

# California Consumer Privacy Act (CCPA) - Requirements, Challenges & Unintended Consequences



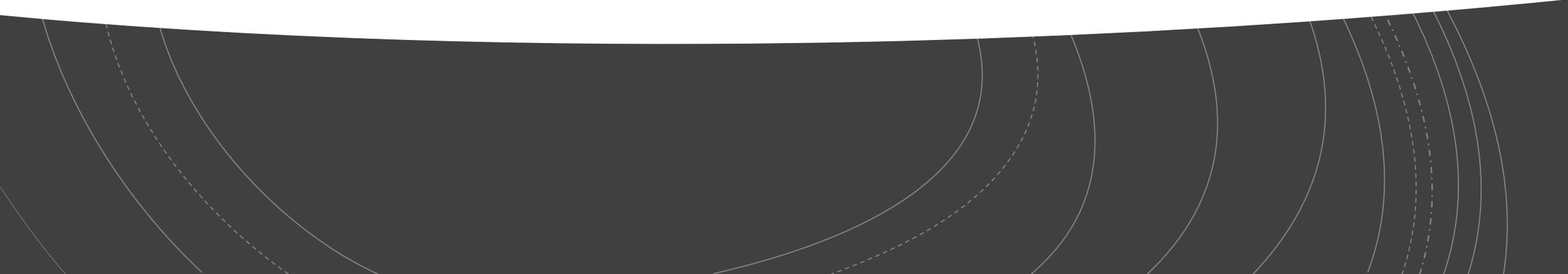
Tim Kosty, RPh MBA

Pharmacy Healthcare Solutions, LLC.

# Agenda

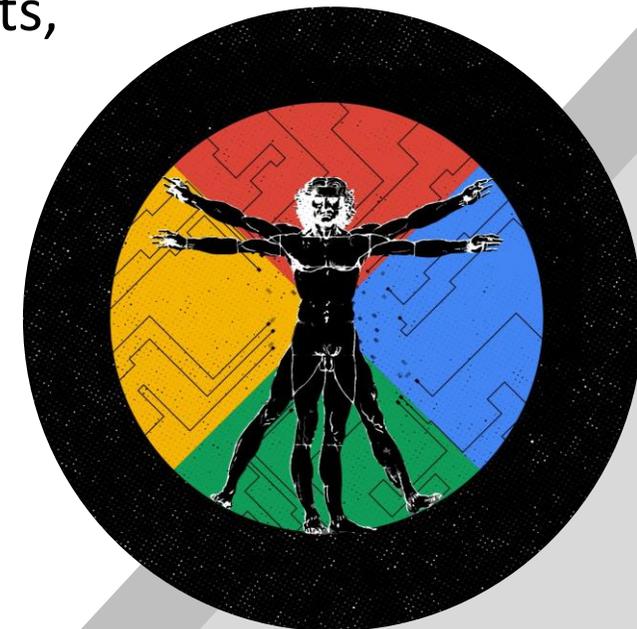
- What issues drove the need for the CCPA?
- CCPA verbiage and intent
- CCPA analysis and discussion
- Impact on Pharmacies and Consumers
- Prognostications
- Questions and Answers

# Privacy Issues and Concerns



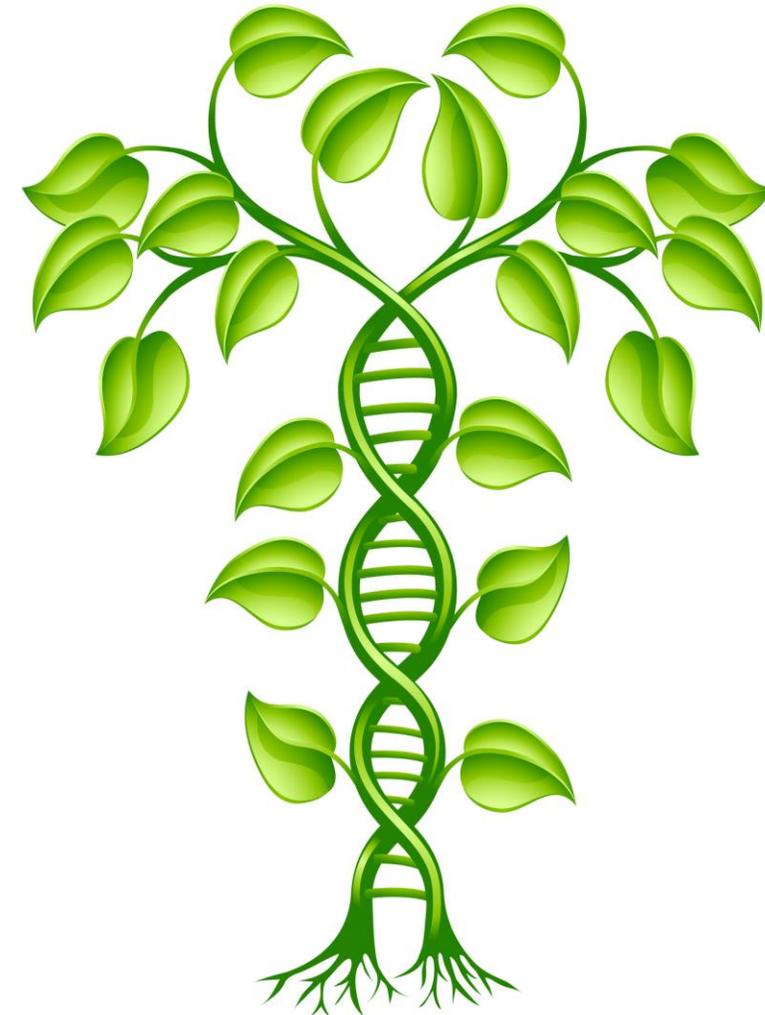
# Control over Consumer Information and Use

- **Google's Project Nightingale (WSJ 11/11/2019)**
  - Healthcare data from Ascension, 2,600 hospitals, doctor's offices, and facilities
  - 150 Google employees have access to data on millions of patients
  - Purpose is to "design new software, underpinned by AI and machine learning, that zeroes in on individual patients to suggest changes to their care."
  - Google's goal "ultimately improving outcomes, reducing costs, and saving lives."
  - No charge to Ascension. "It hopes to mine data to identify additional tests that could be necessary or other ways in which the system could generate more revenue from patients."
- 10 Year Mayo Clinic Project
  - Google to store the hospital system's genetic, medical, and financial records.



# Unapproved Uses of Personal Information

- FamilyTreeDNA FBI Disclosures – WSJ 8/22/2019
  - 1.5M customers had their DNA tested to learn more about their ancestry and potential health risks
  - FBI Approached FamilyTreeDNA President about helping solve heinous crimes by using the genetic information to generate leads. When a match was found, the FBI was provided information on the customer including contact information and percent of DNA in common with the suspect
  - Now only provides information in cases of homicide, sexual assault, child abduction, and identification of deceased individuals
  - Golden State Killer’s Arrest – GEDmatch website, which now allows individuals to opt in/out of law enforcement searches
- What have I signed up for?



# Privacy Notices – LinkedIn Effective 1/6/20

- 15 printed pages so they can be transparent about the data they collect about us. Doesn't include cookie policy or professional community policy
- Members versus Visitors
- “LinkedIn Corporation will be the controller of your personal data provided to, or collected by or for, or processed in connection with, our Services.”
- Data Collected may include:
  - Your address book and/or calendar
  - Your device and location
  - Messages can use AI to evaluate content for suggestions
  - Your employer can review and manage your use of LinkedIn if they have an Enterprise Account
- If you object to any changes, “You may close your account.”



# Congressional Hearings – December 2019



US Senate Committee on Commerce, Science and Transportation convened to examine legislative proposal to protect consumer data privacy.

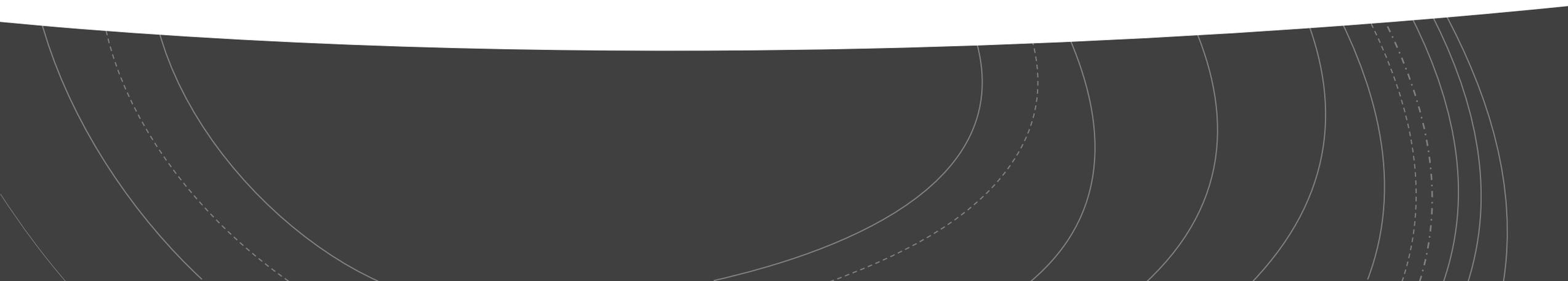


Walmart supports a comprehensive federal privacy law and is ready to comply with CCPA. In favor of consumers having “reasonable controls” with regard to collection, use, and sharing of personal data.” Walmart collects “personal information provided by consumers, third parties, purchase history, healthcare data, browsing information, device information and location data.”



Federal versus State privacy laws

# **California Consumer Privacy Act of 2018**



# Introduction



Title 1.81.5. California Consumer Privacy Act of 2018 [1798.100-1798.100]

Effective Date: January 1<sup>st</sup>, 2020

Signed by the California State Gov Jerry Brown on June 28<sup>th</sup> 2018

Similar to Europe's General Data Protection Regulation (GDPR)

Most stringent privacy law in the United States



**CALIFORNIA**  
CONSUMER PRIVACY ACT

# CCPA Findings and Declarations (Sec.2)

- California Constitution includes the right of privacy among the “inalienable” rights of all people.
  - “A legal and enforceable right of privacy for every Californian”
  - Allows consumers to control use of their personal information
  - Reasonable expectation of privacy even when you disclose your personal information to a third party
- Businesses profit from buying and selling personal information for commercial purposes
- Californians have lost control over their ability to protect and safeguard their privacy, that’s why the CCPA needed to be passed and implemented

# CCPA Findings and Declarations

- Consumers are “in a position of relative dependence on businesses that collect your information.”
- Consumers should be able to control the use of your personal information:
- Stop businesses from selling personal information
- Businesses need to respect privacy and provide high level service. Opting out of the business using/selling your PI shouldn't impact the:
  - Quality of service provided
  - Price for the service

# Sections

1798.100.

- Right to Know What Personal Information is Being Collected

1798.101.

- Right to Know Whether Personal Information is Sold or Disclosed and to Whom

1798.102.

- Right to Say No to Sale of Personal Information

1798.103.

- Right to Equal Service and Price

1798.104.

- Compliance with Right to Know and Disclosure Requirements

1798.105.

- Compliance with Right to Say No and Notice Requirements

1798.106.

- Definitions

1798.107.

- Exemptions

# Sections

1798.108.

- Enforcements By Consumers Who Have Suffered An Injury In Fact

1798.109.

- Enforcement by Public Entities

1798.110.

- Consumer Privacy Fund

1798.111.

- Whistleblower Enforcement

1798.112.

- Security Breach

1798.113.

- Construction

1798.114.

- Imposition of Additional Privacy Safeguards

1798.115.

- Regulations

# California Consumer Rights

- The right to know what PI a business has collected about them, where it was sourced from, what it is being used for, whether it is being disclosed or sold and to whom
- The right to “opt out” of allowing a business to sell their PI to third parties
- The right to have a business delete their PI, with some exceptions; and
- The right to receive equal service and pricing from a business, even if they exercise their privacy rights under the Act

# Categories of Personal Information

Real Name, Alias

Postal Address

Unique Identifier

Internet Protocol (IP)  
Address

Email Address

Account Name

Social Security  
Number

Internet Activity

Geolocation Data

Biometric Data

Audio, Electronic,  
Visual, Thermal,  
Olfactory

Profession/  
Employment

Psychometric  
Information

Inferences from PI  
Listed

# Businesses Required to Comply with CCPA

- Business conducted in California and satisfies one or more of the following:
  - Annual gross revenues of \$25M, or
  - Buys or sells the Personal Information of 50,000 or more consumers, or
  - Derives 50% or more of its annual revenue from selling consumers' PI

Not-for-profits, small companies and/or those that don't traffic in large amounts of PI, and do not share a brand with an affiliate who is covered by the Act, will not have to comply with the Act.

# Business Compliance

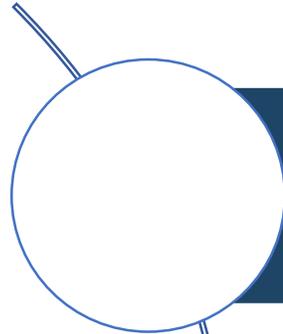
- a) Make available to consumers **two or more designated methods for submitting requests for information** at minimum a toll-free telephone number, and a website address if applicable
- b) Disclose and **deliver the required information** to a consumer free of charge **within 45 days** after receiving a verified request
- c) Ensure **all individuals responsible for handling consumer inquiries** about the business's privacy practices **are informed of all the requirements**
- d) A business is not required to provide information to the same consumer **more than once in a 12-month period**

# Right to Say No to Sale of Personal Information

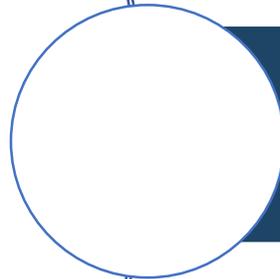
- A business that sells consumers' personal information must disclose that information to consumers for the consumer to have the right to opt out
- Consumer has the right, at any time, to direct a business that sells personal information about the consumer not to sell the consumer's personal information.
- A business that received notice from a consumer not to sell the consumer's personal information shall be prohibited from doing so
  - Consumers can reverse course and authorize sale of PI after they have opted out

# Exemptions

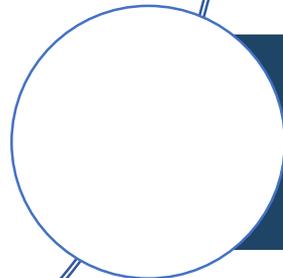
Do not  
restrict a  
business's  
ability to:



Does not apply to protected health information that is collected by a covered entity governed by the medication privacy and security rules issued by the HHS established pursuant to HIPAA (PHI and covered entity from the federal privacy rule shall apply )



Collect and sell a consumer's personal information if every aspect of such commercial conduct takes place entirely outside of California



Cooperation with law enforcement agencies concerning conduction or activity that the business reasonably and in good faith believes may violate federal, state, or local law

# Enforcement By Consumers

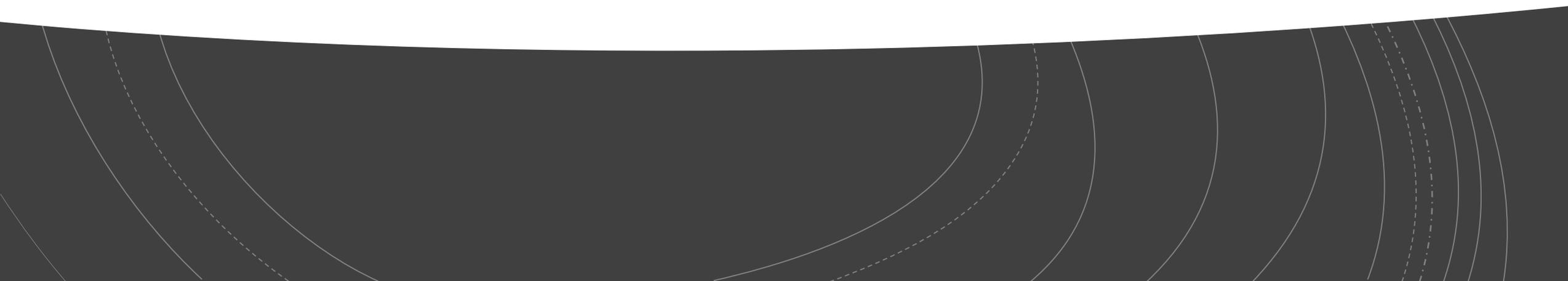
- Consumers can bring statutory damages if a violation of this Act has occurred
  - It will be deemed to constitute an injury in fact to the consumer who has suffered the violation
  - Consumer cannot lose money or property as a result of violation in order in order to bring action for a violation of this Act
- Any consumer who suffers an injury will shall recover statutory **damages of \$1,000 or actual damages whichever is greater**
- A knowing and **willful violation** by a business results in statutory damages of not less **than \$1,000 and not more than \$3,000, or actual damages**, whichever is greater, for EACH violation from the business

# Enforcement by Public Entities

- Violation of this Act by businesses are liable for a civil penalty
- Intentional violation may be liable for a civil penalty of up to \$7,500 for EACH violation
- Enforceable by the Attorney General for the State of California and private litigants



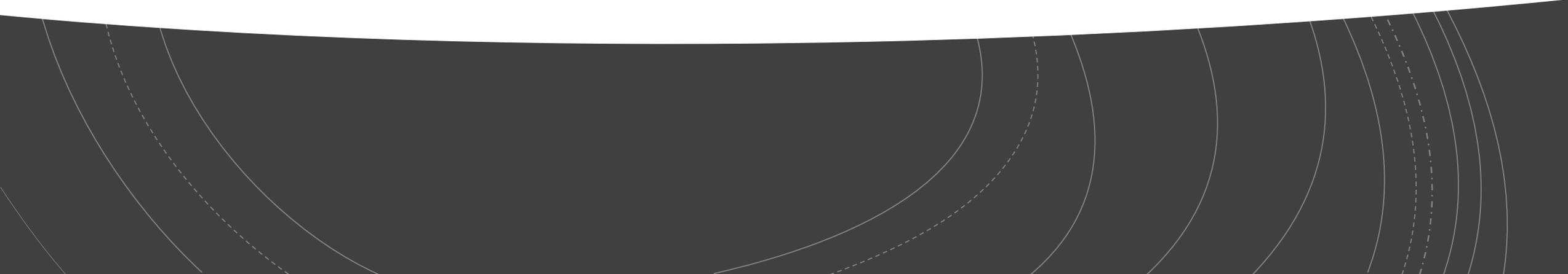
# Pharmacy Impact



# Pharmacy Impacts

- Should be minimal with the HIPAA exception.
- Will impact big retailers with their loyalty card programs and other consumer engagement strategies.
- Retailers with operations in multiple states will have to decide if they have a separate California process or adopt the new CCPA across all states to ease administrative overhead
- Raises awareness on patient privacy concerns and should cause management and IT to revisit security processes and procedures
- Evaluate cross platform engagement strategies

# Prognostications



# Unintended Consequences

- CCPA will provide a privacy law for other states to model and adopt similar laws/privacy regulations
- Will create higher administrative costs for business to comply including internal auditing of compliance with new policies and procedures
- New litigation exposure that will likely be tested sooner rather than later. New secret shopper services?
- Potentially slow down innovation using latest technology and data analytics

# CCPA will it improve Consumer privacy controls?

- Minimal impact on changing consumer behavior
  - Consumers want convenience and are willing to give personal information to businesses that provide services desired
  - Some consumers will opt out and force business to demonstrate compliance
  - Increase consumer awareness of privacy issues
- Technology likely to keep changing faster than legislation can keep up
- Businesses will encourage Congress to establish national privacy regulations to prevent state specific rules and associated overhead
- CCPA provides avenue for consumers to protect their private information if they act with all of the entities that capture and sell their personal information

# What Consumer Privacy Issues Doesn't the Law Address?



Proper destruction of current information



Employee information



“Privacy” is not the same as it was 20 years ago or even 5 years ago



Changes in technology constantly improving (e.g. artificial intelligence)

# Questions & Answers

**Tim Kosty, RPh, MBA**

Pharmacy Healthcare Solutions, LLC.

[tkosty@phsirx.com](mailto:tkosty@phsirx.com)