ata ACTION
Telehealth Policy to Transform Healthcare

June 26, 2026

The Honorable Cynthia Stone Creem
Majority Leader
Massachusetts State Senate
24 Beacon St.
Room 312-A
Boston, MA, 02133

The Honorable Barry R. Finegold
Massachusetts State Senate
24 Beacon St.
Room 109-D
Boston, MA, 02133

The Honorable Patrick M. O'Conner
Assistant Minority Leader
Massachusetts State Senate
24 Beacon St.
Room 419
Boston, MA, 02133

The Honorable Michael J. Moran
Massachusetts House of Representatives
24 Beacon St.
Room 343
Boston, MA, 02133

The Honorable Tricia Farley-Bouvier
Massachusetts House of Representatives
24 Beacon St.
Room 274
Boston, MA, 02133

The Honorable David T. Viera
Third Assistant Minority Leader
Massachusetts House of Representatives
24 Beacon St.
Room 312-A
Boston, MA, 02133

RE: ATA Action Comments Regarding The Massachusetts Data Privacy Act

Dear Members of the Conference Committee on the Massachusetts Data Privacy Act

On behalf of ATA Action, I am submitting the following comments regarding S. 2619 *An Act Establishing the Massachusetts Data Privacy Act* and the proposed House amendments, H. 5479. We commend the Legislature's commitment to enhancing consumer privacy protections. However, several provisions in the Senate-passed version may unintentionally restrict responsible uses of health data, impede the delivery of telehealth services, and create operational challenges for healthcare providers and digital health companies. While the proposed House amendments addressed many of our organization's concerns with S. 2619, we do not believe that a private right of action is an appropriate enforcement mechanism and instead enforcement should be left in the qualified hands of the Attorney General.

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.

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ATA Action Concerns Regarding S. 2619

ATA Action has several targeted concerns regarding the sensitive data (including health data) privacy provisions of S. 2619, which we believe could create conflicting obligations for telehealth providers and introduce unnecessary compliance uncertainty We strongly encourage the Committee to instead adopt the framework outlined in H. 5479, which appropriately balances consumer protection with operational feasibility, including strong protections for both sensitive and consumer health data Specifically, ATA Action offers the following recommendations:

S. 2619's strict data minimization standard is unworkable
Section 5(a)(iii) of S. 2619 mandates that, an entity would be only allowed to collect, process, or transfer sensitive data when it is "strictly necessary" to provide the specific product or service requested—absent only narrow exceptions. This overly rigid framework would prohibit common, beneficial, and low-risk activities that require processing of sensitive data (broadly defined). For example, healthcare entities and digital health platforms would be prohibited (even if they had authorization) from activities such as informing patients about new clinical offerings, using the data to improve product and service offerings, improving customer support operations, or training and improving new and developing technologies. In effect, this will deteriorate the range and quality of health services, products and technologies offered to Bay Staters.

In contrast, under the HIPAA Privacy Rule, covered entities—and, in certain cases, their business associates—may perform these same activities using protected health information *even without* obtaining separate authorization. This inconsistency creates divergent rights for Massachusetts consumers and unequal compliance burdens on entities doing business in the Commonwealth based solely on HIPAA exempt status.

We respectfully urge the Conference Committee to instead adopt Section 6 from H. 5749, which includes a "reasonably necessary and proportionate" data minimization standard and requires controllers to obtain affirmative consent to collect and process sensitive data.

Implementing the framework in H. 5749 removing the "strictly necessary" qualification will better align with HIPAA and avoid unworkable "strict necessity" standard that could unintentionally restrict legitimate, privacy-protective uses of data in telehealth and health technology applications. This approach preserves strong consumer protection while maintaining the flexibility necessary for innovation, patient communication, and high-quality care delivery.

Ban on the sale of data is inconsistent with HIPAA
Section 5(a)(iv) of S. 2619 prohibits a controller from selling sensitive data, with no consideration of consumers' explicit authorization. However, under the HIPAA Privacy Rule, 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.

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

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Further, given the broad definition of "sale" that extends beyond monetary exchange, S. 2619 will prohibit many health care entities from using third-party tools. Nearly all healthcare provider entities use third-party tracking technologies to understand user behavior, improve their public facing websites and digital services, and ultimately make it easier for the public to access the information and services that they count on each and every day. S. 2619 would effectively prohibit healthcare entities subject to the Act (such those who offer cash pay services without taking insurance) from using these beneficial technologies while their HIPAA covered counterparts (not subject to this bill) can continue using them.

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 Committee adopt the House amendment provisions regarding the sale of sensitive data be amended to better align with HIPAA and other states such as Connecticut, Delaware and Rhode Island (which all require opt-in consent to process sensitive data, including for purposes of sale.

State attorneys general should have sole enforcement authority when privacy laws are violated
ATA Action is appreciative to the House Ways and Means Committee for proposing H. 5479 which addressed the concerns enumerated above with S. 2619. However, our organization is concerned about the addition of a private right of action that H. 5479 would add to this legislation.

ATA Action believes that state attorneys general should have appropriate authority to investigate possible violations of privacy laws and determine when it is appropriate to pursue sanctions against bad actors. ATA Action private rights of action as a method of enforcing privacy laws are prone to a lack of clarity, result in frivolous lawsuits and result in out-of-court settlements that exacerbate legal uncertainty. We recommend the Committee adopt the provisions in S. 2619 that give exclusive enforcement authority to the Attorney General.

ATA Action hopes that the General Court will embrace the amendments proposed by H. 5479, while removing the private right of action, to simultaneously ensure patient data is effectively protected while not placing undue burdens on providers. We believe that this will reflect a fair balance between these two significant public policy goals.

We encourage you and your colleagues to consider our comments on this bill to ensure easy and efficient access to high-quality health care services in Massachusetts. 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 hyoung@ataaction.org.

Kind regards,

Hunter Young

Hunter Young
Head of State Government Relations
ATA Action