

# Private Equity and Digital Health in 2023: Policy Updates and Trends to Watch

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As we approach the middle of the first quarter of 2023, private equity firms have continued to demonstrate their interest in investing in digital health. This does not come as a surprise, as most startups in the healthcare technology space have been active in developing attractive strategies. These companies strive to improve health outcomes and lower expenses by focusing on specific gaps, issues or illnesses, prioritizing technological innovation, and customizing individualized care plans.

While the healthcare industry is experiencing an evolution towards [digitally enabled care](#), this movement has been accompanied by a rise in regulatory oversight of digital health — an ostensible conclusion to recent shifts, including the COVID-19-era investment boom in telehealth and the persisting issue of narrowing the digital divide to ensure equitable access and outcomes. Meanwhile, Congress's recent approval of the [2023 Consolidated Appropriations Act](#) extended important flexibilities for telehealth provisions, and even as venture dollars dwindle in the market at large, health tech and digital health startups have the ability [shift focus](#) from dealmaking to partnerships.

Under the current landscape, there are high-level trends that private equity investors involved in digital health startup formation and consolidation may want to consider as they formulate ways to prioritize value and innovation while mitigating risk. The following serves as a broad overview of recent policy updates and areas of opportunity in 2023.

## **Regulatory and Legislative Updates**

- The 2023 Consolidated Appropriations Act extends various flexibilities including:
  - Medicare beneficiaries can continue to receive telehealth services from any geographic location;
  - Federally Qualified Health Centers and Rural Health Clinics can continue to provide telehealth services;

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- Providers can continue to use telehealth for hospice face-to-face recertification requirements; and
  - Telehealth services can continue to be conducted through audio-only communications through at least 2024.

Congress's expansion of access to telehealth [takes steps](#) to ensure continuity of care for Medicare beneficiaries and provides regulators with additional time to determine which flexibilities will become permanent, indicating a success for the telehealth industry as well as a reminder that there is more legislation to come.

- If finalized, the Centers for Medicare and Medicaid Services (CMS) Proposed Rule on Advancing Interoperability and Improving Prior Authorization Processes [will require](#) payers to participate in electronic payer-to-payer data exchange and implement automated prior authorization processes. If implemented, these proposals would incentivize payers and providers alike to track health data carefully, document reimbursements accurately, and take on a more proactive approach to improving health, signaling another trend towards preventive care. Both of these policies would require applicable entities to take on significant structural improvements to ensure that they can participate in the streamlined electronic data exchange programs and move towards interoperability.
- Several Current Procedural Terminology (CPT) codes [are launching](#) this year, including a category for remote therapeutic monitoring treatment-management services, codes for digital ophthalmology services and codes for remote examination by pathologists or in conjunction with the use of artificial intelligence (AI) algorithms. These codes will make it easier for digital therapeutics companies to get reimbursed for their software-based treatments.
- In July 2022, the Department of Health and Human Services (HHS) Office of Inspector General (OIG) issued a [Special Fraud Alert](#) alerting practitioners to exercise caution when entering into arrangements with telemedicine companies. Recently, [we reflected that](#) this report, coupled with recent high-profile investigations in the telehealth industry by the Department of Justice (DOJ) and the Drug Enforcement Agency (DEA) reinforces the government's recently heightened interest in scrutinizing telehealth arrangements.
- The DOJ and the Federal Trade Commission (FTC) have demonstrated a [keen interest in PE deals in the healthcare industry](#). In 2022, the agencies pledged to carefully regulate stealth roll-ups, coordinate with OIG to protect healthcare consumers and workers, and prioritize Section 8 enforcement and HSR filing deficiencies while ramping up investigations of new deals and investments.
- As digital health evolves, the ability to collect, store and share personal health information poses greater privacy concerns. The FTC has [expressed concerns](#) about the misuse of mobile location and health information and has reaffirmed its commitment to using the full scope of its legal authorities to protect consumers' privacy in light of advances in the digitization of health information.

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## **Health Tech Areas of Focus**

- Many healthcare systems are focused on prioritizing clinician wellness and addressing burnout with technology to solve issues pertaining to staffing shortages in hospitals and clinics. Leveraging AI can [enable faster scans](#) and shorter wait times while eliminating unnecessary manual work. Similarly, automating patient data directly into electronic medical records can allow physicians, nurses, and other staff to spend less time updating information into computers, reducing administrative burdens.
- Some healthcare providers are looking into using health data analytics to address issues pertaining to population health and equitable care delivery. Digital health is being utilized to analyze how social determinants of health, including housing, income, food access, education, and geography, affect patients to provide individuals with specific information and services to improve their quality of life and health outcomes.
- The global mental health apps market size [was valued](#) at \$5.2 billion in 2022 and is expected to expand at a compound annual growth rate of 15.9% from 2023 to 2030. Mental health tech companies are continuing to prioritize solutions for stress, anxiety, and depression, providing services including online therapist sessions, chat portals, and on-demand meditations.
- A new [shift towards FemTech](#) encompasses a broad range of women's health issues from fertility to cardiovascular disease while increasing access to traditionally stigmatized or ignored health conditions such as menopause, mental health, and sexual health. Emerging technologies like remote high-risk pregnancy monitoring solutions and mobile ultrasound with AI support, hold the potential to close care gaps in maternal and child health. Particularly in the era following the landmark U.S. Supreme Court decision of *Dobbs v. Jackson Women's Health Organization*, many health innovators are working to bring access to care through wearable devices, virtual doctor visits, medical screenings.
- Wearable devices, including fitness trackers and smartwatches, are [becoming more sophisticated](#), allowing manufacturers to add in ECG scanning (recording the electrical signals in the heart) or SpO<sub>2</sub> monitoring (measuring a person's saturation of peripheral Oxygen) capabilities to capture and analyze vast amounts of health data. Given the growing demand for wearables and their potential for sharing health data with healthcare providers, insurers and companies are considering supplying or covering these products for beneficiaries and employees if they have not done so already.
- As healthcare becomes more digitized, health systems, providers, apps, and devices are storing and tracking data in many different types of formats, leading to a need for heightened interoperability of informatics in a vendor-neutral manner. Health IT companies are working on creating integrated platforms that can integrate into different providers' electronic medical record systems to aggregate and analyze data from a network of connected devices. This could improve operational performance and reduce administrative burdens while lowering costs and time for care teams.

## **Looking Forward**

In 2023, some tech companies are concerned with the potential for a macroeconomic slowdown and more constrained capital environments. This also creates opportunities, as many digital health startups are hoping to achieve inorganic growth by acquiring their competitors and continuing towards interoperability and artificial intelligence. As the industry continues to consolidate, bigger players in the digital health space will continue to refine larger-scale platforms that can focus on holistic, preventive, individualized care. As a result, we expect to see continued PE investment and corresponding regulatory scrutiny in the digital health space in the year to come.

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