



## Telephone Consumer Protection Act

**HISTORY:** The Telephone Consumer Protection Act (TCPA) was passed by Congress 1991 and signed into law by President George H. W. Bush as Public Law 102-243. It amended the Communications Act of 1934. The TCPA is codified as 47 U.S.C. 227. The TCPA restricts telephone solicitations (i.e., telemarketing) and the use of automated telephone equipment. The TCPA limits the use of automatic dialing systems, artificial or prerecorded voice messages, SMS text messages, and fax machines. It also specifies several technical requirements for fax machines, autodialers, and voice messaging systems, principally with provisions requiring identification and contact information of the entity using the device to be contained in the message.

**OVERVIEW:** Preliminary results from the January–June 2014 National Health Interview Survey (NHIS) indicate that the number of American homes with only wireless telephones continues to grow. Two in every five American homes (44%) had only wireless telephones (also known as cellular telephones, cell phones, or mobile phones) during the first half of 2014, an increase of 3% percentage points since the second half of 2013. In addition, nearly 33.1% of American homes received all or almost all calls on wireless telephones despite also having a landline telephone. This report presents the most up-to-date estimates available from the federal government concerning the size and characteristics of these populations. 59.1% of adults living in poverty tend to be wireless homes only. The numbers in all categories continue to grow and why this has become a major issue for the healthcare sector.

The TCPA was designed to protect consumers from receiving unsolicited telemarketing calls in their homes at all hours of the day and night. To prevent these intrusive calls, Congress restricted the use of “automatic telephone dialing systems”, broadly limited the use of pre-recorded voice messages and prohibited outreach to mobile phones without “prior express consent” from the call recipient.

Twenty three years since its passage, the TCPA has become outdated. It restricts Americans from receiving customer service messages they want – including healthcare appointment reminders, credit card fraud alerts, notifications of travel changes, power outage restoration, UPS delivery information and more. It also prevents them from receiving these communications on the device they prefer, their mobile phones.

At the time the TCPA legislation was passed, over 90% of U.S. households relied on their home or land-line phone. Only 3% of Americans had a mobile phone, they were truly the province of the elite. So much has changed since then. Today, the trend is away from landline phones, nearly 2 in 5 American homes no longer have them, and toward mobile only households. And a new form of communication, text messaging has emerged. In 2012, more than 2.19 trillion text

messages were sent and received. In 1991, legislators had no way of predicting the growth of the mobile market or the rapid adoption of text messaging as a critical form of communication.

The Affordable Care Act (ACA), was passed in 2011, requires hospitals and outpatient clinics to perform post-discharge follow-up with patients to reduce the rate of readmission, a big contributor to the cost of healthcare. We know the reminders, surveys, and education that have proven to lower readmission rates, can be successfully and cost effectively conducted by phone. However, under the TCPA, these calls are high-risk if the patient's primary contact number is a mobile number and the patient didn't expressly provide the mobile phone number for that purpose.

President Obama has proposed "clarifying that the use of automatic dialing systems and pre-recorded messages is allowed when contacting wireless phones in the collection of debt owed to or granted by the United States. In this time of fiscal constraint, the Administration believes that the Federal Government should ensure that all debt owed to the United States is collected as quickly and efficiently as possible and this provision could result in millions of defaulted debt being collected..."

The current law also provides a carve out for political calls. Under the TCPA political campaigns can use this technology to call and text mobile phones for political purposes without penalty, yet hospitals and doctors do not have the same ability to use this technology to stay in touch with their patients.

It is a financial strain on a hospital or doctor's office to try and determine if the phone number a patient left is a cell number or landline number. It also causes for increase in the healthcare system when a hospital and/or doctor's office cannot communicate with their patients, as now required by the ACA, using autodialer technology providing that these calls are not for telemarketing purposes and are not randomly generated.

**RECOMMENDATION:** Congress should immediately move to modernize the TCPA to allow automated dialing technology to be used to text or call mobile phones, as long as these texts or calls are **NOT** for telemarketing purposes. These changes are critical to the future of technology and how people communicate and send and receive information.

*Recommended language: The TCPA shall be changed to allow for non- telemarketing calls and text messages to mobile phones as long as consumer has given permission in writing on any form or verbally. Use of autodialer technology would be allowed, for non -telemarketing calls and as long as the numbers dialed are not randomly generated and there is a business to consumer relationship, which include third party relationships.*