

HEADWINDS & TAILWINDS IN PRIVACY & CYBERSECURITY IN 2023

Privacy & Cybersecurity

Tailwinds

- Increasing potential to harmonize divergent state consumer privacy and data breach notification requirements through Federal legislation
- Increasing support for greater data access and sharing from the amendments to HIPAA
- Growing potential to streamline care coordination and improve alignment with HIPAA through proposed modifications of Part 2 requirements for substance use data

Headwinds

- Increasing privacy-related regulatory scrutiny
- Uptick in private privacy litigation and class actions that rely on state laws
- Escalating state-level enforcement of state privacy laws
- Increasing state-level enactment of broad-reaching consumer privacy laws
- Intensifying regulatory scrutiny as health care continues to remain a key target of hackers

Interoperability

Tailwinds

- Upcoming rulemaking expected to require industry-wide adoption of a standards-based API by all providers, facilities, and commercial payors to increase interoperability and enable the transmission of good faith estimate data pursuant to the No Surprises Act
- Promotion of greater data access and sharing through updates to the Trusted Exchange Framework and Common Agreement (TEFCA) and the rise of Qualified Health Information Networks (QHINs)
- Growing opportunities for trusted entities to access robust data sets under direction of individuals

Headwinds

- Increasing enforcement activity related to interoperability requirements
- Escalating variability in levels of interoperability as private Application Programming Interface (API) standards development continues to outpace regulatory adoption of standards
- Uncertainty and increased compliance risks due to the lack of clarity and guidance regarding the scope of electronic health information

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