



June 11, 2015

VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentation
CG Docket No. 02-278**

Dear Ms. Dortch:

Please accept this correspondence from the American Association of Healthcare Administrative Management (“AAHAM”) in response to the April 28, 2015 and June 8, 2015 *ex parte* filings by The National Consumer Law Center, *et al.* (“NCLC”).

On October 21, 2014, AAHAM filed its Petition for Expedited Declaratory Ruling and Exemption with the Federal Communications Commission (“FCC”), CG Docket No. 02-278, with two requests: (1) a declaratory ruling that the provision of a telephone number by an individual to a healthcare provider constitutes “prior express consent” under the Telephone Consumer Protection Act (“TCPA”); and (2) an exemption from the “prior express consent” requirements for certain non-telemarketing healthcare calls that are not charged to the called party.

NCLC expresses concern that calls from hospitals concerning patient medical information or other healthcare-related communications made to someone other than the patient or designee (such as when a number has been reassigned without the caller’s knowledge) will prove devastating to the personal privacy interests of the patient and will cause the unintended recipient of the call to be needlessly subjected to healthcare concerns that could cause emotional trauma and other injuries. They recommend that information provided by exempt free-to-end user calls and texts must not be of such a personal nature that it would violate the privacy of the intended call party for another person to receive the calls. These concerns are baseless and are far outweighed by the positive aspects of granting the AAHAM petition.

Healthcare providers need to communicate expeditiously with their patients, and providing effective healthcare does not end upon discharge from the hospital. Following up with patients

and keeping them informed of appointments and additional care is a necessary and desirable part of delivering quality healthcare.

The confidentiality of patient information in the fulfillment of these aims is also a top priority of the healthcare industry, and the disclosure of confidential patient information has been comprehensively regulated for many years. The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) addresses this exact issue and provides complete protection to patients from the disclosure of confidential medical information, with stringent enforcement penalties. This was recognized by the FCC in its 2012 Robocall Report and Order, FCC 12-21 (2012). There is no need for the FCC to add redundant restrictions when the “dangers” raised by NCLC have already been addressed through other laws.

Equally groundless is the claim that a healthcare message subject to an exemption could cause an unintended recipient (*e.g.*, with a reassigned number) to embark on a course of action that is not relevant to them and could cause them unnecessary emotional distress. Notwithstanding their “concern” above that messages should not be of such a personal nature as to violate personal privacy, NCLC contradicts itself by recommending that “the information in the calls and texts must be targeted to the intended recipient such that the called party does not embark on a course of action that is not relevant to her.” This appears to be nothing more than a thinly veiled attempt to muddy the waters sufficiently to invite extended litigation against callers attempting to fulfill their obligations to provide quality healthcare and follow-up treatment to patients.

Underlying each “concern” expressed by the NCLC appears to be an overriding suspicion of the motivation of the healthcare provider caller. The suggested limitations on the relief sought by AAHAM belies a complete lack of evidence or argument that a healthcare provider, seeking to provide adequate follow-up care to patients, has any incentive whatsoever to contact an unrelated third party. The purpose for the non-marketing healthcare calls is to make sure the patient has received adequate follow up information, including care instructions, and that they are advised of upcoming appointments. Further, it is to also fulfill quality guidelines imposed by the Patient Protection and Affordable Care Act (“ACA”) in this regard. Preventing such contact could significantly impact quality of care and increase risk to patients. NCLC offers no argument, evidence, or even speculation as to what would motivate a healthcare provider to intentionally call anyone other than the patient for his or her own benefit.

The relief sought in the AAHAM petition is both necessary and adequately limited to allow healthcare providers to fulfill their mission and obligation to provide healthcare follow-up without compromising patient privacy or causing significant impact to non-patients. As previously discussed by parties in this proceeding, healthcare providers (and entities acting on their behalf) may contact patients by telephone for non-marketing purposes regarding matters including, but not limited to:

- Appointment and exam confirmations and reminders;
- Wellness checkups;
- Hospital pre-registration instructions;
- Pre-operative instructions;
- Lab results;

- Post-discharge follow-up intended to prevent readmission;
- Prescription notifications;
- Flu shot reminders;
- Home healthcare instructions;
- Available payment options;
- Insurance coverage outreach and eligibility (*e.g.*, to notify a patient that insurance coverage or payment is available for a service that has been provided);
- Account communications and payment notifications;
- Social Security disability eligibility; and
- “Health care messages” as defined by “HIPAA”.¹

The Commission should confirm that such calls are within the scope of the “prior express consent” provided to the healthcare provider. While neither the TCPA nor the FCC’s TCPA rules expressly define “prior express consent,” both courts and the FCC itself have indicated that the provision of a telephone number within the context of a transaction constitutes “prior express consent.” The FCC has also confirmed that third parties may place calls on behalf of a party that obtains “prior express consent.” In addition, the FCC has affirmed that it is in the public interest to facilitate non-telemarketing healthcare calls.

Healthcare providers place these calls (many of which are time-sensitive) to patients to support and enhance the healthcare services provided and to ensure that patients have all of the information necessary to make well-informed decisions regarding their healthcare. The calls are targeted to specific individuals (patients) for particular purposes, and there is no need or incentive for healthcare providers to contact anyone other than the patient. Moreover, the calls do not involve any telemarketing, solicitation, or advertising, nor do they trigger the other concerns that Congress was attempting to address through enacting the TCPA.

AAHAM’s separate exemption request is also narrowly tailored to help facilitate healthcare calls while continuing to protect consumers. As described in the Petition, AAHAM supports the following conditions for each free-to-end-user call or text message utilizing any exemption for healthcare calls, consistent with the conditions that the FCC adopted in the Cargo Airline Association Order, FCC 14-32 (2014)²:

1. A call or text message must be sent, if at all, only to the telephone number provided for the patient;

¹ HIPAA’s privacy rule defines “health care messages” as calls regarding the “care, services, or supplies related to the health of an individual,” including but not limited to: “(1) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and (2) sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.” *See* 45 C.F.R. § 160.103.

² Cargo Airline Association Order ¶ 18.

2. Calls and text messages must identify the name of the healthcare provider and include contact information for the healthcare provider; for voice calls, these disclosures would need to be made at the beginning of the call;
3. Calls and text messages must not include any telemarketing, solicitation, or advertising content;
4. Text messages and prerecorded calls must be concise, generally one minute or less in length for voice calls and one message of 160 characters or less in length for text messages;
5. Each healthcare provider shall send or place only one call or text message per day, up to a maximum of three calls or text messages combined per week from a specific healthcare provider;
6. Healthcare providers relying on this exemption must offer parties the ability to opt out of receiving future autodialed or prerecorded healthcare calls and text messages and must honor the opt-out requests within a reasonable time from the date such request is made, not to exceed thirty days; and
7. Each call or text message must include information on how to opt out of future autodialed or prerecorded healthcare calls; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future healthcare calls; text messages must include the ability for the recipient to opt out by replying "STOP."

Pursuant to Section 1.1206(b) of the Commission's rules, I am filing this notice electronically in the above-referenced docket. Please contact me with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Victoria Di Tomaso".

Victoria Di Tomaso, CRCE-I, System Director, Central Business Office
Lee Memorial Health System
AAHAM President