



STATEMENT FOR THE RECORD  
OF THE  
AMERICAN ASSOCIATION OF HEALTHCARE  
ADMINISTRATIVE MANAGEMENT  
BEFORE  
THE U.S. SENATE  
COMMITTEE on COMMERCE  
SCIENCE, AND TRANSPORTATION

WEDNESDAY, MAY 18, 2016

Chairman Thune, Ranking Member Nelson, and members of the Committee, thank you for the opportunity to submit this testimony for the record.

My name is Richard Lovich and I serve as National Legal Counsel for the American Association of Healthcare Administrative Management (AAHAM), which is the national organization actively representing the interests of healthcare administrative management professionals through a comprehensive program of legislative and regulatory monitoring and its participation in industry groups such as ANSI, DISA, WEDI and NUBC. AAHAM is a major force in shaping the future of healthcare administrative management.

I appreciate your holding this hearing today. As you know, the Federal Communications Commission recently ruled on over 22 petitions seeking changes to the current rules governing the Telephone Consumer Protection Act (TCPA). AAHAM was one of those groups that submitted a petition seeking clarification of how the FCC defines consent. Consent by definition may seem like something simple to answer, but we have found that consent does not mean the same thing to so many people and thus has caused our members to be sued over this issue. Healthcare providers cannot do their job effectively, efficiently, or in a cost effective manner without using technology today.

The TCPA was signed into law in 1991 and already is out of date, yet, the FCC seems unwilling to consider real modernization. Technology has advanced so rapidly since 1991 and continues to develop at a pace the government cannot keep up with, yet agencies like the FCC, are unwilling to keep pace with these changes.

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. Mr. Chairman, AAHAM supports that goal and mission of the TCPA. Nothing we or others have proposed would change that.

Twenty three years since its passage, the TCPA has become outdated.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. Further, it 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, in fact nearly 2 in 5 American homes no longer maintain a land line and rely exclusively on wireless or cell technology.
- Since the enactment of the TCPA, 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.

To make matters worse, new laws and regulations have been passed that make compliance with the TCPA even more difficult. The Affordable Care Act (ACA) as well as new IRS regulations dealing with charitable hospitals, place unfunded mandates on hospital providers the fulfillment of which is made difficult if not impossible by the current language and interpretation of the TCPA.

The 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 place the hospital at high-risk of violating the statute and facing penalties and defense fees and costs where the patient's primary contact number is a mobile number and the patient didn't expressly provide the mobile phone number for that purpose. The FCC's recent ruling helps by making some slight changes to the TCPA for healthcare related calls, but it just touches the surface and does not get to the root of the problem.

The IRS's 501(r) regulations create another another federal government unfunded mandate. These regulations require hospitals to call patients and orally inform them they may be eligible for financial assistance. A laudable endeavor and one hospitals are fully in favor of conducting. However, this is a process that could be more effectively, efficiently, and economically performed through the use of technology. The chilling effect of the ambiguity of the TCPA has required hospitals to refrain from the use of auto dialers and contacting patients through the use of mobile technology. By requiring the use of more labor intensive methods to comply with the regulations, the TCPA adds unnecessary expense which requires diverting resources that could otherwise be dedicated to patient care.

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 practical impact on the care provider community is devastating. It is a significant financial strain on a hospital or any size, let alone a physician's office to try and determine if the phone number a patient left is a cell number or landline number. Then is it is a wireless number, determining if the provision of the number constituted express consent to call them and for what purpose? In addition, when can a hospital vendor rely upon the level of consent provided to the hospital to gauge if their work on behalf of the hospital is protected at least to the limited extent that the hospital is protected.

The bottom line is that healthcare providers must be able to effectively, efficiently and economically communicate with their patients. The TCPA robs our community of this fundamental aspect of the care provider-patient relationship by imposing outdated and

artificial restraints on effective communication. In addition, the TCPA prevents providers from fulfilling statutory and regulatory mandates in an effective and efficient manner, all at the expense of greater patient care.

Those in the healthcare sector aren't looking to inundate consumers with telemarketing calls. The great majority of the communication with patients is care related and mandated by federal statute or regulation. Any government mandate in and of itself should provide a safeguard against unwarranted lawsuits against hospitals for fulfillment of the essence of the caregiver-patient relationship and to make calls they are required by law to make.

In today's technologically burgeoning society, it makes no sense for the FCC to allow technology to be used to contact consumers via their landline phone, but not their cell phones. Almost 40% of homes today rely on their cell phones as the primary means of communication. This number is expected to continue to rise. With this trend, the FCC is missing a golden opportunity to truly modernize the TCPA in a way that will have beneficial impacts on industry, while also safeguarding the protections consumers want.

Today the FCC is looking at the modernization of the TCPA the wrong way. The FCC should be looking at meeting two mutually achievable goals-balancing the needs of consumers for obtaining healthcare and other information quickly and efficiently through their mobile devices, with maintaining the strong anti-telemarketing rules that already exist.

This is not a challenging endeavor. AAHAM has met with key members of the FCC several times and the message has been the same. AAHAM has explained in great detail what healthcare calls are and what, in the healthcare industry, would be considered (and prohibited) healthcare telemarketing calls. Yet, still getting the needed changes has been challenging.

We urge Congress to immediately 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 caregiver-patient communication.

Mr. Chairman and Ranking Member Nelson this is not a partisan issue, nor should it be. This is a simple issue of the need for government regulations to keep pace with the needs of today's consumers and businesses. This is an issue about government working to bring healthcare costs down for consumers, not drive them up by continuing to rely on outdated rules and regulations.

The TCPA is outdated and needs to be modernized immediately. The FCC's recent decision was disappointing and troubling for us in the healthcare industry. AAHAM's petition was very modest and simply asked for clarification on the definition of consent. The ruling did not effectively end this inquiry. This means that the caregiver community, those upon which we all rely to provide effective healthcare to us, will continue to be subjected to costly lawsuits draining resources that would otherwise go to patient care.

Thank you for this opportunity and if you or your staff have any questions, please feel free to contact me. I would love to work with the Committee on real solutions to this very important issue.