



April 23, 2024

Hon. Virginia Lyons
Chair, Senate Committee on Health & Welfare
Senator, Chittenden Southeast District
State House - Room 17
115 State Street
Montpelier, VT 05633-5301
vlyons@leg.state.vt.us

RE: ATA ACTION COMMENTS ON HOUSE BILL 121

Dear Chair Lyons and members for the Senate Committee on Health & Welfare

On behalf of ATA Action, I am submitting the following comments on House Bill 121 and new redrafts of that bill emerging in the Senate along with a small but important recommendation to improve the final version of 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.

Telehealth is and will remain an important way Americans access the healthcare they need. As more providers come online – figuratively and literally – ATA Action urges increased vigilance by the healthcare community to ensure these practices meet standards for patient safety, data privacy, and information security. Indeed, patient privacy and the protection of patient data are prerequisites for connected care and core principles for our organization. State and federal regulatory schemes should allow for innovation and support the advancement of technology-assisted care; however, telehealth and virtual care platforms, systems, and devices should be required to mitigate cybersecurity risks and provide for patient safety and confidentiality.

In light of the advancement of privacy legislation in many states across the country to address such concerns, the American Telemedicine Association has published [Health Data Privacy Principles](#) (also attached) to aid legislators in crafting legislation that supports both secure data practices and patient access to care. ATA Action hopes these policy principles are helpful in crafting forward-thinking privacy legislation in Vermont. Specifically, ATA Action makes the following recommendations:

Legislators should seek uniform privacy laws consistent across states and industries: ATA Action appreciates the 'omnibus' approach that HB121 seeks to take to uniformly address data privacy concerns across industries. As states adopt privacy laws across the nation, efforts to establish uniformity with existing federal and other state standards would reduce both complexity and costs regarding compliance, as well as confusion for consumers. An 'omnibus' policy structure is better suited for accomplishing this goal. As HB121 continues to work through the legislative process and the Senate

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begins to offer and finalize its own version of a data privacy bill, we hope this Committee and the Vermont legislature will strive for uniformity with these existing state regulatory frameworks and avoid burdensome requirements that would be specific only to Vermont.

To that end, ATA Action has serious concerns about the legislature possibly advancing Senate Bill 173, 'An Act Relating to the Collection, Sharing, and Selling of Consumer Health Data'. SB173 treats health data as a discreet, sectoral category of data separate from other data, thereby setting complex and asymmetrical restrictions on users of health information not borne by other processors of consumer data which may reasonably require similar protections. Instead, the predominantly comprehensive privacy approach that both HB121 and the most recent redrafts of it by the Senate Committee on Economic Development & Housing take with regard to consumer health data attempts a level playing field and common understanding of data practices across industries, while significantly protecting Vermont consumer's health data under the bill's specific provisions regarding "sensitive data".

Under SB 173, however, a regulated entity would need a specific consent to both collect and use a consumer's data for any purpose other than to provide the product or service that the consumer requested. This would, for example, prohibit a regulated entity from sending communications about its own health products or services to the consumer. However, a HIPAA-covered entity – and in some situations their contracted third-party business associates – could engage in that same activity with the consumer's HIPAA protected health information without any need for consent from the consumer under the HIPAA Privacy Rule 3. This inconsistency not only undermines the stated intent of the Act, but it would also afford differing rights to Vermont consumers and unequal burdens on entities based solely on being subject to HIPAA. We suggest aligning the permitted uses and disclosures of the Act, at a minimum, with the HIPAA Privacy Rule, including that consumer health data may be used for purposes of treatment, payment, and health care operations.

Include an exemption for healthcare data already protected under Vermont'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 2417(a)(2) of HB121 which exempts "protected health information" under HIPAA from the requirements of the Act. This is important to ensure that entities already observing a complex system of regulations under both federal and state laws do not have to apply those additional layers of compliance requirements to the same sets of health data.

By this same logic, this data-level exemption should also be extended for non-HIPAA covered entities and providers when health data is collected, used, or disclosed in accordance with already existing Vermont laws and regulations pertaining to health information. 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 Section 2417 in addition to the existing language on PHI under HIPAA:

(2A) Patient health information that is governed by state law, including but not limited to 18 V.S.A. §1881 et. sec., 26 V.S.A § 1354 et. sec., and any additional state laws, rules, and regulations regarding protection of health information and health records.

ATA Action hopes that the Committee will embrace this amendment - one that was already embraced within the California and Connecticut data privacy laws - to simultaneously ensure patient data is

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effectively protected while not placing undue burdens on providers. We believe that this strikes a fair balance between these two significant public policy goals.

Thank you for your support of telehealth. We encourage you and your colleagues to support the overall approach to the protection of consumer health data privacy put forward within the most recent Senate draft of HB121 and to support the ATA requested amendment to the legislation previously discussed in order to ensure easy and efficient access to high-quality health care services in Vermont without creating statutory inconsistencies. Please do not hesitate to let us know how we can be helpful in 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 grid background.

Kyle Zebley
Executive Director
ATA Action

cc: Sen. David Weeks, Vice Chair; Sen. Ruth Hardy; Sen. Martine Larocque Gulick; Sen. Terry Williams;
Committee Assistant Kiki Carasi-Schwartz