



701 Pennsylvania Ave. N.W., Suite 700
Washington, D.C. 20004-2694
(202) 737-5980 • (202) 478-5113 (fax)

dmaa@dmaa.org • www.dmaa.org

May 21, 2010

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

Re: Telephone Consumer Protection Proposed Rule (CG Docket No. 02-278)

Submitted via the Federal eRulemaking Portal: www.regulations.gov

Dear Ms. Dortch:

DMAA: The Care Continuum Alliance appreciates the opportunity to provide comments on the Proposed Rule on Telephone Consumer Protection published in the *Federal Register* on March 22, 2010. Our comments specifically focus on the provision in the Proposed Rule permitting health care-related prerecorded message calls that are subject to the privacy protections of the Health Insurance Portability and Accountability Act (HIPAA). DMAA: The Care Continuum Alliance supports this exception to allow for “prerecorded healthcare messages made 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.” (64CFR 64.1200 (a) (2) (v).

DMAA: The Care Continuum Alliance represents organizations providing services along the continuum of care to more than 160 million Americans through wellness, chronic care management and complex case management. DMAA: The Care Continuum Alliance members include wellness, disease management and population health management organizations; health plans; labor unions; employer organizations; pharmaceutical manufacturers; pharmacy benefit managers; health information technology innovators and device manufacturers; physician groups; hospitals and hospital systems; academicians; and others. These diverse organizations share DMAA: The Care Continuum Alliance’s vision of aligning all stakeholders toward improving the health of populations. Our members seek to improve health care quality and contain health care costs by providing targeted interventions and services to individuals who are well, at-risk or managing one or more chronic conditions.

The Proposed Rule prohibits the use of automatic telephone dialing systems and artificial or prerecorded voice telephone contact except in limited situations where the individual receiving the contact has provided written consent. In addition, there are limited exceptions to the Rule, including the exception to allow for “prerecorded

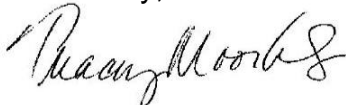
healthcare messages made by, or on behalf of a covered entity or business associate.” The Rule recognizes that HIPAA “covered entities” and “business associates” routinely use these types of health care communications to improve the overall quality of the health care experience and health of plan members.

We support this exception, which allows for important communications by health plans and wellness, chronic care and population health management organizations to patients. These types of communications are a cost-effective approach to encourage and offer personalized support to individuals with chronic illnesses and those who have health related questions or face significant health care decisions.

The Preamble correctly states that these communications are already subject to extensive protections in the HIPAA Privacy Rule. Further, privacy provisions have been strengthened by new requirements in the Health Information Technology for Economic and Clinical Act (PL 111-5), including restrictions on the use of personal health information for marketing purposes. Prerecorded health care messages are also permitted by the Federal Trade Commission’s (FTC) Telemarketing Sales Rule. Both the FTC rule and the FCC Proposed Rule recognize that these health care communications promote better health care and do not adversely affect consumers’ privacy rights.

We appreciate the opportunity to provide our views on the Proposed Rule. Please feel free to contact me at (202) 733-5980 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracey Moorhead". The signature is fluid and cursive, with a large initial "T" and "M".

Tracey Moorhead
President and CEO