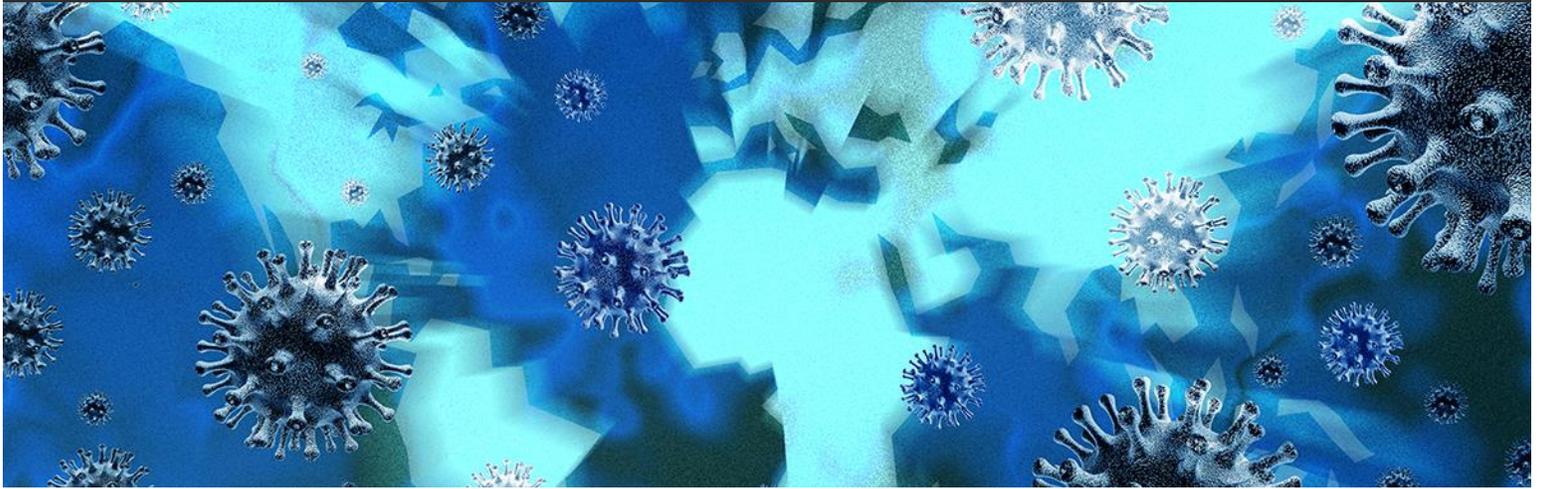


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



May 2020

Massachusetts AG Issues Emergency Regulation to Protect Consumers from Unfair Debt Collection Practices During COVID-19 State of Emergency—UPDATE

On May 6, 2020, the United States District Court for the District of Massachusetts, in *ACA Int'l v. Maura Healy*, C.A. No. 1:20-cv-10767-RGS, issued a temporary restraining order and preliminary injunction that enjoined the Massachusetts Attorney General (MA AG) from enforcing certain aspects of an emergency regulation (Regulation) (*See* our March 30 GT Alert, “[Massachusetts AG Issues Emergency Regulation to Protect Consumers from Unfair and Deceptive Debt Collection Practices During COVID-19 State of Emergency](#)”). On April 20, 2020, ACA Int'l (ACA) filed the lawsuit against the MA AG, alleging that the Regulation (which had been enacted March 27, 2020) violated the constitutional and state-law rights of ACA’s members, as it effectively prohibited them from conducting their businesses in Massachusetts.

As explained in our March 30th Alert, the MA AG issued the Regulation pursuant Massachusetts General Laws Chapter 93A, which gives the MA AG authority to declare certain conduct unfair or deceptive and unlawful in Massachusetts. The Regulation focuses specifically on debt collection practices in Massachusetts by “creditors” and “debt collectors.” It prohibits, among other things, (1) debt collectors from initiating telephone calls to debtors (940 C.M.R. § 35.04) and (2) debt collectors and creditors from initiating, filing, or threatening to file any new collection lawsuit (940 C.M.R. § 35.03).

ACA brought various claims against the MA AG in the lawsuit, including constitutional claims. Although the Court lauded the MA AG's desire to protect Massachusetts citizens during the COVID-19 pandemic, the Court concluded that the Regulation itself did not afford citizens any further protections that did not already exist under the law other than "an unconstitutional ban on one form of communication." The Court also concluded that the ban on initiating litigation impermissibly restrains ACA's members' rights to petition to government and courts to redress their grievances.

Ultimately, the Court concluded that the mere fact of an emergency (the COVID-19 pandemic) neither increases constitutional powers nor diminishes constitutional restrictions. Consequently, as irreparable harm need not be shown when there exists a constitutional violation, after balancing the equities and considering the public interest, the Court (1) entered a temporary restraining order enjoining the MA AG from enforcing the provisions of the Regulation that ban telephonic communications initiated by debt collectors with consumers (i.e., the entirety of 940 C.M.R. §35.04), and (2) enjoined the MA AG from enforcing 940 C.M.R. § 35.03 to the extent it bars debt collectors (as defined in the Regulation) from bringing or threatening to bring enforcement actions in state and federal courts in Massachusetts. The Court's order is silent, however, about the Regulation's prohibition on "creditors" initiating, filing, or threatening to file any new collection lawsuit.

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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