lifeline provides a further example of telephone and text outreach success. Lifeline is a government benefit program, supported by the federal Universal Service Fund, which helps eligible low-income subscribers obtain access to telephone service. In 11 states where Anthem administers Medicaid benefits under contract with state agencies, Anthem has partnered with Tracfone, the largest “No-Contract” cell phone provider in the United States, to offer free cell phone and free minutes every month under the Lifeline program for members

¹¹ The proposed revision to 42 C.F.R. § 438.209(b)(3) was published June 1, 2015, 80 Fed. Reg. 31098, and can be found at <https://www.federalregister.gov/articles/2015/06/01/2015-12965/medicaid-and-childrens-health-insurance-program-chip-programs-medicoid-managed-care-chip-delivered> (last visited June 10, 2015).

¹² COMAR 10.09.65.04.

enrolled in Medicaid. Anthem is currently piloting a texting program known as “Connect4Health,” including 178,000 members in 11 states. Consistent with existing law, Anthem members receiving cell phones opt into receiving health care messages by phone and can opt out at any time. The text messages encourage members to follow recommended guidelines for physical exams, preventive screenings, flu shots and vaccinations, as well as make them aware of services and benefits available from Anthem subsidiary Amerigroup. The program is designed to improve key quality measures for health plans and increase member satisfaction. Prior to the launch of the services, the content of the health messages was approved by the state Medicaid agencies in those 11 states.

Early results are encouraging; for example, members receiving reminders to schedule physical exams are up to 10 times more likely to attend their annual physical exams within 90 days of receiving interactive text messages, and 71 percent of surveyed members said that receiving reminders helped them to remember to go to the doctor. Anthem’s experience with Lifeline is shaping up to be a resounding proof of the program’s potential value to connect eligible low-income subscribers with their health care, and more generally of the potential for text outreach to improve health and reduce mortality.¹³

III. Most consumers welcome non-telemarketing health care related wireless telephone calls and text messages.

Available research confirms that a great majority of consumers are open to and desire access to programs that employ telephonic contact for health care matters. One study concluded that “text messaging may be a promising method to improve healthcare provider communication with safety net populations in the US, particularly for appointment and expiring insurance

¹³ A recent article concerning Lifeline quoted a consumer as stating that “Without a phone, I couldn’t connect with my job, my kids’ doctors or their schools.” Rebecca R. Ruiz, *F.C.C. Chief Seeks Broadband Plan to Aid the Poor*, N.Y. Times, May 28, 2015, at A1.

reminders and among younger and Hispanic populations.”¹⁴ Another survey of commercially-insured consumers found that the highest acceptance for health management programs when they are mobile.¹⁵

A major national pharmacy, Walgreens, makes prescription refill reminder calls with an opt out mechanism of a simple keypad entry during prerecorded calls. The overall “opt out” rate was less than 1.5 percent.¹⁶

This consumer receptiveness is confirmed by Anthem’s experience. As noted above, Anthem is sponsoring distribution of Lifeline phones to disadvantaged Medicaid members. Only 4 percent of members receiving phones under the program cancel out. Indeed, Anthem collects “opt out” requests by any of its members – consumers with benefits under commercial group or individual policies as well as Medicare and Medicaid members – who do not desire to receive health-care messages. Anthem is experiencing an overall “opt out” rate for non-telemarketing calls of approximately 0.35 percent. In sum, the overwhelming majority of Anthem customers want to receive health care messages by text or phone.

Unfortunately, and despite the desire of most consumers to receive these types of calls and texts, it is difficult and often impossible to effectively inform consumers and get their consent to initiate these calls except through their preferred method of communication, *i.e.*, mobile phones. Other means of outreach, such as mailings and calls to residential phones, are

¹⁴ Leah Zallman, et al., *Access to and Preferences for Text Messaging for Medical and Insurance Reminders in a Safety Net Population*, Cambridge Health Alliance, Department of Medicine, et al., available at <http://chiamass.gov/assets/docs/r/pubs/14/text-sgim-final.pdf> (last visited June 10, 2015).

¹⁵ Elizabeth Boehm, et al., *Mobile and Social Gain Ground in Wellness and Disease Management*, Forrester Research, available at <https://www.forrester.com/Mobile+And+Social+Gain+Ground+In+Wellness+And+Disease+Management/fulltext/-/E-res58231> (last visited June 10, 2015).

¹⁶ *Kolinek v. Walgreen Co.*, Case No. 13-cv-04806 (N.D. Ill.), Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (March 26, 2015) (Dkt. No. 98) at page 11.

simply not effective in reaching most consumers, especially young people, minorities and low-income groups. Moreover, given the complexities of health care enrollment, many members do not directly sign subscription agreements or enrollment forms with their insurers, so consent cannot be obtained in that way. The result is that large numbers of consumers are effectively eliminated from these outbound calling efforts, often without having any knowledge of the opportunity to participate. We believe that consumers have the right to fully avail themselves of the benefits of these calls, just as they should have the right to opt out of calls that they do not wish to receive.

IV. Health-related calls to cell phones are necessary to effective outreach, are already subject to robust regulation, and should be treated equally with calls to residential lines.

As shown above, using telephony to engage consumers in their health care is emerging as a way to improve outcomes and health care. In order to use telephony effectively, however, plans and health care providers must be able to call and send text messages to cell phone numbers, which triggers the TCPA.

Approximately 44 percent of American households in 2014 relied exclusively on wireless devices for telephone service, up from 29.7 percent in 2010.¹⁷ More than one-half of all children under 18 and adults aged 18-44 live in wireless-only households.¹⁸ Wireless-only households are more likely to have numerous health challenges, such as substance abuse, financial barriers to health care, lack of influenza vaccination, and untreated medical conditions.¹⁹ Medical

¹⁷ Fact Sheet: Wheeler Proposal, citing Stephen J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2014*, Div. of Health Interview Statistics, Nat'l Ctr. for Health Statistics, Centers for Disease Control and Prevention (Dec. 2014), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201412.pdf> (last visited June 10, 2015) (cited below as “Blumberg & Luke, *Wireless Substitution*”).

¹⁸ Blumberg & Luke, *Wireless Substitution*, at 1.

¹⁹ *Id.* at 3.

researchers have observed that hard-to-reach populations are particularly prone to rely on cell phones and texting as their only or primary means of telephonic communications.²⁰

In sum, telephony is important to health care (as discussed above); and health care insurers and providers must be allowed to place calls and send texts to wireless numbers, lest basically half of the U.S. population, and a majority of the vulnerable populations (children, poor, persons with health challenges), be excluded from its benefits.

Moreover, health-related calls, whether to cell phones or residential lines, are already subject to robust privacy regulation. CMS has promulgated rules that (a) require that any marketing communications with Medicaid members be approved by state agencies, and (b) flatly prohibit “cold call” telephonic marketing to members.²¹

Health plans and covered health care providers regulated by the HIPAA Privacy Rule²² promulgated under the Health Insurance Portability and Accountability Act (“HIPAA”) are required to provide privacy notices, which may include a disclosure that telephone numbers will be used for contact.²³ Upon providing a privacy notice, and as permitted under the HIPAA Privacy Rule, covered entities and business associates may use cell phone and residential lines to communicate with individuals under HIPAA’s treatment, payment and operations exceptions. The Privacy Rule draws careful distinctions between using patient information for permissible health-care related messages without specific authorization, on the one hand, and calls and

²⁰ Melissa S. Stockwell, MD, MPH, et al., *Text4Health: Impact of Text Message Reminder–Recalls for Pediatric and Adolescent Immunizations*, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3483980/> (last visited June 10, 2015).

²¹ 42 C.F.R. § 438.104(b)(1)(i) & (v).

²² 45 C.F.R. § 164.520.

²³ HHS, Health Information Privacy: Model Notices of Privacy Practices, <http://www.hhs.gov/oct/privacy/hipaa/modelnotices.html> (last visited June 10, 2015).

messages that constitute marketing, requiring written authorization, on the other. Using patient information for prescription adherence calls as defined by the Privacy Rule, for example, is generally permitted without specific written permission.²⁴ In sum, outreach to patients by health plans and providers is already subject to a highly articulated regulatory regime under the HIPAA Privacy Rule, further ensuring that latitude given health plans and providers under the TCPA will not result in abuse.

V. An “opt out” regime for non-telemarketing, health care related calls to existing patients/subscribers will strike the appropriate balance and avoid the adverse health care impacts of a restrictive or deterrent regime.

The TCPA addresses in a general way the interests of consumers in avoiding unwanted calls. However, Congress also recognized the need for flexibility in application of the TCPA by granting the Commission broad authority to interpret the statute. While one touchstone of the TCPA is Congress’ decision to allow consumers to prevent automated dialer calls to their cell phones, that is not the only interest at issue. Another important interest of consumers also is at stake: the right of consumers to receive beneficial calls to their cell phones, particularly when the consumers’ health and medical care are at stake. A regime that makes it too difficult and too risky to place calls with such a high degree of consumer benefit would have perverse, anti-consumer consequences.

²⁴ See U.S. Department of Health and Human Services, *Health Information Privacy: The HIPAA Privacy Rule and Refill Reminders and Other Communications about a Drug or Biologic Currently Being Prescribed for the Individual*, <http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveridentities/marketingrefillreminder.html> (visited June 10, 2015) (explaining that the Privacy Rule authorizes “refill reminders or other communications about a drug or biologic that is currently being prescribed for the individual”; that face-to-face “Communications about drugs or biologics *not* falling within the refill reminder exception” are permitted under the Privacy Rule; and that “Face-to-face communications do *not* include communications by telephone or sent by mail or e-mail”).

Fortunately, the FCC is able to make calibrated policy to achieve an appropriate balance; it is not required to enforce the TCPA myopically, with only one type of consumer benefit in mind. Anthem respectfully submits that the appropriate balance is to allow health plans and providers to make calls and send texts to cell phones of consumers with whom they have existing relationships, for specific, health care related, non-telemarketing purposes, provided that consumers' requests that callers stop sending calls and/or texts are respected.

The FCC's authority to regulate these calls is reflected in the TCPA and its implementing regulations in several ways. First, the TCPA, 47 U.S.C. § 227(b)(1)(A), and its implementing regulations, 47 C.F.R. § 64.1200(a), recognize that calls for "emergency purposes" do not require prior express consent. Courts have yet to interpret this exception, but the potential application of this exception to the consent requirement was recognized as a potential defense by plaintiffs' lawyers in the settlement of a TCPA class claim against Walgreen for making prescription refill reminder calls. Indeed, in that case the plaintiffs' lawyers represented to the Court that whether this exception would apply to prescription refill reminders potentially would be an issue for the FCC to decide.²⁵

In addition to the emergency purpose exception, the FCC also has clear power to interpret the concept of consent under the statute and regulation. The FCC thus has the power to rule that a patient's health-care relationship with a provider or health plan, which already is heavily regulated, constitutes consent to be called or texted at any number connected with the consumer with dialer technology for non-telemarketing calls germane to the relationship with the health plan or provider.

²⁵ *Kolinek v. Walgreen Co.*, Case No. 13-cv-04806 (N.D. Ill.), Plaintiff's Motion for Preliminary Approval of Class Action Settlement (March 26, 2015) (Dkt. No. 98) at page 3.

Without regulatory action, health plans and providers face massive potential liability under the TCPA for making non-telemarketing, health care calls. Regardless of how hard callers try to comply, given the complexity of health care systems and the uncertainty surrounding the rules governing these calls, the upsurge of litigation will continue absent the Commission's intervention. Given the enormous potential class action liability, a regulatory failure to carve out exceptions for specific, beneficial health care communications would lead to fewer health care related calls being made, regardless of actual consumer preferences and regardless of the lives that could be saved.

Anthem supports, however, the right of consumers to control their preferences for receiving health care messages from health plans and providers. Such a right strikes the appropriate balance between reducing the legal exposure faced by health plans and providers in making calls and sending texts, and the ultimate interests of consumers in being able to turn off a flow of unwanted contacts, however potentially beneficial.

VI. Specific calls and texts should be permitted under an urgent circumstances exception.

Chairman Wheeler has recently announced that his proposal would “Allow *Very Limited* and Specific Exceptions for Urgent Circumstances – Free calls or texts to, for example, alert consumers to possible fraud on their bank accounts or remind them of important medication refills would be allowed,” and “consumers would have the ability to opt out of even these permitted calls and texts.”²⁶ By this Petition, Anthem asks that the FCC immediately begin the process of identifying the limited and specific exceptions for important health-related calls subject to the “opt out” regime.

²⁶ Fact Sheet: Wheeler Proposal.

As a starting point, the case for prescription refill reminder calls being treated as urgent under the TCPA is a clear one. By definition, a prescription reflects a determination by a health care professional that medication is needed to treat a current condition. Studies show that non-compliance with treatment regimes is a significant problem.²⁷

However, other specifically-identifiable types of calls that Anthem makes are comparable in terms of their important links to health care outcomes, and Anthem asks that they also be subject to an “opt out” consent regime.

Anthem, therefore, petitions the FCC to include the following types of calls in the “opt out” regime:

A. Case management calls to engage consumers in the treatment of existing medical conditions with the goal of obtaining better outcomes.

Examples of these calls include:

- **Chronic Conditions:** Calls to persons with identified chronic health conditions to help them manage those conditions. These would include, for example, calls to persons who have been identified as having diabetes and who need screenings, with the goal of encouraging each member to make an appointment to have his or her yearly diabetic eye exam. Other examples would be calls to persons identified as having hypertension or asthma to share information on recommended screenings and offer tips for managing these conditions.
- **Pregnancy:** Calls to pregnant mothers to promote adequate prenatal care. These would include, for example, calls to screen for various high-risk factors with the goal of identifying issues that need to be addressed during pregnancy, encourage patients to complete recommended prenatal checkups on time, and offer various tools and resources.
- **Post Discharge Follow Up:** Post discharge calls to patients to encourage compliance with recommended health care follow up measures. These would include calls to new mothers regarding care for themselves and their babies, including issues related to breastfeeding,

²⁷ It is estimated that 50 percent of elderly patients forget to take medicines as prescribed. Darrell West, *How Mobile Devices are Transforming Healthcare*, 18 Issues in Technology Innovation (Brookings Institution) (May 2012), available at <http://www.brookings.edu/~media/research/files/papers/2012/5/22-mobile-health-west/22-mobile-health-west.pdf> (last visited June 10, 2015).

newborn care and vaccination, and postpartum depression, with the goals of assisting new mothers with infant care and screening for postpartum depression. Also included would be calls reminding members who had in-patient hospital or nursing home stays or other extended forms of treatment to adhere to discharge instructions and follow up with doctors as directed to prevent re-admittance and promote proper healing; and calls to members who have used the ER inappropriately and/or members who frequent the ER to offer alternative sites of care, educate them about true health emergencies, and offer tools and resources (such as the nurse helpline) to help them use their benefits wisely and prevent fragmented care.

- Prescription Adherence: Calls to encourage adherence to prescribed medications. These would include, for example, calls to members taking medication for anxiety and depression, including education regarding taking medications as prescribed, with the goal of increasing members' compliance with their prescriptions; calls to members who have filled multiple prescriptions for opiates, aimed at educating them about the proper use of drugs and encouraging them to speak to clinical staff; and calls to parents/guardians of members who have been prescribed attention deficit hyperactivity disorder medication to share information about side effects, remind them to follow up with prescribers, and offer support.

B. Preventative medicine calls to arm patients with information necessary to seek preventative care with the goal of preventing illness or early detection leading to better outcomes.

Examples of these calls include:

- Screenings: Calls to encourage patients to obtain appropriate health screenings. These would include, for example, calls to encourage members to seek breast cancer screening services, with the goal of early detection to reduce mortality; reminder calls to seniors who are due for colorectal cancer screenings, including offers to send home testing kits free of charge; and calls that ask members questions about their health, to identify individuals with conditions that would benefit from case management or who need additional support and/or resources to improve or maintain health and avoid worsening of those conditions.
- Available Services: Calls to educate members about available services and benefits. These would include, for example, calls to schedule home visits from nurse practitioners or physicians to conduct health assessments and collect blood samples, if needed, with the goal of closing gaps in care and disease prevention; calls to educate parents about health care benefits available for children and teenagers, including the importance of well-child checkups, immunizations and screenings, with the goal of ensuring that children and teenagers are getting the health care they need; and calls to members who have gaps in care related to annual teeth and eye exams, encouraging them to have checkups and stressing the importance of eye and mouth health (especially for children and diabetics).

- Vaccinations: Calls to encourage vaccinations. These would include, for example, calls reminding members to get flu shots to protect against the seasonal flu, with the goal of reducing death and hospitalizations associated with the flu; calls to members most at risk for contracting pneumonia, aimed at educating them about the vaccine and providing information about where to get it and whether it is a covered benefit; and calls to parents/guardians of members who have gaps in care related to missed immunizations, aimed at explaining why children should receive those services, that they are covered by members' plans, and offering assistance with making appointments.
- Text4Health Texts: Comprehensive health education program for adults that also contains administrative modules (renewal reminders, benefits information), with the goal of better member engagement in their own health care.

C. Calls to arm consumers with information about using and maintaining medical benefits with the goal of better access to and more effective use of providers' services, leading to better health and outcomes.

Examples of these calls include:

- Health Program Enrollment Reminders: These would include calls to remind members that continued health insurance requires attention to health plan renewal requirements, with the goal that members are not denied access to health care due to lack of coverage.
- Provider Information: These would include calls to members to ensure they know who their Primary Care Providers are, offer assistance for selecting new PCPs, and educate them on the importance of selecting a PCP, to encourage members to have a medical home, maintain continuity of care, and manage their health. Also included would be calls to inform members about doctors, hospitals, or other healthcare providers no longer being in our network, to ensure that they are not denied service or presented with unexpected bills and to facilitate their selections of new providers who are in our network.
- Provider and Benefit Changes: These would include calls to inform members about changes to their health plan names and/or brands, to ensure that they know who their health plan insurer is and what, if any, impact the change will have (e.g., getting a new ID card). These also would include calls to inform members when their health plans are no longer being offered in a certain geography (due to contractual or other reasons) or dispelling rumors about such exits, to ensure that members are apprised of any plan changes that could affect their ability to access services and/or prevent unexpected costs.
- Weather Emergencies Affecting Health Care: Calls to members in areas about to experience weather emergencies that may require evacuation and/or involve disruptions in electricity or other services, aimed at sharing information about staying safe, providing resources, and reminding members to take medications, ID cards and/or other important health information with them if they are evacuated.

In addition to these specifically-identified types of urgent calls, Anthem also asks that the FCC recognize that additional types of calls may be added to the list from time to time, based on experience and changes in technology. One of the most exciting and promising aspects of mHealth, including telephonic contact with consumers, is that the field is subject to an outburst of experimentation and study – often with the encouragement of governmental entities. This creativity can and will lead to new types of ways to improve health and avoid unnecessary mortality using modern communications technologies, and the health policy effectively made by the FCC should be continuously informed by those experiences.

Respectfully submitted,

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