

May 17, 2022

The Honorable Jessica Rosenworcel
Chairwoman
Federal Communications Commission
45 12th Street SW
Washington, DC 20554

Dear Chairwoman Rosenworcel:

On behalf of the National Association of Medicaid Directors (NAMD), I am writing to express our full support for the U.S. Department of Health and Human Services' (HHS) request regarding certain text messages and automated, prerecorded voice calls relating to enrollment in state Medicaid programs ([Docket Number: 02-278](#)). We respectfully request that the Federal Communications Commission (FCC) issue an opinion that concludes that state Medicaid agencies, local government agencies, Medicaid managed care organizations, and other state and local government agency contractors will not be acting in violation of the Telephone Consumer Protection Act (TCPA) when they send such communications.

NAMD is a bipartisan, nonprofit, professional organization representing leaders of all Medicaid agencies across the country. NAMD represents, elevates, and supports state and territorial Medicaid leaders to deliver high value services to the millions of people served by Medicaid and CHIP so they can achieve their best health and thrive in their communities.

Text and Phone Communication is Essential to Reducing Gaps in Coverage

At the start of the COVID-19 pandemic, Congress passed the Families First Coronavirus Response Act (FFCRA), which included changes to normal Medicaid eligibility rules. In exchange for an enhanced federal match rate, state Medicaid programs have not disenrolled individuals from their Medicaid programs, even if they do not meet normal eligibility criteria. When the federal COVID-19 public health emergency ends, however, states will be required to conduct redeterminations of eligibility on all of their Medicaid members. Communicating with these members about the information they need to provide to renew their enrollment will be crucial to mitigating coverage losses.

Medicaid members have not been required to complete full redeterminations of coverage since March 2020, so many members' mailing addresses are out-of-date. To address this, states have pursued a [range of strategies](#), including using returned mail to target phone outreach, implementing data matches with the National Change of Address Database, launching social media campaigns encouraging members to update their contact information, and working with managed care plans to receive updated contact information (in accordance with [strategies recommended](#) by the Centers for Medicare and Medicaid Services). However, states still report serious concerns about

out-of-date contact information leading to gaps in coverage, as Medicaid members may not realize they need to return renewal forms and other information.

There is an alternative to mailing addresses. State Medicaid programs have cell phone numbers for many of their members and could use text messages and pre-recorded phone calls to encourage members to update their addresses and respond to renewal requests. States, however, have been unable to use this option out of fears that violations of the TCPA could result in costly litigation.

Research and pilot programs have consistently shown that multimodal outreach strategies – including text messaging and phone calls – increase Medicaid renewal rates and are preferred by Medicaid members. [A pilot program](#) using text messaging in Louisiana found that text messages led to a 67% increase in renewals and that members “overwhelmingly” preferred electronic communications. [In research conducted](#) by the Medicaid and CHIP Payment and Access Commission (MACPAC), Medicaid members reported finding email and text renewal reminders (in addition to paper mail) helpful. In this study, many Medicaid members reported that they would like to receive *more* reminders of upcoming renewal deadlines.

State Medicaid Programs are Working Closely with Counties, Contractors, and Managed Care Entities

In preparation for the end of the COVID-19 public health emergency, states have been working extremely closely with managed care organizations, contractors, and county governments to conduct outreach to Medicaid members. Although the FCC has previously issued guidance indicating that state agencies are immune from suit under the TCPA to the extent they are acting in their official capacity, additional guidance is needed to ensure states can fully leverage their partnerships with these outside organizations.

In their letter, HHS outlines the types and sources of text messages and automated calls that state Medicaid agencies may use, pending clarification by the Commission. NAMD would like to confirm HHS’ characterization of anticipated state strategies. Many states have already developed robust communications plans, including approved language for their managed care organizations, contractors, and counties to use in outreach to Medicaid members. The Centers for Medicare and Medicaid Services (CMCS) have been important partners in this work, and have released a [communications toolkit](#) with sample graphics and suggested language for social media, emails, and text messages.

Pending clarification by the Commission, states would continue working extremely closely with these partners to develop approved text message and automated call language, direct the timing of any text messages or calls, and determine which Medicaid members would receive outreach. These texts and calls would be solely for the purpose of encouraging Medicaid members to update their contact information, provide information needed to renew Medicaid coverage, and consider other coverage options (including through the state or federal Marketplace) if they are no longer eligible for

Medicaid. Contractors and managed care organizations would not be allowed to send communications related to marketing or advertising.

HHS' Requested Flexibilities are in the Public Interest

We view HHS' request for flexibility on these types of communications as consistent with the FCC's record of providing TCPA exemptions when a particular healthcare related communication is clearly in the public interest. As you are aware, in a 2015 ruling your agency permitted certain health care organizations to send communications without prior express consent for limited purposes such as appointment reminders. Similarly, at the beginning of the pandemic, your agency issued a ruling that concluded that state and local public health agencies, among other organizations, could send COVID-19 related communications also without prior consent.

The text messages and automated calls described in HHS' letter are clearly in the public interest. Millions of people are at risk of losing health insurance coverage simply because Medicaid agencies lack an up-to-date mailing address. State Medicaid agencies and their partners should be allowed to use the information they have – including cell phone numbers – to facilitate coverage renewals. By confirming HHS' understanding that text messages and automated calls from state, federal, and local governments, their contractors, and their managed care entities are permissible under the TCPA, the Federal Communications Commission can give states the tools they need to communicate with their Medicaid members.

The National Association of Medicaid Directors would be happy to answer any follow-up questions you may have. Please contact Jack Rollins, Director of Federal Policy, at jack.rollins@medicaiddirectors.org if any additional information would be helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Salo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Matthew Salo
Executive Director
National Association of Medicaid Directors