



November 26, 2024

The Honorable Tyrone Carter
Chair, Regulatory Reform Committee
Michigan House of Representatives
Post Office Box 30014
Lansing, MI 48909-7536

The Honorable Tullio Liberati
Majority Vice Chair, Regulatory Reform Committee
Michigan House of Representatives
Post Office Box 30014
Lansing, MI 48909-7536

The Honorable Mike Mueller
Minority Vice Chair, Regulatory Reform Committee
Michigan House of Representatives
Post Office Box 30014
Lansing, MI 48909-7536

RE: ATA ACTION COMMENTS ON HOUSE BILL 6077

Dear Chair Carter, Vice Chairs Liberati and Mueller and members of the House Regulatory Reform Committee,

On behalf of ATA Action, I am writing to comment on House Bill 6077 relating to reproductive health data and consumer privacy. Our organization believes that patient privacy is a necessity of healthcare and supports the Legislature's efforts to ensure sensitive reproductive data is protected but ask the Committee to consider further clarity and amendments before moving this legislation forward.

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 coverage and fair payment 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.

Our organization understands that the Legislature seeks to ensure that consumers' sensitive reproductive data is not sold or used without users' consent, particularly those entities that are not subject to privacy laws that apply to health care providers. We wholeheartedly support the Legislature's efforts to protect Michiganders' private information. However, we believe that certain provisions within this bill would create confusion for and place unnecessary burdens on technology platforms which facilitate interactions between state-licensed health care providers and patients.

The definitions of reproductive health data, reproductive health service, and reproductive health status are too broad and cause confusion: ATA Action is concerned the expansive definitions in this bill do not

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provide enough clarity as to the types of information that are being targeted by these privacy provisions and exceed the intent of the legislation. Specifically, HB 6077's definition of "reproductive health data" broadly includes "information that is linked or reasonably linkable to an individual and that identifies the individual's past, present, or future reproductive health status." The correlated definition for "reproductive health status" is equally expansive, capturing a wide range of information which could then be subject to regulation under this Act, even if the patient is not seeking any type of reproductive health care and where "non health information" is provided. Taken together, the use of vague and seemingly all-encompassing language in these definitions offers telehealth providers and entities with little direction as to whether or not the requirements of this bill apply to them, raising many questions in the process. For example, what is information that related to an individual's "type of sexual activity"? Would information about the age of consumer thereby constitute information fall under the Act since an entity might be able to extrapolate about that consumer's reproductive status or fertility? What about where the data is deidentified?

ATA Action is concerned that providers and other online healthcare entities would be arbitrarily limited in their ability to communicate with current or potential Michigan residents about reliable reproductive and sexual health information, obtaining over the counter medication, or obtaining supplies. This is especially troubling for stigmatized conditions like reproductive or sexual health, where online outreach and engagement might be the only way a patient would feel comfortable with treatment. We suggest clarifying the language to limit the scope of the proposed legislation to health information and that specifically relates "reproductive health services" to capture the intent of the bill. Further, ATA Action encourages the Committee to make amendments to narrow the definition of "reproductive health data" to explicitly exclude deidentified data from regulation by this act.

Attorneys general should have sole enforcement authority when privacy laws are violated: Section 13 of HB 6077 allows for individuals to bring civil action against persons that committed violations of the Act, in addition to actions available to the Attorney General 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 and result in frivolous lawsuits and out-of-court settlements that exacerbate legal uncertainty. ATA Action hopes that the Committee will embrace these changes to both 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.

We would like to reiterate our organization's belief that patient privacy is a necessity of healthcare and our support of the Legislature's efforts to protect sensitive reproductive data. Our concerns are rooted in the broadness of the definitions present in HB 6077 which create questions about what services, and thus what providers, would be implicated by this legislation and other sections of the Michigan code. This confusion could have the unintended consequence of limiting telehealth access to reproductive health care as providers could be hesitant to offer these services with the ambiguity around their definition and responsibilities.

We thank you for the opportunity to comment. We urge you and your colleagues to consider these concerns to ensure efficient and effective access to high-quality, affordable reproductive health care. Please do not hesitate to let us know how we can be helpful in your efforts to advance common-sense

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telehealth policy in Michigan. If you have any questions or would like to discuss the telehealth industry's perspective further, please contact me at kzebley@ataaction.org.

Kind regards,

A handwritten signature in black ink that reads "Kyle Zebley". The signature is fluid and cursive, with the first name "Kyle" and last name "Zebley" clearly distinguishable.

Kyle Zebley
Executive Director
ATA Action