



May 15, 2023

The Honorable Elaine Marzola
Chair, Assembly Commerce and Labor Committee
Nevada Legislature
2920 North Green Valley Parkway
Suite 219
Henderson, NV 89014-0407

The Honorable Sandra Jauregui
Vice Chair, Assembly Commerce and Labor Committee
Nevada Legislature
7582 Las Vegas Boulevard South,
No. 118
Las Vegas, NV 89123-1009

RE: ATA Action Comments on Senate Bill 370

Good afternoon Chair Marzola, Vice Chair Jauregui, and members of the Assembly Commerce and Labor Committee,

On behalf of ATA Action, please find our comments on Senate Bill 370.

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 an important component of how 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 SB 370 to ensure appropriate protections for personal health information. However, as currently drafted, we have serious concerns that several provisions in SB 370 (“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, as the existing confusion ultimately may lead to providers not offering certain services – thus potentially lowering access to care for Nevada’s most vulnerable communities.

Specifically, ATA Action makes the following recommendations:

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901 N. Glebe Road, Ste 850 | Arlington, VA 22203
Info@ataaction.org



Definition of consumer health data is too broad and causes confusion: After referencing the existing protections for health data under HIPAA, the Act goes on to state an intent to “prescribe various protections that is maintained and used by [non-HIPAA covered] and nongovernmental entities.” The bill’s broad definition of “consumer health data” and list of illustrative examples, however, far exceeds the HIPAA definition of “protected health information” within the context of HIPAA. The Act’s definition of “consumer health data” captures a wide range of data, which would include various search and browsing-related activities even when there is not any health information related to such searches. ATA Action is concerned that providers and other online healthcare entities would be arbitrarily limited in their ability to communicate with current or potential Nevada consumers about things such as 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.

Consider making HIPAA-compliant entities exempt from this Act: 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. For that reason, we support that the Act exempts persons or entities subject to HIPAA.

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 consider revising SB 370 to also exempt HIPAA-compliant entities or, as described in detail below, remove the obligations and requirements in the current Act that exceed – or appear to conflict – with HIPAA.

Restrictions on collection and use of data are inconsistent with and exceed HIPAA, setting up an unequal framework for Nevadans: Under HIPAA, a covered entity may collect and use a consumer’s HIPAA protected health information to send communications about the entity’s additional products or services to the consumer without any need for consent from the consumer. This can be critical for patients. Many patients simply are not aware of the options that may be available to them for various services or goods. Whether that be that their insurance covers telehealth services or that they are eligible for an improved type of glucose monitor – making sure this information gets to patients will lead to healthier outcomes, less expensive care, and a more efficient healthcare system.

Though HIPAA permits the collection and use of PHI for these types of notices, SB 370 would prohibit such sending communications about additional products or services to the consumer without consent. 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 inconsistency not only undermines a stated intent of the legislation, it would afford differing rights to Nevada consumers and unequal burdens on entities based solely on being subject to HIPAA. We suggest

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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 370 to ensure easy and efficient access to high-quality health care services in Nevada. 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