



Health Information Privacy Enforcement Suddenly Got Serious in 2023

Privacy professionals will remember 2023 as the year enforcement of health information privacy protections expanded rapidly. They were no longer limited to HIPAA and OCR investigations. Suddenly, new actors and strategies emerged to champion the privacy of individual health information. In 2022, cybersecurity was a significant concern, and the number of patients affected by health information breaches continued to rise. On June 16 of that year, The Markup published "[Facebook Is Receiving Sensitive Medical Information from Hospital Websites](#)," jolting the healthcare industry, government regulators and privacy lawyers. It spun up public and private privacy protection efforts to an urgent level. Later that year, millions of patients received notifications that their protected health information had been compromised by tracking technologies on their provider's website. Some filed class action lawsuits. OCR published a [bulletin](#) on December 1, 2022, explaining that widely used online tracking technologies like Meta Pixel and Google Analytics could violate HIPAA.

2023 – New Enforcers

The Federal Trade Commission (FTC)

The Federal Trade Commission (FTC) took the stage as a leading privacy protection player. It settled highly publicized enforcement actions against [BetterHelp](#), [GoodRx](#), [Premom](#) and [Vitagene](#), published sternly worded [health information privacy guidance](#) and proposed [modifications to strengthen and clarify its Health Breach Notification Rule](#). The FTC also joined OCR in [public letters](#) to major health care providers warning of severe privacy and security risks related to their use of online tracking technologies. On September 15, 2023, the FTC underscored its enforcement mission warning, "[The FTC Act's obligations apply to HIPAA-covered entities and business associates, as well as to companies that collect, use, or share health information that aren't required to comply with HIPAA.](#)"

Private Class Action Lawsuits

Energized by The Markup's June 2022 article, the plaintiffs' bar began filing increasing numbers of class action lawsuits focused on health data breaches caused by tracking technologies. Many new lawsuits reflect lessons learned from prior litigation that often were less than successful. For example, multiple class actions targeted Advocate Aurora Health Inc., the first filed slightly more than a week after Advocate Aurora notified patients of a tracking technology breach. Within ten months, Advocate Aurora chose to cut its losses by agreeing to a court [order](#) settling the consolidated class actions. Private class action data breach lawsuits may be the fastest growing, most aggressive and feared vehicles for protecting health information privacy.

State Laws and Enforcement

A [2023 Washington state law](#) regulates the collection, use, and disclosure of "consumer health data" to provide more robust privacy and security protection for health-related information not protected by HIPAA.

Also, in 2023, eight states passed comprehensive consumer data privacy laws. Now, 13 states have these new, strong consumer protection laws, although generally, they do not apply to HIPAA-protected health information. However, the new laws underscore state legislative concerns about protecting individual privacy. And they may apply to other types of consumer personal information held by HIPAA-regulated entities that are not PHI.

State Attorneys General are joining together to investigate health data breaches. On October 5, 2023, 49 states and the District of Columbia settled a joint investigation of [Blackbaud](#), a software provider for health care and other organizations. On March 29, 2023, the Attorneys General of Oregon, Connecticut and the District of Columbia settled a joint investigation of [Easy Healthcare \(Premom\)](#).

2024 – What's Ahead

OCR and HIPAA Enforcement

OCR seems to be taking action to increase HIPAA enforcement. Most significantly, [joining with the FTC](#), it rebuffed the [American Hospital Association's objection to its tracking technology bulletin](#). OCR also created a new [Health Information Privacy, Data, and Cybersecurity Division \(HIPDC\)](#) to improve enforcement of the HIPAA Rules.

The New Enforcers

Expect the FTC, Private Litigants and State Enforcement to continue on course, increase their activities and find even more innovative ways to protect individual health information privacy.