

**HHS-CMS-CMCS**

**January 24, 2023**

**2:00 pm CT**

Coordinator: Welcome, and thank you for standing by. At this time, I'd like to inform all participants that today's call is being recorded. If you have any objections, you may disconnect at this time. All lines have been placed in a listen-only mode for the duration of today's conference. I would now like to turn the call over to Miss Jackie Glaze. Thank you, ma'am. You may begin.

Jackie Glaze: Thank you, and good afternoon and welcome, everyone, to today's all-State call-in webinar. I'll now turn to Dan Tsai, our Center Director, for opening remarks. Dan?

Dan Tsai: Thanks, Jackie. Good afternoon, everybody, or morning. Welcome to today's all-State call. We have a very special guest from the Federal Communications Commission, FCC, joining today's call. Before I introduce that, we're going to hear from our team at CMCS, Gene Coffey, and Kia Banton, who will discuss a recent center informational bulletin we put out last week, communicating updated federal poverty - FPL levels and implications for what States are doing on unwinding, that is fresh off the presses, and we just put that out.

So, after that, we've received many questions. That's probably an understatement, many, many, many questions about how the TCPA impact

States and their contractors' ability to text reminders during unwinding and a range of related questions.

And so, to help answer many of your questions, Kristi Thornton, from the FCC, is joining us today to talk about the dos and don'ts for calling and texting consumers under the Telephone Consumer Protection Act, TCPA, which we know is of great interest to you all.

We have received many, many questions, and the FCC put out, I understand it's called the ruling yesterday that is quite interesting for folks to read as well. We're very, very, very excited to have Kristi here with us. Thank you, Kristi. And then after Kristi's presentation, we're going to open the lines for questions.

So, we'll use a webinar for today's call. So, as always, if you're not logged in to the webinar platform, we suggest you do so now. There will be some slides. And with that, I will turn things over to Gene to start our FPL center informational bulletin SIM overview. Gene?

Gene Coffey: Good. Dan, can you hear me?

Dan Tsai: Yep. Thanks.

Gene Coffey: Okay. Very good. Yes. Hi, folks. This is Gene Coffey with the Division of Medicaid Eligibility Policy. So, as Dan said, I'm just going to start things, and I'm going to try to do this quickly. As many, or even most of you, are aware, we publish each year an informational bulletin announcing that the new federal poverty levels have been published in the Federal Register.

And that has occurred again, both the publication in the Federal Register of the new poverty levels, and our informational bulletin announcing publication. And you should see under the new and notable component of our homepage, [medicaid.gov](https://www.medicaid.gov), a link to the info bulletin, which contains within it a link to the Federal Register posting.

Now, two quick things. First, as is customary, we've attached to the info bulletin and what we call the dual-eligibles chart, which is the chart that features the income and resource standards for each of the Medicare saving program eligibility groups, specifically the QMB, SLMB, QI, and QDWI groups.

Second, we also want to note that this year, the Assistant Secretary for Planning and Evaluation, ASPE, which is a component within the US Department of Health and Human Services, is responsible for the publication of the FPLs, has on its Web site, published this year a chart that displays multiples of the federal poverty levels in both annual and monthly figures, such as 133% of the FPL, 150, 185, 200, and so on, up to, I think, 1,000%. So, we think this chart will be very useful for States and stakeholders.

And finally, I just want to flag that we will be discussing the figures more at length during our eligibility tag call tomorrow for those who want to know more about the FPLs and how they should be implemented now and in the upcoming year. And I know there are a number of you on the call who probably plan on being there.

So, you'll get to hear me do a little bit more of an in-depth part two on the federal poverty levels. But for now, that's it. Let us know if you have any questions, and I think I'm going to turn it over now to Kia.

Kia Banton: Yep. That's correct. Thanks, Gene, and good afternoon and good morning, everyone. This is Kia Banton from your unwinding team and also from the data and systems group. And just wanted to talk to you all again about the FPLs, and just remind States how important it is to make sure that they are reviewing those FPL levels and making the necessary updates to your eligibility and enrollment systems as soon as possible.

We do recognize that these updates are routines. States do them every year. However, unwinding is upon us. So, at this stage, it's really critical that States are making the changes as soon as possible, but certainly, before you begin processing your renewals, right?

The FPL levels have gone up quite a bit. So, we want to make sure that once you do - once States do start renewals, that they're making determinations based on the correct FPL. So, while States are in the midst of testing all of their system changes for unwinding and getting ready to submit these artifacts to CMS, just wanted to flag as a reminder that your system testing documents should include, right, proof that you've conducted your testing using the 2023 FPL levels.

So, if they're not currently reflected in your artifacts, you may want to add that in, or work with myself or your State officer to determine how best to show that in your system's artifacts documentation. So, as the docs start coming in, CMS will be working with all of our States just to confirm that everything we needed to see related to the FPL is in there.

And this means that, you know, in your routine engagement with your State officers, those monthly calls, they'll be asking about the status of your FPL updates. I've been asking about the updates on the calls that we're doing with States related to unwinding.

And then again, if we see any - if we have any questions about the FPL updates, once we review your testing artifacts, we'll also follow up with you there. That was a lot, but, you know, if you have any questions or any concerns, please don't hesitate to reach out to myself or your State systems State officer with any questions or concerns. I will turn it over to Jackie, and I will talk to you all soon. Thanks.

Jackie Glaze: Thank you, Kia, and Gene, for your updates. So, next Kristi Thornton, from the FCC, will provide information to us today about the Telephone Consumer Protection Act. So, I will turn now to you Kristi.

Kristi Thornton: Thank you so much. It is my pleasure to be here with you today. Thank you for inviting me to be here, and I understand you reasonably have a lot of questions. It's my job. I - hopeful I will be successful at it to answer some questions for you, to provide you more information that will assist you as you make plans for unwinding.

As Kia just said when she finished her announcements, that was a lot, and I have a feeling that you're probably going to be saying that as I make this presentation. So, I hope that I have provided a useful slideshow for you in that as I've gone through this in preparing this, I've put in citations to regulations to the act and also to important decisions.

So, if you have - if you're confused later about anything I've said, you should be able to go through this deck which will be posted, and do some follow-up research on your own that should, I hope, make it easier to answer some questions later. So, we're going to be talking about the Telephone Consumer Protection Act and things that you can and can't do as you're looking at calling and texting consumers. So, next slide, please.

I thought I'd start by telling you just a little bit about the TCPA. Chances are you interact with this a lot in your everyday life, and you don't even know it. So, let me give you a little bit of background on it. The Telephone Consumer Protection Act was enacted in 1991 by Congress, and Congress was trying to address certain practices that were thought to be an invasion of consumer privacy and also a risk to public safety.

The 47 USC 227 citation is where you can find the entirety of the TCPA that was passed by Congress. Now, you may think that, you know, the TCPA has one goal, which is to get rid of really annoying robocalls, but actually, Congress was trying to do - to create a balancing act.

And whenever the commission is looking at regulations or clarification on the TCPA, that's what we're trying to do as well, is to balance individuals right to privacy, but also legitimate business interest of telemarketers and other callers. So, we're always looking at both sides of that, trying to balance who can make calls and also consumers' interest. Next slide, please.

So, what does the TCPA restrict? It's an interesting act in that it doesn't necessarily restrict the content of the call, it also restricts the technology used to make calls. So, it does restrict telemarketing calls. But in addition to that, the TCPA restricts calls that are made using an autodialer, and also calls that contain an artificial or a pre-recorded voice.

And the artificial or pre-recorded voice and autodialed calls, applies to both informational and telemarketing calls. Now, telemarketing calls is defined in the regulations implementing the TCPA. I actually didn't put that definition citation on here, but the important thing here is, it's not the content of the call that matters so much, but more the technology being used to make that call.

So, autodialer, artificial, or pre-recorded voice calls, those are the key things that we're looking for when determining whether the TCPA applies. The reason it's probably most important to you today is that in 2003, the commission said that call includes both voice calls and text messages.

So, in 1991, when the TCPA was enacted, text messaging wasn't really an issue. In 2003, the commission recognized, oh, wait, TCPA regulates calls made with an auto dialer. Calls actually includes text messages as well. So, next slide, please.

Now, what does the TCPA do? So, it has a few different categories of what it does. There are restrictions for residential numbers and for wireless numbers. So, calls going to your home phone, calls going to your mobile phone, and then there's some exceptions.

So, for residential members, it prohibits callers from making telemarketing calls. That's the content, telemarketing calls, using an artificial or a pre-recorded voice. So, chances are, the calls that you are interested in making, the text messages you are interested in sending, are not going to be telemarketing calls.

Rather, they're likely going to be informational calls. And if you're sending text messages, those are going to be wireless numbers that you're calling. So, let's look at that second bullet there, which is wireless numbers. So, the TCPA prohibits making any calls, regardless of content, using an auto dialer or an artificial or a pre-recorded voice.

Now, if you're making - sending a text message, chances are that artificial or pre-recorded voice is in a component that you're interested in, so you're

looking at an autodialed call. We'll talk a little more about auto dialer later. I just wanted you to know that that's what we're talking about for wireless numbers, artificial or pre-recorded voice, autodialed, any content going to wireless numbers.

Now, there are exceptions. Those would be for emergency calls, and the commission has defined emergency calls and provided examples of that, or also where the call's party has given prior express consent for the call.

So, if I, as the consumer, tell you, you know, Bob's Pizza Palace, that you can call me or send me text messages using an auto dialer, then that consent means that the TCPA- you create an exception under the TCPA. I've given you an exception. We'll talk a lot more about consent in a few slides.

So, why is this important? Why are we even concerned about this? Why is HHS so concerned about the TCPA? Well, for two reasons. One is, FCC enforcement FCC strictly enforces TCPA regulations, but more importantly probably that - because chances are we could figure something out on enforcement, but more importantly, the TCPA grants consumers a private right of action for TCPA violations.

What this means is, you as an individual, if you receive a robocall that is in violation of the TCPA, you can go to court and file a claim for monetary damages. You multiply that by every consumer that you may be interested in texting for purposes of the wind-down that you have - the unwinding you have to do, and you're looking at serious consequences if you get this wrong. That's why we're talking to you about this today. So, next slide, please.

So, here's the bottom line for HHS. Yesterday, the commission issued a decision. I'm sorry, the commission's Consumer and Governmental Affairs



Bureau, released a declaratory ruling that answered HHS's request for clarification. And I've put a link in the slide here, so you can look at that later if you haven't seen it yet.

Throughout this slide deck, I'm going to quote from that decision, and I've put the paragraph numbers where you can find what I'm quoting. So, here are the two big takeaways. An enrollee's provision of a telephone number on an application for coverage in Medicaid or other government healthcare programs.

So, when someone puts their phone number on an application, that constitutes prior express consent to be contacted at that phone number regarding enrollment eligibility, and the other reasons that HHS described in its petition for clarification, because the purpose of those calls and texts is closely related to the purpose for which the enrollee provided their number in the first place.

So, the enrollee gave their phone number. That phone number was on an enrollment application. And so, that constitutes consent to be called at that phone number for purposes related to that application. That's one big takeaway. The second big takeaway is, when the enrollee is no longer at that number, or did not provide a number in the first place.

Somehow or another, they didn't give you the phone number. You just have it. The federal and State government agencies, and that's important that we're limiting it to that, federal and State government agencies, may nevertheless use auto dialer to call and send a text to reach those enrollees, even though they do not have prior express consent.

So, if you didn't get the number from the enrolled, or the enrollee has changed their phone number, if you were the federal or the State government agency

itself, you can still contact the consumer at that phone number. We'll break those down a little bit more. So, next slide.

Here's what we're going to talk about as we break that down. Here's the outline of our next few slides. We're going to talk about consent, the types of consent, who needs consent, and we're going to look at the definition of person, what valid consent is, and when you need consent if you're making autodialed calls.

After we talk about consent, we're going to talk about the reassigned numbers database, which helps you figure out if you have consent matched between person and phone number, and why that's important. That's where we're going next. So, next slide, please.

So, let's start with consent. I mentioned earlier that the TCPA has exceptions so that you can make phone calls that are otherwise prohibited if you have consent. So, prior express consent is what we need, what we're interested in. Express consent given ahead of time, those requirements apply to each wireless number calls, and for each call.

In other words, the next bullet says, at any time, a consumer can revoke consent or asks you to stop. What that means is, if I gave consent on my application for enrollment, that doesn't constitute a blanket consent for all time. If I tell you six months later stop calling me, that consent has to be honored.

If I tell you, you can call me for X, but not for Y, that's a restriction on that consent. I can text that consent. I can give it to you verbally. I could probably write it on a letter. I can't give you right now all of the ways that would be considered a reasonable means to revoke consent.

It's just important for you to know that consent can be revoked at any time and in any reasonable means. Additionally, the burden for proving that you have consent is on you, the caller. In other words, the consumer does not have to say, I didn't give you consent. You, the caller, have to show that you actually obtained consent. The next slide, please.

So, there are different types of consent needed for different types of calls. And this is going to - the type of consent you need, depends on the content of the call you're making and the type of number being called. So, it's going to depend on whether it's a telemarketing or an informational call, and whether you're calling a residential number or a wireless number.

There are different types of consent needed, and those are the larger bullets. Sometimes you need oral or written consent. Sometimes you need written consent, and sometimes you need no consent. So, I'll look a little bit more closely at those.

For calls where you need prior express oral or written consent, in other words, I can give it to you verbally, or I can fill out a form to give you consent, you're going to need that for autodialed or pre-recorded and artificial voice informational calls to wireless numbers.

Okay, so that's only going to apply for wireless numbers if the content is informational. You can get that consent either orally or in writing. A more strict version of consent is going to be the next bullet, which is written consent only. We've taken out the option of oral.

This consent, you have to get in writing, and that's going to be for telemarketing calls to a residential number or for - I'm sorry, for pre-recorded

voice telemarketing calls to a residential number, or for autodialed, pre-recorded, or artificial voice telemarketing calls to a wireless number. You'll notice that those are all telemarketing calls.

So, a more strict standard to consent, written consent for those telemarketing calls. And here is where I've given you the citation for the definition of prior express written consent. And finally, some calls require no consent. For example, emergency robocalls about weather or threats or unexcused absences from school. Those calls won't have any consent requirements. Next slide, please.

Now that you know that some calls require consent and what types of consent is required, the next question is, do you actually need to have consent to make the calls? So, most callers need consent, but not all callers need consent. So, I'm going to quote again from this decision that came out yesterday, and these are all from paragraph four.

The first quote says, federal and State governments making calls in the conduct of official business, do not fall within the meaning of person within section 227(b)(1). I'm going to explain that more a little - in a bit.

The second says that federal and State government callers and texters are not subject to the TCPA's prohibition on using an automated equipment without the prior express consent of the called party. Again, you'll notice that that's relevant for federal and State government callers.

However, the third quote, on the other hand, contractors making calls on behalf of such governments, along with local governmental entities and their contractors, are persons subject to the TCPA. I'll explain this a little bit more later on a different slide.

For now, what you need to know is, if you were the federal or State government itself, and you are making calls in the conduct of your official business, you are not subject to the TCPA. You do not have to have consent for these calls.

However, if you are a contractor of the federal or State government, or if you are a local government or a local government's contractor, you do have to have consent because you are subject to the TCPA. That's who needs consent. So, next slide, please.

So, government or contractor. The TCPA only restricts calls and texts made by persons. So, if you are a person, the TCPA does not apply to you. I've given you two key - citations to two key FCC decisions that work through who is and is not a person.

The first was in 2016, where the commission set this fourth, and then a 2020 reconsideration, where the commission modified it slightly. So, if you want to go into the details of how to determine who is and is not a person, those two decisions are very helpful.

The summary is, federal and State government callers in the conduct of official business, do not fall within the meaning of person, but local governments and all contractors are persons, and they're therefore subject to the TCPA. Next slide, please.

So, once you know what types of consent and whether you need to have a consent because of who you are, then you need to look at whether your consent is valid. Do you have valid consent? So, we looked at this a little bit earlier is that quote from the decision yesterday, which is that by providing

their telephone number on their benefit applications, and acknowledging they may be contacted for more information, consumers have given prior express consent to be called at that number under the TCPA regarding enrollment eligibility.

So, that basically says, if a consumer put their phone number on the application, and you're calling about something related to eligibility for services, that is valid consent. But, that last bullet there, remember that consumers can revoke consent at any time and by any reasonable means. So, you may have had valid consent at one time, but if there was a revocation, you no longer have valid consent. Next slide, please.

Now, at the very beginning, we talked about how the TCPA primarily restricts not the content of the call, but it restricts calls made using specific technology. Text messages are sent using an auto dialer. That's how the TCPA comes into play here. If you're sending a text message using an auto dialer, then the TCPA applies, and you need valid consent if you're sending a text using an auto dialer.

Here's where things get a little murky. It may not have been murky before. The TCPA defines an automatic telephone dialing system or an auto dialer, as equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and to dial such numbers.

Now, that may - that's a pretty wordy definition. You're probably used to pretty wordy definitions. This one actually has been the subject of some pretty significant litigation in the past few years. In a (unanimous) Supreme Court decision, Facebook vs. Duguid in 2021, the Supreme Court specifically looked at this definition of auto dialer, and the court held that to qualify as an

automatic telephone dialing system under the TCPA, the technology used, the device, must have the capacity either to store a telephone number using a random sequential number generator, or to produce a telephone number using a random or sequential number generator.

And if that doesn't make sense to you, that's okay. The next bullet says that the FCC has not spoken to the definition of automatic telephone dialing system since the Supreme Court decision. What this means is, the definition of automatic telephone dialing system, the last word on it, was the Supreme Court decision in 2021.

I can't tell you, the FCC can't tell you whether the equipment you are using is an auto dialer. You probably have attorneys in your agencies who can look at the Supreme Court decision, look at your dialing equipment, and make that determination for you.

It's a fact-based equipment-by-equipment decision, and the commission - the FCCS guidance can't answer that facts-based question for you. I've pointed you to the information on auto dialer that we have, the latest information on the definition and whether equipment falls within it, and this is the best I can do on helping you determine if you are using an auto dialer. If you are not using an auto dialer, then the TCPA does not apply. If you are using an auto dialer, you need to look at the other things that apply to the TCPA. So, next slide, please.

So, if you are using an auto dialer, and you have consent, then you need to make sure that your consent is valid. And there are two parts to determine if you have valid consent, two parts have to match, the person and the phone number. So, in 2015, the commission clarified that the TCPA requires the

consent of the called party, the actual subscriber to a phone number, or the customary user of that number, not just the intended recipient of a call.

In other words, if you as, you know, Massachusetts, are trying to reach me, Kristi Thornton, it's not good enough if you have a phone number you think is going to reach Kristi Thornton, but you actually reach John Smith. That isn't valid consent.

I may have given you that phone number at one time, but if you aren't - if it's no longer my phone number because I relinquished it at some point, I changed service providers, I moved, whatever, that consent is no longer valid.

For consent to be valid, I may have been able to give you that consent at the time I gave it. It was my phone number then. But if circumstances have changed, and it's no longer my phone number, then that consent that you're relying on is no longer valid.

So, even calls made to a telephone number that have been provided by the called party, may be subject to TCPA liability if the number has been reassigned from the person who provided consent. So, how in the world are you supposed to know that? Next slide, please.

We have a tool that will help you know that, and that is the reassigned numbers database. The Web address for the reassigned numbers database is here, [reassigned.us](https://reassigned.us). This is a subscription database that is run by a contractor to the FCC. It is the only comprehensive database of reassigned number data.

It enables callers to verify before they call, whether a telephone number has been recently disconnected and therefore potentially reassigned to someone other than the person who originally gave consent to be called. If the database



provides information that is incorrect, then the caller can be eligible for a Safe Harbor from TCPA liability. Excuse me.

And that's why this is important. If you call a number that has been reassigned, then you may be liable for an illegal call under the TCPA. But if you check the database before making that call, and it gives you wrong information, it says the number has not been disconnected since the date of consent that you're checking, and it actually has been reassigned, if the database gives you wrong information, and you rely on that, then you may be eligible for a Safe Harbor under the TCPA. So, you would not be held liable for those damages. Next slide, please.

Those are the key things to keep in mind in determining who can make calls, which calls you can make, who you can call, the type of technology you're using, those key questions, what consent looks like under the TCPA. I realize I've given you a lot of information. And so, I am now available to answer questions.

Jackie Glaze: Thank you, Kristi. We appreciate your presentation. So, we are ready to take calls, or take your questions at this time. So, we'll begin with the chat function. So, I'll ask that you begin by sending your questions through the chat, and then we'll follow by taking the calls through the phone line. So, I'll turn to you now, (Ashley).

(Ashley): Thanks, Jackie. We have a couple of questions that have come in so far. The first one says, can consumers revoke consent from State agencies?

Kristi Thornton: Thank you for that question. That actually was a point I wanted to make. Consumers can revoke consent from State agencies, but State agencies don't

have to have consent to make calls, because they aren't persons under the TCPA. So, the TCPA doesn't apply to them.

So, even though States - they can revoke consent from the State, the State doesn't have to honor that because they didn't need consent to make the call in the first place. So, it is your choice as the State to determine whether you're going to honor that consent. The States can make calls without consent because the TCPA does not apply.

(Ashley): Okay, thank you. The next question says, does the reassigned number database allow for mass entries?

Kristi Thornton: That's a great question. It does, and there - the best people to contact about the specifics of how the reassigned numbers database works are - is the reassigned numbers database administrator, that actual Web address. You have to set up an account with it. It's a subscription-based service, and there are different tiers of subscription-based off of how many queries you're making.

The way it works is, you enter a set of numbers and the - that you want to check, along with the date of - the last date of - on which you obtained consent from that number. You enter an entire batch of numbers, and then you receive a response regarding each one of those numbers. So, yes, you can batch query the RND.

(Ashley): Okay. We have a question asking if the slides are available, and yes, we actually have the slides already posted to [medicaid.gov](https://www.medicaid.gov). So, if individuals want to visit [medicaid.gov](https://www.medicaid.gov), there's a link to our COVID-19 page right on the homepage. And if you click on the Medicaid and CHIP all-State calls, the slides are already available.

Our next question says, if the State Medicaid agency contracts with a vendor to send text messages, does the State agency need to collect consent?

Kristi Thornton: This is a great question also, and it's a really nuanced answer that I'm not going to be able to answer definitively. There is a portion of the January 23rd decision that I didn't go into in detail intentionally. The requirement or the specification that State and - well, federal and State government agencies making calls in the conduct of their official business, are not callers for purposes of the TCPA is, if the State and federal government agency is the actual maker of the call, your question - the question is about what if we're working with a contractor, and we're supervising the contractor?

The clean answer is, if the contractor is making the calls, the contractor is not the actual State employee, and the contractor has to have consent. They are a person. All contractors are persons under the TCPA, and they have to have consent.

There is, however, a nuanced answer that is addressed in the decision, and then there are citations to more complete decisions, previous decisions from the commission along these lines, that says that if the State is so involved in the making of the call as to be deemed the maker of the call, then the State is deemed the maker of the call.

If that is the case, then the State steps into the shoes of the contractor, and the State becomes the maker of the call, and consent is not required. That is a fact-based analysis based on a number of different criteria, who determines the content of the call, the timing of the call, how closely involved the State is in determining all of those specifics surrounding the call.

The commission did not have enough information on the facts from HHS's request for clarification to be able to determine that, whether each call would be made by - whether States could be deemed the maker of the call in all circumstances.

And so, the decision says these are fact-based decisions and the commission can't make a blanket statement determining who would be deemed the maker of the call. So, please look for more specifics on that at the actual January 23rd decision.

(Ashley): Okay. Our next question says, if a State's eligibility system generates the call, even if maintained by a vendor, does that constitute the State making the call?

Kristi Thornton: I think that's going to be the same answer I just gave. I can't determine from that question whether the vendor is a contractor, or whether the vendor is the State. That's going to be a nuanced question on who is the maker of the call. And so, I would point to my previous answer.

(Ashley): Okay. We have a question that says, if an individual has a guardian, can the guardian give consent on behalf of the individual, and is this consent limited to the extent of the guardianship privileges?

Kristi Thornton: Oh, I'm thinking on that one. I don't know the answer to that. I don't believe the commission has discussed guardianship regarding consent, and I don't think the commission has discussed age of consent. So, I can't answer that for you. I'm sorry.

(Ashley): Okay. The next question says, if a State agency has local counties as government entities allowed under the State plan for Medicaid and CHIP

eligibility and enrollment, are you saying that they're subject to the TCPA and have to have consent to call or text?

Kristi Thornton: Yes. Good question again. You may have noticed that I was very specific in some of these slides regarding federal and State governments are persons - are not persons, sorry, but local governments and all contractors are persons for subject purposes of the TCPA.

And there's - I cited two decisions. Excuse me. One was a 2016, I believe, Broadnet decision, and one was a 2020 reconsideration decision, also a Broadnet decision. Those two decisions are going to go into more detail on the distinctions between federal and State governments, and also local governments, particularly the reconsideration.

Broad strokes, I can't go into nuances without more information, but broad strokes is, local governments are persons subject to the TCPA. There may be, I suppose, circumstances where State governments are set up in such a way that local governments are actors of the State, but I can't address that generally. That would be a State law question. Your guidance is really going to come from that 2020 TCPA reconsideration on Broadnet.

(Ashley): Okay. Then we have a question that says, so even when the State is not the maker of the call, the contractor or the local government has the consent from the application. Isn't that correct? So, they fulfill the consent requirement?

Kristi Thornton: That should generally be correct. And when I started the slide presentation with like the bottom line overviews from the January 23rd decision, that's basically what the commission said, is State and federal governments do not need consent.

However, if you need consent to make these calls, the consent given on an application for eligibility, constitutes consent to be called regarding continuous - regarding continued eligibility for services, absent contrary - absent indication to the contrary. So, unless that consent has been revoked or limited in some way by the person who originally gave consent.

So, if you have a phone number that was given to you on an application for enrollment, and you were contacting the person about continued enrollment, something related to the purpose for which they provided the number in the first place, unless there is contrary instruction from them saying, I've changed my mind, don't contact me, don't contact me for specific purposes, something like that, then that is consent to be contacted about the purposes for which they originally gave their number.

Jackie Glaze: Thanks, Kristi. We'll move now to the phone lines to see if we have questions there. So, I'll ask the operator to provide instructions for how to register a call, the phones - excuse me, the questions, and then we'll open the phone line. So, operator?

Coordinator: Yes, ma'am. If you would like to ask a question over the phone, please press Star followed by 1. Please make sure that your phone is unmuted, and record your name clearly when prompted. If you wish to withdraw your question, you can press Star 2. Please allow a moment for questions to come in. Thank you. Our first question comes from (Patrick). Your line is open.

(Patrick): Thank you very much. Quick question. I tried to type it in the chat, but it doesn't seem to be functioning for me. Where on your Web site can I find the slide deck? I looked on the unwinding resources page and didn't see it.

Kristi Thornton: Sure. So, it's actually not on the unwinding page yet. If you go directly to [medicaid.gov](https://www.medicaid.gov) and scroll down a little, there's a link to our COVID-19 page, and then a link on the left-hand side to our all-State call series.

(Patrick): Great. Thank you.

Coordinator: Thank you. Our next question comes from (Jennifer). Your line is open.

(Jennifer): Will the questions and answers be available for printing?

Kristi Thornton: We will post a written transcript of the call as well as a recording to our all-State call page on [medicaid.gov](https://www.medicaid.gov).

(Jennifer): Thank you.

Coordinator: Thank you. I'm showing other questions at this time.

Jackie Glaze: Thank you. I'll send it back to you, (Ashley). Do we have any additional questions?

(Ashley): It looks like we have a couple more. We have a question that says, if a State vendor or contractor makes a call, does a revocation of consent have to be directed to the vendor, or would a revocation made to the State count?

Kristi Thornton: Oh, that's a good question. I don't know that the commission has directly addressed this, so I'm going to speak, not as the commission, but I'm going to give you my opinion. So, this is not binding on the commission, what I'm saying here.

I'm going to give you my best thought here, and this is based off of a decision that I don't have a citation for, but the commission issued a decision. It's an ACA declaratory ruling. It's likely cited in a footnote in the January 23rd decision. And that decision talks about conveyance of consent and how consent for purposes of a loan application, conveys to the person collecting on behalf of the loan originator.

Based on that decision, my best guess would be that revocation of consent to the vendor would have to be passed to the State, and it would be revocation of all calls related to that - to the eligibility to that application, not just to calls from that particular vendor. But also remember that the State doesn't have to have consent. So, a State may make calls absent consent.

(Ashley): Okay. The next question says, if we have a software that we run but was purchased through a contractor, does that remove the State exception? In other words, does the software have to be both run and owned by the State?

Kristi Thornton: That is a very fact-specific question, and I can't give you a definitive answer, other than to point to that portion of the January 23rd decision that addresses who is the maker of the call. If the State is itself making the call, then they are deemed the maker of the call. If someone else is actually making the call using the software, it depends on how the software is functioning to determine who is actually making the call.

(Ashley): Then the next question says, can you confirm that these are the steps? One, member provides their number on the application. Two, checks the number against reassigned number database. And three, a contractor can text if the State is sufficiently involved in the process.

Kristi Thornton: I'm sorry. Can you ask that question again, (Ashley)?



(Ashley): Sure. It says, can you confirm that these are the steps? One, the Medicaid member provides a phone number on the application. Two, checks the number against the reassigned number database. And then three, a contractor can text if the State is sufficiently involved in the process.

Kristi Thornton: So, slight - thank you for repeating. Slight modification there. Yes. First, you need to make sure that you have consent, which is they provided their phone number on the application. You should have consent. Then, yes, checking the reassigned numbers database helps you determine whether the consent is still valid.

The third point you said was then the contractor can make the call if the State is sufficiently involved. Actually, the State doesn't have to be sufficiently involved. The contractor can make the call then. They're relying on consent that they have determined is valid by checking the reassigned numbers database.

The State would only have to be so involved in the making of the call if you're trying to say the State is actually the maker, and so we don't need consent.

(Ashley): Okay. It looks like we have one more question. It says, Medicaid numbers change their telephone numbers frequently. Should the managed care organizations and contractors regularly check the reassigned number database to protect themselves in case the telephone number on the application has changed?

Kristi Thornton: Yes, that's a great practice. The reassigned numbers database data is updated every 30 days. The RNDs Web site, which there's - the Web address is in the

slide deck, their Web site will have more information on how to use it, what the best way to check and verify your data is.

But best practice is to check every 30 days to make sure that since the last time you checked, that number hasn't been reported as reassigned.

Jackie Glaze: Thanks again, Kristi. So, we will go back and check the phone lines. So, operator, if you could provide instructions once again to register the questions and then open the phone lines, please.

Coordinator: Yes, ma'am. Again, if you would like to ask a question over the phone, please press Star followed by 1. Please make sure your phone is unmuted, and record your name when prompted. If you wish to withdraw your question, you can press Star 2. Please allow a moment for questions to come in. Thank you. I'm seeing no questions coming in at this time.

Jackie Glaze: Okay. Thank you. So, (Ashley), I see a couple of questions in the chat.

(Ashley): Yes. Let's see. The next question says, if a State purchases a cell phone number database and checks against the reassigned number Web site prior to making calls or texts, do we need consent?

Kristi Thornton: So, if the State is making the calls, the State is not subject to the TCPA. And so, the State does not need consent to make those calls. So, the State - I believe there's a sentence somewhere in the January 23rd decision that says - I wrote it down. Sorry, I don't have the exact place it is. It says, if an enrollee is no longer at that number or did not provide the number, then federal and State government callers may still call.

(Ashley): Okay. The next question says, in all events, if the State is the maker of the call or text, no consent is required. Is that correct?

Kristi Thornton: That is correct.

(Ashley): Okay. The next question says, if a person revokes their consent to the State, would that count, or would the person have to revoke consent directly to the vendor?

Kristi Thornton: It depends on the facts of how the call - who is making the call and how the call is being made. That's similar to the question I answered a few moments ago saying I didn't have a definitive answer, but I was going to give it my best shot in answering based off of a decision - an ACA is the name of the declaratory ruling.

The State doesn't have to have consent, but if the consent is provide - if the - I'm sorry, if the revocation is provided to the State, more than likely the State would be responsible for passing that to the vendor because the vendor is acting on behalf of the State. But that's my best guess. The commission has not addressed that question specifically.

(Ashley): Okay. The next question says, can you give the minimum requirements for contractor calls to meet the State threshold?

Kristi Thornton: I don't know that I understand the question. I'm sorry.

(Ashley): Okay. So, maybe if the individual would like to slightly revise their question and submit it into our chat, we can try to ask again. Then we have a question that says, are these rules and regulations applicable to quasi-State agencies?

Kristi Thornton: Oh, I don't know how you would define a quasi-State agency. The rules are applicable unless you are a federal or a State agency acting in the conduct of your official- and acting in the conduct of official business. So, absent the status of federal or State agency, and you're doing your official business in that capacity as a federal or State agency, the TCPA will apply.

Jackie Glaze: Thanks, Kristi. So, we have just another minute or so. So, if we could check the phone lines one additional time, and then we'll close that out. So, operator, I'll turn to you.

Coordinator: Yes, ma'am. Again, if you'd like to ask a question over the phone, that is Star followed by 1. Again, that is Star followed by 1. Thank you. Our first question comes from (Jennifer). Your line is open

(Jennifer): Just to confirm, so if a number is provided on an application, the client has given consent. If the State checks the reassigned number database, but the State uses a contractor to call, for instance, a reason for calling would be to clarify or update the address because we received returned mail from that client, then the contractor is subject to the TCPA rules, correct?

Kristi Thornton: The simple answer is that contractors are subject to the TCPA. Yes.

(Jennifer): Okay. Thank you.

Coordinator: I'm showing no further questions.

Jackie Glaze: Oh, great. Thank you so much. So, in closing, I'd like to thank the team for their presentations today. Looking forward, the topics and invitation for the next call will be forthcoming. If you do have a question that would come up before the next call, please reach out to us, your State lead, or bring your

question to the next call. So, thank you again for joining, and we hope everyone has a great afternoon. Thank you.

Coordinator: Thank you. That does conclude today's conference. You may disconnect at this time, and thank you for joining.

[End]