



March 21, 2023

Joint Committee on Judiciary
Connecticut General Assembly
Legislative Office Building, Room 2500
Hartford, CT 06106

RE: ATA Action Comments on Senate Bill 3

Good afternoon members of the Connecticut Joint Committee on Judiciary,

On behalf of the ATA Action, please find our comments on Senate Bill 3.

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 this overall intent of SB3 to ensure appropriate protections for personal health information. However, as currently drafted, we have concerns that several provisions in SB3 (“the Act”) run counter to the stated goals of the legislation and put undue burdens on healthcare providers due to its complexity and undefined breadth. We strongly urge the Committee to consider whether the goals of SB3 could be met through Connecticut's recently-enacted comprehensive privacy framework, as the potential for confusion between multiple layers of competing privacy frameworks ultimately may lead to providers simply not offering certain services – thus potentially lowering access to care for Connecticut's most vulnerable communities.

Specifically, the Act's definition of “consumer health data” includes health information “reasonably linked” to past, present, or future physical or mental health or information “derived” or “extrapolated” therefrom. 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 Connecticut residents about reliable health information, obtaining over the counter medication, finding services, or obtaining supplies. This is especially troubling for stigmatized conditions like sexual and mental health, where online outreach, education, and engagement might be the

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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.

Further, 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 under the proposed Act. For example, under the Act, a regulated entity would need a specific consent to collect 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 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 Privacy Rule.¹ To avoid this conflict, 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 collected and used for purposes of treatment, payment, and health care operations.

If the Committee determines to advance this legislation rather than amend Connecticut’s existing privacy statute, ATA Action hopes that the Committee will consider 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.

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", written over a light grey circular stamp.

Kyle Zebley
Executive Director
ATA Action

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