

Regulatory Issues Facing the ARM Industry: What Providers Need to Know

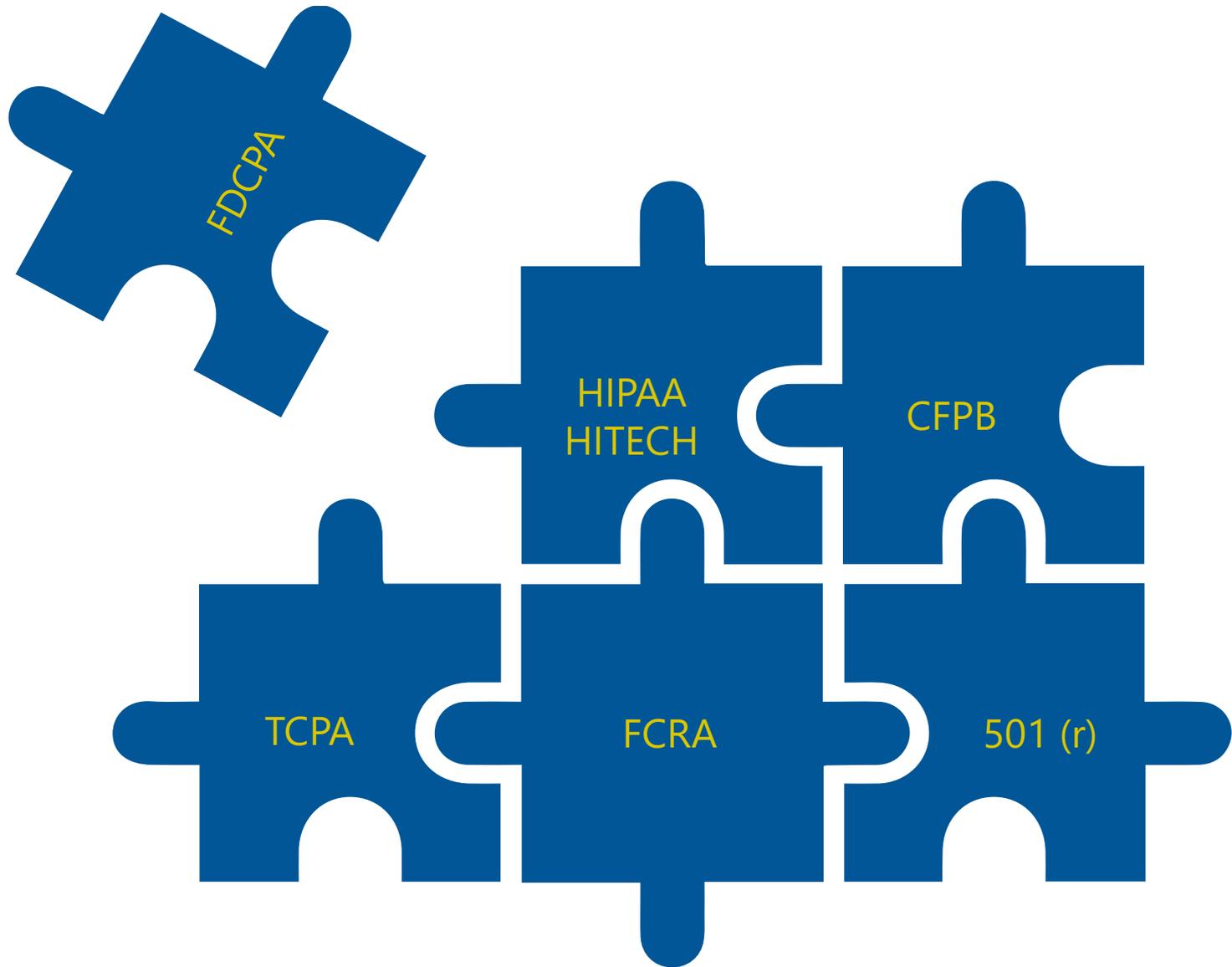


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The Regulatory Puzzle



FDCPA

Enacted in 1977 with the purpose of:

- Eliminating abusive debt collections practices by debt collectors
- Ensuring that those debt collectors who refrain from abusive debt collection practices are not competitively disadvantaged
- Imposing a range of restrictions and disclosure requirements on collector conduct



**Fair Debt
Collection
Practices Act**

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.



Unfair, Deceptive and Abusive Practices



Consumer Financial Protection Bureau



"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."

Outgrowth of the Frank-Dodd Act of 2010
The mission of the CFPB, according to their website www.consumerfinance.gov or
www.cfpb.gov

A person in a white shirt is using a tablet computer. The tablet screen displays a financial dashboard with a bar chart at the top, a table of data in the middle, and a 3D pie chart at the bottom. The person's hands are visible, holding the tablet. The background is blurred, showing what appears to be an office setting with other people and equipment.

\$11B+

CFPB has secured since inception in penalties against 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."

CFPB

Focus on Medical Debt:

“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.”

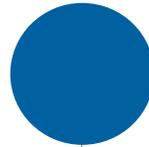
- Often incurred from necessity
- One visit can result in multiple bills
- Health insurance coverage
- Room for error



**Consumer
Financial
Protection Bureau**

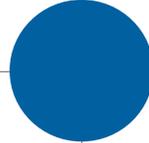
CFPB

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



July 10, 2013

CFPB begins to accept debt collection complaints.



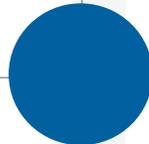
March 20, 2014

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



December 11, 2014

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



June 2015

First major CFPB action against a healthcare collections agency.



July 2016

CFPB announces ANPR and forming of SBREFA Panel.

CFPB

Takes action against Medical Debt Collector

- Mishandling consumer credit reporting disputes
- Preventing consumers from exercising important debt collection rights
- Penalties:
 - Provide over \$5 million in relief to harmed consumers
 - Correct errors on credit reports
 - End illegal credit reporting and debt collection practices
 - Establish consumer safeguards
 - Pay a civil penalty of \$500,000



**Consumer
Financial
Protection Bureau**

ANPR & SBREFA Process

Proposals under consideration

Information Integrity and Related Concerns

- Debt collectors must “substantiate” debt before beginning collection activities
- Required review and transfer of certain information
- Collector must respond to any “specific warning signs” that the account information is inaccurate or incomplete



**Advanced Notice of
Proposed Rulemaking &
Small Business
Regulatory Enforcement
Fairness Act**

ANPR & SBREFA Process

Proposals under consideration

Consumer Understanding Initiatives

- Validation letters
- New disclosures required on initial collection letters
- Must include a tear-off portion for consumers to dispute debt
- Must disclose specific on how to dispute debt
- May require a one page "Statement of Rights"



**Advanced Notice of
Proposed Rulemaking &
Small Business
Regulatory Enforcement
Fairness Act**

A photograph of four business professionals in an office setting, overlaid with a semi-transparent blue filter. The individuals are gathered around a table, looking at documents and a laptop. The scene is professional and collaborative.

Proposed Validation Notice

North South Group
P.O. Box 121212
Pasadena, CA 91111-2222
(800) 123-4567 from 8am to 8pm EST, Monday to Saturday
www.nsgroup.com

December 12, 2015

To: Ms. Mary Smith
2323 Park Street
Apartment 342
Arlington, VA 22201

Reference: 564-345

North South Group is a debt collector. We are trying to collect a debt that you owe to ABC Credit. We will use any information you give us to help collect the debt.

Our information shows:

You had a Main Street Store credit card from Bank of Rockville with account number 123-456-789. ABC Credit now owns that account, so now you owe ABC Credit.

As of January 2, 2013, you owed:	\$	1,234.56
Between January 2, 2013 and today:		
You were charged this amount in interest:	+	\$ 75.00
You were charged this amount in fees:	+	\$ 25.00
You paid this amount toward the debt:	-	\$ 50.00
Total amount of the debt now:	\$	1,284.56

How can you dispute the debt?

- Write to us by **January 11, 2016 to dispute all or part of the debt.** We must stop collection on any amount you dispute until we send you information that shows you owe the debt. If you write AFTER January 11, we are not required to send that information to you, but we must stop collection until we confirm that our information is correct. For ease, you may use the form below or you may write to us without the form. You may also include supporting documents.
- Call us to dispute. But if you do call, we are not required to send you information that shows you owe the debt.** We must stop collection on any amount you dispute until we confirm that our information is correct.

If we do not hear from you, we will assume that our information is correct.

What else can you do?

- Ask us to send you the name and address of the original creditor.** Write by January 11, 2016 and we will stop collection until we send you that information. For ease, you may use the form below or you may write to us without the form.
- Learn more about your rights under federal law.** For more information, see the enclosed *Know your debt collection rights* document or go to the Consumer Financial Protection Bureau's website at www.consumerfinance.gov.
- Contact us about your payment options.**

Mail this form to:

North South Group
P.O. Box 121212
Pasadena, CA 91111-2222

Ms. Mary Smith
2323 Park Street
Apartment 342
Arlington, VA 22201

How do you want to respond to this notice?

Check all that apply:

- I want to dispute the debt because I think:
 - This is not my debt.
 - The amount is wrong.
 - I already paid this debt in full or I settled it.
 - You are not the right person to pay.
 - Other or more detail: _____
- I want you to send me the name and address of the original creditor.
- I enclosed this amount: \$

Make your check payable to *North South Group*.
Include the reference number 564-345.

Proposed Validation Notice

Know your debt collection rights

This form explains some of your rights under the Fair Debt Collection Practices Act and other laws. You may want to keep this form for reference.

What you can do

- You can decide how and when debt collectors can contact you.**
A debt collector cannot contact you before 8 am or after 9 pm except in limited circumstances. Also, if you tell a debt collector verbally or in writing that a certain time or place is inconvenient, such as while you are at work, the collector cannot contact you at that time or place.
- You can stop communications.**
If you write the debt collector and instruct them to stop all contact with you, the collector must stop. This does not make the debt go away, and in limited circumstances the collector may follow up with you.
- You can dispute the debt at any time.**
You can find further details about how to dispute your debt on the notice describing your debt.
- You can obtain a credit report and dispute any item on it.**
Under the Fair Credit Reporting Act, you may obtain a free copy of your credit report at annualcreditreport.com. If a debt appears on your credit report, you can dispute it if you believe the information is inaccurate.

What debt collectors cannot do

- They cannot harass or be abusive to you.**
For example, a debt collector cannot threaten you with violence or harass you with obscene language. A collector also cannot claim that you have committed a crime by not paying a debt. A collector cannot contact you more than a certain number of times each week.
- They cannot deceive you.**
A debt collector cannot make a false or misleading statement about what you owe.
- They cannot discuss your debt with others.**
A debt collector generally cannot communicate about your debt with other people (such as your neighbors, friends, and relatives) unless you give the collector permission. However, a collector is allowed to contact others to find out how to reach you.
- They cannot garnish certain types of assets or income.**
Federal and state laws may prevent a debt collector from taking certain assets and income to pay the debt. For example, collectors may not be able to take SSI, Social Security, public assistance, veterans', disability, unemployment, and workers' compensation benefits.

Need help?

The Consumer Financial Protection Bureau (CFPB) is a federal government agency built to protect consumers. Visit our website at consumerfinance.gov/debtcollection or call 855-411-CFPB (2372) to learn more about your rights and what you can do next.

Para obtener una copia de este documento en español, visite consumerfinance.gov/es or comuníquese con el cobrador de deudas.

ANPR & SBREFA Process

Proposals under consideration

Collector Communication Practices

- Contact frequency and leaving of messages
- General time, place, manner restrictions
- Decedent debt
- Consumer consent



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Regulatory Enforcement
Fairness Act**

CFPB

Releases 6th Annual FDCPA report to Congress

"We recognize that debt collection is a necessary part of a functioning financial system. At the same time, we recognize that illegal practices have no place in the debt collection process, and if such practices are not stopped, those collectors seeking to adhere to the law find themselves at a competitive disadvantage."

– CFPB Director Richard Cordray

- Debt Collection Rulemaking
- Supervision and Enforcement Actions
- Consumer Complaints to the CFPB
- Education and Outreach Initiatives



**Consumer
Financial
Protection Bureau**



Public Perceptio n

Results



So Sue Them: What We've Learned About The Debt Collection Lawsuit Machine

Paul Kiel - May 5, 2016 

- Some [public](#) and [nonprofit hospitals use the courts to collect from patients who can't pay their bills](#), even when those patients obviously qualify for financial assistance.
- Debt buyers are primarily responsible for the rise in lawsuits.
- Medical/Healthcare ranks in the top four as the most common plaintiff.

Results



Nonprofit Hospital Stops Suing So Many Poor Patients: Will Others Follow?

Paul Kiel and Chris Arnold - June 1, 2016



- ProPublica has found nonprofit hospitals filing thousands of suits in several states, from Kansas to Alabama to New Jersey.
- In Indiana, for example, a non-profit hospital filed more than 20,000 lawsuits from 2010 through 2015.
- After [an investigation by ProPublica and NPR](#) prompted further scrutiny by Sen. Charles Grassley, a Missouri hospital overhauled its financial assistance policy late last year and forgave the debts of thousands of former patients.

Results



In Nebraska, New Bill Proposes Protections Against Rampant Debt Collection

Paul Kiel – January 24, 2017 

- About 79,000 debt collection lawsuits were filed in Nebraska courts in 2013 alone.
- In Nebraska, debt collectors frequently sue over medical debts as small as \$60 and a simple missed doctor's bill can quickly land you in court.
- In February, [a federal judge deemed a collection agencies practices unfair](#), siding with the plaintiffs in a class action lawsuit against the company. U.S. District Judge Joseph Bataillon, rules that the agency had deceived consumers with its collection suits by wrongly claiming interest and attorney fees — charges that the agency adds to debts and keeps for itself.



Medical Debt Malpractice

Consumer Complaints About Medical Debt Collectors, and How the CFPB Can Help

U.S. PIRG

**Standing Up To
Powerful
Interests**

Medical Debt Collection is a Source of Pain for American Consumers

- **Medical Debt Collection Affects Millions of Americans**
- **Medical Debt Collection is a Leading Source of Consumer Complaints**
- Inaccurate and Unfair Credit Reporting Can Harm Consumers'
- 10 Companies Account for 20% of All Medical Debt Collection Complaints

TCPA

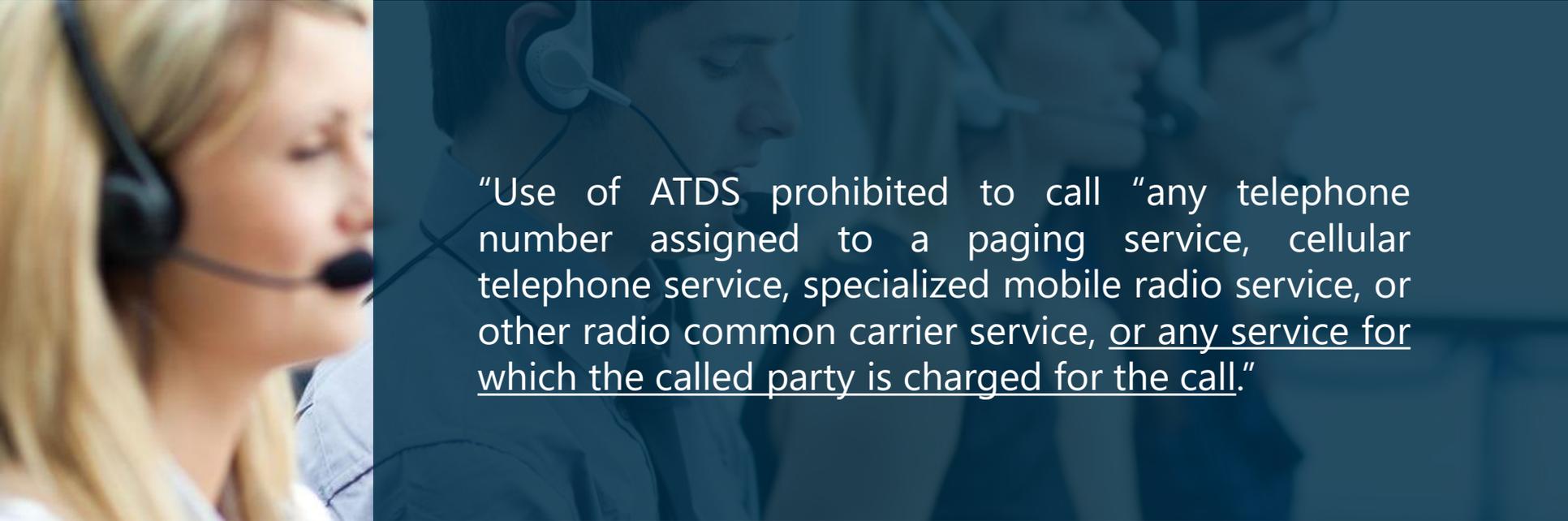
Understanding what role the TPCA plays in today's climate

- 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



The Telephone Consumer Protection Act

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)

ATDS

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

The FTC defines ATDS as equipment that:

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



Automated Telephone Dialing Systems

TCPA

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

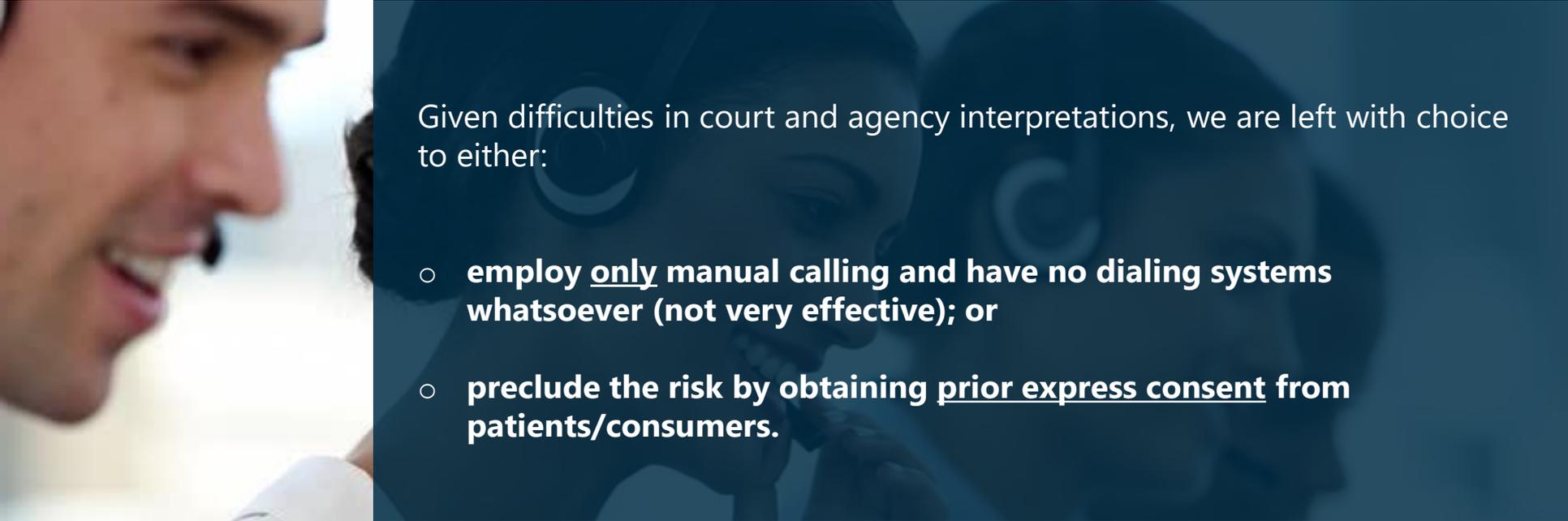
Consent Revocation:

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



*** The Telephone
Consumer
Protection Act**

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.**

TCPA

Specific exemptions for healthcare

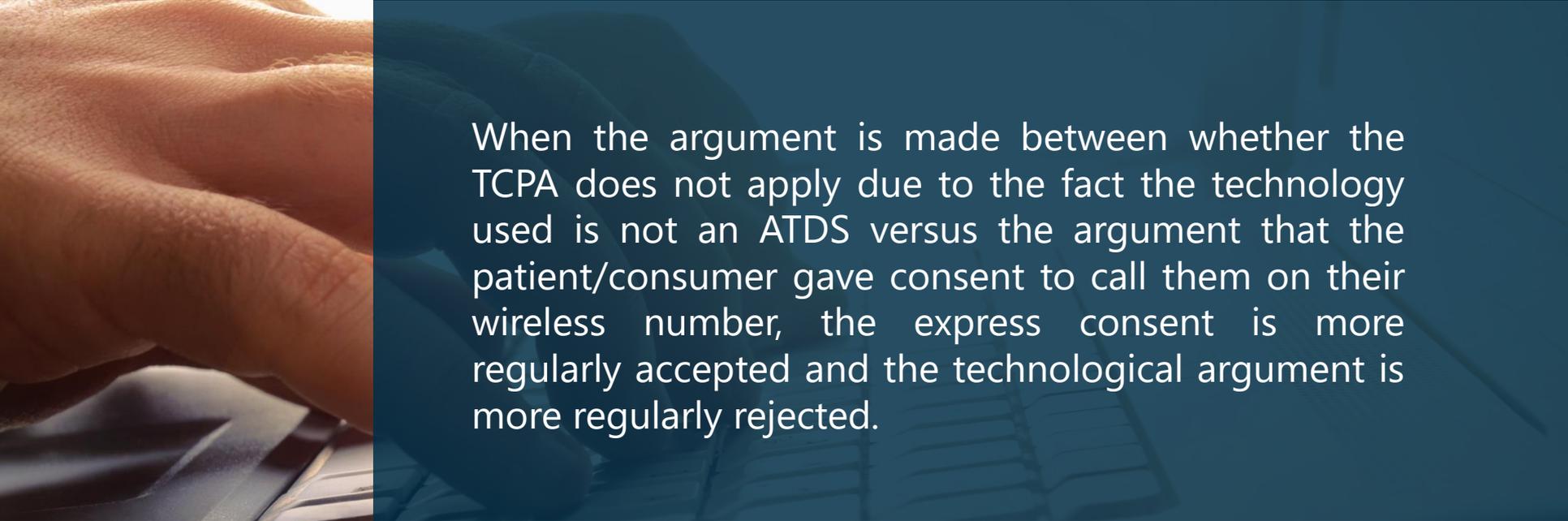
Calls/Texts Exempt from TCPA Consumer Consent Requirements

- 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



**The Telephone
Consumer
Protection Act**

Prior Express Consent: What it Means and Why it Matters

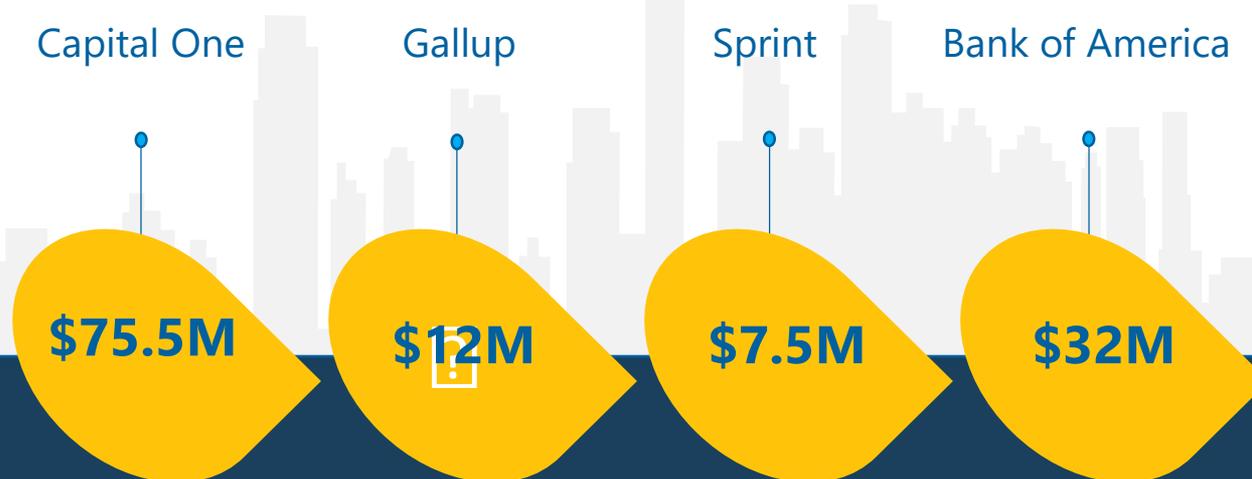


When the argument is made between whether the TCPA does not apply due to the fact the technology used is not an ATDS versus the argument that the patient/consumer gave consent to call them on their wireless number, the express consent is more regularly accepted and the technological argument is more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

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



Violations are class-actionable.

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

Q&A

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