

*Shaping the Tenets of Government Regulations*

*to fit the Revenue Cycles of Tomorrow*



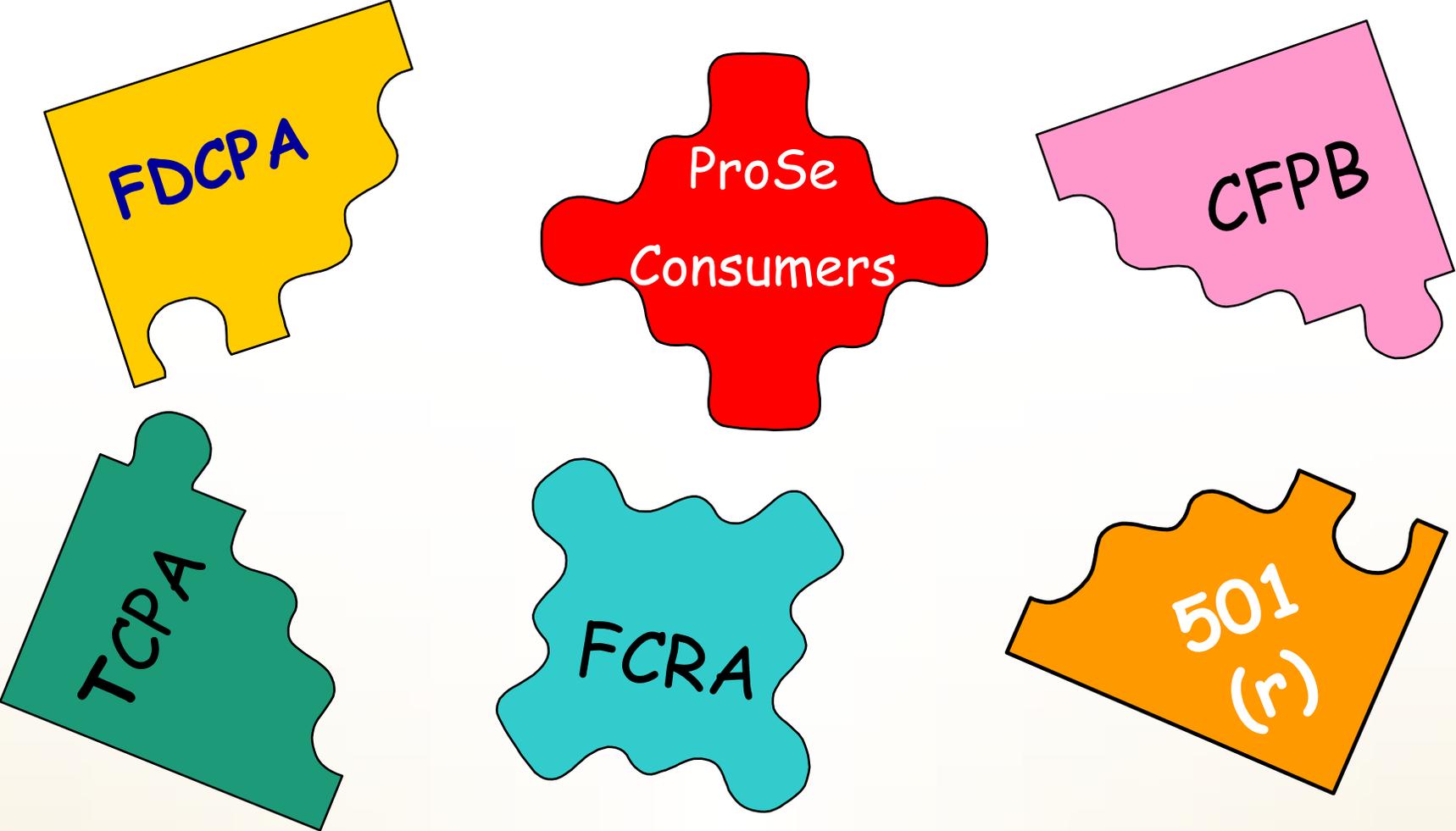
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# Regulations – how are you making it work?



# The Telephone Consumer Protection Act (TCPA)

# The Telephone Consumer Protection Act

## A Brief Overview of the TCPA

- Federal statute passed in 1991
- Original focus: to attack aggressive telemarketers (“robo-calling”)
  - E.G., allowed consumers to “opt out” of telemarketing call lists
- Regulation needed for consumer protection
  - High costs of mobile telephone usage
  - Limited mobile telephone minutes
- New technology—risk-adverse federal government

# The Telephone Consumer Protection Act

Understanding what role the TCPA plays in today's climate

- Distinction between mobile and land-based phone lines is blurred
- No longer significant risk of fees to consumers
- Many mobile-only households
  - *More than 1 out of every 3 in the United States*
- Focus has shifted: beyond telemarketers to all other consumer-related calls
  - *Including billing and debt collection*

# What Does The TCPA Do?

“Use of ATDS prohibited to call “any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.”

- *TCPA, § 227(b)*

# Automated Telephone Dialing Systems (ATDS)

The Federal Trade Commission and courts have broadly interpreted the definition of an ATDS when looking at communications systems.

**The FTC defines ATDS as equipment that:**

1. has the “**capacity**” to store or produce telephone numbers;
2. uses a random or sequential number generator; and
3. has the “**capacity**” to dial such numbers.

# FCC's TCPA Declaratory Ruling

## July 10, 2015

### **ATDS “Capacity”**

- The capacity of an autodialer is not limited to its current configuration but also includes its potential functionalities, i.e. its future ability to be modified to have the requisite capacity
- Prior express consent is now required for voice calls and texts made with an ATDS even if the equipment being used to dial does not have the present ability at the time a call is made

### **Reassigned Numbers**

- Callers now have a one call “safe harbor” for a single call or text to a reassigned number
- A single call covers all company affiliates, including subsidiaries – two affiliated entities may only make one call in total

### **Consent Revocation:**

- Consumers have the right to revoke any prior consent to receive call from an ATDS in any reasonable way at any time.

# Is There A Solution

Given difficulties in court and agency interpretations, we are left with choice to either:

- employ only manual calling and have no dialing systems whatsoever (not very effective); or
- preclude the risk by obtaining prior express consent from patients / consumers.

# Prior Express Consent

## What It Means And Why It Matters

When the argument is made between whether the TCPA does not apply due to the fact the technology used is not an ATDS versus the argument that the patient/consumer gave consent to call them on their wireless number, the express consent is more regularly accepted and the technological argument is more regularly rejected.

# Specific Exemptions for Healthcare

## **Calls/Texts Exempt from TCPA Consumer Consent Requirements**

- Appointment and exam confirmations and reminders
- Wellness checkups
- Hospital pre-registration instructions
- Pre-operative instructions
- Lab results
- Post-discharge follow-up intended to prevent readmission
- Prescription notifications
- Home healthcare instructions

# Liability

Generally, under the TCPA, a person may bring an action to recover actual monetary loss from such violation *or* to receive \$500 in damages for *each* violation, whichever is greater.

## Notable TCPA Class Action Settlements

Capital One, \$75.5 million

Gallup, \$12 million

Sprint, \$7.5 million

Bank of America, \$32 million

***Violations are class-actionable.***

*Penalty for willfully or knowingly violating the TCPA is \$1,500 in damages per each violation.*

# The Consumer Financial Protection Bureau

(CFPB)

# Consumer Financial Protection Bureau (CFPB)

CFPB, Complaints, and the Ever-Increasing Focus on Medical Debt Collection

The mission of the CFPB, according to their website [www.consumerfinance.gov](http://www.consumerfinance.gov) or [www.cfpb.gov](http://www.cfpb.gov) :

“The CFPB is a 21st century agency that helps consumer finance markets work by making rules more effective, by consistently and fairly enforcing those rules, and by empowering consumers to take more control over their economic lives.”

# Consumer Financial Protection Bureau

For the calendar year 2015, the CFPB has secured

***\$817 million***

in relief for consumers harmed by illegal practices in the financial marketplace.

“Given the broad scope of financial services, the CFPB essentially has the power to regulate every industry in the U.S.”

# Consumer Financial Protection Bureau

“These violations are particularly egregious given the challenges many consumers already face who are attempting to navigate the medical debt maze.”

The CFPB begins to accept debt collection complaints

July 10,  
2013

March 20,  
2014

The CFPB’s annual report shows that the majority complaints received were about debt collection.

The CFPB conducts a field hearing on **medical** debt collection and credit reporting.

December 11,  
2014

First major CFPB action against a healthcare collections agency.

June  
2015

# Consumer Financial Protection Bureau

“Medical debt amplifies many of the problems generated by debt collection and the credit reporting system. When people fall ill and end up at the hospital with unexpected bills, far too often they have entered into a financial maze.”

- Often incurred from necessity
- One visit can result in multiple bills
- Health insurance coverage
- Room for error

# Unfair, Deceptive, and Abusive Practices (UDAAP)

## What is considered “*unfair*”?

- The practice causes or is likely to cause substantial injury.
- The injury cannot be reasonably avoided.
- The injury is outweighed by any benefits.

## What is considered “*deceptive*”?

- The practice misleads or is likely to mislead.
- A “reasonable” consumer would be misled.
- The presentation, omission or practice is material.

## What is considered “*abusive*”?

- The practice materially interferes with the consumers ability to understand a term or condition of a product or service.
- The practice takes unreasonable advantage of a consumer’s lack of understanding of the risks, costs and conditions of a product or service.

# Q & A

