



February 29, 2016

EX PARTE VIA ECFS

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

**Re: *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278; Petition for Rulemaking of American Association of Healthcare Administrative Management***

Dear Ms. Dortch:

On February 25, 2016, we the undersigned representing, Anthem, Inc. (“Anthem”) met with members of the Consumer and Governmental Affairs Bureau of the Federal Communications Commission (“FCC” or “Commission”) including Deputy Bureau Chief Mark Stone, Consumer Policy Division Chief Kurt Schroeder, and Deputy Chief John Adams. Joining us for this meeting were Dana Thomas, Sam Marchio and Adam Goldberg on behalf of Anthem. During our meeting we outlined how the Telephone Consumer Protection Act (“TCPA”) Omnibus Declaratory Ruling and Order (“2015 Order”), released on July 10, 2015, impacts Anthem’s ability to communicate with members enrolled in its family of health plans. The purpose of this filing is to seek clarification from the FCC’s Consumer and Governmental Affairs Bureau (“Bureau”) that the exemption included in the 2015 Order for a “healthcare provider,” which is undefined, is being made available to all “covered entities” as defined under the privacy regulations adopted pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”), including health plans and business associates.<sup>1</sup>

Anthem appreciates the opportunity to meet with the Bureau as it examines the impact of the TCPA on the ability of health care plans to assist their members through outbound calls. More than 38 million Americans rely on our health plans. Anthem provides health coverage and services for a large and diverse population that differs in demographic and socioeconomic backgrounds. We provide health coverage for people enrolled in our varying commercial health plans, as well as government-sponsored plans including Medicare, Medicaid, and the Federal Health Employees Benefit Program (FEHBP). A critical part of Anthem’s services are telephonic outreach to our members and that outreach includes; medication management calls, calls assisting individuals living with one or more chronic diseases, and calls reminding individuals about needed wellness visits, dental visits or flu shots.

During our meeting we mentioned several studies that support the conclusion that Anthem’s health-care related calls and texting programs are integral to improving the health outcomes of our members and more efficiently utilizing healthcare resources. As noted by the Brookings Institution, a program that connects with consumers through their mobile devices, known as m-Health, is poised to alter how health care is delivered, the quality of the patient experience, and the cost of health care. Mobile technology is helping with chronic disease

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<sup>1</sup> *TCPA Omnibus Declaratory Ruling and Order*, 30 F.C.C. Rcd at 7961 (July 10, 2015), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-72A1\\_Rcd.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-72A1_Rcd.pdf). Paragraph 147 of the 2015 Order conditioned the exemption on the call being made “by or on behalf of a healthcare provider.”

management, empowering the elderly and expectant mothers, reminding people to take medication at the proper time, extending service to underserved areas, and improving health outcomes and medical system efficiency.<sup>2</sup> Additionally, a U.S. Department of Health and Human Services (“HHS”) task force determined that “Mobile phones . . . 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).”<sup>3</sup> Importantly, the studies reviewed by HHS in reaching this conclusion include the use of many of the same types of outreach calls that managed care organizations, such as Anthem, make as part of their efforts to improve the health of their members while also managing costs.

Moreover, federal and state governments’ interest in improving consumer transparency and increased health care literacy has resulted in additional outreach requirements for Anthem plans. Several of our Medicaid plans are contractually obligated to make calls to newly enrolled members designed to inform them about their recently-obtained coverage and help acquaint them with their benefits, all with the goal of empowering members to use their benefits to improve health.

As we discussed, HIPAA acts as the controlling authority for the privacy of healthcare-related communications and governs “covered entities” and “business associates” as defined by HIPAA, such as health care plans, in precisely the same way as those more traditionally labelled as “providers.” Moreover, the 2012 Order clarifying the application of the TCPA concluded that healthcare-related calls to residential lines that were subject to HIPAA were “exempt from our consent, identification, time-of-day, and abandoned call requirements.”<sup>4</sup> The 2012 Order expressly asserts that calls subject to HIPAA “serve a public interest purpose: to ensure continued consumer access to health care-related information.” The 2012 Order made these exemptions applicable to any “covered entity” and “business associate,” as defined by HIPAA.<sup>5</sup>

Anthem believes that the 2015 Order potentially obscures the Commission’s previous 2012 Order acknowledging the value of including HIPAA-covered entities in the aforementioned healthcare-related exception. By limiting the exemption to “health care providers,” and by not defining that term, the 2015 Order might be construed as not applying to all relevant HIPAA covered entities, such as health plans and business associates that increasingly serve a similar role in facilitating and managing the care of individuals. We believe this is an unintended result which could expose health plans who attempt to deliver important health care messages by calls designed to comply with the exemption to potential civil litigation. A risk that would be inconsistent with the Commission’s recognition, as expressed in its 2015 Order, of the need to address the proliferation of class action litigation in this area.

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<sup>2</sup> 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 Apr. 1, 2015).

<sup>3</sup> 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>.

<sup>4</sup> *In the Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order 27 F.C.C. Rcd. 1830 1852 (Feb. 15, 2012), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-12-21A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-12-21A1.pdf) (last visited February 25, 2016).

<sup>5</sup> *Id.* at 31 (revisions to 47 C.F.R. § 64.1200 making exemptions applicable to calls “by, or on behalf of, a ‘covered entity’ or its ‘business associate’ as those terms are defined in the HIPAA Privacy Rule, 45 CFR 160.103”).

As we discussed, health plans engage in various care management efforts that previously may have been performed by health care professionals, including outreach to certain enrollees in order to provide them with important information about their health and wellbeing. These are the same type of messages identified in the 2015 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.<sup>6</sup>*

We ask that the Bureau provide guidance to clarify that the exemption is applicable to all HIPAA covered entities, including health plans, and business associates acting on behalf of such entities, in keeping with the Commission's recognition of the importance of these types of calls and its intent in establishing this exception.

Anthem and our colleague plans are committed to ensuring that the populations we serve have access to the services needed to improve their health outcomes. It is critical that we are able to communicate with our customers, to not only assist in the management their care but also to help answer questions that arise as they navigate the healthcare system.

This filing does not replace or dismiss Anthem's June 10, 2015 Petition for Declaratory Ruling and Exemption Regarding Non-Telemarketing Healthcare Calls, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278.

In accordance with Section 1.1206(b)(2) of the Commission's rules, this letter is being filed electronically with your office. Please contact Dana Thomas, Senior Director, Federal Affairs for Anthem at [Dana.Thomas2@Anthem.com](mailto:Dana.Thomas2@Anthem.com) or via phone at 202-218-4925, with any questions connected with this filing.

Sincerely,

Jack Young  
Vice President & Counsel

John Nicholson  
Managing Associate General Counsel, Senior

Cc: Mr. Mark Stone, Deputy Bureau Chief  
Kurt Schroeder, Consumer Policy Division Chief  
John Adams, Deputy Chief

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<sup>6</sup> *TCPA Omnibus Declaratory Ruling and Order*, 30 F.C.C. Rcd at 7961 (July 10, 2015).