



PUBLIC NOTICE

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CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU CLARIFICATION ON EMERGENCY COVID-19 RELATED CALLS

CG Docket No. 02-278

By this Public Notice, the Consumer and Governmental Affairs Bureau (Bureau) confirms that calls and text messages made by or on behalf of commercial labs, health insurers, physicians, and pharmacies (health care entities) that, pursuant to guidance from federal, state, or local government officials, communicate with individuals who have tested positive for COVID-19 to provide them with information regarding donating their plasma after recovering, fall within the “emergency purposes” exception to the Telephone Consumer Protection Act (TCPA). As a result, such calls during the ongoing pandemic do not require prior express consent to be lawful.

The TCPA expressly excepts from its prior express consent requirements autodialed, prerecorded, and artificial voice calls made for “emergency purposes.”¹ The Commission’s rules define “emergency purposes” to mean “calls made necessary in any situation affecting the health and safety of consumers.”² The “emergency purposes” 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.”³

On March 13, 2020, the President proclaimed that the COVID-19 outbreak in the United States constitutes a national emergency.⁴ Shortly thereafter, in a March 20, 2020 Declaratory Ruling, the Bureau confirmed that the COVID-19 pandemic constitutes an “emergency” under the TCPA and that consequently hospitals, health care providers, state and local health officials, and other government officials may lawfully communicate, through automated calls or texts to wireless numbers, information

¹ 47 U.S.C § 227(b)(1)(A)-(B).

² See 47 CFR § 64.1200(f)(4).

³ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8778, para. 51 (1992) (*1992 TCPA Order*).

⁴ See Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>; News Release, Federal Emergency Management Agency, COVID-19 Emergency Declaration (Mar. 13, 2020), <https://www.fema.gov/news-release/2020/03/13/covid-19-emergency-declaration> (citing section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207).

about the novel coronavirus as well as mitigation measures.⁵ Specifically, the *March 20 Declaratory Ruling* stated that callers may avail themselves of this emergency exception where two conditions are met. *First*, the caller must be from a hospital, or be a health care provider, state or local 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.⁶

With this Public Notice, the Bureau confirms that the TCPA's emergency exception also applies to calls or texts made by or on behalf of health care entities that, pursuant to guidance from federal, state, or local government officials, communicate with individuals who have tested positive for COVID-19 to encourage them to donate their plasma after recovering. We find that such calls or texts serve the same purposes as those we described in the *March 20 Declaratory Ruling*, i.e., they are made necessary in a situation that "affect[s] the health and safety of consumers,"⁷ as such calls are critical to inform their recipients of the need for them to participate in an effort to mitigate the devastating effects of COVID-19.

We reiterate that automated calls that contain advertising or telemarketing of services or that attempt to collect debt, even if such debt arises from related health care treatment, do not constitute calls made for an "emergency purpose" as those calls do not "affect the health and safety of consumers," and are not directly related to an imminent health or safety risk.⁸ As a result, those calls or texts require the prior express consent of the called party.⁹

For further information, please contact Richard Smith, Consumer Policy Division, Consumer and Governmental Affairs Bureau, at 717-338-2797 or by e-mail to Richard.Smith@fcc.gov.

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⁵ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Declaratory Ruling, DA 20-318 (CGB Mar. 20, 2020) (*March 20 Declaratory Ruling*); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, *Blackboard, Inc. Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, Declaratory Ruling, 31 FCC Rcd 9054, 9063, para. 21 (2016) (*Blackboard-Edison Declaratory Ruling*) (concluding that calls or messages 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).

⁶ See 47 CFR § 64.1200(f)(4), (12), (14); *Blackboard-Edison Declaratory Ruling*, 31 FCC Rcd at 9061, paras. 17-18.

⁷ See 47 CFR § 64.1200(f)(4); *Blackboard-Edison Declaratory Ruling*, 31 FCC Rcd at 9062, para. 20.

⁸ See *March 20 Declaratory Ruling*, para. 9; *1992 TCPA Order*, 7 FCC Rcd at 8778, para. 51.

⁹ See 47 CFR § 64.1200(a).