

The Honorable Gus Bilirakis
Chair
House Energy and Commerce Innovation, Data, and Commerce Subcommittee
2125 Rayburn Office Building Washington, DC 20515

The Honorable Jan Schakowsky
Ranking Member
House Energy and Commerce Innovation, Data, and Commerce Subcommittee
2125 Rayburn Office Building Washington, DC 20515

The Honorable Tim Walberg
Vice Chair
House Energy and Commerce Innovation, Data, and Commerce Subcommittee
2125 Rayburn Office Building Washington, DC 20515

Re: ATA Action Feedback on American Privacy Rights Act (APRA)

Dear Chair Bilirakis, Ranking Member Schakowsky, and Vice Chair Walberg,

We are writing on behalf of the American Telemedicine Association (ATA), the only organization focused solely on advancing telehealth, and ATA Action, the ATA's advocacy arm, to provide our feedback on the American Privacy Rights Act (APRA).

Thank you for the Energy and Commerce Committee's consistent bipartisan support for patient access to telehealth. Your efforts have significantly advanced our collective mission to deliver high-quality care to Americans regardless of their location.

We are particularly grateful for your work in drafting the American Privacy Rights Act aimed at establishing national consumer data privacy rights and setting standards for data security. We fully endorse the need for a consistent national approach to privacy, as reflected in the [ATA's Health Data Privacy Principles](#). Such a national framework is essential to mitigate the complexity and financial burdens faced by organizations, especially our smaller members with fewer resources, in delivering clinically appropriate telehealth services across state lines.

However, we have some significant concerns with the current draft of the legislation, also reflected in our privacy principles. As it stands, it does not pre-empt many existing state laws in this area, which may result in additional layers of compliance rather than removing barriers. This could hinder rather than help organizations striving to provide high-quality telehealth care.

First, in order to derive the benefits of a national data use and information privacy framework, such as reduced compliance costs and legal clarity, we believe that the Act should clearly preempt the patchwork of state data privacy laws recently enacted across the nation which seek to regulate the same sets of covered health data. We recommend changing Section 20(a)(3)(N) to read as follows:

(N) Provisions of laws that protect the privacy of health information, healthcare information, medical information in the possession of a provider of healthcare or health care service plan, medical records, HIV status, or HIV testing.

This change would preempt state laws that cover health data use and privacy, while preserving state laws that deal with actual medical records covering patient health conditions. For example, state laws that protect medical records created by doctors interacting with patients would not be preempted, but state laws that regulate how health data is collected by a phone application or an over-the-counter purchase of aspirin would be preempted and solely governed by federal law.

Second, Section 3 data minimization requirements may create conflicting and overly burdensome obligations for processors of health information. For example, the permitted purposes exceptions for marketing and advertising exclude sensitive covered data (including health data) and therefore appear to significantly limit these uses for health entities even when a consumer has consented or chosen not to opt out. It is also unclear if this draft language would allow for the use of health data in developing innovative internal tools, such as artificial intelligence used in consumer interactions and business operations. The value-added benefit of these restrictions is also unclear, as covered entities are already in possession of this data and the consumer has previously consented to collection.

Finally, we are particularly concerned about the enforcement regime predicated on a private right of action. We believe this will impose undue burdens on organizations by opening the door to potential frivolous lawsuits, which could divert valuable resources away from patient care.

We strongly hope that the committee will reconsider these provisions as the bill advances. Please know that the ATA and ATA Action are available as resources as you continue to refine this important legislation. We believe that with thoughtful adjustments, this bill can better support access to telehealth while ensuring robust consumer data privacy.

Thank you for your continued dedication and hard work.

Kind regards,

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

Kyle Zebley
Executive Director
ATA Action