



April 12, 2022

The Honorable Jesse Gabriel  
Chair, Assembly Committee on Privacy and Consumer Protection  
California State Assembly  
1021 O Street, Suite 5220  
Sacramento, CA 94249

The Honorable Kevin Kiley  
Vice Chair, Assembly Committee on Privacy and Consumer Protection  
California State Assembly  
1021 O Street, Suite 4530  
Sacramento, CA 94249

**RE: ATA COMMENTS ON ASSEMBLY BILL 2089**

Dear Chair Gabriel and Vice Chair Kiley:

On behalf of ATA Action, I am writing to comment on and express concerns with certain provisions within Assembly Bill 2089 relating to mental health information and consumer privacy.

ATA Action, the American Telemedicine Association's affiliated trade association focused on advocacy, advances policy to ensure all individuals have permanent access to telehealth services across the care continuum. ATA Action supports the enactment of state and federal telehealth coverage and fair payment policies to secure telehealth access for all Americans, including those in rural and underserved communities. ATA Action recognizes that telehealth and virtual care have the potential to truly transform the health care delivery system – by improving patient outcomes, enhancing safety and effectiveness of care, addressing health disparities, and reducing costs – if only allowed to flourish.

Assembly Bill 2089 would prohibit broadly defined “mental health application developers” from sharing consumers’ personal information with third parties unless certain conditions are met. Additionally, the bill would require these mental health application developers to register with the California Attorney General on an annual basis.

Our organization understands that the Legislature seeks to ensure that consumers’ sensitive mental health-related data is not sold or used without users’ consent, particularly those entities that are not subject to privacy laws that apply to health care providers. We wholeheartedly support the Legislature’s efforts to protect Californians’ private information. However, we believe that certain provisions within this bill would create confusion for and place unnecessary burdens on technology platforms which facilitate interactions between state-licensed mental health care providers and patients.

**ATA ACTION**

901 N. Glebe Road, Ste 850 | Arlington, VA 22203  
Info@ataaction.org



First, ATA Action takes issue with the broad and confusing definition of “mental health application developer” proffered in the bill. The definition reads:

*“Mental health application developer” means a person or entity that develops an online or mobile-based application that collects information from a consumer related to the consumer’s inferred or diagnosed mental health or substance use disorder and that uses the information to facilitate mental health services to that consumer.*

Our organization is unsure as to which persons or entities fall under this definition. The definition’s vague and seemingly all-encompassing language offers providers and entities in the mental health care space with little direction as to whether or not the requirements of this bill apply to them, raising many questions in the process. What exactly does the Legislature mean when it describes a mental health application developer as a person or entity that “facilitates” mental health services to consumers? Does the definition apply only to California hospitals or health systems that develop their own online health portals or virtual care applications to deliver behavioral health care services to patients, or does it also apply to those who simply design these applications? Would the definition cover – and thereby require registration with the California Attorney General from – health care providers or entities using virtual behavioral health services even if those services constitute a fraction of their overall care delivered? Many mental health applications exist for the purposes of facilitating interactions between providers and patients or prospective patients – not for the purposes of delivering care directly to consumers. Would these entities be covered? ATA Action requests more specificity in terms of which kinds of persons or entities are meant to be considered “mental health application developers.”

Further, as noted in the Senate Health Committee analysis, existing medical privacy laws already contain numerous privacy protections around the use of health information in possession of or derived from a health care provider. Rather than subject entities to multiple and potentially competing privacy frameworks, we suggest the Committee consider carveouts for entities that collect, use, or store patient information already subject to or in compliance with HIPAA or CMIA.

ATA Action also opposes the provision which would require mental health application developers to register with the California Attorney General once per year. Such a requirement is concerning to ATA Action for the following reasons.

First, the requirement would not afford California patients with any substantial additional protections as far as privacy is concerned. While the requirements in §1798.100.151(a) would serve to protect consumers’ information, it is unclear which protections would be provided to consumers by allowing – as the Senate Health Committee report noted – the California “AG’s authority [to] expand to mobile apps to track violations of privacy laws.” Any California provider operating on a mental health application who has access to a patient’s private health care information is subject to California’s existing laws regarding the sharing of such

**ATA ACTION**



information and could be held accountable by the appropriate regulatory boards were he or she to breach the patient's confidentiality.

Second, there are thousands of entities and applications outside of the mental health virtual care space which store consumer information that are not required to register with the California Attorney General. Will the Legislature start requiring any entity whose application collects consumer information and uses it in the delivery of services to register with the California Attorney General? If not, the Legislature would be holding mental health care applications to a higher standard than applications in other fields (including other health care sectors), placing undue administrative burdens on those working in the mental health care space and potentially limiting access to care in the process.

We thank you for the opportunity to comment. As we emerge from the pandemic, addressing mental health issues – issues which are more widespread than ever before – is a top priority for legislatures across the country. We urge you and your colleagues to consider the effects that passing Assembly Bill 2089 in its current form would have on access to mental health care in California. Please do not hesitate to let us know how we can be helpful in your efforts to advance common-sense telehealth policy in your state. If you have any questions or would like to discuss the telehealth industry's perspective further, please contact me at [kzebley@ataaction.org](mailto:kzebley@ataaction.org).

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley", is written over a light gray rectangular background.

Kyle Zebley  
Executive Director  
ATA Action