



NAHAM Checklist: TCPA Exempt Calls for Healthcare Providers and their HIPPA

*The Federal Communications Commission (FCC) issued a Declaratory Ruling and Order on July 10, 2015, addressing several regulatory provisions of the Telephone Consumer Protection Act (TCPA). The TCPA's HIPAA exemption extends to advertising and marketing calls to cell phone and residential landlines. Under the exemption, calls that deliver a **healthcare message** made by or on behalf of a "covered entity" or its "business associate" (as these terms are defined in HIPAA) do not require the prior express written consent of the party called.*

The FCC July Clarifications

1. An individual's provision of his or her cell phone number is effectively an invitation to be contacted at that number, as long as the calls or texts are limited in scope to the purpose the number was provided in the first place. Healthcare providers can rely on the voluntary provision of a cell phone number as constituting prior express consent under the TCPA.
2. In situations where a patient is incapacitated and unable to provide a telephone number directly to a healthcare provider, a third party HIPAA-covered intermediary is allowed to provide a number. Consent by a third party on behalf of an incapacitated individual will end when the individual is no longer incapacitated, at which time the provider must get prior express consent from the individual being called.
3. Non-telemarketing healthcare calls, for which the called party is not charged, are exempt from the prior express consent requirement. The FCC provided these examples –
 - Appointment and exam confirmations and reminders
 - Wellness check-ups
 - Hospital pre-registration instructions
 - Pre-operative instructions
 - Lab results
 - Post-discharge follow-up intended to prevent readmission; prescription notifications
 - Home healthcare instructions
4. Healthcare calls related to accounting, billing, debt collection or containing other financial content are **not** part of this exemption.
5. The content of the exempt calls continue to be subject to HIPAA privacy rules. The FCC reiterates that for purposes of these TCPA exemptions –
 - Calls must be free to the end user;
 - Calls must be made by or on behalf of a healthcare provider;
 - Calls can only be made or sent to the cell phone number provided by the patient;
 - Calls or texts must state the name and contact information of the healthcare provider;
 - Calls or texts must be "concise" (one minute or less for voice calls and 160 characters or less for text messages);
 - Healthcare providers may only make one exempt call or send one exempt text per day (per recipient), with a weekly limit of three total calls or texts (per recipient); and
 - Healthcare providers must offer recipients an opportunity to opt out of receiving these types of calls or texts, and honor those opt outs immediately.

The FCC's Declaratory Ruling and Order may be found at its webpage using this address: <https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-order>. A "NAHAM TCPA Checklist", as well as NAHAM's "Deconstructing the FCC's Declaratory Ruling on TCPA Regulations – What it Means for Healthcare Providers", may be found on the NAHAM webpage using this address: www.naham.org.