

FCC Narrows the TCPA's Emergency Purpose Exception Amid Pandemic While Greenlighting Certain Emergency Messages by Hospitals, Health Care Providers, and Government

March 23, 2020

Effective March 20, 2020, the FCC issued a *sua sponte* Declaratory Ruling narrowing the TCPA's emergency purpose exception in the context of calls "relating to the COVID-19 pandemic." (Full Ruling [here](#).) This update supplements our March 12, 2020, coverage and breakdown of the TCPA's emergency purpose exception, found [here](#).

To recap, the TCPA's restriction on using an automatic telephone dialing system or an artificial or prerecorded voice does not apply to calls made for an "emergency purpose." The term "emergency purposes" means "calls made necessary in any situation affecting the health and safety of consumers." 47 C.F.R. 64.1200(f)(4). As the FCC previously recognized, "[t]he legislative history of the TCPA indicates a congressional intent to interpret the term 'emergency' broadly rather than narrowly." *In the Matter of the Tel. Consumer Prot. Act of 1991*, 7 F.C.C. Rcd. 2736, 2738 (1992). The FCC and various courts have recognized the emergency purposes exception in a variety of contexts. (See examples [here](#).)

The FCC's March 20, 2020, Declaratory Ruling first confirms "that the current pandemic constitutes [] an imminent health risk to the public." In support, the FCC cites the President's March 13, 2020, proclamation that the COVID-19 outbreak constitutes a national emergency, as well as similar declarations by several states.

The Ruling further recognizes that "[a] critical component of the nation's efforts to address and contain this health-related emergency is the ability of health care and public safety organizations to communicate effectively with the public."

With this backdrop, the FCC's ruling narrowly applies the emergency purpose exception to only certain callers and content:

"In determining whether a call relating to the COVID-19 pandemic qualifies as a call made for an emergency purpose, we look to the identity of the caller and content of the call. *First*, the caller must be from a hospital, or be a health care provider, state or local

Related Capabilities

- Healthcare & Life Sciences
- Healthcare Transactions & Regulations
- Privacy & Social Media

health official, or other government official as well as a person under the express direction of such an organization and acting on its behalf. *Second*, 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."

The FCC goes on to provide specific, but expressly non-exclusive, examples of permitted calls by hospitals, health care providers, and government (or persons "under the express direction of [any aforementioned] organization and acting on its behalf"):

1. **Hospitals:** "[A] call originating from a hospital that provides vital and time-sensitive health and safety information that citizens welcome, expect, and rely upon to make decisions to slow the spread of the COVID-19 disease would fall squarely within an emergency purpose."
2. **Health Care Providers:** "An informational call designed to inform and update the public regarding measures to address the current pandemic made on behalf of, and at the express direction of, a health care provider would be made in a situation that 'affect[s] the health and safety of consumers' and would thus be exempt."
3. **State or Local Official or Other Government Official:** "[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 national emergency would be made for an emergency purpose as such measures are designed to inhibit the spread of the disease."

The FCC also re-affirmed prior rulings that "calls that contain advertising or telemarketing of services do not constitute calls made for an 'emergency purpose[.]'" Examples provided by the FCC include "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 likewise "not made for an 'emergency purpose,'" consistent with the FCC's prior rulings.

There are several key takeaways from this Ruling:

1. Organizations other than hospitals, health care providers, and government (or persons "under the express direction of [any aforementioned] organization and acting on its behalf") should not rely on the emergency purposes exception to send automated calls or texts or use prerecorded voice messages related to the COVID-19 pandemic. Instead, to the extent such organizations wish to send emergency messages related to the COVID-19 pandemic using such technology, they should ensure they have prior express consent of the called party as well as appropriate policies and procedures in place.
2. This Ruling does not preclude application of the emergency purposes exception for messages that are not related to the COVID-19 pandemic.
3. Government is undoubtedly in the best position to make immediate use of this Ruling to improve communication on a local, state and national level during this pandemic.
4. Health care providers may likewise benefit from this Ruling to send informational calls "designed to inform and update the public regarding measures to address the current pandemic."

5. The benefit of this Ruling to hospitals is less obvious given the limited hospital specific example proffered by the FCC. However, some hospitals with time to prepare might consider how to make use of this exception to streamline operations during the pandemic as staffing and resources are strained.

Bloomberg Law covered some of my additional comments on the FCC's Ruling earlier today. See "[FCC Eases Robocall Limits for Health Providers Amid Pandemic](#)."

For additional legal updates regarding COVID-19, please see Dorsey's Coronavirus Resource Center [here](#).