

## Compliance Today – March 2024



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### From tracking to trust: The privacy-first revolution in healthcare marketing

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by Steven Fitzsimmons

Rewind to November 2022. The U.S. Department of Health and Human Services (HHS) just delivered new guidance about the use of online tracking technologies by HIPAA-covered entities.<sup>[1]</sup>

At the time, the reaction from legal departments and compliance teams at healthcare organizations across the country was one of uncertainty: “What do we do? How serious is this? How much risk are we willing to assume here?”

Those questions quickly gave way to fear of tracking technologies because of a number of fines the Federal Trade Commission (FTC) levied against companies like GoodRX<sup>[2]</sup> and BetterHelp.<sup>[3]</sup> After the BetterHelp fine, it became extremely clear that HHS and the FTC are serious about this new guidance.

As a result, many healthcare legal and compliance teams started to tell their marketing counterparts to shut off these tracking technologies. Marketing teams were hesitant, though, because those technologies help them do their jobs effectively.

Jump forward to July 2023. The FTC put out a joint statement with HHS telling healthcare organizations to get their tracking technologies in compliance or face serious consequences. If the previous fines didn’t emphasize it enough, the government’s joint statement helped everyone understand that it is not playing around with the risks of tracking technologies and their effect on consumer data privacy.

And if fines from the FTC aren’t enough, multiple covered entities were—and still are—facing class-action lawsuits for sharing protected health information (PHI) with companies that develop web trackers. Most recently, Costco’s pharmacy business was hit with a lawsuit for sharing PHI with Meta.<sup>[4]</sup>

Almost all covered entities tell their marketing teams to stop using all tracking technologies by this time.<sup>[5]</sup> They’re too risky. A fine or lawsuit levied against any healthcare organization could cause serious damage to their reputations and bottom lines.

Marketing teams were left scrambling to figure out a path forward because tracking technologies are crucial for marketers. Those technologies provide insight into optimization and return on investment (ROI). Without that, marketers are left in the dark about what really moves the needle for their marketing strategies.

That’s where we’re at now. The guidance makes it seem like neither side has a clear path forward. Marketers want to keep using these tools. Legal and compliance teams don’t want to stop marketers from doing their jobs,

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but they have to protect the company.

But, when we look at the reality, we realize that this guidance actually sets very clear rules for using tracking technologies. And when we know the rules of the game, we can develop strategies to win.

## **The role of web trackers in digital marketing**

Tracking technologies, also known as “web trackers,” appear on nearly every website. These tools monitor visitors’ actions to help marketers understand website, advertising, and marketing performance.

These trackers are an essential functionality for almost all analytics platforms. If your marketing team wants to know how many people visited your website, what pages they visited, and how long they spent, they need an analytics platform, like Google Analytics, that uses web trackers.

Web trackers are also important for understanding advertising performance. If your marketing team wants to get the best possible ROI from their advertising campaigns, they need an ad platform—like Meta Ads—that uses a web tracker.

If your marketing team wants to create an email marketing campaign that sends different emails to different website visitors based on demographic or psychographic information, they need an email platform that uses web trackers.

The list of web trackers and their functionality is nearly endless. The point is this: if your marketing team wants to do great digital marketing, they need to use web trackers. However, HHS’s web tracking guidance has scared a lot of healthcare organizations away from using web trackers.

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