



March 8, 2023

The Honorable Jim Wood  
Chair, Committee on Health  
California State Assembly  
Capitol Office, 1020 N Street, Suite 390  
P.O. Box 942849-0002

The Honorable Marie Waldron  
Vice-Chair, Committee on Health  
California State Assembly  
Capitol Office, 1021 O Street, Suite 6140  
P.O. Box 942849-0075

**RE: ATA ACTION COMMENTS ON ASSEMBLY BILL 254**

Dear Char Wood, Vice-Chair Waldron and members of the California State Assembly Committee on Health,

On behalf of ATA Action, I am writing to comment on Assembly Bill 254 relating to reproductive and sexual health application information and consumer privacy. Our organization believes that patient privacy is a necessity of healthcare and supports the Assembly's efforts to ensure sensitive reproductive and sexual health data is protected, but ask the Committee to consider further clarity.

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 understands that the Legislature seeks to ensure that consumers' sensitive reproductive and sexual 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 health care providers and patients.

**ATA ACTION**

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Specifically, ATA Action is concerned the broad definitions of “reproductive or sexual health application information” and “reproductive or sexual health digital service” don't provide enough clarity as to the types of information that are being targeted by these privacy provisions. The definitions read:

*Section 56.05(p) “Reproductive or sexual health application information” means information related to a consumer’s reproductive or sexual health collected by a reproductive or sexual health digital service.*

*Section 56.05(q) “Reproductive or sexual health digital service” means a mobile-based application or internet website that collects reproductive or sexual health application information from a consumer, markets itself as facilitating reproductive or sexual health services to a consumer, and uses the information to facilitate reproductive or sexual health services to a consumer.*

Our organization is unsure as to which applications or websites fall under these definitions. The definition of “reproductive and sexual health digital service” uses vague and seemingly all-encompassing language that offers providers and entities in the reproductive or sexual 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 constitutes a reproductive or sexual health service? Would the definition cover health care providers or entities using virtual reproductive or sexual health services even if those services constitute a fraction of their overall care delivered? ATA Action requests more specificity in terms of which kinds of services are meant to be considered “reproductive or sexual health digital services.”

We also have significant uncertainty as to the breadth of what constitutes “information related to a consumer’s reproductive or sexual health.” Without significant refining, this broad language would seem to sweep in various search and browsing-related activities. We suggest clarifying the language to limit the scope of the proposed legislation to information that has been inputted by the consumer into the reproductive or sexual health service.

We would like to reiterate our organization's belief that patient privacy is a necessity of healthcare and support the Assembly’s efforts to ensure sensitive reproductive and sexual health data is protected. Our concerns are rooted in the broadness of the definitions present in AB 254 which create questions about what services, and thus what providers, would be implicated in the CMIA and other sections of California code. This confusion could have the unintended consequence of limiting telehealth access to reproductive and sexual health care as providers could be hesitant to offer these services with the ambiguity around their definition and responsibilities.

We thank you for the opportunity to comment. We urge you and your colleagues to consider these concerns in the interest of ensuring efficient and effective access to high-quality, affordable reproductive or sexual health care. Please do not hesitate to let us know how we can be helpful in

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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](mailto:kzebley@ataaction.org).

Kind regards,

A handwritten signature in black ink that reads "Kyle Zebley". The signature is fluid and cursive, with the first name "Kyle" and last name "Zebley" clearly distinguishable.

Kyle Zebley  
Executive Director  
ATA Action