



October 16, 2023

Hon. Anne M. Carney
Chair, Joint Committee on Judiciary
Senator, District 29
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Augusta, ME 04333-0003
Anne.Carney@legislature.maine.gov

Hon. Matt Moonen
Chair, Joint Committee on Judiciary
Representative, District 38
Room 333, State House
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Augusta, Maine 04333-0002
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CC: JUD@legislature.maine.gov

RE: ATA Action comments for October 17th Committee Work Session on Data Privacy

Dear Chair Carney, Chair Moonen and members of the Judiciary Committee,

On behalf of the ATA Action, I am writing you to provide comments regarding the Committee's upcoming October 17th public hearing and work session to review a series of data privacy bills.

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.

In light of the advancement of privacy legislation in many states across the country, ATA Action recently published its [Health Data Privacy Principles](#) (attached) to aid legislators in crafting legislation that supports both secure data practices and ensures patient access to care. As you review the privacy bills laid before the Committee, ATA Action urges you to keep the following considerations in mind:

State consumer privacy laws should be consistent with and not exceed HIPAA's standards to the greatest extent possible

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Enacted almost thirty years ago, the Health Insurance Portability and Accountability Act (“HIPAA” and the HIPAA Privacy Rule adopted in 2000) is a time-tested health information privacy framework that providers understand and patients expect to keep health data protected. Mirroring these well understood HIPAA standards in state law will be key to providing consistency and reducing complexity while also mitigating compliance and administrative costs on providers.

Therefore, ATA Action recommends that Maine’s data privacy laws should explicitly exempt HIPAA covered entities that are already subject to HIPAA privacy rules. Imposing additional, duplicative, and potentially inconsistent regulation on these entities would create unnecessary and inappropriate burdens and costs.

Furthermore, we urge that any privacy framework does not subject healthcare entities that fall outside this HIPAA exemption to greater administrative burdens or more restrictive rules than their exempted HIPAA covered entity peers. For example, a patient’s interaction with a telemedicine provider paid in cash out-of-pocket would not be subject to HIPAA, although the information the provider gathers may be similar to patient information gathered during a traditional doctor’s office examination reimbursed by insurance and subject to HIPAA privacy rules.

ATA Action therefore urges lawmakers to strive for uniform privacy law burdens across healthcare encounters, both in line with patient expectations and to better ensure competitive equity among providers. If not providers would be subjected to disproportionate regulatory burdens contingent on how a patient pays for care rather than patient expectations related to the nature or sensitivity of the health information gathered.

Privacy laws should require clear and conspicuous disclosures regarding data use, consumer consent for the sharing or sale of data, and the ability for consumers to opt-out of data use

State privacy laws should require clear and conspicuous disclosures on what data an entity collects, how the data will be used and how a consumer can opt-out of data processing. This should include a clear definitions of “sale of data” and “sensitive data”, and what explicit disclosures and consumer consent are required related to the sale or marketing use of personal or sensitive data. ATA Action suggests these requirements align with, and be [no more burdensome than, the HIPAA Privacy Rule’s marketing requirements](#),¹ which allow for disclosure of protected health information in “exchange for direct or indirect remuneration” so long as the consumer has provided their written authorization for such sale.

Good examples of states that have enacted consumer data privacy laws which balance privacy interests, administrative burdens and clarity in the context of health information include the [Virginia Consumer Data Protection Act](#)² and the [Connecticut Consumer Data Privacy and Online Monitoring Act](#).³

¹ *Marketing*, U.S. Dept. of Health and Human Servs. (July 26, 2013), <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/marketing/index.html>.

² Virginia Consumer Data Protection Act, VA Code Ann. § 59.1-575 *et seq.*, <https://law.lis.virginia.gov/vacodefull/title59.1/chapter53/>.

³ Connecticut Consumer Data Privacy and Online Monitoring Act, Conn. Gen. Stat. § 42-515 *et seq.*, https://www.cga.ct.gov/current/pub/chap_743jj.htm.



State attorneys general should have sole enforcement authority when privacy laws are violated

ATA Action believes that state attorneys general should have appropriate authority to investigate possible violations of privacy laws and determine when it is appropriate to pursue sanctions against bad actors. ATA Action also recommends that legislators avoid including private rights of action as a method of enforcing privacy laws, which are prone to a lack of clarity, result in frivolous lawsuits and result in out-of-court settlements that exacerbate legal uncertainty.

Please see the attached Privacy Principles for greater detail on ATA Action's data privacy policy positions and 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 grey circular watermark that contains the text "ATA ACTION".

Kyle Zebley
Executive Director
ATA Action