

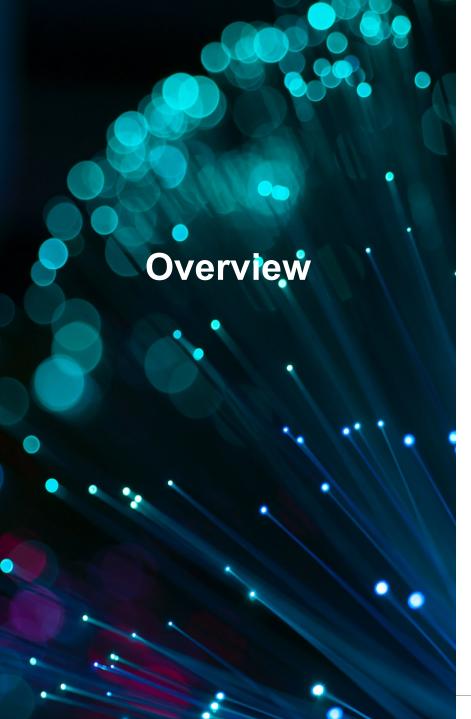
Speakers



Yana Komsitsky
Senior Counsel
Los Angeles



Neeka Hodaie Associate Seattle



My Health My Data Act

- Broad definitions for:
 - "consumer"
 - "regulated entity"
 - "Consumer Health Data"
- Creates new and unique consumer rights and obligations for business relating to collection, sharing, and use of "Consumer Health Data" ("CHD")
- Impacts a wide range of personal data categories, entities, consumers, and business
- Well beyond Washington state



- Effective dates apply on a section-by-section basis
- The prohibition on geofencing around health-care facilities went into effect on July 23, 2023
- Regulated entities must comply with most provisions by March 31, 2024
- Effective date for **small businesses** delayed to June 30, 2024



- Consumers who are either:
 - Washington residents; or
 - natural persons whose CHD is collected in Washington state, regardless of their residency or location
 - acting in an individual or household context
- Not consumers:
 - individuals "acting in an employment context"



Regulated entities, processors and persons

- Subject to some exceptions, a regulated entity is a legal entity that
 - conducts business in Washington, or produces or provides products or services that are targeted to consumers in Washington, and
 - alone or jointly with others, determines the purpose and means of collecting, processing, sharing, or selling of consumer health data
- An entity that only stores data in Washington is not a regulated entity
- Out-of-state entities that are processors for regulated entities or a small business
- Note: consent to sell CHD and geofencing prohibitions apply to "persons"



- Consumer Health Data is personal information that is:
 - linked or reasonably linkable to a consumer, and
 - identifies the consumer's past, present, or future physical or mental health status

CHD Specifically Includes:

- Reproductive or sexual health information (as defined by the Act)
- Individual health conditions, treatment, diseases, or diagnoses
- Social, psychological, behavioral, and medical interventions
- Health-related surgeries or procedures
- Use or purchase of prescribed medication
- Bodily functions, vital signs, symptoms, or measurements of the information expressly identified in the definition of CHD
- Diagnoses or diagnostic testing, treatment, or medication
- Gender-affirming care information (as defined by the Act, including "precise location information" and "efforts to research")
- Biometric data (including keystroke/gait patterns)

- Genetic data (as defined by the Act)
- Precise location information (as defined by the Act) that could reasonably indicate a consumer's attempt to acquire or receive health services or supplies
- Data that identifies a consumer seeking "health care services," which is defined broadly as any service provided to a person to assess, measure, improve, or learn about a person's mental or physical health
- Any information that a regulated entity, or its respective processor, processes to associate or identify a consumer with the data described above that is derived or extrapolated from non-health information (such as proxy, derivative, inferred, or emergent data by any means, including algorithms or machine learning)

Exemptions

- Data that is covered by:
 - HIPAA (PHI)
 - Gramm-Leach-Bliley Act
 - Fair Credit Reporting Act
 - Administrative Simplification provisions of the Social Security Act
 - Family Educational Rights and Privacy Act
 - Statutes and regulations applicable to the Washington Health Benefit Exchange
 - Certain privacy rules adopted by the Washington Office of the Insurance Commissioner
- **Deidentified data** (requires: measures; public commitment; contractual obligations)
- Collection, use, or disclosure of CHD to prevent, detect, protect against, or respond and
 prosecute in relation to security incidents, theft, fraud, harassment, malicious or deceptive
 activities, or any illegal activity under Washington or federal law
- Collection for preservation of the **integrity or security of systems**; or to investigate, report, or prosecute those responsible for any such action that is illegal under Washington or federal law



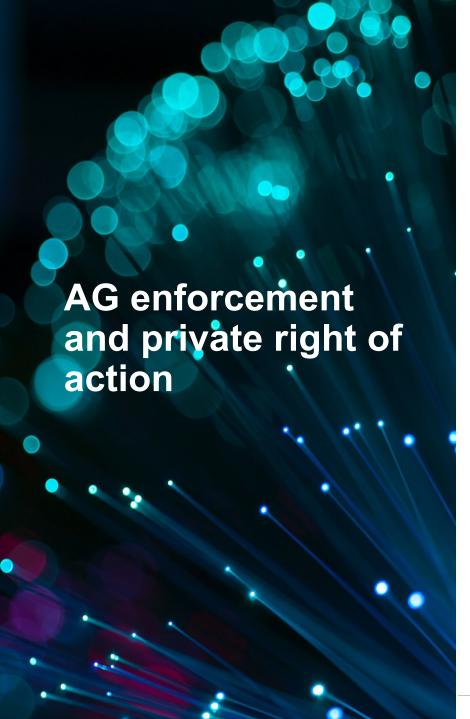
- Regulated entities must:
 - Maintain a "Consumer Health Data Privacy Policy"
 - Obtain consent to collect or share consumer health data
 - Implement or amend data processing agreements
 - Collect valid authorization to sell CHD
 - Be prepared to grant consumer requests
 - Implement security measures
 - Not use geofences



- Unlawful for any person to implement a "geofence" around an entity that provides in-person health care services where such geofence is used to:
 - Identify or track consumers seeking health care services
 - 2. Collect CHD
 - Send notifications, messages, or advertisements to consumers related to their CHD or health care services



- Confirm whether a regulated entity is collecting, sharing, or selling the consumer's health data
- Access CHD, including a list of all third parties and affiliates with whom the regulated entity has shared or to whom it has sold the CHD and an active email address or other online mechanism to contact such parties
- Withdraw consent from the regulated entity's collection and sharing of CHD
- **Delete** CHD concerning the consumer
- Appeal a regulated entity's refusal to take action on a request



- Any violation of the Act is a per se violation of the Washington Consumer Protection Act (CPA)
- Enforced by the AG as well as through private action
- To prevail on a CPA action (and thus an action under the Act), a plaintiff must establish 5 elements:
 - an unfair or deceptive act or practice
 - occurring in trade or commerce
 - impacting the public interest
 - injuring a plaintiff in his or her business or property
 - a causal link between the unfair or deceptive act complained of and the injury suffered



- Assess which of your activities take place in WA state or impact WA consumers
- Determine whether you can rely on any exemptions or exclusions
- Inventory of documentation requirements that are applicable to your business' activities
- Prioritize consent for sale of CHD and geofencing prohibition compliance
- Operationalizing fulfillment of consumer requests (access and deletion)
- Consider whether existing or pipeline products or services require design or engineering modifications to comply

thank you

contact information

Yana Komsitsky

ykomsitsky@seyfarth.com

(310) 201-5242

Neeka Hodaie

nhodaie@seyfarth.com

(206) 946-4969