

Health Care Alert: FCC Allows Certain COVID-19 Related Health Care “Robocalls”

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Health Care

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On March 20, 2020, the Federal Communications Commission (FCC) issued a **declaratory ruling** which permits certain health care entities and government officials to communicate information about COVID-19, including any mitigation measures, without first obtaining prior express consent.

Under the Telephone Consumer Protection Act (TCPA), automated calls and texts to cell phones without the recipient’s express consent are prohibited, except for “emergency purposes.” TCPA implementing rules explain that this exception is intended for “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.” TCPA violations expose 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.

Holding specifically that the COVID-19 pandemic qualifies as an emergency, the FCC confirmed that certain callers may lawfully make automated calls and send automated text messages to wireless telephone numbers when such calls are necessary to protect the health and safety of citizens pursuant to the TCPA’s “emergency purposes” exception. In order for a call relating to the COVID-19 pandemic to qualify under this exception, two conditions must be satisfied:

1. The caller must be from a hospital, or be a health care provider, state or local health official, or other government official, or a person under the express direction of such an organization and acting on its behalf.
2. 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 outbreak.

In contrast, calls that contain advertising or telemarketing of services would not constitute calls made for an “emergency purpose” (e.g., advertising a commercial grocery delivery service, or selling or promoting health insurance, cleaning services, or home test kits). Calls made to collect debt, even if such debt arises from related health care treatment, are not made for an “emergency purpose,” as those calls are not time-sensitive, do not “affect the health and safety of consumers,” and are not directly related to an imminent health or safety risk. Such debt collection, advertising, or telemarketing automated calls require the prior express consent of the called party.

Vorys is continuing to monitor the COVID-19 outbreak and related guidance and will provide updates on relevant developments as they occur. We also strongly urge providers to continually monitor developments that pertain to your specific organization. If you have questions about COVID-19 or its impact on your organization, please contact Jolie Havens, Lisa Reisz, Liam Gruzs, Jonathan Ishee, Nita Garg, or your regular Vorys attorney.

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Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.