

## **BEST PRACTICES, POLICIES, AND PROCEDURES**

### **PATIENT TEXT COMMUNICATION CONSENT**

#### **What is TCPA? What Does TCPA Stand for?**

TCPA stands for the telephone consumer protection act. The TCPA is a set of laws and regulations enacted in 1991 to protect consumers' privacy and reduce abusive telecommunications.

The TCPA outlines various violations and offers a guide to businesses on how to contact consumers

#### **TCPA Compliance Guide**

#### **Guide to TCPA Customer Communications and Consent**

##### **Conversational Text Messaging Consent:**

Conversational text messaging is a one-on-one two-way conversation between you and your existing customers or known contacts with an existing business relationship.

If a customer texts your business first and you respond quickly with a single message, then it is likely conversational.

As long as you respond with relevant information, then you don't need verbal or written permission.

**This is called implied consent. It's based on the already established relationship you have with your customer or contact.**

##### **Informational Text Messaging Consent:**

Informational messaging takes place when a contact gives your business their phone number and asks to be contacted in the future.

Informational text messaging includes appointment reminders, welcome texts, and other alerts and notifications.

These messages are all in this category because the message content fulfills your contacts' original request.

For informational text messaging, your customer does need to agree to receive texts specifically for informational purposes.

This is called express permission. Contacts may grant you this permission via text opt-in, on a form, on a website, verbally or with written permission.

### **Implied Consent:**

If it's "reasonable to believe" that you have permission to text a contact then you have implied consent.

Think of implied consent as getting more casual or inferred permission whereas express consent is getting formal permission.

If a contact reaches out to your business and texts you first, then it's reasonable to assume you have permission to text the contact back, but only specifically regarding their message.

The same holds true for email. If a contact emails your business, and their signature includes their phone number, then you can reasonably assume they've given you permission to call them.

Meeting someone in person and getting their business card also gives you permission to contact them by the means listed on their card.

Keep in mind that this doesn't grant you permission to send them promotional messages regarding your product, good or service.

However, if the contact asked specifically for that information, then you have express consent.

### **Express Consent:**

The TCPA doesn't specifically define express consent. It simply states that express consent is a written or oral agreement that clearly indicates consent to receive texts or calls at a particular phone number. Informational text messages fall into this category.

If a contact knowingly provides your business with a phone number as part of the normal course of business, then you have implied express consent to message them.

But this only holds if the content of the message you send the contact relates to the original reason they gave your business their number.

If a contact gave you their number and they expect to receive a confirmation of their appointment or receive pertinent information regarding their account, then your business has the right to contact them via implied express consent.

**If you have a prior established business relationship with a contact, then in most cases you also have prior express consent.**

## **TCPA Consent Exceptions**

### **Prior Established Business Relationships (EBR)**

Texting or talking with an existing customer means your business has a prior established business relationship.

If a contact asked for information regarding your business within the past 3 months or they've made a purchase or transaction with your business in the past 18 months, you have an established business relationship with that contact.

**An established business relationship with a contact gives your business prior express consent to call or text with them.**

### **Tax-Exempt Nonprofits**

Tax-exempt Nonprofits are non-commercial. They don't sell goods or services. As long as their communications with contacts remain non-commercial, they can operate under the assumption of express consent to call and text contacts.

### **Health Care**

Health care messages sent on behalf of someone covered under a healthcare plan as defined by the HIPAA Privacy Rules are exempt from normal TCPA consent standards.

### **Emergency Purposes**

Calls and text messages for emergency purposes are for obvious reasons exempt from normal TCPA consent standards.

You need to offer your contacts the choice to opt-out of communications with your business at any time. This message should state how and what words will opt a contact out of communication.

Most every business text messaging platform uses the word "STOP" to opt contacts out. The wording for all opt-out instructions needs to be unambiguous and support normal language and variances like, stop, end, unsubscribe, cancel, quit, "please opt me out", etc.

### **Contact Opt-out Best Practices:**

- Contacts should be able to opt-out of your messages at any time.
- Opt-out via phone call, email, or text should be available.
- A contact's opt-out request should generate one final opt-out confirmation message per campaign and notify the contact that they've successfully opted-out.
- Don't send any messages after the opt-out confirmation message.

### **Group Text Messaging**

Depending on the type of business text messaging service your business uses, group messaging might be possible. If you can send group text messages using your provider, keep in mind the following recommendations:

- Make sure the service has strong anti-abuse controls and mechanisms in place to accommodate sending many messages - most do.
- Check that the service specifically gives group members the ability to opt-out of the group at any time.
- Finally, make sure the messaging service has features that prevent contacts from getting caught in recursive or cyclical group messages that involve more than one group. Opting a contact out of one group may not opt them out of the other and so on.