

**America's Health  
Insurance Plans**

601 Pennsylvania Avenue, NW  
South Building  
Suite Five Hundred  
Washington, DC 20004

202.778.3200  
www.ahip.org



March 1, 2016

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

Re: *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling and Order*, (CG Docket No. 02-278, WC Docket No. 09-135)

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 *Declaratory Ruling and Order* adopted by the Federal Communications Commission (FCC) on June 15, 2015 addressing the application of the Telephone Consumer Protection Act (TCPA) to certain types of communications made to consumers (the "FCC Order"). In particular, we are asking for clarification of the FCC Order as it relates to health care communications made to individuals by HIPAA covered entities and their business associates. In submitting this letter, AHIP is in support of similar comments made by several health insurance plans to the FCC.<sup>1</sup>

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.

AHIP has previously provided comments to the FCC regarding 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.<sup>2</sup> Numerous clinical studies support the benefits of

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<sup>1</sup> See e.g., *Letter from WellCare to the FCC*, February 9, 2016.

<sup>2</sup> *Comments by America's Health Insurance Plans in Support of United Healthcare Services, Inc. Petition for Declaratory Relief* (CG Docket No. 02-278), March 10, 2014 and *AHIP Letter to the Federal Communications Commission*, June 10, 2015.

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such communications.<sup>3</sup> For example, a recent analysis by the Commonwealth Fund noted the growing adoption of cell phone interventions by community health centers and clinics for chronic disease management.<sup>4</sup>

AHIP appreciates the FCC's recognition of the importance of these communications in its recent Order.<sup>5</sup> However, we are concerned that the FCC Order may inadvertently limit the benefit of these calls by reference to health care providers. The FCC Order, in ¶147, sets out standards, "for each exempted call (voice call or text message) made by or on behalf of a healthcare provider." (*emphasis added*). By limiting the conditions for exempted calls to "health care providers," a term which the FCC does not define, the FCC Order might be seen as not applying to all relevant HIPAA covered entities, such as health plans, that increasingly serve a similar role in facilitating and managing the care of Americans. We believe this is an unintended result which exposes health plans to potential regulatory enforcement action by the FCC and civil litigation.

Health plans typically receive an individual's telephone contact information as part of the enrollment process and engage in various care management communications that previously may have been performed by health care professionals. These are the same type of messages identified in the FCC Order:

We grant the exemption, with the conditions below, but restrict it to calls for which there is exigency and that have a healthcare treatment purpose, specifically: appointment and exam confirmation and reminders, wellness checkups, hospital pre-registration instructions, pre-operative instructions, lab results, post-discharge follow-up intended to prevent readmission, prescription notifications, and home healthcare instructions.

FCC Order at ¶146. We ask that the FCC provide guidance to clarify that the exempted call safe harbor is applicable to all HIPAA covered entities, including health plans, and business associates acting on behalf of such entities, in keeping with the FCC's recognition of the importance of these types of calls and its intent in establishing this exception. We believe such guidance is consistent with and does not require a change to the FCC Order.

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<sup>3</sup> *The Effectiveness of Mobile-Health Technologies to Improve Health Care Service Delivery Process*, PLOS Medicine, January 2013, accessed at:

<http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001363>

<sup>4</sup> *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>

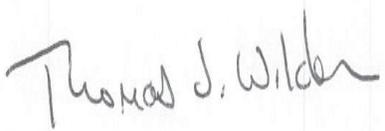
<sup>5</sup> As a general matter, AHIP believes HIPAA covered entities and business associates are permitted to make non-marketing healthcare communications to individuals without their consent (*see*: 45 CFR §164.506(c)(1)). We recognize that the FCC Order provides specific standards for communications in situations where consumers have previously given consent to be contacted by providing their telephone number to a covered entity.

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AHIP appreciates the opportunity to provide comments to the FCC on this important issue. If you have any questions, please contact AHIP's General Counsel, Julie Miller at (202) 778-3250 or [jumiller@ahip.org](mailto:jumiller@ahip.org).

Sincerely,

A handwritten signature in black ink that reads "Thomas J. Wilder". The signature is written in a cursive style with a large initial 'T'.

Thomas J. Wilder  
Senior Counsel