



October 16, 2024

The Honorable Christina Henderson
Chairperson, Committee on Health
Council of the District of Columbia
The John A. Wilson Building,
1350 Pennsylvania Avenue, NW
Washington, DC 20004

RE: ATA ACTION COMMENTS IN OPPOSITION TO B25-0930, THE ‘CONSUMER HEALTH INFORMATION PRIVACY PROTECTION ACT OF 2024’

Dear Chairperson Henderson and members of the Committee on Health:

On behalf of the ATA Action, I am submitting the following comments opposing B25-0930 along with the following recommendations to improve 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](#) 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 the District of Columbia.

ATA Action has several concerns that B25-0930 (“the Act”) runs counter to sound data privacy policy and puts undue burdens on telehealth providers due to its complexity and undefined breadth. Specifically, ATA Action makes the following recommendations:

Legislators should seek uniform privacy laws consistent across states and 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. Unfortunately, B25-0930 is both specific only to healthcare data and creates uneven burdens on providers relative to federal laws (discussed below). Instead, ATA Action encourages legislators to

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take an approach similar to Virginia (see the Virginia Consumer Data Protection Act¹) and Connecticut (see the Connecticut Consumer Data Privacy and Online Monitoring Act²). As B25-0930 continues to work through the legislative process, we hope this Committee and the District Council will strive for uniformity with these existing state regulatory frameworks and avoid burdensome requirements that would be specific only to the District of Columbia.

Make clear that HIPAA-covered entities are exempt from this Act: ATA Action believes the current HIPAA rules provide detailed and appropriate protections for the confidentiality of protected health information, as they have been a fixture in our healthcare system for more than two decades. Imposing additional, duplicative and potentially inconsistent regulation on HIPAA covered-entities would create unnecessary and inappropriate burdens and cost. The Act also creates the opportunity for significant confusion for regulated entities through the language in Sec. 11. (a)(1)(A) which states that health information protected under HIPAA is exempt from the provisions of this legislation. Exempting information, but not the HIPAA regulated entities, will create unnecessary compliance confusion and should be revisited. ATA Action recommends B25-0930 be revised to clearly exempt HIPAA-covered entities and business associates from the provisions of this Act.

Restrictions on collection and use of data are inconsistent with and exceed HIPAA requirements, setting up an unequal framework for District providers and consumers: ATA Action believes state consumer privacy laws should be consistent with and not exceed HIPAA's standards to the greatest extent possible. However, we are concerned that B25-0930 imposes obligations and requirements that exceed HIPAA requirements and other existing state and federal regulatory frameworks, creating significant uncertainty and confusion about compliance. The lack of clarity is particularly troubling as our organization represents both HIPAA and non-HIPAA covered entities, who nonetheless share a commitment to protect the confidentiality of patient personal information.

Under B25-0930, for example, a regulated entity would need a specific consent to collect consumer health data. This could prohibit a regulated entity from sending communications about its own 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 specific consent from the consumer under the HIPAA Privacy Rule.³ This inconsistency would afford differing rights to District 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.

B25-0930 also includes an unprecedented requirement that states that any valid authorization must have an expiration date and that it must be within a year of signing. Instead, ATA Action recommends aligning with the HIPAA authorization requirements, which remains valid until it expires or is revoked by the

¹ Virginia Consumer Data Protection Act, VA Code Ann. § 59.1-575 *et seq.*, <https://law.lis.virginia.gov/vacodefull/title59.1/chapter53/>.

² Connecticut Consumer Data Privacy and Online Monitoring Act, Conn. Gen. Stat. § 42-515 *et seq.*, https://www.cga.ct.gov/current/pub/chap_743jj.htm.

³ *Marketing*, U.S. Dept. of Health and Human Servs. (July 26, 2013), <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/marketing/index.html>.



individual patient. We recommend the Act align with HIPAA and not prescribe limits on the authorization.

Attorneys general should have sole enforcement authority when privacy laws are violated: B25-0930 states that any violation of the Act is an unfair and deceptive trade practice pursuant to D.C. Official Code § 28–3904, and therefore subject to § 28–3905, complaint procedures. § 28–3905 includes both personal and class rights of action, in addition to actions available to the Attorney General and Office of Consumer Protection against violators.

ATA Action believes that state attorneys general should have sole, appropriate authority to investigate possible violations of privacy laws and determine when it is appropriate to pursue sanctions against bad actors. ATA Action also recommends that legislators avoid including private rights of action as a method of enforcing privacy laws, which are prone to a lack of clarity, result in frivolous lawsuits and out-of-court settlements that exacerbate legal uncertainty. ATA Action hopes that the Committee will embrace these changes so as to simultaneously ensure patient data is effectively protected while not placing undue burdens on providers. We believe that this strikes a fair balance between these two significant public policy goals.

While ATA Action does have significant concerns with B25-0930, there are positive provisions. Specifically, the consumer rights in Section 5 are well aligned with ATA Action’s Health Data Privacy Principles and we are grateful to the sponsor for including these essential consumer rights in this legislation. We are also supportive of the first sentence of Section 8 which clearly states that it is unlawful to sell consumer health data without first obtaining valid authorization from the consumer, although we maintain our disagreement with the need to obtain a separate and distinct authorization from collection and sharing of that data.

Thank you for your support of telehealth. We encourage you and your colleagues to consider our amendments to B25-0930 to ensure easy and efficient access to high-quality health care services in the District of Columbia. 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 kzebley@ataaction.org.

Kind regards,

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

Kyle Zebley
Executive Director
ATA Action