



February 16, 2023

Washington State Legislature
416 Sid Snyder Ave. SW
Olympia, WA 98504
Submitted electronically via email

RE: ATA Action Comments on House Bill 1155

Dear Members of the State Legislature,

On behalf of the ATA Action, please find our comments on House Bill 1155 – the Washington My Health My Data Act.

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 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.

Telehealth is and will remain a major way Americans access the healthcare they need. As more providers come online – figuratively and literally – ATA Action urges increased vigilance by the healthcare community to ensure these practices meet standards for patient safety, data privacy, and information security. Indeed, patient privacy and the protection of patient data are prerequisites for connected care and core principles for our organization. State and federal regulatory schemes should allow for innovation and support the advancement of technology-assisted care; however, telehealth and virtual care platforms, systems, and devices should be required to mitigate cybersecurity risks and provide for patient safety and confidentiality.

ATA Action has concerns that several provisions in HB1155 (“the Act”) run counter to sound data privacy policy and put undue burdens on healthcare providers due to its complexity and undefined breadth. The stated intent of HB1155 is to “close the gap” to ensure that Washingtonians’ health information is “afforded the same protections [as HIPAA].” ATA Action agrees with this intent as we believe the HIPAA Rules provide appropriate protections for the confidentiality of personal health information.

However, we echo the concerns other stakeholders have expressed that this Act imposes obligations and requirements that exceed – or conflict – with HIPAA and other existing state and federal regulatory frameworks, creating significant uncertainty about compliance. The lack of clarity is particularly troubling as our organization represents both HIPAA and non-HIPAA covered entities, who nonetheless share a commitment to protect the confidentiality of patient’s personal information. We strongly urge the Committee to refine and target this legislation to its stated purpose, since the existing confusion ultimately may lead to providers not offering certain services – thus potentially lowering access to care for Washington’s most vulnerable communities.

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Specifically, ATA Action makes the following recommendations:

Align the Act with the stated intent and make clear that HIPAA-covered and HIPAA-compliant entities are exempt from this Act: As currently drafted, HB1155 does not wholly exempt entities subject to HIPAA’s rules from the Act’s requirements even when the entity is complying with HIPAA. Instead, Section 12 only exempts HIPAA-covered entities and business associates when they use, collect, or share “protected health information” in compliance with HIPAA. Protected health information under HIPAA, however, is only a subset of what is covered under the extremely broad definition of “consumer health data” under the Act. For example, information such as a patient browsing OTC medication at a retail pharmacy, visiting a landing page of a health system to research its location, and purchase of a health-related book at a hospital bookstore would not be considered protected health information under HIPAA, but would fall under the definition of consumer health data here.

ATA Action recommends that the drafters revise Sec 12 to clearly exempt HIPAA-covered entities and business associates from the provisions of this Act. The current HIPAA rules provide detailed and appropriate protections for the confidentiality of protected health information. Imposing additional, duplicative and potentially inconsistent regulation on these entities would create unnecessary and inappropriate burdens and cost.

Further, we believe the language in Sec 12 should explicitly exempt an entity that is in compliance with HIPAA, even if they are not subject to HIPAA’s regulation. If the intent of the legislation is to universally apply HIPAA’s requirements, then an entity that is willing and able to adhere to the requirements as set forth in HIPAA should still be exempted from the requirements of this Act.

Definition of consumer health data is too broad and causes confusion: The legislation’s stated intent is to apply an equivalent HIPAA standard to all entities that create, compile, store, transmit, or use personal health data. As noted above, the bill’s broad definition and list of illustrative examples of “consumer health data,” however, exceeds the HIPAA definition of “protected health information” and captures a wide range of data, even when there is not any health information provided. ATA Action is concerned that providers and other online healthcare entities would be arbitrarily limited in their ability to communicate with current or potential Washingtonians about reliable sexual health information, obtaining over the counter medication, or obtaining supplies. This is especially troubling for stigmatized conditions like sexual health, where online outreach and engagement might be the only way a patient would feel comfortable with treatment. To promote clarity and consistency, ATA Action requests that the definition of consumer health data track the definition of “protected health information” in the HIPAA Privacy Rule. At a minimum, we strongly urge the sponsors to reconsider this definition and ensure it is narrowly tailored to achieve the legislation’s objectives and not unnecessarily restrict access to care.

Restrictions on collection and use of data are inconsistent with and exceed HIPAA, setting up an unequal framework for Washingtonians: Under the proposed Act, a regulated entity would need a specific consent to collect and use a consumer’s data for any purpose other than to provide the product or service that the consumer requested. This would, for example, prohibit a regulated entity from sending communications about additional products or services to the consumer. However, a HIPAA-covered entity – or their contracted business associates – could engage in that same activity with the consumer’s HIPAA protected health information without any need for consent from the consumer under the HIPAA

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Privacy Rule¹. This inconsistency not only undermines the stated intent of the Act, it would afford differing rights to Washington consumers and unequal burdens on entities based solely on it being subject to HIPAA. We suggest aligning the permitted uses and disclosures of the Act, at a minimum, with the HIPAA Privacy Rule, including that consumer health data may be used for purposes of treatment, payment, and health care operations.

ATA Action hopes that the Committee will embrace these changes so as to simultaneously ensure patient data is effectively protected while not placing undue burdens on providers. We believe that this strikes a fair balance between these two significant public policy goals.

Thank you for your support of telehealth. We encourage you and your colleagues to consider amendments to SB 1155 to ensure easy and efficient access to high-quality health care services in Washington. Please do not hesitate to let us know how we can be helpful to your efforts to advance common-sense telemedicine policy. If you have any questions or would like to discuss the telemedicine industry's perspective further, please contact me at kzebley@ataaction.org.

Kind regards,

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

Kyle Zebley
Executive Director
ATA Action

¹ <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/marketing/index.html>