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CLIENT ALERT





# Department of Health and Human Services Tracking Technology Guidance

On Friday, December 2, 2022, the U.S. Department of Health and Human Services (HHS) issued critical HIPAA guidance to the medical industry on the use of **cookies and website tracking** technologies. This is particularly sensitive for authenticated webpages where users are more likely to access and disclose medical information. Below are the key takeaways that all **Covered Entities** and **Business Associates** need to know.

HHS considers regulated entity website tracking data to be Protected Health Information (PHI) “even if the individual does not have an existing relationship with the regulated entity.” HHS affirmed that connection to “specific treatment or billing information like dates and types of health care services” is **not** necessary and listed the following data elements as potential PHI:

- > An individual’s IP address
- > Geographic location
- > Device IDs
- > Any unique identifying code

Uses of such data must comply with the HIPAA privacy rule, be tied to a specifically permitted purpose, and accompanied by a notice of privacy practices.

Disclosures of such data are also subject to HIPAA and may require a Business Associate Agreement.

Processing of such data must meet the standards of the HIPAA security rule, like encryption in transit and at rest, access control, and security risk analysis.

Incidents of such data violating of HIPAA must be reported to HHS and the patient, in according with the breach notification rule. Violations are subject to civil monetary penalties and corrective action plans.

Particular areas of noted risk for Covered Entities and Business Associates include:

- > Authenticated sites (e.g., patient portals and scheduling forms)
- > Unauthenticated web resources (e.g., doctor searching and medical information pages)
- > Mobile devices, (e.g., health tracking and med device reporting)

## A Nationwide Priority

The **HHS bulletin** follows months of high-profile **investigative journalism**, class-action lawsuits, and large-scale **breach notifications** against U.S. health care providers related to the widespread, allegedly inappropriate use of the Meta/Facebook pixel. Covered entities and business associates can expect HHS to focus on enforcement in the coming months, as similar enforcement authorities in the US have done in other industries.

## How Epsilon Life Sciences Can Help

- > Website tracking technology and cookie scanning audits
- > HIPAA security risk analysis, privacy assessments, and applicability reviews
- > Privacy technology design and deployment to control the consent, authorization, and restriction of cookie, pixel, and other website scripts



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