



June 14, 2022

Senator Thomas J. Umberg
Chair
Senate Judiciary Committee
1021 O Street, Room 3240
Sacramento, CA 95814

RE: ATA COMMENTS ON ASSEMBLY BILL 2089

Dear Chair Umberg,

On behalf of ATA Action, I am writing to comment on Assembly Bill 2089 relating to mental health information and consumer privacy and support certain amendments.

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.

Our organization appreciates amendments made to Assembly Bill 2089 in its most recent draft. In addition to eliminating a separate registration process for mental health application developers, the Legislature amended the bill to bring these applications' technologies under the purview of existing state law, the Confidentiality of Medical Information Act (CMIA). ATA Action believes that these changes will make it easier for telehealth providers to deliver high-quality, affordable health care services to California patients without being burdened with overly restrictive data privacy provisions.

However, our organization still has several concerns with the bill as currently written, specifically in regards to the definitions of “mental health application” and “mental health application information” and language concerning the obligations of businesses which operate mental health applications to notify health care providers of data breaches. These concerns are outlined below.

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

Section 56.05(p) “Mental health application” means a mobile-based application that collects mental health application information from a consumer, markets itself as facilitating mental

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health services to a consumer, and uses the information to facilitate mental health services to a consumer.

Section 56.05(q) “Mental health application information” means information related to a consumer’s inferred or diagnosed mental health or substance use disorder, as defined in Section 1374.72 of the Health and Safety Code, collected by a mental health application.

Our organization is concerned that these definitions, specifically in regards to the phrase "inferred diagnosis" in the definition of mental health application information, don't provide enough clarity as to the types of information that are being targeted by these privacy provisions. We suggest clarifying the language to limit the scope of the proposed legislation to information that has been inputted by the consumer into the mental health application. We also suggest incorporating some disclosure language that empowers the consumer to be notified when sensitive information is being requested on a mental health application.

ATA Action suggests the following amendments to the language in Section 1 of the proposed legislation in accordance with the above concerns:

Section 56.05(p) “Mental health application” means a mobile-based application that collects mental health application information directly from a consumer, specifically markets itself as allowing a consumer to directly input and self-manage their mental health application information and/or uses the mental health application information to connect a consumer to professional mental health services, including for the diagnosis, treatment, or management of mental health or substance use disorder.

Section 56.05(q) “Mental health application information” means information directly related to a consumer’s mental health or substance use disorder, as defined in Section 1374.72 of the Health and Safety Code, and knowingly disclosed by a consumer when entered into a mental health application by a consumer.

We also suggest the following changes to Section 2 of the bill:

Section 56.06(d) Any business that offers a mental health application to a consumer for the purpose of allowing the consumer to directly input and self-manage their mental health application information, or to connect a consumer to professional mental health services, including for the diagnosis, treatment, or management of a mental health or substance use disorder medical condition, shall be deemed to be a provider of health care subject to the requirements of this part.

Finally, we request that the Legislature narrow the requirements placed on businesses which operate mental health applications as they relate to informing providers of data breaches. We fear that the current obligations as written in the proposed legislation are overly broad and put a separate burden on telemental health services not applied in other care settings, which might ultimately result in a reduction in access to care. In an attempt to find a balance between the



necessary cybersecurity and notification requirements as well as business realities, ATA Action proposes the following changes to Section 3 of the bill:

Section 56.251: When partnering with a provider of health care to provide mental health application services, any business that offers a mental health application shall, upon request by the provider, inform the provider of any known data breaches which such business was required to report to regulatory authorities or consumers under applicable state or federal breach notification laws. This disclosure shall be limited to those known, reportable data breaches which occurred within the twelve-month period immediately preceding the effective state date of the arrangement between the business and the provider. Any business required to provide data breach information under this Section shall not be required to provide any information that is subject to attorney-client or other privilege or the disclosure of which would cause either party to violate contractual or statutory confidentiality requirements.

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 adopt these amendments in the interest of ensuring efficient and effective access to high-quality, affordable mental health care. Please do not hesitate to let us know how we can be helpful in your efforts to advance common-sense telehealth policy in California. If you have any questions or would like to discuss the telehealth industry’s perspective further, please contact me at kzebley@ataaction.org.

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley", written in a cursive style.

Kyle Zebley
Executive Director
ATA Action