ata ACTION
Telehealth Policy to Transform Healthcare

February 3, 2026

The Honorable Joy A. San Buenaventura
Chair, Senate Committee on Health and Human Services
Hawai'i State Legislature
Room 213, Hawaii State Capitol
415 S Beretania St., Honolulu, HI 96813

The Honorable Brandon J.C. Elefante
Chair, Senate Committee on Labor and Technology
Hawai'i State Legislature
Room 217, Hawaii State Capitol
415 S Beretania St., Honolulu, HI 96813

RE: ATA ACTION COMMENTS ON SENATE BILL 2281

Dear Chair San Buenaventura, Chair Elefante and Members of the Senate Committees on Health and Human Services and Labor and Technology,

On behalf of ATA Action, I am writing to provide comments for your consideration as you evaluate Senate Bill 2281 regarding the use of artificial intelligence (AI) in healthcare. While this legislation is well intended, we believe further refinement and stakeholder input is necessary before this legislation advances.

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 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.

As artificial intelligence has continued to become more refined, healthcare entities have begun to utilize this technology in many aspects of care delivery due to its potential to improve quality and service capacity at every stage of the care journey. AI-powered technologies are being deployed to analyze data quickly and accurately to assist providers in making better informed decisions and identifying diseases earlier. AI is also helping healthcare entities streamline administrative tasks – such as improving patient scheduling or medication refill requests – which frees up more time for patient care. Accordingly, legislators and regulators have begun to consider the proper guardrails for the use of AI in healthcare, allowing for increased innovation and efficiency while ensuring patient care is not compromised. With this in mind, in 2023 the ATA adopted AI Policy Principles (updated in 2025) to help guide policies that enhance patient and provider trust, safety, and efficacy of AI adoption as a tool in healthcare, including in telehealth.

While our organization stands in support of the intent behind SB 2281, we believe significant refinement and clarification is necessary before sweeping legislation like this is put into effect, along with a robust stakeholder process. Our concerns are enumerated below.

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Overly Broad Definitions Will Create Confusion and Burdens for Providers and Patients

The definition of a "consequential decision" in SB 2281 is very broad with "a decision that has a significant effect on the physical or mental health of a patient" having the potential to include essentially any patient recommendation. For example, it is widely accepted that a healthy diet and adequate amount of sleep can improve mental and physical health. Would a decision to recommend to a patient that they get more sleep or eat healthier be considered as a consequential decision under this legislation? Likewise, the definition of "substantial factor" is extremely broad as it includes any AI generated factor or recommendation that serves "as *a basis* to make a consequential decision," which has the potential to capture many use cases of AI in a healthcare setting.

Taken together these broad definitions could implement the requirements of the legislation for routine uses of AI, likely discouraging their use all together to the detriment of provider efficiency and patient care. For example, under these definitions a decision to prescribe or alter a dosage of blood pressure medication would be considered a "consequential decision." If a provider is using a blood pressure cuff with AI recommendations to assist whether to change blood pressure medication, the cuff's recommendations could be capable of altering the decision. Alternatively, a provider using an AI powered medical search platform for consultation, as providers do regularly, could also impact the provider's approach to prescribing blood pressure medication. These use cases, for one patient and one condition, would then prompt the litany of disclosure, notification, oversight and opt-out requirements entailed in SB 2281 – requirements that present enough operational challenges that they all but guarantee that beneficial AI uses will not be utilized in a healthcare context.

Concerns that Operational and Oversight Requirements are Unworkable in Healthcare Settings

As stated in the ATA's AI Policy Principles, transparency is crucial to building trust and protecting consumers within AI deployment and it should be clearly disclosed to users when they are interacting with AI or when AI is used to materially influence patient care. While this legislation speaks to that intent, as currently drafted, we fear these requirements are unworkable in a healthcare setting and could unintentionally discourage the use of new and innovative technologies by providers.

The series of requirements that apply anytime AI is used as a "substantial factor" in consequential decisions, including written statements describing the data used, the opportunity to correct personal data and several opt-outs, among other requirements, are overly onerous and undermine the efficiencies that the use of AI in healthcare can produce. Additionally, while the requirement for opportunity to appeal a consequential decision is considered during emergency situations, emergency situations are not contemplated for the rest of the requirements. This will force providers to choose between writing and providing the written statement and fulfilling opt-out requirements in an emergency, or not using beneficial AI uses to assist with patient care.

These same concerns apply to the oversight personnel requirements which would see "artificial intelligence oversight personnel" review, evaluate and validate or override any AI generated output before a provider can use it. As previously stated, this requirement undermines efficiency and does not take emergency situations where AI outputs may be useful into account. Furthermore, this requirement would be particularly onerous for small provider groups or digital entities who could opt against using beneficial AI uses in delivering care to avoid the cost of additional staff or contractors for this oversight role. Finally, the legislation currently provides little information or clarity on what would qualify an individual

as capable of serving as AI oversight personnel. While the Department of Health would be directed to undertake rulemaking to determine the qualifications of oversight personnel, this legislation would go into effect immediately upon passage, creating compliance confusion for providers currently using AI to assist in the delivery of healthcare while rulemaking is undertaken.

Consideration of FDA Cleared Devices

As currently drafted, SB 2281 does not take into account FDA-cleared products, treating all products the same, which we believe is harmful to patient care. FDA-regulated digital therapeutics and AI tools are held to rigorous standards, including quality management systems, cybersecurity requirements and mandatory adverse event reporting, ensuring both safety and efficacy. Our organization represents Digital Therapeutics, which are clinically validated and FDA regulated Software as a Medical Device products that incorporate artificial intelligence and other technologies into treatments delivered to patients through phones, tablets, computers, and VR headsets. The FDA approved its first prescription digital therapeutic in 2017 and has since approved more than 20 through this rigorous review process under both the Biden and Trump administrations.

These products undergo clinical validation, are subject to pre- and post-market oversight and involve regulated healthcare practitioners as gatekeepers, protecting patients throughout the care process. In contrast, unregulated mobile health apps operate without these safeguards, rely only on general consumer protections, and may compromise patient data while making unproven health claims. Maintaining the distinction between regulated and unregulated products is essential to protect patients while allowing safe, evidence-based digital interventions to thrive. Indeed, given the existing federal oversight, Colorado's AI Act – the country's first comprehensive AI law – exempts high-risk AI systems already approved, authorized, or certified by the Food and Drug Administration (FDA).

Record Keeping Provisions Should Consider Third-Party Vendors and Entities

The section of the bill regarding monitoring, performance evaluation and record keeping includes several commonsense requirements that put reasonable requirements on providers using AI to ensure patient safety and mitigate basis. However, this section would also place several requirements on the information that providers must maintain, such as the training data of artificial intelligence systems. Currently, there are few health care providers that are developing their own AI systems with most instead deploying AI systems developed by third-parties or vendors that the provider has purchased or licensed for their use. Therefore, providers are unlikely to have access to training data, as this would be closely guarded by the developer. ATA Action believes that this legislation needs to take this reality into account to ensure that impossible to meet requirements are not placed on providers using AI that is not developed in house.

Reporting Requirements Present Potentially Onerous Compliance Regimes

While we understand the intent behind the requirement to file annual reports to the Department of Health to ensure providers are compliant with the provisions of this legislation, our organization believes that this annual requirement is overly onerous and instead would be better served through a compliance statement or attestation. This would require providers to document their compliance program and have this information readily available for audit by the Department, without the tall task of an annual report. The annual report requirement would be particularly onerous for small provider groups or digital entities serving small, but crucial, client populations such as patients receiving treatment for opioid use disorder,

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reproductive health or mental health. These companies have small compliance teams and could opt against using innovative and beneficial AI systems in the healthcare setting, to the detriment of patients, in order to avoid expensive and onerous compliance regimes created by an annual reporting requirement. Furthermore, any reporting or compliance requirements should include common sense protections regarding proprietary information and intellectual property protections.

Thank you for the opportunity to comment and for your consideration of these important issues. As your committees consider this legislation the implications of AI regulations on healthcare entities, we are happy to serve as a resource. If you have any questions or would like to further discuss ATA Action's perspective on this critical issue, please contact us at hyoung@ataaction.org.

Kind regards,

Hunter Young

Hunter Young
Head of State Government Relations
ATA Action