



April 18, 2023

The Honorable Jesse Gabriel, Chair
Privacy and Consumer Protection Committee
Capitol Office, 1021 O Street, Suite 5220
Sacramento, CA 95814

Re: AB 254 Confidentiality of Medical Information Act: reproductive or sexual health application information — SUPPORT

Dear Chair Gabriel,

Consumer Reports¹ writes in support of AB 254 which would extend long overdue privacy protections to some of our most personal and sensitive data. Last year we supported similar legislation to extend California's Confidentiality of Medical Information Act (CMIA) to data generated by mobile applications providing mental health services. Today we support AB 254's application of CMIA to fertility and sexual health apps.

Currently there are few reliable protections for most personal health data shared with mobile applications. Both CMIA and the federal Health Insurance Portability and Accountability Act (HIPAA) place significant restrictions on *medical providers* and their direct associates; however, in most cases those protections do not apply to commercial websites or mobile apps for the same categories of data. Recently, the Federal Trade Commission has prioritized using its existing consumer protection framework to pursue abuses of personal health data;² however, the

¹ Founded in 1936, Consumer Reports (CR) is an independent, nonprofit and nonpartisan organization that works with consumers to create a fair and just marketplace. Known for its rigorous testing and ratings of products, CR advocates for laws and company practices that put consumers first. CR is dedicated to amplifying the voices of consumers to promote safety, digital rights, financial fairness, and sustainability. The organization surveys millions of Americans every year, reports extensively on the challenges and opportunities for today's consumers, and provides ad-free content and tools to 6 million members across the U.S.

² Press Release, FTC to Ban BetterHelp from Revealing Consumers' Data, Including Sensitive Mental Health Information, to Facebook and Others for Targeted Advertising, Federal Trade Comm'n, Mar. 2, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/03/ftc-ban-betterhelp-revealing-consumers-data-includin-g-sensitive-mental-health-information-facebook>; Press Release, FTC Enforcement Action to Bar GoodRx from Sharing Consumers' Sensitive Health Info for Advertising, Federal Trade Comm'n, Feb. 1, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/02/ftc-enforcement-action-bar-goodrx-sharing-consumer-s-sensitive-health-info-advertising>.

FTC's legal theories have not yet been tested in court. AB 254 would offer consumers and business clarity that personal fertility and sexual health data shared with apps must be kept confidential and protected.

Concerns about sexual health apps sharing your personal data are not just theoretical. A Consumer Reports investigation in 2020 showed that the five leading fertility apps all had significant privacy issues: many required users to provide their name and email address in order to function, others had confusing privacy policies that few consumers would understand, and *all* shared users' personal health data with advertising and marketing firms.³ A follow-up Consumer Reports investigation in 2022 found that while a handful of fertility apps did implement robust privacy protections to safeguard consumer data, the biggest companies still had not addressed many of the problems we had identified in our earlier study — including sharing personal fertility data with data brokers and other third-parties.⁴ This research demonstrates that while it is possible to offer mobile app fertility services in a privacy-preserving way, many companies simply choose not to do so.

AB 254 offers a simple and elegant solution to this problem by extending the existing CMIA framework to personal health data associated with these and other sexual health applications. We would also support a more aggressive approach to more strongly protect *all* health information, such as was recently passed by the Washington state legislature.⁵ However, extending protections to sexual health applications would offer needed protections for especially sensitive categories of personal health data.

Thank you for your consideration. We look forward to continuing to work with you to ensure the strongest possible protections for consumer data.

Sincerely,

Justin Brookman
Director, Technology Policy
Consumer Reports

cc: Members, Assembly Privacy and Consumer Protection Committee

³ Donna Rosato, *What Your Period Tracker App Knows About You*, Consumer Reports, Jan. 28, 2020, <https://www.consumerreports.org/health-privacy/what-your-period-tracker-app-knows-about-you-a8701683935/>.

⁴ Catherine Roberts, *These Period Tracker Apps Say They Put Privacy First. Here's What We Found.*, Consumer Reports, May 25, 2022, <https://www.consumerreports.org/health-privacy/period-tracker-apps-privacy-a2278134145/>.

⁵ Jennifer Bryant, *Washington state on track to pass broad-based health data privacy law*, International Association of Privacy Professionals, Apr. 14, 2023, <https://iapp.org/news/a/washington-on-track-to-pass-health-data-privacy-law/>.