

**CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES**

P.O. Box 419064, Rancho Cordova, CA 95741-9064



October 2, 2015

CSS LETTER: 15-10

ALL IV-D DIRECTORS  
 ALL COUNTY ADMINISTRATIVE OFFICERS  
 ALL BOARDS OF SUPERVISORS

SUBJECT: TEXTING AND AUTO-DIALING

The purpose of this letter is to provide direction regarding auto-dialing and auto-text messaging in light of the recent declaratory ruling of the Federal Communications Commission (FCC) issued July 10, 2015.

The Telephone Consumer Protection Act of 1991 (TCPA) was passed by the United States Congress in 1991 and is codified as 47 U.S.C. 227. The TCPA restricts telephone solicitations (i.e., telemarketing) and the use of automated telephone equipment as well as text messaging. The TCPA limits the use of automatic dialing systems, artificial or prerecorded voice messages, Short Message Service (SMS) text messages, and fax machines. The FCC is empowered to issue rules and regulations implementing the TCPA. The Department of Child Support Services (DCSS) and the local child support agencies (LCSAs) must comply with the TCPA at all times.

DCSS, at both the state and local level, **must** have the express consent of our customers prior to contacting them via auto-dialers and automated-text messages.

- Express consent is achieved when the owner of the number provides that number to the LCSA or DCSS with an understanding that they will receive unsolicited information via automated voice message or automated text.
- If any person other than the owner of the number provides the number, there is no consent to contact that number via auto-dialer or automated-text.
- The called party may revoke consent to be contacted via auto-dialer or automated-text at any time, by any reasonable means (phone, letter, in-person, etc.).

No system or methodology used by any DCSS office, including the Child Support Enforcement System (CSE), has a consistent method to capture the consent of the

Reason for this Transmittal

- State Law, Regulation and/or Change
- Federal Law, Regulation and/ or Change
- Court Order or Settlement Change
- Clarification requested by One or More Counties
- Initiated by DCSS

party to be contacted via auto-dialers or automated-texts. Likewise, there is no way to indicate, or be assured that we know for certain, that the individual to be contacted has revoked consent. Activity logs or notes entered by child support professionals cannot be easily tracked and CSE overrides of data entered by child support professionals make that data unreliable. In their declaratory order issued in July, the FCC opined the importance of real-time business records to track the consent requirement.

Due to the current lack of a real-time data platform or a system which consistently maintains this information, DCSS requires that LCSAs currently using automated-text messaging and auto-dialers for calls, either via a vendor/contractor or in-house, discontinue doing so.

Liability exists if a called party is contacted via auto-dialer or automated-text and they have not provided consent to receive that method of contact. **The first violation is \$500 and any subsequent violation is \$1500.** Where the owner of the number provided consent but that number has been reassigned to a non-consenting party, there is a one call safe harbor provision. Any contact to that number after the first call is considered a violation and is subject to monetary liability. The burden of proving that consent was obtained directly from the called party, **and that consent is still valid**, is on the caller (DCSS).

For purposes of TCPA liability, both automated texts and auto-dialed calls are treated the same way and are subject to the same strict liability. One element of texting and dialing that triggers TCPA liability is automation. Only those texts and calls that are sent in mass, automatic fashion are subject to TCPA liability. "On demand" or specifically requested texts where the caseworker texts an individual directly, who has asked to receive such text, are not subject to TCPA liability, just as a direct phone call to a case participant by a caseworker would not be subject to the TCPA.

DCSS recently formed the Customer Service Advisory Committee and has been working in collaboration with multiple LCSA Directors and staff to implement statewide guidelines on several areas of interest including auto-dialing and automated-text messaging. To date, the committee has drafted and proposed scripts to be used for auto-dialing and automated-text messaging to the DCSS directorate, as well as drafted a document detailing statewide guidelines for auto-dialing and automated-text messaging. The committee is also proposing necessary changes to CSE in order to track the consent requirements of the FCC. In conjunction with the work being done by the committee, the DCSS Technology Services Division is assessing the state's current and future ability to facilitate a real-time data platform which would support auto-dialing and automated-text messaging in the future.

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If you have any questions or concerns regarding this matter, please contact your regional administrator at (916) 464-5507.

Sincerely,

o/s

Alisha A. Griffin  
Director

Attachments

## QUESTIONS AND ANSWERS

Q1: What can LCSAs do now with regard to reaching out to customers with auto-dialers?

A1: LCSAs may use an automated system to **email** customers. Emails are not regulated by the FCC, so informational messages, emails regarding missed payments, or any other automated email contact is not restricted. As a majority of our customers use alternative methods of communication such as email, and already provide their email addresses to DCSS and the LCSAs, we should take advantage of this opportunity.

Q2: May child support professionals **manually** call residential lines or call or text cell phones regardless of how the phone number was obtained?

A2: Yes. Nothing in the recent Declaratory Ruling of the FCC precludes direct, manual contact between DCSS and our customers. If an LCSA wishes to text customers directly (not via an automated system), the attached script language<sup>1</sup> should be used.

Q3: Does DCSS plan to make autodialing and automated-texts a viable option in the future?

A3: Yes. It is anticipated that DCSS will build or acquire a useful and accurate data base that will maintain a real-time Participant Profile which includes individual preferences for participant contact with DCSS or their managing county. The data base will also have the ability to capture real-time withdrawal of consent. The state is exploring opportunities to contract with technology vendors to achieve this goal as quickly as possible.

Q4: In case opening and other documents/applications, as well as in verbal communications with case participants, should we give notice to the parties that if they provide us with a residential or cell phone number, we may use it for autodialing and automated-texting when this becomes available in the future?

A4: The FCC has indicated that express consent from the called party to the caller is required before the individual may be contacted via autodialing and automated-texts. While the law indicates that express consent can be achieved simply by the customer providing their number, the best practice would be to advise the customer that the number will be used in limited situations for automated-communications with their consent.

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<sup>1</sup> The scripts were developed by the DCSS Customer Service Advisory Committee as a method to standardize automated communications with our customers. While the scripts will not be used in an automated fashion at this time, the language can be used for direct texting. "Stop" language ("text N to Stop") is not necessary when direct messaging so that verbiage may be omitted from direct text messages.

Q5: In determining whether or not we may autodial or auto-text a number in the future, does it make a difference what type of call (example: debt collection, informational) is being made?

A5: If consent has not been given by the called party, it doesn't make a difference.

Q6: In determining whether or not we may autodial or auto-text a cell phone in the future, does it matter if the receiving party is charged a per call, per text, or per minute fee as opposed to having an unlimited plan?

A6: No. Although one of the public policy reasons behind the statute and the regulations is to avoid having unsolicited charges being added to consumer cell phone bills, the law does not make a distinction between unlimited plans and other plans.

Q7: Do the FCC rules apply to automated calls or automated texts placed by a dialer that; a) picks cell phone numbers at random, b) places calls or texts to all numbers in a database, or c) uses a list of cell phone numbers that are manually compiled and input into the auto-dialer by DCSS or an LCSA?

A7: All of the above auto-dialer methodologies would be covered under the law and subject to strict liability.

Q8: May a case participant withdraw consent to be called or texted via an autodialer when that becomes the practice of DCSS and the LCSAs?

A8: Yes, at any time, by any reasonable means.

Q9: Is it safe to assume that once a cell phone number is provided by a case participant and entered in CSE, it is good to use it forever for auto-dialer purposes in the future?

A9: No. The case participant may have let the number lapse and it may now be reassigned to another person; one who has not consented to receive calls or text messages. Any calls made to the reassigned number after the first call will be subject to strict liability.

Q10: If we verify a cell phone number one time as having been provided by the case participant (self), is that all we need to do?

A10: No. When autodialed calls and automated-texts are standard practice in the future, the child support professional should re-verify the cell phone number at every available opportunity and request that the customer update their Participant Profile regularly.

## California Department of Child Support Services (CDCSS) - Texting / Auto-dialer Scripts

Trigger	Category Type	Message Type	Message Example	Byte/Character Length (incl. spaces)
Events	Appointment reminder - Genetic Testing	Text	DCSS ALERT: Appointment reminder for Genetic Testing on [DATE] at [TIME] at [ADDRESS], call 866.901.3212 with questions. Text N to Stop	135
Events	Appointment reminder - Court	Text	DCSS ALERT: Appointment reminder for Court on [DATE] at [TIME] at [ADDRESS], call 866.901.3212 with questions. Text N to Stop	125
Events	Appointment reminder - Interview	Text	DCSS ALERT: Appointment reminder for Interview on [DATE] at [TIME] at [ADDRESS], call 866.901.3212 with questions. Text N to Stop	129
Events	Appointment reminder - Genetic Testing	Auto-dialer	This is the [COUNTY] Department of Child Support Services calling to remind you of your appointment on [DATE] at [TIME], at our office located at, [ADDRESS]. Please bring a photo i.d. such as a driver's license, or a California I.D. card. To change this appointment, opt out of future calls, or if you have received this message in error, please contact our office at 866.901.3212. Thank you.	N/A
Events	Appointment reminder - Court	Auto-dialer	This is the [COUNTY] Department of Child Support Services calling to remind you of your upcoming hearing in [COUNTY] Superior Court, located at [ADDRESS]. It is important that you attend this hearing. If you have any questions, to opt out of future calls, or if you have received this message in error, please contact our office at 866.901.3212. Thank you.	N/A
Events	Appointment reminder - Interview	Auto-dialer	This is the [COUNTY] Department of Child Support Services calling to remind you of your appointment on [DATE] at [TIME], at our office located at, [ADDRESS]. Please bring a photo i.d. such as a driver's license, or a California I.D. card. To change this appointment, opt out of future calls, or if you have received this message in error, please contact our office at 866.901.3212. Thank you.	N/A
Missed Payment	" "	Text	DCSS ALERT: Your child support payment has not posted. Need help? Contact us at <a href="http://www.childsup.ca.gov/payments/customerconnect.aspx">http://www.childsup.ca.gov/payments/customerconnect.aspx</a> or 866.901.3212. Text N to Stop	169
Missed Payment	" "	Auto-dialer	This is the [COUNTY] Department of Child Support Services calling to alert you that your payment has not been received. For assistance with making your payment, to opt out of future calls, or if you have received this message in error, please contact our office at 866.901.3212. Thank you.	N/A
Court Order - Est/Mod	Court Order	Text	DCSS ALERT: You have a new child support order. If you have not received it or have questions, please contact us @ 866.901.3212. Text N to Stop	111
Court Order - Est/Mod	Court Order	Auto-dialer	This is the [COUNTY] Department of Child Support Services calling to advise you that a new child support order has been established or your order has been changed by the court. To discuss the next steps, opt out of future calls, or if you have received this message in error, please contact our office at 866.901.3212. Thank you.	
Payment Options	" "	Text	DCSS ALERT: New Child Support payment options are available to you. <a href="#">Click here</a> for more info or call 866.901.3212. Text N to Stop	129

<b>Payment Options</b>	" "	Auto-dialer	This is the [COUNTY] Department of Child Support Services. We are calling to inform you that <i>Money Gram</i> is now an available payment option. Please visit our website at <a href="http://www.childsup.ca.gov">www.childsup.ca.gov</a> to learn more. To opt out of future calls or if you have received this message in error, please contact our office at 866.901.3212. Thank you.	N/A
<b>Contact Us</b>	" "	Text	DCSS ALERT: Your [COUNTY] Child Support Professional needs to talk with you regarding your case. Please contact us at 866.901.3212. Text N to Stop	146
<b>Contact Us</b>	" "	Auto-dialer	This is the [COUNTY] Department of Child Support Services, we need to talk with you about your case. Please contact us during business hours for important information. To discuss your case, opt out of future calls or if you have received this message in error, please contact our office at 866.901.3212. Thank you.	N/A
<b>Contact NP For More Info</b>	Welcome to DCSS	Text	DCSS ALERT: Welcome to the child support program. Learn how we can help you at <link> or call 866.901.3212. Text N to Stop	122
<b>Contact NP For More Info</b>	Welcome to DCSS	Auto-dialer	This is the [COUNTY] Department of Child Support Services calling to welcome you and offer our assistance in managing your new case. If you have any questions, to opt out of future calls, or have received this message in error, please contact our office at 866.901.3212. Thank you.	N/A
<b>60 Day NOI</b>	Case Closure	Text	DCSS ALERT: Your child support case will close on [DATE]. Please call us if you believe this action is incorrect 866.901.3212. Text N to Stop	141
<b>60 Day NOI</b>	Case Closure	Auto-dialer	This is the [COUNTY] Department of Child Support Services. Your child support case is scheduled to be closed on [DATE]. If you disagree with this action, to opt out of future calls, or if you have received this message in error, please call our office at 866.901.3212. Thank you.	