



**Changes Needed to Align  
H.R. 8152, the American Data Privacy and Protection Act (ADPPA)  
With HIPAA**

- ADPPA represents a bipartisan effort to establish a framework to safeguard data not covered by existing laws or regulations
- HIPAA's privacy and security protections have successfully been in place for over 20 years and patients overwhelmingly trust the safeguarding of their information when told it is protected by HIPAA
- While the bill takes several steps to strengthen privacy protections, the current language fails to sufficiently carve out HIPAA from the other provisions in the bill
- Some health data is not protected by HIPAA (e.g. data from wearables and some third-party applications) and should be regulated in order to protect patients and consumers
- Ensuring current HIPAA regulations are sufficiently carved out in the ADPPA will avoid unnecessary and conflicting regulations for HIPAA covered entities and their business associates
- These proposed changes to the ADPPA would provide clarity to federal agencies such as the Federal Trade Commission (FTC) and the Department of Health and Human Services (HHS) on the congressional intent ensuring HIPAA remains the gold standard for health care privacy
- We recommend the following changes to better align ADPPA with HIPAA, the current structure to regulate healthcare privacy:

**Clean Carve-Out for Covered Data Subject to Other Federal Data Protection Laws**

In Section 404(a), strike subsections (2) and (3) and substitute the following:

“(2) EXEMPTIONS. The following information and data is exempt from this Act:

“Protected health information” as defined under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) and its implementing regulations at 45 C.F.R. Parts 160-164 (“HIPAA”);

Patient identifying information for purposes of 42 U.S.C. § 290dd-2;

Identifiable private information for purposes of the federal policy for the protection of human subjects under 45 C.F.R. Part 46; identifiable private information that is otherwise information collected as part of human subjects research pursuant to the good clinical practice guidelines issued by The International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use; the protection of human subjects under 21 C.F.R. Parts 6, 50, and 56.

Information and documents created for purposes of the federal Health Care Quality Improvement Act of 1986 (42 U.S.C. § 11101 et seq.);

Patient safety work product for purposes of the federal Patient Safety and Quality Improvement Act (42 U.S.C. § 299b-21 et seq.);  
Information derived from any of the health care-related information listed in this subsection that is de-identified in accordance with the requirements for de-identification pursuant to HIPAA;  
Information originating from, and intermingled to be indistinguishable with, or information treated in the same manner as information exempt under this subsection that is maintained by a “covered entity”, “business associate” or “health care provider” as such terms are defined under HIPAA or a program or a qualified service organization as defined by 42 U.S.C. § 290dd-2;  
Data subject to Title V of the federal Gramm-Leach-Bliley Act (15 U.S.C. § 6801 et seq.);  
The collection, maintenance, disclosure, sale, communication, or use of any personal information bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living by a consumer reporting agency or furnisher that provides information for use in a consumer report, and by a user of a consumer report, but only to the extent that such activity is regulated by and authorized under the federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.);  
Personal data collected, processed, sold, or disclosed in compliance with the federal Driver’s Privacy Protection Act of 1994 (18 U.S.C. § 2721 et seq.);  
Personal data regulated by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g et seq.)

**Exclude Business or Professional Data from Covered Data**

In Section 2(8)(B)(ii) add “or business or professional” after “employee”.

In Section 2(8)(C) add “OR BUSINESS OR PROFESSIONAL” after “EMPLOYEE” in Line 7.

Strike Section 2(8)(C)(ii) and substitute the following:

“(ii) the business contact or identifying information of an employee or of a natural person acting in a business or professional capacity, including but not limited to acting as an owner, shareholder, director, trustee, officer, partner, or contractor, and such information shall include but not be limited to the natural person’s name, position or title, business or professional identifier, business telephone number, business address, or business email address, provided that such information is collected, processed, or transferred solely for purposes related to such natural person’s employment, business or professional activities;”

In Section 2(8)(C)(iii) add “or the emergency contact information of a natural person acting in a business or professional capacity” before “,provided” and delete “the employee” and substitute “such person”.

*As of September 6, 2022*