

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: SB 2786

INTRODUCER: Senator Haridopolos

SUBJECT: Florida Health Information Network, Inc.

DATE: April 17, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bedford</u>	<u>Wilson</u>	<u>HE</u>	Favorable
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates the “Florida Health Information Network Act,” the purpose of which is to promote the establishment of a privacy-protected and secure integrated statewide network for the communication of electronic health information among authorized parties and to foster a coordinated public-private initiative for the development and operation of Florida’s health information infrastructure.

The bill requires the Agency for Health Care Administration (AHCA or agency) to promote the development of a health information network. The agency must develop and implement a plan for the formation and operation of the network and must contract with the Florida Health Information Network, Inc., to implement the plan.

The Florida Health Information Network, Inc., is created as a not-for-profit corporation under chapter 617, Florida Statutes. The initial board of directors of the corporation is the Governor’s Health Information Infrastructure Advisory Board. The bill specifies the duties of the corporation.

The bill requires AHCA to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 1, 2007, with recommendations for continued development of the state’s health information infrastructure. The bill appropriates \$9,426,117 from the General Revenue Fund to AHCA to implement the bill during fiscal year 2006-07.

This bill creates section 408.064, Florida Statutes, and one undesignated section of law.

II. Present Situation:

Agency for Health Care Administration

Section 20.42, F.S., creates the Agency for Health Care Administration. The agency is designated as the chief health policy and planning entity for the state. Chapter 408, F.S., provides the statutory authority for the programs administered and the functions performed by AHCA.

Section 10 of HB 1629 from the 2004 Session created s. 408.062(5), F.S., to require the agency to develop a strategic plan for the adoption and use of electronic health records. The agency is authorized to develop rules to facilitate the functionality and protect the confidentiality of electronic health records.

Electronic Health Records/Sharing of Records

An electronic health record system, also known as an electronic medical record or a computer-based patient record, is an information system, which houses a health record. It is designed to provide users with access to complete and accurate clinical data, practitioner alerts and reminders, clinical decision support systems, and links to medical knowledge resources.¹

Currently in this country, health information is generally stored on “islands” of information at the facilities of the health care providers who generate the information. Even if a health care provider is among the minority that has an electronic health record system, until that system is connected to the electronic health record systems of other providers in the same geographical region, there is no effective and timely means to share the health information. The lack of effective access to clinical health information at the point of critical decision-making means that:

- Providers often must make significant decisions without the benefit of many critical facts and access to the latest relevant scientific findings;
- Quality and safety of the health care delivered without complete information are not as good as they could be in an information-rich health care system;
- Money is spent unnecessarily on duplicative tests and procedures;
- Public health officials do not have timely access to information needed for public health activities such as disease surveillance, outbreak detection, and emergency response; and
- Consumers are not able to participate meaningfully in the critical decisions regarding their health or the health of family members under their care.

In his Executive Order on April 27, 2004, President George W. Bush called for the widespread implementation of health information technology and the sharing of electronic health information within the next 10 years. He created the Office of the National Coordinator for Health Information Technology and charged the office to create an environment that will nurture health information sharing. In such a system, providers would have access to and use of health information exchanges through which the providers could view their patients’ cumulative health data collated from multiple data sources (i.e., hospitals’ clinical information systems,

¹ *Health Information Management: Concepts, Principles, and Practice*. LaTour, K.M. and Eichenwald, S., 2002. Chicago: American Health Information Management Association

claims/payor-based data, outpatient clinic system, etc.). The office has awarded several contracts that will help establish standards and certification for a national health information network.

Florida Health Information Network

The agency provides staff support to the Governor's Health Information Infrastructure Advisory Board, which was established by Governor Jeb Bush's Executive Order 04-93 in May of 2004. The advisory board was created to advise and support the agency as it develops and implements a strategy for the adoption and use of electronic health records and creates a plan to promote the development and implementation of a Florida health information infrastructure. The board may continue to operate until June of 2007.

The advisory board is proposing the development of the Florida Health Information Network that would be a statewide health information infrastructure operating over the Internet, which will enable health care professionals to access a patient's medical records from any provider database connected to the network. The network would be a collaborative effort among state and local governments, and the private sector, including regional health information organizations and health insurers. The operational core of the Florida Health Information Network would be a state-level server that would function as the highest-level server in a statewide client/server hierarchy. The Governor's Health Information Infrastructure Advisory Board has released a draft Strategic Plan for the Adoption and Use of Electronic Health Records, which will soon be finalized by the board.² Further information about the Florida Health Information Network is available in a Draft White Paper prepared for the advisory board.³

The agency received a \$1,531,737 appropriation in fiscal year 2005-06 for the Florida Health Information Network, to be used to provide grant funding for the planning and implementation of local and regional health information exchange projects and for technical assistance programs to encourage the adoption of electronic health record systems by physicians and other practitioners. Nine grant projects were awarded during the period January through June 30, 2006. These include five planning grants, three implementation grants, and one technical assistance grant. Final reports on the projects are due to the agency July 10, 2006.

The Florida Health Information Network, Inc.

The Governor's Health Information Infrastructure Advisory Board recommended that the Florida Health Information Network be governmental at inception and become a public/private partnership at maturity.⁴ Towards that end, the advisory board recommended and established a not-for-profit private corporation. Papers were filed with the Department of State, Division of Corporations on April 5, 2005. The Florida Health Information Network, Inc., is registered as a Florida non profit corporation with the Department of State.

² See the draft plan at: http://ahca.myflorida.com/dhit/pdf/StrategicPlanFinalDraft_01_10_06.pdf. (Last visited on April 12, 2006.)

³ *Draft White Paper: Florida Health Information Network Architectural Considerations for State Infrastructure*. Available at: http://ahca.myflorida.com/dhit/pdf/FHIN_%20White_Paper_Ver_5.1_03312006.pdf. (Last visited April 12, 2006.)

⁴ *The Florida Health Information Network: A Progress Report*. Presentation to the House Health Care General Committee by Secretary Alan Levine, Agency for Health Care Administration. December 7, 2005. Page 7. Found at: [http://ahca.myflorida.com/dhit/pdf/House_Health_Care_General_FHIN_120705\(Final\).pdf](http://ahca.myflorida.com/dhit/pdf/House_Health_Care_General_FHIN_120705(Final).pdf). (Last visited April 12, 2006.)

According to the agency, the Florida Health Information Network, Inc., will be responsible for promoting, developing, operating, and maintaining the Florida Health Information Network. The corporation will use the resources of the Governor's Health Information Infrastructure Advisory Board until its governing structure is instituted, and it will work collaboratively with the agency on implementing rules and regulations governing the not-for-profit organization to maximize public and private resources, maintain the integrity of the system, and ensure the protection of health information in a secure and compliant manner.⁵ The corporation will also ensure coordination and consistency among the regional health information organizations around the state.

Advisory Bodies

Section 20.052, F.S., requires each advisory body created by statute as an adjunct to an executive agency to be established, evaluated, or maintained in accordance with the provisions of the section. An advisory body may not be created unless:

- It meets a statutorily defined purpose;
- Its powers and responsibilities conform with the definitions for governmental units in s. 20.03, F.S.;
- Its members, unless expressly provided otherwise in the State Constitution, are appointed for four-year staggered terms; and
- Its members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation or honorarium, and are authorized to receive only per diem and reimbursement for travel expenses as provided in s. 112.061, F.S.

Section 20.03, F.S., defines "council" or "advisory council" as an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

Guiding Principles for the Development of Information Systems

Part I of ch. 282, F.S., establishes requirements for information resources management for state agencies. Section 282.3032, F.S., adopts guiding principles to ensure the best management of the state's information technology resources. The following are some of the guiding principles:

- State governmental entities should be committed to maximizing information sharing and participate in enterprise-wide efforts when appropriate.
- State governmental entities should maximize public access to data, while complying with legitimate security, privacy and confidentiality requirements.
- State governmental entities should strive for an integrated electronic system for providing individuals with information to the extent possible.

⁵ *Privacy and Security Solutions for the Florida Health Information Network – Technical Proposal*. submitted by the Agency for Health Care Administration in response to a request for proposals issued January 4, 2006, by RTI International. Available at: <http://ahca.myflorida.com/dhit/pdf/RTIProposal2%2028%2006.pdf> . (Last visited on April 12, 2006.)

- Integration of data elements should be achieved by establishing standard definitions, formats, and integrated electronic systems, when possible.

Corporations Not For Profit

Chapter 617, F.S., governs the creation and operation of not-for-profit corporations in the state. Under s. 617.01401(5), F.S., a “corporation not for profit” is defined to mean a corporation no part of the income or profit of which is distributable to its members, directors, or officers. “Board of directors” is defined in s. 617.01401(2), F.S., to mean the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated, including, but not limited to, managers or trustees. Section 617.0302, F.S., specifies the powers of not-for-profit corporations, which includes, among other powers, the power to acquire, enjoy, utilize, and dispose of patents, copyrights, and trademarks and any licenses and other rights or interests thereunder or therein.

III. Effect of Proposed Changes:

The bill provides a number of whereas clauses relating to the need for and benefits of establishing an integrated health information network operated by a neutral manager as a public-private partnership. The bill creates s. 408.064, F.S., titled the Florida Health Information Network Act. The purpose of the act is to promote the establishment of a privacy-protected and secure integrated statewide network for the communication of electronic health information among authorized parties and to foster a coordinated public-private initiative for the development and operation of Florida’s health information infrastructure.

The bill makes AHCA responsible for promoting the development of the health information network and requires the agency to develop and implement a plan for the formation and operation of the network. The agency must contract with the Florida Health Information Network, Inc., for the purpose of implementing the plan for the period July 1, 2006, through June 30, 2008.

The bill creates the Florida Health Information Network, Inc., as a not-for-profit corporation registered, incorporated, organized, and operated in compliance with ch. 617, F.S. The bill declares that the corporation is not a unit or agency of state government. The initial board of directors of the corporation will be the Governor’s Health Information Infrastructure Advisory Board, which shall serve a term of 18 months. Upon expiration of the terms of office of the initial members of the board of directors, members shall be appointed to 4-year staggered terms by majority vote as provided in the bylaws of the corporation.

The responsibilities of the Florida Health Information Network, Inc., include:

- Instituting a statewide health information network by:
 - Devising and implementing a strategic plan for infrastructure development;
 - Developing, operating, and maintaining the technical infrastructure necessary to perform the functions of the network;

- Promoting an integrated approach to efforts to create a secure network for communication of electronic health information;
 - Marketing the network to promote widespread use of the network; and
 - Assisting in the development and expansion of existing local or regional health information networks and the creation of new networks.
- Developing and implementing specific programs or strategies relating to regional or local health information networks;
 - Specifying standards among regional and local health information networks and other participants in the Florida Health Information Network, Inc., to promote effective statewide and interstate interoperability;
 - Assessing the adoption of electronic health records systems and utilization of the statewide network to identify and reevaluate the state's health information infrastructure strengths and weaknesses;
 - Developing and enforcing privacy, security, operational, and technical standards among regional and local health information networks;
 - Developing annual budgets, including funding from public and private entities, and user fees;
 - Taking commercially reasonable measures to protect its intellectual property, including obtaining patents, trademarks, and copyrights where appropriate; and
 - Making recommendations for reform of the state's laws regarding medical records.

The agency is required to review data gathered by the corporation regarding the strengths and weaknesses of the state's health information infrastructure and make recommendations for its continued development in a report that is to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 1, 2007.

The bill appropriates \$9,426,117 from the General Revenue Fund to AHCA for fiscal year 2006-07 to carry out the provisions of the bill.

The effective date of the bill is July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The bill declares that the Florida Health Information Network, Inc., is not a unit or agency of state government. Nevertheless, s. 119.011(2), F.S., defines "agency," for purposes of the public records requirements, to include any private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. The bill states that the "agency (AHCA) shall develop and implement a plan for the formation and operation of a health information network and shall contract with the Florida Health Information Network, Inc., for the purpose of implementing the plan, . . ." Further, the

Legislature delegates specific duties to the corporation in the bill, further indicating that the corporation is a creature of statute. Without a specific public records and meetings exemption, the corporation will be subject to ch. 119, F.S., and s. 286.011, F.S. There does not appear to be a companion Senate Bill creating a public records and meetings exemption for the corporation.

One of the duties of the corporation is to “develop and enforce privacy . . . standards . . . among regional and local health information networks to ensure effective statewide privacy . . . across the network.” Article I, s. 23 of the State Constitution provides Floridians with a right to privacy, but this privacy right expressly does not limit the right of the public to inspect and copy public records. Without a public records exemption, information in the network could be publicly available upon a public records request.

Further, the bill does not explicitly state that the corporation is subject to the public meetings and records requirements of Art. I, s. 24(a) and (b) of the Florida Constitution, ch. 119, F.S., and s. 286.011, F.S. A statement that an entity is subject to open government requirements is usually expressly stated in statutes creating public-private entities for notice and clarity. A clear statement of the applicability of these provisions to the entity created by the bill would provide the public with notice, as well as ensure compliance with open records and meetings requirements by the entity.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Florida Health Information Network, Inc., and its subcontractors will benefit from the funds provided in the bill.

C. Government Sector Impact:

The bill appropriates \$9,426,117 from the General Revenue Fund to AHCA for the 2006-07 fiscal year to implement the bill. The agency indicates that the full amount will be provided to the Florida Health Information Network, Inc., by contract. The contract will provide \$5,953,200 for the health information network technical infrastructure, \$1,524,452 for technical staff and technical consulting, \$1,052,446 for professional and administrative personnel and overhead, and \$896,019 for practitioner outreach projects and a public education campaign.

The practitioner outreach projects will include \$104,200 for a rural connectivity demonstration project, \$300,000 for a public education campaign and a website, and \$491,819 for practitioner outreach and training.

VI. Technical Deficiencies:

On page 4, line 19, the bill references s. 20.052, F.S., with regard to terms of office of the members of the board of directors of the Florida Health Information Network, Inc. Section 20.052, F.S., applies to statutorily created advisory bodies adjunct to an executive agency. The Florida Health Information Network, Inc., is a not-for-profit corporation registered and incorporated under ch. 617, F.S., which provides requirements for directors. Chapter 617, F.S., provides considerable flexibility regarding the manner of appointment of directors, the length of directors' terms of office, and staggering of terms of directors. These requirements may be established in the articles of incorporation or the bylaws of the corporation.

VII. Related Issues:

The bill provides that the initial board of directors of the Florida Health Information Network, Inc., will be the Governor's Health Information Infrastructure Advisory Board. Executive Order Number 04-93 established the Governor's Health Information Infrastructure Advisory Board "which shall be advisory in nature." The order further states that the advisory board "shall advise and support the Agency for Health Care Administration." To have the Advisory Board acting as the board of directors of a not-for-profit corporation would appear to exceed the authority granted to the Governor's Health Infrastructure Advisory Board by the Executive Order and the statutorily established role of an advisory body.

As the members of the Governor's Health Information Infrastructure Advisory Board are designated to serve as the initial members of the corporate board and successive board members are to be chosen by a majority vote of the sitting board members, a future Governor is precluded from selecting future board members of the corporation. Further, in many instances in which public-private corporations are authorized in Florida law, the Senate President and Speaker of the House also are permitted to select some of the members of the boards of these public-private corporations. There is no such opportunity under the current structure of the corporation. As this corporation is created in statute to perform a public purpose, it may be appropriate to increase the level of executive and legislative branch oversight through a board member appointment process that permits appointments by a future executive.

The bill requires AHCA to contract with the Florida Health Information Network, Inc., for the period July 1, 2006, through June 30, 2008. There are no performance standards established in the bill for the contract. The reporting requirements the agency must make to the Governor and Legislature regard the continued development of the network, not whether the corporation is meeting performance standards.

The bill creates the corporation in statute, but does not clearly state who owns the corporation. As the entity is created as a Florida corporation under ch. 617, F.S., with no express limitations on those powers in the enabling statute, it has all of the powers of any other corporation. These powers could include the ability: (1) to sell the corporation for limited consideration to a family

member or close associate; (2) to sell the corporation for a large amount of money and distribute the proceeds among the stockholders; (3) to issue notes, bonds, and other obligations; (4) to increase by a vote of its members the number of its directors; (5) to acquire and dispose of patents, copyrights, and trademarks and licenses and other rights or interests; (6) to merge with other corporations. Without a clear statement regarding the ownership of the corporation and an express limitations on the powers of the corporation established in the bill, oversight and control of the corporation by the executive and the legislative branches is greatly diminished.

The bill appropriates funds for the 2006-07 fiscal year only. The 2007 Legislature cannot be required to provide funding for a contract in fiscal year 2007-08.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
