ata ACTION
Telehealth Policy to Transform Healthcare

May 11, 2026

The Honorable Steven Otis
Chair, Science and Technology Committee
New York State Assembly
LOB 739
Albany, NY 12248

RE: ATA ACTION CONCERNS REGARDING S. 9269/A. 10357 – NEW YORK HEALTH INFORMATION PRIVACY ACT

Dear Chair Otis and members of the Committee on Science and Technology,

On behalf of ATA Action, I am writing to share our concerns regarding S. 9269/A. 10357, the New York Health Information Privacy Act ("NY HIPA"). ATA Action previously engaged in opposition to the prior version of this legislation, S. 929/A. 2141, through standalone advocacy, authoring an op-ed raising our concerns and signing on to a coalition letter with almost 50 other organizations urging a Governor's veto of the legislation. We appreciate the meaningful improvements made to this new draft. The removal of the 24-hour waiting period before seeking authorization and changes to the exemptions – particularly for HIPAA-covered entities and business associates – represent substantive steps forward.

However, several core concerns from our prior opposition remain unresolved and, in some respects, have become more pronounced in this legislation. We remain concerned that the NY HIPA, as introduced, would impose sweeping obligations on telehealth providers and other health-adjacent entities that go well beyond any comparable consumer health data framework enacted in other states. We urge the Committee to consider the targeted amendments described below before advancing this legislation.

ATA Action is the affiliated policy and legislative advocacy arm of the American Telemedicine Association. ATA Action is the leading advocacy organization dedicated to advancing policy and accelerating the adoption of technology-enabled healthcare. Working collaboratively with federal and state legislators and policymakers, our organization drives industry momentum by influencing legislative and regulatory developments in telehealth, virtual care, remote patient monitoring, artificial intelligence in health, health data privacy, private sector healthcare investment, and more. We represent a diverse membership – including hospital systems, technology companies, professional associations, direct-to-consumer digital health providers, payers, pharmaceutical manufacturers, digital therapeutics developers, and remote monitoring organizations.

The Definition of "Regulated Health Information" Remains Overbroad

The NY HIPA retains an extraordinarily broad definition of "regulated health information" and, in certain respects, expands it relative to S. 929. The new draft enumerates thirteen specific categories of covered information – including IP addresses, cookie identifiers, device identifiers, precise

location information, and any data "derived or extrapolated from nonhealth information" through algorithms or machine learning – that capture routine technical data. Under this definition, a telehealth platform's ordinary session logs, authentication records and technical support data could all qualify as regulated health information simply because they are collected in connection with a service that relates to health.

The bill's broad definition of "regulated health information" also far exceeds the HIPAA definition of "protected health information." By capturing not only an individual's health-related data as the statute intends, but *any* data that *could* be used to create an inference around an individual's health. ATA Action is concerned that providers and other online healthcare entities would be arbitrarily limited in their ability to communicate with current or potential New York residents about things such as reliable sexual health information, birth control options, obtaining over the counter medication or obtaining supplies. This is especially troubling for stigmatized conditions like sexual health, where online outreach and engagement might be the only way a patient would feel comfortable with treatment. Our organization believes the definition of "regulated health information" should be narrowed to track the definition of "protected health information" in the HIPAA Privacy Rule and to limit the reach to data of New York consumers. At a minimum, we strongly urge amendments to this definition to ensure it is narrowly tailored to achieve the legislation's objectives and not unnecessarily restrict access to care.

The Act Requires Onerous Authorization for Beneficial Uses That Are Permitted Under HIPAA

Under the proposed NY HIPA, a regulated entity would need a signed authorization to both collect and use a consumer's data for any purpose other than what is "strictly necessary" to provide the product or service that the consumer requested, absent a few narrow exceptions. While the new draft adds product development, improvement and repair of a product or service *requested by an individual* to the list of permissible purposes, that exemption will be difficult to implement because the legislation still *specifically prohibits* internal "research and development." We continue to be concerned about the NY HIPA's authorization mandates for many routine functions will slow service delivery and disrupt core operations.

For example, an entity would need to go through the Act's onerous authorization process for a number of common and beneficial uses of data: researching consumer data to understand how patients book appointments on the website, directly sending a customer a coupon for future health products, using customer data to improve websites experience, informing their patients of new clinical services they might be offering and prohibit a regulated entity from sending communications about its additional products or services to the consumer. However, a HIPAA-covered entity – and in some situations their contracted business associates – could engage in these same activities with the consumer's HIPAA protected health information without any need for specific authorization from the consumer under the HIPAA Privacy Rule.[1] This inconsistency not only undermines the stated intent

[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.

of the Act, it would afford differing rights to New York consumers and unequal burdens on entities based solely on being subject to HIPAA.

For telehealth providers, this standard creates particular problems. Quality assurance review, care coordination tools and patient outreach programs are all standard components of telehealth delivery that may not qualify as "strictly necessary" under a narrow reading of the bill's permissible purposes. Requiring patient-by-patient authorization for these baseline operational uses would create significant friction in care delivery and, paradoxically, could reduce the quality and continuity of care for the patients the bill aims to protect. We recommend replacing the "strictly necessary" standard with a proportionality or reasonable necessity standard consistent with peer state frameworks.

The Definition of "Sell" Does Not Exempt Routine Service Provider Transfers

As currently drafted, the NY HIPA defines "sell" to include any sharing of regulated health information for monetary or other valuable consideration, without exempting transfers to service providers. This omission conflicts with every other comprehensive privacy and consumer health data statute in the country – including those in Connecticut, New Jersey, California, and Washington – which expressly exclude disclosures to processors from the definition of "sale."

For telehealth providers, this creates serious operational problems. Telehealth delivery inherently involves a network of technology vendors, cloud providers, electronic health record systems and clinical support platforms, all of which receive regulated health information under service agreements in exchange for valuable consideration. Treating these routine service provider relationships as "sales" would require consent for every such transfer, effectively making standard telehealth infrastructure untenable. The Legislature should add a clear exemption for disclosures to service providers consistent with every comparable framework in the country.

The Authorization Requirements Remain Operationally Burdensome

Although the NY HIPA removes the 24-hour waiting period that ATA Action and the broader coalition opposed in S. 929, the authorization requirements remain substantially more burdensome than those in any comparable state framework. The bill requires that each authorization request be made "separately from any other transaction," present eleven discrete categories of information to the consumer, expire after no more than one year, and be provided alongside detailed disclosure of all service providers and third parties, monetary consideration, revocation mechanisms, and access and deletion rights.

For telehealth providers, this would require presenting patients with a dense, multi-element consent flow before routine data uses that are expected and unremarkable in a health care context. The cumulative effect of these requirements would create consent fatigue – patients dismissing detailed authorization requests for data uses that are genuinely routine – rather than meaningful privacy protection. We recommend streamlining the authorization requirements to focus on truly sensitive or non-obvious data uses and defining "transaction" to avoid requiring separate authorizations for closely related data processing activities.

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ATA Action shares the Legislature's commitment to protecting New Yorkers' health information. We appreciate the meaningful improvements made to the NY HIPA relative to the prior version of this legislation. However, the core structural issues described above would impose obligations on telehealth providers and the broader health technology ecosystem that goes beyond what any other state has required and that cannot be implemented without seriously disrupting access to care for New York patients.

We welcome the opportunity to work with the sponsor and the Committee to address these concerns through targeted amendments and to craft a framework that provides durable, meaningful protections without the operational consequences described above. If you have any questions or would like to discuss further the telehealth industry's perspective, please contact me at hyoung@ataaction.org.

Kind regards,

Hunter Young

Hunter Young
Head of State Government Relations
ATA Action