



March 26, 2024

Hon. Dawn Gile
Senator, District 33
Miller Senate Office Building, 3 East Wing
11 Bladen St., Annapolis, MD 21401
Annapolis, MD 21401
dawn.gile@senate.state.md.us

RE: ATA ACTION COMMENTS REGARDING SENATE BILL 541

Dear Senator Gile:

On behalf of ATA Action, I am submitting the following comments for you to consider regarding the consumer health data provisions of Senate Bill 541, 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.

ATA Action has two targeted concerns regarding the consumer health data language in SB 541 (“the Act”), which we believe could subject certain telehealth providers to conflicting requirements and unnecessary confusion. Specifically, ATA Action makes the following recommendations:

Include Exemption for Healthcare Data Already Protected Under Maryland's Health Privacy Laws: 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 supports Section 14-4603 (B) (1) which exempts “protected health information under HIPAA” from the requirements of the Act and the recent amendment to Section 14-4603 (B) (6) to protect certain medical records held by HIPAA covered entities. This is important to ensure that entities already observing a complex system of regulations under both federal and state law are not having to apply those additional layers of compliance requirements to the same sets of health data.

By this same logic, this data-level exemption should be extended for non-HIPAA covered entities and providers when consumer health data is collected, used, or disclosed in accordance

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with already existing Maryland health privacy frameworks. Without this exemption, non-HIPAA covered entities will be subject to additional, duplicative, and potentially inconsistent regulation, which creates unnecessary and inappropriate burdens and cost. We therefore recommend adding the following data level exemption language to 14-4603 in addition to PHI under HIPAA:

Health information protected under MD ST GHG 4-301 , GHG 4-302, GHG 4-303 – 4-307, GHO 1-1004 and other applicable state laws, rules, and regulations related to the protection of health information.

Revise Provisions on Sale of Data to be Consistent with HIPAA: Section 14-4607(A)(3) of the Act states that a controller or processor is prohibited from receiving *any remuneration* (monetary or otherwise) for consumer’s sensitive health data—even with a consumer’s explicit authorization. We understand that the intent of this provision is because “this data is too private, too sensitive to have companies selling it.”

Under the HIPAA Privacy Rule, however, individuals currently can—and do—authorize entities to disclose their protected health information (“PHI”) for marketing, including in instances where an entity discloses the individual’s PHI to a third party in exchange for a “direct or indirect remuneration.”¹ For example, an individual may authorize their provider to disclose their PHI to a pharmaceutical firm so that the individual receives discounts on medications, even where the individual provider receives remuneration from the pharmaceutical firm.

ATA Action believes the current HIPAA rules provide detailed and appropriate protections for the confidentiality of protected health information, as these rules have been a fixture in our healthcare system for more than two decades. We are concerned that the strict mandate against the sale of data contemplated in this Act—a provision we are unaware of in any state law—would create inconsistent and conflicting obligations on HIPAA entities when the “sensitive data” at issue would not constitute PHI that is exempt from the Act. Furthermore, to the extent HIPAA entities are exempt from the sale prohibition, this Act would then afford differing rights to Maryland consumers as to the sale of their data and unequal burdens on entities based solely on being subject to HIPAA.

To be certain, ATA Action shares the sponsors’ intent to protect sensitive data and our [Data Privacy Principles](#) emphasize that sensitive data should always require explicit disclosure to, and consent from, the consumer. We respectfully request the provision regarding the sale of sensitive data align with HIPAA and other states, such that “a controller or processor may not... sell sensitive data *without the consent from the consumer.*”

ATA Action hopes that the Conference Committee will embrace these changes 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.

¹ Summary of HIPAA Privacy Rule, <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html>



Thank you for your support of telehealth. We encourage you and your colleagues to consider amendments to Senate Bill 541 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 that contains the text "ATA ACTION".

Kyle Zebley
Executive Director
ATA Action