



The Enrollment Coalition

Brendan Carr
Chairman
Federal Communications Commission
45 L Street NE
Washington, DC 20554

RE: CG Docket No. 17-59, WC Docket No. 17-97, and CG Docket No. 02-278: Advanced Methods To Target and Eliminate Robocalls Proposed Rule

The Enrollment Coalition appreciates your seeking, via the proposed rule, feedback on calling-related rules that could be simplified, streamlined or eliminated, as well as seeking information on whether Telephone Consumer Protection Act (TCPA) Rules and Do-Not-Call Implementation Act Rules unduly restrict consumers' ability to receive calls from healthcare providers.

The Enrollment Coalition is an alliance of organizations including patient advocates, health plans, health care providers, employers, consumer advocates, and technology and data organizations whose mission is to help the eligible uninsured – people already eligible for coverage – get enrolled and stay enrolled. Our [website](#) lists all of the Enrollment Coalition members.

We are specifically responding to comments/questions 74 and 80:

74. We seek comment on whether some of our calling-related rules can be simplified, streamlined, or eliminated, perhaps because they are outdated or have not been enforced for a substantial amount of time.

80. Does the rule unduly restrict consumers' ability to receive wanted calls? For example, does it unduly restrict consumers' ability to receive calls from healthcare providers that might have multiple locations or practice specialties or from pharmacies? What about banks or other financial institutions where consumers might have different types of accounts or other businesses that have multiple locations, operating units, or lines of business? How does this affect consumers who both are customers of a business and are employees, job applicants, or contractors of that same business? Does this requirement place an undue burden on callers to modify their communications systems or is an all-or-nothing requirement less burdensome to implement? Would requiring consumers to revoke consent separately for each business unit, location, practitioner, or other sub-division of a caller create an undue burden under this rule modification? How can we modify the rule so that consumers continue to receive calls they want and in so doing ensure that callers honor consent revocation for those they do not, including empowering consumers to specify the scope of their revocations?

For years, the TCPA has created uncertainty regarding allowable outreach to Medicaid, Marketplace, and Medicare Advantage enrollees. Although texting has been successful when used in limited circumstances and is the preferred form of contact for many enrollees, many health care entities will not conduct outreach through text for fear of violating the TCPA and for fear of litigation, which is relatively common – and costly - as it relates to TCPA. It is important that there are clear rules regarding the ability to utilize modern telecommunications tactics and practices that help mitigate coverage disruption and connect with enrollees on important covered services. Clarifying that non-marketing calls related to enrollment and benefits are allowed under the TCPA would remove barriers to enrollment, improve continuity of care, increase use of preventative medicine, reduce costly churn in health insurance coverage, and improve the health outcomes of enrollees.

Text messaging is particularly promising for enrollment and medical activities, such as reminders of renewal requirements and health care appointments, assistance with navigating plan benefits, and health education. However, the lack of clarity around whether TCPA applies to these activities is preventing communications about important resources and services including:

- Invitations to new member orientation to assist in accessing care (i.e. Health Navigation),
- Availability of telehealth services,
- Options and availability of after hour care (Nurse Advice Line, Urgent Care),
- Importance of diabetes care, and
- Scheduling follow-up appointments for critical care such as pre-natal and postnatal care.

Text messaging is also an effective means of communication with Medicaid enrollees as 92% of adults earning less than \$30,000 a year own a mobile phone¹ and 97% of low-income phone owners use text messaging.² Text messaging also provides more flexibility and privacy in situations like working in hourly positions that limit taking personal calls.

The Enrollment Coalition believes health care entities should be able to contact consumers, including individuals currently enrolled in coverage, to support the consumer's enrollment in health coverage and related programs. In order to ensure this critical outreach occurs, FCC could clarify that:

(1) The provision of a phone number to a “covered entity” or “business associate” (as defined under HIPAA) constitutes prior express consent for non-telemarketing calls allowed under HIPAA for the purposes of treatment, payment or health care operations; and

¹ Eileen Cianciolo, “3 Member Engagement Pitfalls Health Plans Should Avoid,” Fierce Healthcare, 3/3/2019, <https://www.fiercehealthcare.com/payer/industry-voices-3-member-engagement-pitfalls-health-plans-should-avoid>.

² Aaron Smith, “U.S. Smartphone Use in 2015,” Pew Research Center, 4/1/2015, <https://www.pewresearch.org/internet/2015/04/01/us-smartphone-use-in-2015/>.

(2) The prior express consent clarification in paragraph 141 of the 2015 Omnibus Declaratory Ruling and Order and the non-telemarking health care message exemption granted in paragraph 147 of the 2015 Omnibus Declaratory Ruling and Order, be clarified to include HIPAA “covered entities” and “business associates.” In order to mitigate risks from the Telephone Consumer Protection Act (TCPA), states should also validate member contact details (e.g., via SSA or public databases) prior to passing the member information to MCOs.

Thank you for your consideration of these comments. For more information on the Enrollment Coalition and our members, please visit our website at www.enrollmentcoalition.org. Should you have any questions or wish to discuss our comments further, please contact Laura Pence at Laura.Pence@LeavittPartners.com.

Sincerely,
The Enrollment Coalition