CVS Urges TCPA Clarification for COVID, Flu Vaccine Calls

CVS Pharmacy, Inc., has supported the request of the National Association of Chain Drug Stores for the FCC to clarify that communications from pharmacies and other health care providers related to COVID-19 vaccines, once available, and flu vaccines during the pandemic qualify for the Telephone Consumer Protection Act’s “emergency purposes” exception to the TCPA’s requirement for prior express consent to receive robocalls.

The FCC’s Consumer and Governmental Affairs Bureau released a declaratory ruling in March clarifying that the COVID-19 pandemic constitutes an “emergency” under the TCPA and thus automated calls and texts to wireless numbers about the crisis from authorities don’t require prior consent (TR Daily, March 20).

“Specifically, we confirm that the COVID-19 pandemic constitutes an ‘emergency’ under the Telephone Consumer Protection Act (TCPA) and that consequently hospitals, health care providers, state and local health officials, and other government officials may lawfully communicate information about the novel coronavirus as well as mitigation measures without violating federal law,” the bureau said.

In its comments filed in CG docket 02-278, CVS said, “While it appears to be implied in the Commission’s prior COVID-19 guidance, the Commission should make clear that communications regarding COVID-19 treatments (including a vaccine and test results) and the flu vaccine fall within the emergency purposes exception during the pandemic. CVS strives always to respect its patients’ communications preferences. However, health care companies must be able to openly communicate with patients regarding vaccines and treatments without fear of TCPA litigation.”

It added that in stating types of calls that would qualify, “[t]he Commission seems to clearly have been providing illustrative examples through its March 20 Declaratory Ruling, rather than a comprehensive list. To that end, on July 28, 2020, the Commission issued a clarification that health care providers (including specifically pharmacies) could ‘communicate with individuals who have tested positive for COVID-19 to provide them with information regarding donating their plasma after recovering. ...’”

CVS added, “The NACDS’s Request seeks clarification of the Commission’s March 20 Declaratory Ruling to ensure that health care providers, like pharmacies, can quickly disseminate essential COVID-19-related mitigation information without fear of class action lawsuits. Specifically, this includes calls and text messages concerning (i) COVID-19 treatment and (ii) flu vaccines during the pandemic. CVS contends that such communications are already covered by the March 20 Declaratory Ruling, but nevertheless believes clarification is prudent to prevent needless litigation.” —Lynn Stanton, lynn.stanton@wolterskluwer.com