



March 23, 2020

The FCC Exempts COVID-19-Related Health Care “Robocalls” From TCPA Liability

The Federal Communications Commission (FCC) issued an [order](#) on March 20, 2020, confirming that the COVID-19 pandemic constitutes an “emergency” under the Telephone Consumer Protection Act (TCPA) relieving hospitals, health care providers, state and local health officials, and other government officials from liability for making autodialed or prerecorded or artificial voice calls (i.e., “robocalls”) to cell phones. The liability exemption applies to calls or texts that provide health and safety information about the coronavirus and mitigation measures.

The TCPA bars automated calls and texts to cell phones without the consumer’s express consent except for emergencies that pose a significant risk to public health and safety. Violation of the ban exposes callers to strict liability and statutory damages of at least \$500, and up to \$1,500, per call or text—with no cap on aggregate liability. In light of the mandatory statutory damages and frequent class action litigation, the TCPA may have a chilling effect on entities considering using efficient dialing technologies to make calls or send texts.

To qualify for the COVID-19 emergency exemption, calls or texts must meet two conditions:

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

Accordingly, a hospital’s call that provides “vital and time-sensitive health and safety information” regarding COVID-19 or a call by or on behalf of a health care provider “designed to inform and update the public regarding measures to address the current pandemic” would be exempt. Under the second condition, a call that includes any form of advertisement—such as offering health insurance, cleaning services or home test kits—would not qualify, even if related to the virus. The FCC also cautioned unscrupulous callers that it will remain vigilant in monitoring complaints of fraudulent or scam calls and noted reports of efforts to sell fake test kits or cures or other efforts to prey on fears about the virus.

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This document is intended to provide you with general information regarding the FCC's order exempting COVID-19-related robocalls from TCPA liability. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.