

COVID-19: Hospitals and Health Care Providers Included in New Guidance on the Emergency Purpose Exception to the Telephone Consumer Protection Act (TCPA)

Article By:

Chanley T. Howell

Jennifer J. Hennessy

Chloe B. Talbert

The Federal Communications Commission (FCC) has issued a [Declaratory Ruling](#) providing guidance (Guidance) on the implementation of the Telephone Consumer Protection Act of 1991 (TCPA) as COVID-19 continues to necessitate wider communications to inform the public and keep people connected. This Guidance confirms that COVID-19 qualifies as an “emergency” under the TCPA, making certain communications relating to and necessitated by the pandemic lawful under the “emergency exception” to the TCPA if certain caller and content requirements are satisfied. This article reviews the effect of this new Guidance and outlines guidelines to navigate compliance according to this clarification by the FCC.

Certain Automated COVID-19 Related Calls May be Lawful Under the TCPA’s “Emergency Purpose” Exception

The TCPA restricts certain telephone calls to residential lines and mobile phones without prior written consent, including most autodialed, prerecorded, and artificial voice calls. The TCPA also regulates SMS text messages, which are treated as telephone calls made to mobile phones. However, the TCPA expressly exempts calls made for “emergency purposes” from this restriction, allowing “calls made necessary in any situation affecting the health and safety of consumers” to be made without such prior written consent.

The FCC has previously clarified that the “emergency purposes” exception is intended to apply in “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.” This new Guidance confirms that the COVID-19 pandemic constitutes such an instance, and that consequently, certain callers may lawfully make automated calls and send

automated text messages communicating certain content without prior written consent when such calls are made for “emergency purposes” necessitated by COVID-19 to protect public health and safety endangered.

Not all calls relating to COVID-19 will fall under the “emergency purposes” exception. In its new Guidance, the FCC outlines both a caller requirement and a content requirement. To constitute a call made for an emergency purpose pursuant to the TCPA exception:

- **The *caller* must be either** (1) from a hospital, (2) a healthcare provider, state or local health official or other government official, or (3) a person under the express direction and acting on behalf of such an organization; and
- **The *content* of the call must be** (1) solely informational, (2) made necessary because of the COVID-19 pandemic, and (3) “directly related to the imminent health and safety risk arising out of the COVID-19 outbreak.”

The FCC offered several examples of calls that would qualify as being made for “emergency purposes,” and could thus be made without prior written consent. These include calls made to communicate measures designed to slow the spread of the COVID-19, like a call from a hospital providing “vital and time-sensitive health and safety information the citizens welcome, expect, and rely upon to make decisions” to help curb the outbreak, or “a call made by a county official to inform citizens of shelter-in-place requirements, quarantines, medically administered testing information, or school closures necessitated by the nation emergency,” and other calls made to disseminate crucial health and safety information, such as an informational call made on behalf of and expressly directed by a health care provider “designed to inform and update the public about efforts to address the current pandemic.”

Advertising, Telemarketing, and Debt Collection Are Not “Emergency Purposes” – Even if Related to COVID-19

The FCC also provided guidance as to what COVID-19 related calls do not fall under the “emergency purposes” exception of the TCPA. This new guidance makes clear that calls made to collect debts are not made for “emergency purposes,” “even if such debt arises from health care treatment,” because debt collection is not time-sensitive, has no effect on the health and safety of consumers, and is “not directly related to an imminent safety risk.” Calls and text messages made for the advertising or telemarketing of services similarly do not qualify as calls made for an emergency purpose, even if directly related to COVID-19, like advertisements for commercial grocery services, or the sale or promotion of health insurance, cleaning services, or home test kits. This new Guidance makes clear that automated calls made for advertising, telemarketing, or debt collection purposes are not exempt from the restrictions of the TCPA and still require prior written consent.

Remaining Questions

While this new Guidance provides some welcome clarity to hospitals, health care providers, and government officials, and those communicating with consumers on their behalf, the FCC’s requirement that calls relating to COVID-19 be made by such specific callers may raise some questions as to whether this specific extension of the “emergency purposes” exception acts to exclude the same communications made by other callers. However, this ambiguity is likely an unintended one. The FCC has confirmed in prior guidance, the *Blackboard-Edison declaratory*

Ruling, that communications from school callers “relating to weather closures, incidents of threats and/or imminent danger to the school due to fire, dangerous persons, health risks, and unexcused absences constitute calls made for an emergency purpose because they potentially affect the health and safety of students and faculty.” This new Guidance does not disavow this prior ruling, but in fact uses it to bolster the FCC’s application of the “emergency purpose” exception to the COVID-19 pandemic. Further, the FCC itself characterizes this new Guidance as a “relief” rather than a restriction. Accordingly, this new Guidance is more likely intended to provide much needed clarity and security for health services and governmental entities to ensure they “can effectively and efficiently communicate vital health and safety information to the American people” during this global health crisis.

For more information about the TCPA, the coronavirus and related compliance issues, please contact your Foley relationship partner. For additional web-based resources available to assist you in monitoring the spread of the coronavirus on a global basis, you may wish to visit the [CDC](#) and the [World Health Organization](#).

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National Law Review, Volume X, Number 100

Source URL: <https://natlawreview.com/article/covid-19-hospitals-and-health-care-providers-included-new-guidance-emergency-purpose>