

REVENUE CYCLE LEGAL ISSUES

Presented by:

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What is the most immediate threat to hospital billing offices?

- TCPA
 - Already in place
 - Generating significant litigation, including class actions
 - Potentially unlimited liability



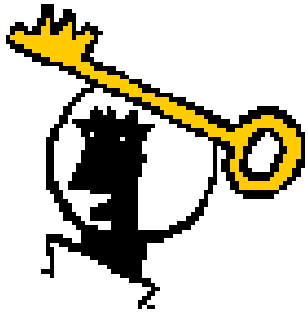


TCPA

- Contains a general prohibition against using an automatic telephone dialing system or an artificial or prerecorded message to call a wireless number.
- With the proliferation of cell phones, this is a problem.
- More Americans who only use cell phones—cell phone is their home phone.

Consent Exception

- With patient's consent, can place these calls to cell phone.
- FCC: if the called party gave the wireless number to the creditor in connection with an existing debt, then consent exists.
- http://fjallfoss.fcc.gov/edocs_public/attachmatch/FCC-07-232A1.pdf
- A MUST read!



Key Step to Take

- Have an express consent provision drafted into your Conditions of Admission form. See, Footnote 37 of FCC Order.



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BEWARE!



- “Similarly, a creditor on whose behalf an autodialed or prerecorded message call is made to a wireless number bears the responsibility for any violation of the Commission’s rules. Calls placed by a third party collector on behalf of that creditor are treated as if the creditor itself placed the call.”
FCC Order, p. 7, ¶10.

Court Victories

- Our law firm obtained a ruling in Sanchez v. Continental Service Group, Inc., Case No. CV-2009-13437 holding that debt collection calls are exempt from the TCPA.
 - See also, Meadows v. Franklin Collection Services, 2010 U.S. Dist. Lexis 72340 (N.D. Al. 2010)
 - Compare, Watson v. NCO Group, Inc., 462 F.Supp. 641 (E.D. Pa. 2006)

February 15, 2012 FCC Ruling

- Non-telemarketing calls do not need prior express *written* consent.
- Leaves in place prior oral or written consent standard that allows for a wireless number to be provided to a third-party agency from their creditor client as a contact to which the consumer has consented.

FCC's July Omnibus TCPA Consent Order

- The term “automatic telephone dialing system” (“ATDS”) is defined as "equipment which has the capacity . . . to store or produce telephone numbers to be called, using a random or sequential number generator[, and] to dial such numbers." 47 U.S.C. § 227(a)(1).
- Actual capacity vs potential capacity

Key Language in Consent Order:

“Rather, we reiterate what the Commission has previously stated regarding the parameters of the definition of “autodialer.” First, the Commission found in its original TCPA proceeding that the “prohibitions of [section] 227(b)(1) clearly do not apply to functions like ‘speed dialing.’”⁶⁶ Second, the Commission has also long held that the

Key Language continued:

basic functions of an autodialer are to “dial numbers without human intervention” and to “dial thousands of numbers in a short period of time.” 67 How the human intervention element applies to a particular piece of equipment is specific to each individual piece of equipment, based on how the equipment functions and depends on human intervention, and is therefore a case-by-case determination.”

So in English:

- The more human intervention in your dialing, the less likely your telephony constitutes ATDS.
- However: the more human intervention, the more call efficiency you lose.
- Also, remember: consent can be revoked.

Moral of the story?

- Get express consent language drafted into your conditions of admission documents!



What is the most complex threat facing hospital business offices?

- IRS 501(r) Final Rule
 - It is a complex regulatory scheme
 - Brand new so a lot of uncertainty
 - Completely revamps the timing and processes of the billing and collection cycles



IRS 501(r) Final Rule



- For our purposes today, we will focus upon the impact on billing and collection
- Rule contains much more!

Billing and Collection

- Hospital may not engage in extraordinary collection actions (“ECA”) prior to making reasonable efforts to determine whether individual eligible for financial assistance.



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ECA's

- Selling debt
 - Unless: prior to sale, legally binding written agreement:
 - Prohibiting purchaser from any ECA's;
 - Prohibiting interest in excess of rate under section 6621(a)(2) at time of sale (3% when Final Rule published);
 - Debt recallable by hospital upon determination by hospital or buyer individual FAP-eligible; AND,



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ECA's

- If individual determined FAP-eligible and debt not returned to or recalled by hospital, buyer required to adhere to procedures specified in the agreement that ensure that individual does not pay, the buyer and the hospital together more than he is responsible for paying as an FAP-eligible individual.



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ECA's

- Credit reporting;
- Deferring or denying, or requiring payment before providing medically necessary care due to prior unpaid bills for prior care under hospital's FAP;
- Actions that require legal or judicial process, including but not limited to:
 - Liens on property (other than state law hospital lien, i.e., PI claims);

ECA's

- Foreclosing on real property;
- Attaching or seizing bank account or other personal property;
- Commencing a civil action;
- Causing arrest;
- Causing writ of body attachment;
- Garnishing wages



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Bankruptcy Claims

- “The filing of a claim in any bankruptcy proceeding is not an ECA.”



Reasonable Efforts

- Must refrain from ECA's until have made reasonable efforts to determine whether individual is eligible for assistance under FAP.
- ECA's engaged in, and reasonable efforts taken to determine FAP eligibility by, "any purchaser of the individual's debt, any debt collection agency or other party to which the hospital facility has referred the individual's debt" are imputed to hospital.

Reasonable Efforts

- Notification period:
 - ECA's may begin 120 days after first post-discharge billing statement, provided proper notification has been given.
- Application Period:
 - 240 days after first post-discharge billing statement (possibly longer)



Reasonable Efforts

- Remember: all notices must inform about availability of financial assistance under hospital's FAP, telephone number to obtain info about FAP and application process, web site address for copies of FAP, FAP application, and plain language summary of FAP



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Reasonable Efforts

- Notice Prior to ECA's:
 - At least 30 days prior to taking ECA's:
 - Provide written notice that financial assistance is available to eligible individuals, identify the ECA's that hospital (or other authorized party) intends to take, and states a deadline after which such ECA's may be initiated that is no earlier than 30 days after the date that the written notice is provided.



Reasonable Efforts

- Together with the above described written notice, the individual must also be given a plain language summary of the FAP.
- Reasonable effort must be made to **orally** notify the individual about hospital's FAP and about how to obtain assistance with the FAP application process.
- Oral notification:
 - How do we do this?



Interplay of 120 and 240 Day Timeframes

- Can we initiate ECA's prior to 240 days?
- What if FAP application submitted after 120 days, but before 240 days?
- Suspension of ECA's once FAP application submitted
 - Incomplete applications
 - Suspend ECA's
 - Notice of additional info required



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Suspension of ECA's



- How do we do this?
 - Credit reporting

Interplay of 120 and 240 Day Timeframes

- Complete applications
 - Suspend ECA's
 - Determine whether individual FAP-eligible, notify of determination, and basis for determination
 - If individual FAP-eligible:
 - If eligible for assistance other than free care, provide billing statement for what is owed as FAP-eligible individual, how amount was determined, and state Amounts Generally Billed (“AGB”) or describe how individual can get info on AGB
 - Refund any amount paid to hospital or any other party exceeding amount responsible for as FAP-eligible individual
 - Take all reasonably available measures to reverse ECA's

Reversal of ECA's

- How do we do this?
 - Judgments



THANK YOU FOR THE OPPORTUNITY TO MEET WITH YOU!



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