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May 17, 2022

**VIA ELECTRONIC FILING**

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

**Re: Notice Seeking Comment on Request Relating to Enrollment in Medicaid and Other Governmental Health Coverage Programs (CG Docket No. 02-278)**

Dear Ms. Dortch:

On behalf of AHIP, we write to strongly support the request submitted by the U.S. Department of Health and Human Services (“HHS”) and the Centers for Medicare & Medicaid Services (“CMS”) seeking the Commission’s confirmation of the agencies’ understanding of permissible communications under the Telephone Consumer Protection Act (“TCPA”) relating to enrollment in Medicaid and other governmental health coverage programs.

AHIP is the national association representing health insurance providers who cover hundreds of millions of Americans. AHIP’s members provide health and supplemental benefits through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid. Our members include managed care organizations (“MCOs”) that provide health care coverage to people enrolled in Medicaid, the Children’s Health Insurance Program (“CHIP”) or Basic Health Program (“BHP”), as well as health insurance providers offering qualified health plans (“QHPs”) on both state-based and federally-facilitated marketplaces (“Marketplaces”).<sup>1</sup>

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<sup>1</sup> As the agencies note, managed care entities are partners to states in providing coverage to enrollees in government programs. For Medicaid and CHIP, these contractual public-private partnerships coordinate and improve care and health outcomes, and ensure access to high-quality and cost-effective health care and related services for a diverse population of more than 60 million people spanning a wide-range of economic, geographic and social circumstances in 40 states, Washington, DC, and Puerto Rico.

***AHIP urges the Commission to confirm HHS's and CMS's understanding of the Medicaid redetermination and program enrollment-related communications detailed in the agencies' letter dated April 28, 2022.***

Since the public health emergency (“PHE”) was declared, enrollment in Medicaid, CHIP, and the Basic Health programs has increased by more than 20 percent and now includes 86 million low-income Americans and 2 million veterans. As the agencies explain, when the PHE ends, redeterminations for all Medicaid enrollees need to be initiated in a single year. This will require an unprecedented effort involving tens of millions of people. That effort will strain state government resources and create a serious risk of coverage loss, including for people who lose coverage merely because they fail to complete the renewal process on a timely basis, or fail to respond to a state request for information because the state’s contact information for the enrollee is outdated.

HHS’s request outlined a three-phase campaign of outreach using a limited number of contacts (estimated at 6-8 contacts per individual for all phases). Contacts would consist of simple text messages or automated, pre-recorded calls to be made during an approximately eighteen-month time frame beginning on the date that the FCC affirms the program.

AHIP agrees with the agencies’ approach and assessment that text messaging and automated, pre-recorded calls will provide more effective communication to alert enrollees to the need to update their contact information and respond to state requests for information, and enhanced opportunities to allow individuals to maintain uninterrupted and continuous health benefit coverage. Depending on the outcome of this effort, we also agree that, consistent with the TCPA, the use of text messaging and automated, pre-recorded calls may become a best practice for reaching Medicaid, CHIP, BHP, and Marketplace enrollees, and both state and federal agencies may choose to incorporate them into future renewal work.<sup>2</sup>

We believe that both grounds articulated by the agencies support this outreach: (1) prior express consent to be contacted for purposes relating to eligibility and enrollment in coverage by an individual providing a cell phone number at application; and (2) construing the government to be the “maker” of the call and thus exempt from the TCPA when a state or federal agency directs the content, timing, and recipients of the calls or text messages and works with a partner directly participating in the eligibility and enrollment process such as a contracted call center, managed care entity, health insurer, or local government entity.

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<sup>2</sup> The agencies’ request makes clear that these communications cannot include marketing or marketing activities as defined by Medicaid managed care marketing regulations in 42 C.F.R. § 438.104 (cross-reference at § 457.1224 for CHIP) in their text messages or automated, pre-recorded calls.

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The Commission has previously recognized the importance of permitting health care related, non-telemarketing outreach. And although the TCPA should not apply for the reasons set out in the agencies' letter, we strongly urge the Commission to confirm the agencies' understanding. Doing so will provide state Medicaid, CHIP, and BHP agencies, managed care entities (including MCOs, their parent companies and contractors), and the Marketplaces serving each state the clarity needed to begin undertaking the measures needed to ensure millions of Americans maintain continued, uninterrupted coverage upon conclusion of the PHE. An opinion affirming this view by the Commission would provide an important deterrent to costly and unfounded litigation resulting from this essential outreach.

We appreciate the opportunity to provide these comments and look forward to working closely with the Commission to address any additional questions it may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Hamelburg".

Mark Hamelburg  
Senior Vice President, Federal Programs