Washington State Enacts 'My Health, My Data Act'

June 8, 2023

- The act will go into effect March 31, 2024
- Broadly defines "consumer health information"
- Gives consumers the right to sue for substantial statutory damages

Overview

On April 27, Washington Governor Jay Inslee signed into law the "My Health, My Data Act" ("MHMDA"). The MHMDA, which takes effect March 31, 2024, applies to legal entities conducting business in Washington or targeting products or services to Washington residents that determine the purpose and means of collecting, processing, sharing, or selling "consumer health data." It also covers all consumer health data processed in Washington no matter what state a person lives in. Unlike other comprehensive U.S. state privacy laws to date, there is no minimum number of data subjects or revenue thresholds before a business must comply with MHMDA.

Among other things, the MHMDA is intended to protect health-related data by requiring regulated entities to make certain disclosures regarding the collection, sharing, and use of "consumer health data." The MHMDA broadly defines "consumer health data" as "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." The MHMDA potentially applies to a far wider range of entities and data than healthcare providers traditionally considered "covered entities" under the Health Insurance Portability and Accountability Act ("HIPAA"). Protected health information and de-identified data under HIPAA are exempted from the MHMDA.

The MHMDA also provides Washington residents certain data privacy rights concerning their health data, including: (i) the right to confirm whether an entity is collecting, sharing, or selling their health data, (ii) the right to access health data, including a list of third parties with whom data was shared or sold, (iii) the right to withdraw consent from a business's collection and sharing health data, and (iv) the right to have a business delete health data.

Further, the MHMDA states that it is unlawful for any person (not just a regulated entity or small business) to sell or offer to sell consumer health data concerning a consumer without first obtaining valid authorization from a consumer. A business may not collect consumer health data except with "consent from the consumer for such collection for a specified purpose" or "[t]o the extent necessary to provide a product or service that the consumer to whom such consumer health data relates has requested." Finally, a business may not release, disseminate, or otherwise disclose any consumer health data except with consent from the consumer for such "sharing" that is separate and distinct from the consent obtained to collect consumer health data, or to the extent necessary to

provide a product or service that the applicable consumer has requested. The MHMDA sets forth several requirements for how consent must be presented and obtained from a consumer.

The attorney general of Washington has the authority to enforce violations as an unfair trade practice through the state's Consumer Protection Act with monetary penalties of up to $7,500 per violation. The state's Consumer Protection Act also provides consumers with a private right of action that includes a potential treble (3x) damages award for actual harm the consumer has sustained along with reasonable attorney's fees. The award for a private plaintiff is capped at $25,000.

Impact to Acxiom and its Clients

The Acxiom privacy team is assessing the impact of the MHMDA on our data products and our data suppliers. Our current position is that Acxiom's data products are not "consumer health information," and therefore, the impact of the act on Acxiom and its clients should be marginal. This is because Acxiom's propensity models are created based on de-identified data. Just as important, Acxiom's data, models, and inferences do not "identify" a person's past, present, or future physical or mental health status." In other words, our data does not represent or indicate a person has a particular condition, only that the person may likely be interested in information about the particular condition, treatment or product.

Before the March 2024 effective date, our privacy team will continue to monitor and assess the potential impact MHMDA will have on Acxiom and its clients. We will engage both industry leaders and groups as we finalize our analysis. Given the potential statutory damages and attorneys' fees involved, we expect there will be significant early litigation determining the scope and application of the law. Of course, in the event Acxiom determines that our data is covered, we will modify our data collection and use policies and procedures to comply with the act.