



February 5, 2024

Hon. Della Au Belatti  
Chair, House Committee on Health & Homelessness  
House District 26  
Hawai'i State Capitol, Room 420  
Honolulu, HI 96813  
[repbelatti@capitol.hawaii.gov](mailto:repbelatti@capitol.hawaii.gov)

Hon. David A. Tarnas  
Chair, Committee on Judiciary & Hawaiian Affairs  
House District 8  
Hawai'i State Capitol, Room 442  
Honolulu, HI 96813  
[reptarnas@capitol.hawaii.gov](mailto:reptarnas@capitol.hawaii.gov)

**RE: ATA ACTION COMMENTS IN OPPOSITION TO HOUSE BILL 1566 “RELATING TO CONSUMER HEALTH DATA”**

Good afternoon Chair Belatti, Chair Tarnas and members of the Health & Homelessness and Judiciary & Hawaiian Affairs Committees,

On behalf of the ATA Action, I am submitting the following comments opposing House Bill 1566 along with the following recommendations to improve the legislation.

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 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.

In light of the advancement of privacy legislation in many states across the country to address such concerns, the American Telemedicine Association has published [Health Data Privacy Principles](#) (also attached) to aid legislators in crafting legislation that supports both secure data practices and patient access to care. ATA Action hopes these policy principles are helpful in crafting forward-thinking privacy legislation in Hawaii.

**ATA ACTION**

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



ATA Action has several concerns that HB1566 (“the Act”) runs counter to sound data privacy policy and puts undue burdens on telehealth providers due to its complexity and undefined breadth. Specifically, ATA Action makes the following recommendations:

***Legislators should seek uniform privacy laws consistent across states and industries:*** As states adopt privacy laws across the nation, efforts to establish uniformity with existing federal and other state standards would reduce both complexity and costs regarding compliance, as well as confusion for consumers. Unfortunately, the Act at hand is both specific only to healthcare data and creates uneven burdens on providers relative to federal laws (discussed below). Instead, ATA Action encourages legislators to take an approach that mirrors Virginia (see the Virginia Consumer Data Protection Act<sup>1</sup>) and Connecticut (see the Connecticut Consumer Data Privacy and Online Monitoring Act<sup>2</sup>). As HB1566 continues to work through the legislative process, we hope this Committee and the Hawaii legislature will strive for uniformity with these existing state regulatory frameworks and avoid burdensome requirements that would be specific only to Hawaii.

***Make clear that HIPAA-covered entities are exempt from this Act:*** 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 HIPAA covered-entities would create unnecessary and inappropriate burdens and cost. ATA Action recommends HB1566 be revised to clearly exempt HIPAA-covered entities and business associates from the provisions of this Act.

***Restrictions on collection and use of data are inconsistent with and exceed HIPAA, setting up an unequal framework for Hawaii providers and consumers:*** The intent and preamble of HB1566 states Hawaii residents have the misimpression that HIPAA protects them anytime they share health information and that this legislation intends to “close the gap” to afford privacy protections where HIPAA would not apply. ATA Action supports this intent and believes state consumer privacy laws should be consistent with and not exceed HIPAA’s standards to the greatest extent possible.

However, we are concerned that HB1566 imposes obligations and requirements that exceed HIPAA and other existing state and federal regulatory frameworks, 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.

Under HB 1566, for example, a regulated entity would need a specific consent to both collect and use 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 its own products or services to the consumer. However, a HIPAA-covered entity – and in some situations their contracted third-party business associates – could engage in that same activity with the consumer’s HIPAA protected health information without any need for specific consent from the consumer under the HIPAA Privacy

---

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

<sup>2</sup> 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](https://www.cga.ct.gov/current/pub/chap_743jj.htm).



Rule.<sup>3</sup> This inconsistency would afford differing rights to Hawaii consumers and unequal burdens on entities based solely on being subject to HIPAA. 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 used for purposes of treatment, payment, and health care operations.

***State attorneys general should have sole enforcement authority when privacy laws are violated:***  
HB1566 cites the Hawaii Trade Regulation and Practice laws (chapter 480) for the Act's enforcement component when violations occur. Chapter 480 includes both personal and class rights of action, in addition to actions available to the Attorney General or Office of Consumer Protection against violators.

ATA Action believes that state attorneys general should have sole, 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 out-of-court settlements that exacerbate legal uncertainty. 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 HB1566 to ensure easy and efficient access to high-quality health care services in Hawaii. 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](mailto:kzebley@ataaction.org).

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley", written in a cursive style.

Kyle Zebley  
Executive Director  
ATA Action

---

<sup>3</sup> *Marketing*, U.S. Dept. of Health and Human Servs. (July 26, 2013), <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/marketing/index.html>.