



## Washington State Enters the Consumer Privacy Arena

While the move to protect consumer privacy information seems to be gaining general traction, with Iowa<sup>1</sup> and Indiana<sup>2</sup> becoming the sixth and seventh state, respectively, to enact such comprehensive privacy statutes,<sup>3</sup> a recent development in Washington State bears some attention. That state recently enacted sweeping health information protections that go well beyond the Health Insurance Portability and Accountability Act.<sup>4</sup>

### Washington Law

On April 27, 2023, Washington Governor Jay Inslee signed into law an expansive health information protection act. With his signing, Washington became the state with the most expansive health information protections when it passed the My Health My Data Act (“MHMD Act”).<sup>5</sup> No other state, even the ones with the extensive privacy protections, go this far, and the MHMD Act focuses on health information and imposes significant requirements and restrictions on usage of same.

The state legislature found that “the people of Washington regard their privacy as a fundamental right and an essential element of their individual freedom.”<sup>6</sup> The MHMD Act “works to close the gap between consumer knowledge and industry practice by providing stronger privacy protections for all Washington consumers’ health data.”<sup>7</sup> The MHMD Act is sweeping in its intent. Section 5 has extensive consent procedures and requirements that other laws do not contain, including consent from the consumer to collect with a specified purpose disclosed and consented to.<sup>8</sup> The definition of consumer health data is extensive. Given the broadness of the definition, it bears setting it out in full:

(8)(a) “Consumer health data” means personal information that is linked or reasonably linkable to a consumer and that identifies the consumer’s past, present, or future physical or mental health status.

(b) For the purposes of this definition, physical or mental health status includes, but is not limited to:

- (i) Individual health conditions, treatment, diseases, or diagnosis;
- (ii) Social, psychological, behavioral, and medical interventions;
- (iii) Health-related surgeries or procedures;
- (iv) Use or purchase of prescribed medication;

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