



June 22, 2022

The Hon. Frank Pallone, Jr., Chair  
Cmte. on Energy and Commerce  
United States House of Representatives  
2107 Rayburn House Office Building  
Washington, DC 20515

The Hon. Cathy McMorris Rodgers, Ranking Member  
Cmte. on Energy and Commerce  
United States House of Representatives  
1035 Longworth House Office Building  
Washington, DC 20515

The Hon. Jan Schakowsky, Chair  
Subcmte. on Consumer Protection and Commerce  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, DC 20515

The Hon. Gus Bilirakis, Ranking Member  
Subcmte. on Consumer Protection and Commerce  
United States House of Representatives  
2322 Rayburn House Office Building  
Washington, DC 20515

**Subject: The American Data Privacy and Protection Act**

Dear Chairman Pallone, Ranking Member McMorris Rodgers, Chairwoman Schakowsky, and Ranking Member Bilirakis:

On behalf of the Medical Professional Liability (MPL) Association and its members which insure approximately one million healthcare professionals and ten thousand hospitals and facilities throughout the United States, I would like to commend you for releasing a discussion draft of the “American Data Privacy and Protection Act.” This draft is an important step in providing uniform consumer data protections across our nation.

As work proceeds on this legislation, we encourage you to take a methodical and deliberate approach. Insurers already comply with an array of federal statutes addressing consumer data privacy/protection. It is imperative that additional legislation on this topic not create conflicting requirements or result in unintended consequences due to overlapping mandates. In order to ensure such an outcome, we ask that you allow additional time for stakeholders to analyze and provide input on the discussion draft. Expedited consideration of legislation with such far reaching potential as the “American Data Privacy and Protection Act” is in neither the consumers’ nor industry’s best interest.

With that said, we appreciate this opportunity to provide initial, general feedback on the draft legislation. There are several areas of the bill that we believe provide a solid base upon which to build the statutory framework for broad-based federal data privacy protections. These include:

- The exclusion of “publicly available information” from the definition of “covered data.”

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- Allowing data privacy/protection requirements to factor in considerations such as, but not limited to, the size of the covered entity, the nature of the data it collects, and the cost of implementing protections in relation to the potential risk (as in Sec. 103(b) and Sec. 208(a)(2)).
- Exemptions from regulation for entities that comply with existing federal data privacy laws, including the Health Information Technology for Economic and Clinical Health Act, the Health Insurance Portability and Accountability Act, and the Gramm-Leach-Bliley Act (although we believe these exemptions should be clarified).
- Exemptions for data collected and processed to “establish, exercise, or defend legal claims,” (although, again, we believe these exemptions should be clarified).

Each of these provisions is crucial to allowing medical liability insurers to provide the desired data privacy/protections without being unduly burdened, and we look forward to working with you to ensure that the final legislative language in each of these areas is as effective as possible.

At the same time, some aspects of the bill should be enhanced to ensure that data privacy and security measures are fair to both insurers and consumers and are appropriate for their respective needs.

- As noted above, the exemptions for entities in compliance with existing federal privacy laws and exemptions for data needed for legal actions should be clarified and strengthened.
- Sec. 210 allows for the Federal Trade Commission to develop and act on a study of “unified opt-out mechanisms.” We believe that before regulatory action is taken on this matter, it would be appropriate for the related Congressional committees to review the study and provide input before a rulemaking is implemented, and recommend legislative language to that effect.
- In Sec. 401, the allowed uses of funds collected from civil penalties would be clarified if specifically prohibited uses were also defined. In particular, we recommend a clear prohibition on providing any civil penalty funds to interests groups. Likewise, a similar prohibition should be included for any penalties collected as a result of state attorney general enforcement actions taken under Sec. 402. Such funds should be explicitly limited to compensation for those directly harmed by a violation of law and to offset the cost of government enforcement actions.
- We remain opposed to any private right of action in the “American Data Privacy and Protection Act,” as we do not believe such actions provide any meaningful benefit to consumers as a whole. MPL insurers are well aware of the flaws in our system of litigation, not the least of which is the time and expense consumed by civil litigation. Increasing the amount of civil litigation in this country will only increase costs to consumers in the long run, and reduce funds available for insurers to enhance their data privacy/protection efforts.

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As with any complex legislation of this kind, further modifications may be warranted as the bill proceeds through the legislative process. We believe the above referenced changes, however, are an initial, and significant, step in making the legislation more effective for both consumers and medical professional liability insurers.

In closing, the MPL Association appreciates this opportunity to provide input as the Energy & Commerce Committee proceeds with its work on the "American Data Privacy and Protection Act." Please do not hesitate to contact me at 301.947.9000 or via email at [batchinson@mplassociation.org](mailto:batchinson@mplassociation.org) should you need any further information.

Sincerely,

A handwritten signature in blue ink that reads "B. K. Atchinson". The signature is fluid and cursive, with the first name "B." and last name "Atchinson" clearly legible.

Brian K. Atchinson  
President & CEO