



November 1, 2018

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

The Confidentiality Coalition applauds the Federal Communications Commission's recent Public Notice to seek further clarification to the interpretation and implementation of the Telephone Consumer Protection Act (TCPA). We write to urge the Federal Communications Commission (FCC) to consider modernizing TCPA prior to the issuance of any omnibus ruling. The TCPA should continue to promote the important consumer protections that motivated its passage while allowing technological advances to be deployed by hospitals, health plans and other healthcare stakeholders to improve patient engagement, improve quality and outcomes, and control healthcare costs.

The Confidentiality Coalition is composed of a broad group of hospitals, medical teaching colleges, health plans, pharmaceutical companies, medical device manufacturers, vendors of electronic health records, biotech firms, employers, health product distributors, pharmacies and pharmacy benefit managers, health information technology and research organizations, patient groups, and others founded to advance effective patient confidentiality protections.

The TCPA—enacted over 27 years ago to protect consumers from unwanted telemarketing phone calls—has had the unintentional and deleterious impact of impeding *non-marketing* communications intended to improve patient care, further patient engagement, and control healthcare costs. As healthcare stakeholders seek to scale efforts to reach, engage and care for patients, telephonic technologies are a critically important component; whether it is to inform a consumer about eligibility for healthcare benefits, a pharmacy reminding a patient by phone to refill a prescription, a primary care office sending an automated telephone reminder for an upcoming appointment, a health plan sending a text reminder to return for an annual visit, or a hospital sending a patient a text message containing discharge instructions, telephone contact plays a vital role in patient engagement.

Unfortunately, the TCPA often serves as an obstacle to improved patient care coordination because the TCPA does not reflect the changes to how health plans, providers, patients and other stakeholders communicate as a result of the Health Insurance Portability and Accountability Act (HIPAA) and other laws. The Confidentiality Coalition believes that federal standards seeking to limit unwanted telephone communications can and should be achieved without compromising healthcare entities' ability to communicate with patients while protecting patient privacy. HIPAA already provides strict regulations for what entities are permitted to do with protected health information; yet the TCPA and HIPAA differ on what constitutes a

permissible communication based on the type of consent or authorization given. For example, a hospital's communication to a discharged patient may comply fully with HIPAA but violate the TCPA.

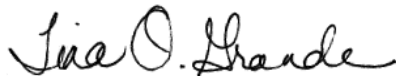
TCPA imposes significant penalties for non-compliance. If the patient who requested automated reminders from the pharmacy changes her telephone number and forgets to alert the pharmacy, messages sent in good faith by the pharmacy to the former phone number could create TCPA risk. The pharmacy would be subject to strict liability, even if it had received adequate TCPA consent from the original user of that telephone number.

The specter of class action lawsuits arising from these types of situations is real and could result in staggering damage claims. As such, the TCPA inhibits population health programs that seek to improve healthcare for those in need of increased engagement and care.

Accordingly, the Confidentiality Coalition recommends that the FCC expeditiously grant a Joint Petition¹ filed with the FCC in July 2016 by a group of healthcare stakeholders, including Confidentiality Coalition members, which seeks clarification to the FCC's 2015 Omnibus TCPA Order related to the treatment of healthcare-related outreach to consumers.

Thank you again for your consideration of this request, and please feel free to contact Tina Olson Grande, Senior Vice President for Policy at the Healthcare Leadership Council on behalf of the Confidentiality Coalition, at (202) 449-3433 or tgrande@hlc.org with any questions. Enclosed you will find information on the Confidentiality Committee and a list of coalition members.

Sincerely,

A handwritten signature in black ink that reads "Tina O. Grande". The signature is written in a cursive, flowing style.

Tina Olson Grande
Healthcare Leadership Council on behalf of the Confidentiality Coalition

¹ Joint Petition of Anthem, Inc., Blue Cross Blue Shield Association, WellCare Health Plans, Inc., and the American Association of Healthcare Administrative Management for Expedited Declaratory Ruling and/or Clarification of the 2015 TCPA Omnibus Declaratory Ruling and Order, CG Docket No. 02-278 (filed July 28, 2016) ("Joint Petition")



ABOUT THE CONFIDENTIALITY COALITION

The Confidentiality Coalition is a broad group of organizations working to ensure that we as a nation find the right balance between the protection of confidential health information and the efficient and interoperable systems needed to provide the very best quality of care.

The Confidentiality Coalition brings together hospitals, medical teaching colleges, health plans, pharmaceutical companies, medical device manufacturers, vendors of electronic health records, biotech firms, employers, health product distributors, pharmacies, pharmacy benefit managers, health information and research organizations, clinical laboratories, home care providers, patient groups, and others. Through this diversity, we are able to develop a nuanced perspective on the impact of any legislation or regulation affecting the privacy and security of health consumers.

We advocate for policies and practices that safeguard the privacy of patients and healthcare consumers while, at the same time, supporting policies that enable the essential flow of information that is critical to the timely and effective delivery of healthcare. Timely and accurate patient information leads to both improvements in quality and safety and the development of new lifesaving and life-enhancing medical interventions.

Membership in the Confidentiality Coalition gives individual organizations a broader voice on privacy and security-related issues. The coalition website, www.confidentialitycoalition.org, features legislative and regulatory developments in health privacy policy and security and highlights the Coalition's ongoing activities.

For more information about the Confidentiality Coalition, please contact Tina Grande at tgrande@hlc.org or 202.449.3433.



CONFIDENTIALITY COALITION

MEMBERSHIP

Adventist Health System
Aetna
America's Health Insurance Plans
American Hospital Association
American Pharmacists Association
American Society for Radiation Oncology
AmerisourceBergen
Amgen
AMN Healthcare
Anthem
Ascension
Association of American Medical Colleges
Association of Clinical Research
Organizations
Athenahealth
Augmedix
Bio-Reference Laboratories
BlueCross Blue Shield Association
BlueCross BlueShield of Tennessee
Cardinal Health
Change Healthcare
CHIME
Cigna
City of Hope
Cleveland Clinic
College of American Pathologists
ConnectiveRx
Cotiviti
CVS Health
Datavant
dEpid/dt Consulting Inc.
Electronic Healthcare Network Accreditation
EMD Serono
Commission
Express Scripts
Fairview Health Services
Federation of American Hospitals
Franciscan Missionaries of Our Lady Health
System
Genetic Alliance
Genosity
Healthcare Leadership Council
Hearst Health
HITRUST
Intermountain Healthcare
IQVIA
Johnson & Johnson
Kaiser Permanente
Leidos
LEO Pharma
Mallinckrodt Pharmaceuticals
Marshfield Clinic Health System
Maxim Healthcare Services
Mayo Clinic
McKesson Corporation
Medical Group Management Association
Medidata Solutions
Medtronic
MemorialCare Health System
Merck
MetLife
National Association of Chain Drug Stores
National Association for Behavioral
Healthcare
NewYork-Presbyterian Hospital
NorthShore University Health System
Novartis Pharmaceuticals
Novo Nordisk
Pfizer
Pharmaceutical Care Management
Association
Premier healthcare alliance
Privacy Analytics
Sanofi US
SCAN Health Plan
Senior Helpers
State Farm
Stryker
Surescripts
Texas Health Resources
Teladoc
UCB
UnitedHealth Group
Vizient
Workgroup for Electronic Data Interchange
ZS Associates



PRINCIPLES ON PRIVACY

1. Confidentiality of personal health information is of the utmost importance in the delivery of healthcare. All care providers have a responsibility to take necessary steps to maintain the trust of the patient as we strive to improve healthcare quality.
2. Private health information should have the strictest protection and should be supplied only in circumstances necessary for the provision of safe, high-quality care and improved health outcomes.
3. The framework established by the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule should be maintained. HIPAA established a uniform framework for acceptable uses and disclosures of individually-identifiable health information within healthcare delivery and payment systems for the privacy and security of health information.
4. The Privacy Rule requires that healthcare providers and health plans use the minimum necessary amount of personal health information to treat patients and pay for care by relying on patients' "implied consent" for treatment, payment of claims, and other essential healthcare operations. This model has served patients well by ensuring quick and appropriate access to medical care, especially in emergency situations where the patient may be unable to give written consent.
5. Personal health information must be secured and protected from misuses and inappropriate disclosures under applicable laws and regulations. Strict enforcement of violations is essential to protect individuals' privacy.
6. Providers should have as complete a patient's record as necessary to provide care. Having access to a complete and timely medical record allows providers to remain confident that they are well-informed in the clinical decision-making process.
7. A privacy framework should be consistent nationally so that providers, health plans, and researchers working across state lines may exchange information efficiently and effectively in order to provide treatment, extend coverage, and advance medical knowledge, whether through a national health information network or another means of health information exchange.
8. The timely and accurate flow of de-identified data is crucial to achieving the quality-improving benefits of a national health information exchange while protecting individuals' privacy. Federal privacy policy should continue the HIPAA regulations for the de-identification and/or aggregation of data to allow access to properly de-identified information. This allows researchers, public health officials, and others to assess quality of care, investigate threats to the public's health, respond quickly in emergency situations, and collect information vital to improving healthcare safety and quality.
9. To the extent not already provided under HIPAA, privacy rules should apply to all individuals and organizations that create, compile, store, transmit, or use personal health information. A similar expectation of acceptable uses and disclosures for non-HIPAA covered health information is important in order to maintain consumer trust.