

Legal Developments in the use of Tracking Technologies by HIPAA-Regulated Entities

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The regulatory landscape surrounding tracking technologies has become complex and difficult to navigate for many businesses, particularly Health Insurance Portability and Accountability Act (HIPAA)-regulated entities. It has recently seen a major shift as a result of the decision from the U.S. District Court for the Northern District of Texas in a case brought by the American Hospital Association (AHA) that challenged, and ultimately vacated, certain portions of the U.S. Department of Health and Human Services (HHS) Office for Civil Rights' (OCR) guidance on tracking technologies. Regardless of the ruling, given the rise of regulatory enforcement and litigation involving tracking technologies over the last few years, HIPAA compliance remains paramount for health care entities, which should continue to closely monitor their use of tracking technologies and the information those technologies collect.

WHAT ARE TRACKING TECHNOLOGIES?

Tracking technologies are scripts or codes that are used to collect information about a user's interaction on the internet. Such technologies include cookies, web beacons, pixels, and browser/device fingerprinting. Web tracking technologies were originally developed, and are generally utilized, for marketing and advertising purposes because they track and analyze information about a user's interactions with a particular website or application. The personal data that are collected by tracking technologies can include IP address, device identifiers, browser types, information about the use of a website, and more. This information may be used to gather analytics, provide personalized content and ads, as well as store searches and other online activity for future online use. Third-party tracking technologies collect information for a company other than the website owner and often are used to track a user's browsing behavior across multiple sites and even across various devices, such as a laptop and smartphone.

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