



February 27, 2023

The Honorable C. T. Wilson
Chair, Economic Matters Committee
Maryland General Assembly
Room 231
House Office Building
Annapolis, Maryland 21401

The Honorable Brian M. Crosby
Vice Chair, Economic Matters Committee
Maryland General Assembly
Room 231
House Office Building
Annapolis, Maryland 21401

RE: ATA Action Comments on House Bill 995

Good afternoon Chair Wilson, Vice Chair Crosby and members of the Economic Matters Committee,

On behalf of the ATA Action, please find our comments on House Bill 995.

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 agrees with the overall intent of HB 995 to ensure appropriate protections for personal health information. However, as currently drafted, we have serious concerns that several provisions in HB 995 (“the Act”) run counter to sound data privacy policy and put undue burdens on healthcare providers due to its complexity and undefined breadth. We strongly urge the Committee to refine and target this legislation, since the existing confusion ultimately may lead to providers not offering certain services – thus potentially lowering access to care for Maryland's most vulnerable communities.

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Specifically, ATA Action makes the following recommendations:

Make clear that HIPAA-covered and HIPAA-compliant entities are exempt from this Act: As currently drafted, the Act appears to impose obligations and requirements that exceed – or conflict – with HIPAA, 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.

ATA Action believes the current HIPAA rules provide detailed and appropriate protections for the confidentiality of protected health information, as they have been a fixture in our healthcare system for more than two decades. Imposing additional, duplicative and potentially inconsistent regulation on these entities would create unnecessary and inappropriate burdens and cost. ATA Action recommends HB 995 be revised to clearly exempt HIPAA-covered entities and business associates from the provisions of this Act.

Further, ATA Action recognizes there are concerns about the growing number of applications that collect and use healthcare or sensitive data, but are outside of the HIPAA regulatory framework. If the intent of the legislation is to universally apply HIPAA’s requirements and close that gap, 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. We recommend the Act also revise HB 995 to exempt HIPAA-compliant entities so that the protection is dependent on the type of information being held, rather than whether it is being held by a HIPAA entity or not.

Definition of health data is too broad and causes confusion: When read in tandem with the Act’s definition of personal information, the Act’s definition of “health data” includes, among other things, “products or services...considered by a consumer” related to past, present, or future physical or mental health. This definition captures a wide range of data, including various search and browsing-related activities 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 Marylanders 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.

Reconsider Total Ban on Sale of Data: Under HIPAA, individuals may authorize the disclosure or use of their protected health information for marketing, including where a covered entity discloses the individual’s PHI to an entity in exchange for a direct or indirect payment. Under the proposed Act, however, any sale of a consumer’s health data –even with their explicit authorization--is prohibited. We suggest removing the strict prohibition on “selling” health data if a consumer authorizes doing so.

Allow sufficient lead time for covered entities to achieve compliance: The Act currently has an effective date of Oct 1, 2023. Privacy laws enacted recently in California, Colorado and Virginia have had two-year enforcement delays to provide covered entities with sufficient opportunity to understand and implement frameworks to comply with new requirements. If this legislation moves forward, ATA Action

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echoes other stakeholders in requesting that it have a comparable lead time and extend the effective date of the Act to a later date.

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 HB 995 to ensure easy and efficient access to high-quality health care services in Maryland. 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 light gray circular watermark.

Kyle Zebley
Executive Director
ATA Action