

NAI Comparison: State Health-Specific Privacy Laws [As of 6/29/23]

	<u>WA</u>	<u>NV</u>	<u>CT</u>	<u>NY (Sec. 2 only)</u>
Effective Date	<p>Generally, the law will go into effect March 31, 2024 for covered entities, and June 30, 2024 for small businesses.</p> <p>However, the geofencing prohibition will go into effect July 22, 2023.</p>	Effective March 31, 2024	Provisions re: consumer health data will go into effect July 1, 2023.	July 2, 2023
Applicability threshold	<p>"Regulated entity" means any legal entity that:</p> <p>(a) Conducts business in Washington, or produces or provides products or services that are targeted to consumers in Washington; and</p> <p>(b) alone or jointly with others, determines the purpose and means of collecting, processing, sharing, or selling of</p>	<p>"Regulated entity" means any person who:</p> <p>1. Conducts business in this State or produces or provides products or services that are targeted to consumers in this State; and</p> <p>2. Alone or with other persons, determines the purpose and means of processing, sharing or selling consumer</p>	<p>Sections pertaining to consumer health data apply to persons that conduct business in this state and persons that produce products or services that are targeted to residents of this state.</p> <p>(Sec. 2(a)(2))</p>	General Applicability

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	consumer health data. (Sec. 3(23))	health data. (Sec. 15))		
Definition of "Health Data"	<p>"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.</p> <p>(b) For the purposes of this definition, physical or mental health status includes, but is not limited to:</p> <p>(i) Individual health conditions, treatment, diseases, or Diagnosis;</p> <p>(ii) Social, psychological, behavioral, and medical Interventions;</p> <p>(iii) Health-related surgeries or procedures;</p>	<p>"Consumer health data" means personally identifiable information that is linked or reasonably capable of being linked to a consumer and that a regulated entity uses to identify the past, present or future health status of the consumer.</p> <p>The term:</p> <p>1. Includes, without limitation:</p> <p>(a) Information relating to:</p> <p>(1) Any health condition or status, disease or diagnosis;</p> <p>(2) Social, psychological, behavioral or medical interventions;</p>	<p>"Consumer health data" means any personal data that a controller uses to identify a consumer's physical or mental health condition or diagnosis, and includes, but is not limited to, gender-affirming health data and reproductive or sexual health data.</p> <p>This amendment makes "consumer health data" a subset of sensitive information.</p> <p>(Sec. 1(9))</p>	NA

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	(iv) Use or purchase of prescribed medication; (v) Bodily functions, vital signs, symptoms, or measurements of the information described in this subsection (8)(b); (vi) Diagnoses or diagnostic testing, treatment, or medication; (vii) Gender-affirming care information; (viii) Reproductive or sexual health information; (ix) Biometric data; (x) Genetic data; (xi) Precise location information that could reasonably indicate a consumer's attempt to acquire or receive health services or Supplies; (xii) Data that identifies a consumer seeking health care services; or	(3) Surgeries or other health-related procedures; (4) The use or acquisition of medication; (5) Bodily functions, vital signs or symptoms; (6) Reproductive or sexual health care; and (7) Gender-affirming care; (b) Biometric data or genetic data related to information described in paragraph (a); (c) Information related to the precise geolocation information of a consumer that a regulated entity uses to indicate an attempt by a consumer to receive health care services or products; and (d) Any information described in paragraph (a),		

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	<p>(xiii) Any information that a regulated entity or a small business, or their respective processor, processes to associate or identify a consumer with the data described in (b)(i) through (xii) of this subsection that is derived or extrapolated from nonhealth information (such as proxy, derivative, inferred, or emergent data by any means, including algorithms or machine learning).</p> <p>(Sec. 3(8))</p>	<p>(b) or (c) that is derived or extrapolated from information that is not consumer health data, including, without limitation, proxy, derivative, inferred or emergent data derived through an algorithm, machine learning or any other means.</p> <p>Does not include information that is used to:</p> <p>(a) Provide access to or enable gameplay by a person on a video game platform; or</p> <p>(b) Identify the shopping habits or interests of a consumer, if that information is not used to identify the specific past, present or future health status of the consumer.</p>		

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		(Sec. 8)		
Definition of Health Care Services/supplies	<p>"Health care services" means any service provided to a person to assess, measure, improve, or learn about a person's mental or physical health, including but not limited to:</p> <ul style="list-style-type: none"> (a) Individual health conditions, status, diseases, or diagnoses; (b) Social, psychological, behavioral, and medical interventions; (c) Health-related surgeries or procedures; (d) Use or purchase of medication; (e) Bodily functions, vital signs, symptoms, or measurements of the information described in this subsection; (f) Diagnoses or diagnostic 	<p>"Health care services or products" means any service or product provided to a person to assess, measure, improve or learn about the health of a person. The term includes, without limitation:</p> <ol style="list-style-type: none"> 1. Services relating to any health condition or status, disease or diagnosis; 2. Social, psychological, behavioral or medical interventions; 3. Surgeries or other health-related procedures; 4. Medication or services related to the use or acquisition of medication; or 5. Monitoring or measurement related to bodily functions, vital signs or symptoms. 	NA	NA

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	<p>testing, treatment, or medication; (g) Reproductive health care services; or (h) Gender-affirming care services.</p> <p>(Sec. 3(15))</p>	<p>(Sec. 11)</p>		
Treatment of Health Data	<p>Opt-in consent required to “collect” or “share” consumer health data.</p> <p>“Valid authorization” required to “sell” consumer health data. Requires a consumer signature and expires after one year.</p>	<p>Opt-in consent required to “collect” or “share” consumer health data.</p> <p>“Valid authorization” required to “sell” consumer health data. Requires consumer signature and expires after one year.</p>	<p>Consumer consent required to sell or offer to sell consumer health data.</p> <p>(Sec. 2(a)(1)(D))</p>	<p>NA</p>
Definition of Sale	<p>“Sell” or “sale” means the exchange of consumer healthdata for monetary or other valuable consideration.</p> <p>“Sell” or “sale” does not include the exchange of consumer health data for</p>	<p>“Sell” means to exchange consumer health data for money or other valuable consideration.</p> <p>The term does not include the exchange of consumer health data for money or</p>	<p>“Sale” has the same meaning as the broader CTDPA (“Sale of personal data” means the exchange of personal data for monetary or other valuable consideration by the controller to a third</p>	<p>NA</p>

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	<p>monetary or other valuable consideration: (i) To a third party as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the regulated entity's or the small business's assets that complies with the requirements and obligations in this chapter; or (ii) By a regulated entity or a small business to a processor when such exchange is consistent with the purpose for which the consumer health data was collected and disclosed to the consumer.</p> <p>(Sec. 3(26))</p>	<p>other valuable consideration:</p> <ol style="list-style-type: none"> 1. With a processor in a manner consistent with the purpose for which the consumer health data was collected, as disclosed to the consumer to whom the consumer health data pertains pursuant to section 22 of this act. 2. With a third party as an asset that is part of a merger, acquisition, bankruptcy or other transaction through which the third party assumes control of all or part of the assets of the regulated entity. 3. With a third party for the purpose of providing a product or service 	<p>party.”)</p>	

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		<p>requested by the consumer to whom the consumer health data pertains.</p> <p>4. With an affiliate of the person who is providing or disclosing the consumer health data.</p> <p>5. As directed by the consumer to whom the consumer health data pertains or where the consumer to whom the consumer health data pertains intentionally uses the person who is providing or disclosing the consumer health data to interact with the third party to whom the consumer health data is provided or disclosed. 28</p> <p>6. Where the consumer has intentionally made the</p>		

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		<p>consumer health data available to the general public through mass media that was not restricted to a specific audience.</p> <p>(Sec. 17)</p>		
<p>Definition of “Valid Authorization” or sale consent requirements</p>	<p>“Valid authorization” to sell consumer health data must be written in plain language and include the following:</p> <ul style="list-style-type: none"> (a) Specific consumer health data to be sold (b) name and contact information of the person selling the data (c) name and contact information of the person purchasing the data (d) description of the purpose of the sale, including how it will be gathered and used (e) a statement that the provision of goods or 	<p>“Written Authorization” to sell consumer health data must be written in plain language and include the following:</p> <ul style="list-style-type: none"> (a) The name and contact information of the person selling the data (b) description of the specific data to be sold (c) the name and contact information of the person purchasing the data (d) a description of the purpose of the sale, without limitation, the manner in which the data will be 	NA	NA

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	<p>services may not be conditioned on the consumer providing the authorization (f) statement that the consumer has the right to revoke the authorization, and instructions on how to do so (g) statement that the consumer health data sold may be subject to redisclosure by the purchaser and may no longer be protected by this section (h) expiration date of one year + consumer signature and date (Sec. 9(2))</p>	<p>collected, and how it will be used by the purchaser (e) statement that the regulated entity may not condition the provision of goods or services on a consumer authorizing the sale of the data (f) statement that the consumer may revoke the authorization, and a description of how to do so (g) statement of potential redisclosure of the data (h) the date of expiration (one year) and (i) signature of the consumer (Sec. 30(3))</p>		
Geofencing prohibition	<p>It is unlawful for any person to implement a geofence around an entity that provides in-person health care services where such</p>	<p>A person shall not implement a geofence within 1,750 feet of any medical facility, facility for the dependent or any other person or entity that</p>	<p>No person shall use a geofence to establish a virtual boundary that is within one thousand seven hundred fifty feet of any mental health facility or</p>	<p>“It shall be unlawful for any person, corporation, partnership, or association to establish a geofence or similar virtual boundary around any</p>

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	<p>geofence is used to:</p> <p>(1) Identify or track consumers seeking health care services;</p> <p>(2) collect consumer health data from consumers; or</p> <p>(3) send notifications, messages, or advertisements to consumers related to their consumer health data or health care services. (Sec. 10).</p>	<p>provides in-person health care services or products for the purpose of:</p> <p>(a) Identifying or tracking consumers seeking in-person health care services or products;</p> <p>(b) Collecting consumer health data; or</p> <p>(c) Sending notifications, messages or advertisements to consumers related to their consumer health data or health care services or products.</p> <p>(Sec. 31(1))</p>	<p>reproductive or sexual health facility for the purpose of identifying, tracking, collecting data from or sending any notification to a consumer regarding the consumer's consumer health Data.</p> <p>(Sec. 2(a)(1)(C))</p>	<p>health care facility, <i>other than their own health care facility</i>, as defined pursuant to paragraph c of subdivision one of this section, for the purpose of delivering by electronic means a digital advertisement to a user, for the purpose of building consumer profiles, or to infer health status, medical condition, or medical treatment of any person at or within such health care facility, and it shall be unlawful for any person, corporation, partnership, or association to deliver by electronic means any digital advertisement to a user at or within any such health care facility, other than their own health care facility, through the use of</p>

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				geofencing or similar virtual boundary. (Sec. 2(2))
Definition of geofencing	<p>"Geofence" means technology that uses global positioning coordinates, cell tower connectivity, cellular data, radio frequency identification, Wifi data, and/or any other form of spatial or location detection to establish a virtual boundary around a specific physical location, or to locate a consumer within a virtual boundary. For purposes of this definition, "geofence" means a virtual boundary that is <u>2,000</u> feet or less from the perimeter of the physical location.</p>	<p>"Geofence" means technology that uses coordinates for global positioning, connectivity to cellular towers, cellular data, radio frequency identification, wireless Internet data or any other form of detecting the physical location of a person to establish a virtual boundary with a radius of <u>1,750</u> feet or less around a specific physical location. (Sec. 31(2)(b))</p>	<p>"Geofence" means any technology that uses global positioning coordinates, cell tower connectivity, cellular data, radio frequency identification, wireless fidelity technology data or any other form of location detection, or any combination of such coordinates, connectivity, data, identification or other form of location detection, to establish a virtual boundary. (Sec. 1(a)(19))</p>	<p>"Geofencing" means a technology that uses global positioning system coordinates, cell tower connectivity, cellular data, radio frequency identification, Wi-Fi data and/or any other form of location detection, to establish a virtual boundary of <u>1,850</u> feet radius or less or "geofence" around a particular location that allows a digital advertiser to track the location of an individual user and electronically deliver targeted digital advertisements directly to such user's</p>

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				<p>mobile device upon such user's entry into the geofenced area. This shall also include the process of identifying whether a device enters, exits, or is present within a geographic area through the use of any information stored, transmitted, or received by the device, including but not limited to latitude, longitude, internet protocol address, wireless internet access information, cell tower connectivity, device identification information and/or other forms of location data.</p> <p>(Sec. 2(1)(b))</p>
Definition of "medical facility" or "healthcare facility"	NA – prohibition applies to any entity that provides in person health care services	"Medical facility" includes: 1.A surgical center for ambulatory patients;	"Mental health facility" means any health care facility in which at	"Health care facility" means any governmental or private entity that

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	(See definition of health care services)	2.A freestanding birthing center; 3.An independent center for emergency medical care; 4.An agency to provide nursing in the home; 5.A facility for intermediate care; 6.A facility for skilled nursing; 7.A facility for hospice care; 8.A hospital; 9.A psychiatric hospital; 10.A facility for the treatment of irreversible renal disease; 11.A rural clinic; 12.A nursing pool; 13.A facility for modified medical detoxification; 14.A facility for refractive surgery; 15.A mobile unit; and 16.A community triage center. (As defined in NRS	least seventy per cent of the health care services provided in such facility are mental health services. (Sec. 1(23)) "Reproductive or sexual health facility" means any health care facility in which at least seventy per cent of the health care-related services or products rendered or provided in such facility are reproductive or sexual health care. (Sec. 1(36))	provides medical care or related services, including but not limited to, those who provide such care pursuant to article twenty-eight of the public health law or licensed under article thirty-one, thirty-two or sixteen of the mental hygiene law, including the building or structure in which the facility is located. (Sec. 2(c))

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		449.0151)		
Enforcement	<p>A violation of the law is an unfair or deceptive trade practice, and provides a private right of action through the State's Consumer Protection Act. Consumers must still show injury and causation.</p> <p>The statute also provides for Attorney General enforcement.</p>	<p>A violation of the law constitutes a deceptive trade practice for purposes of the State's consumer protection law, but <u>does not</u> provide a private right of action.</p> <p>Attorney General enforcement provided.</p>	<p>A violation of this subsection constitutes a violation of the CTDPA. No private right of action.</p>	<p>No PRA</p>