



The Honorable Michelle Lopes Maldonado  
Virginia House of Delegates, District 20  
General Assembly Building  
201 North 9<sup>th</sup> Street  
Richmond, Virginia 23219

**RE: ATA Action Comments on [HB2094](#)**

Dear Delegate Maldonado:

On behalf of the ATA Action, I am writing to offer feedback on HB2094, the High Risk Artificial Intelligence Developer and Deployer Act. ATA Action appreciates the work that you and stakeholders have done thus far on this bill and write specifically with comments on the bill's provision regarding use of AI in delivering or administering healthcare services.

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 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.

As artificial intelligence (AI) has continued to become more refined, healthcare entities have begun to utilize this technology in many aspects of care delivery due to its potential to improve quality and service capacity at every state of the care journey. AI-powered technologies are being deployed to analyze data quickly and accurately to assist providers in making better informed decisions and identifying diseases earlier. AI is also helping healthcare entities streamline administrative tasks-- such as improving patient scheduling or medication refill requests--which frees up more time for patient care. Accordingly, legislators and regulators have begun to consider the proper guardrails for the use of AI in healthcare, allowing for increased innovation and efficiency while ensuring patient care is not compromised. With this in mind, last year the ATA adopted AI Principles to help guide policies that enhance patient and provider trust, safety, and efficacy of AI adoption as a tool in healthcare, including in telehealth.

Section 59.1-612 (K) if HB2094 makes clear that the bill's provisions do not apply to HIPAA covered entities (i) providing healthcare recommendations through AI that require a provider to implement and (ii) using AI powered services for administrative, financial, quality measurement, security, or performance improvement function. ATA Action appreciates and supports this exemption. Indeed, health care entities—and the technology partners and vendors they work with—already must follow a number of complex federal and state frameworks that address the intent of HB 2084. This exemption avoids HIPAA covered entities from being subject to additional, duplicative, and potentially inconsistent regulation, which creates unnecessary and inappropriate burdens and cost. Further, many of the bill's provisions could be difficult to operationalize in healthcare settings, where AI powered tools are often embedded into clinical workflows.

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901 N. Glebe Road, Ste 850 | Arlington, VA 22203  
Info@ataaction.org



While we support the exemption, ATA Action believes it must also include those non-HIPAA covered entities providing or supporting healthcare services, such as Virginia licensed healthcare providers that do not take insurance and the third-party services providers perform functions on their behalf. As currently drafted, the bill will subject Virginia healthcare providers and entities to two different standards without justification. In some cases, the same health care provider could be subject to two different statutory regimes based on the patients' forms of payment for services received. Moreover, low cost telehealth providers that are not HIPAA covered likely will be subject to additional administrative hurdles just to obtain or use AI-powered software, making these innovation solutions more expensive (at a minimum) and potentially unavailable. To resolve this issue, we recommend adding the following amendment to Section 59.1-612 (K):

The provisions of this chapter shall not apply to a developer, integrator, distributor, deployer, or other person that ~~is a covered entity within the meaning of the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) and the regulations promulgated under such federal act, as both may be amended from time to time, and~~ is providing (i) health care recommendations that (a) are generated by an artificial intelligence system and (b) require a health care provider to take action to implement the recommendations or (ii) services to or for a healthcare entity utilizing an artificial intelligence system for an administrative, financial, quality measurement, security, or performance improvement function

ATA Action hopes you will favorably consider and adopt these changes. Thank you for your support of telemedicine. We encourage you and your colleagues to consider amendments to [HB2094](#) to ensure easy and efficient access to high-quality health care services in Virginia.

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](mailto:kzebley@ataaction.org).

Kind regards,

A handwritten signature in black ink, appearing to read "Kyle Zebley", written over a light blue horizontal line.

Kyle Zebley  
Executive Director  
ATA Action

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