

Coppersmith Briefs

COVID-19 TCPA Emergency Exception for Robocalls and Texts from Health Care Providers and Government Officials

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On March 20, 2020, the Federal Communication Commission (FCC) issued a declaratory ruling that hospitals, health care providers, state or local health officials, or other government officials may make necessary, and solely informational communications related to the imminent health or safety risk arising out of the COVID-19 pandemic through automated voice calls and text messages without a recipient's prior express consent.¹ The ruling is effective immediately and will allow health care providers and public health officials to push out important information about COVID-19 without violating the Telephone Consumer Protection Act (TCPA).

The TCPA is a federal law that makes it unlawful to send automated, prerecorded or artificial voice calls and text messages to wireless telephone numbers without the recipient's prior express consent. The TCPA places even stricter restrictions on telemarketing communications to wireless and residential landlines. The TCPA is a litigation minefield for organizations engaging in automated calling/texting—and a potential goldmine for class action plaintiffs seeking to take advantage of the statutory damages of \$500 to \$1,500 per unlawful call or text.

However, the TCPA has an exception to the prior express consent requirement for communications made for “emergency purposes.” Emergency purposes are “calls made necessary in any situation affecting the health and safety of consumers,”² such as those instances that “pose significant risks to public health and safety, and [where] the use of prerecorded message calls could speed the dissemination of information regarding . . . potentially hazardous conditions to the public.”³

The FCC's recent ruling confirms that COVID-19 communications necessary to protect the health and safety of consumers qualify for the “emergency purposes” exception. But the communications must meet the following requirements:

- The caller must be a hospital, health care provider, state or local health official, or other government official, or a person acting on their behalf and under their express direction.
- The content of the message must be solely informational, necessary because of the COVID-19 outbreak, and directly related to the imminent health or safety risk arising out of the COVID-19 outbreak.

- The message cannot contain any advertising or telemarketing services or relate to debt collection.

Examples of permissible communications under this ruling include:

- An automated call or text message from a hospital with vital and time-sensitive health and safety information to slow the spread of the COVID-19 disease.
- A prerecorded informational call designed to update the public on measures to address the COVID-19 pandemic made on behalf of, and at the express direction of, a health care provider.
- An automated call or text message from a county official to inform citizens of shelter-in-place requirements, quarantines, medically administered testing information, or school closures necessitated by the national emergency.

Examples of impermissible communications under this ruling include:

- An automated call or text message advertising or providing coupons for a commercial grocery delivery service.
- A prerecorded call to sell or promote health insurance, home test kits, or cleaning services.
- An automated call to collect a debt, even if such debt arising out health care treatment related to COVID-19.

Such communications require the appropriate level of consent from the recipient.

The TCPA has a health care message exemption that provides some leeway for health care providers to send health care related messages to patients through automated calls and text messages, *e.g.*, appointment and exam confirmation and reminders, so long as certain conditions are met. To the extent providers want to send necessary and solely informational COVID-19 messages, they now have additional leeway under the “emergency purpose” exception. Of course, to minimize risk under the TCPA, health care providers should continue to seek prior express consent (or confirm they already have such consent), from patients, if feasible, prior to sending health care related messages through automated, prerecorded or artificial voice calls or text messages. If health care providers wish to send any type of telemarketing messages to patients, even if such messages relate to COVID-19, they will need to obtain prior written express consent to avoid TCPA liability.

The FCC ruling also does not affect health care providers’ obligations under other applicable state or federal laws, which may include HIPAA, the Federal Trade Commission’s Telemarketing Sales Rule, and state laws restricting marketing activities.

[Melissa Soliz](#) focuses on HIPAA and 42 C.F.R. Part 2 compliance, health information exchange and networks (including compliance with the new information blocking rule), compliance with opioid treatment laws and regulations, data breaches and OCR investigations, as well as clinical research compliance and contracting.

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The logo for Coppersmith Brockelman Lawyers features the firm's name in a white, sans-serif font against a dark blue background. The background image shows a city skyline with buildings and trees. The text is centered and reads "COPPERSMITH" on the first line, "BROCKELMAN" on the second line, and "LAWYERS" on the third line.

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extensive experience leading clients through privacy and security-related investigations and has successfully resolved numerous investigations (federal and state) without penalty or payment. Erin is affiliated with Coppersmith Brockelman on designated matters, and licensed in Missouri and Illinois.

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¹ [Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Declaratory Ruling \(2020\).](#)

² [47 C.F.R. § 64.1200\(f\)\(4\).](#)

³ [Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8778, para. 51 \(1992\).](#)