

The Florida Senate
PROFESSIONAL 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 Regulation Committee

BILL: CS/SB's 2348 and 2582

INTRODUCER: Health Regulation Committee and Senators Atwater and Ring

SUBJECT: Florida Health Information Network

DATE: April 10, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bedford	Wilson	HR	Fav/Combined CS
2.			GO	
3.			HA	
4.				
5.				
6.				

I. Summary:

The committee substitute creates the “Florida Health Information Network Act.” It is the intent of the Legislature 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 committee substitute creates the Florida Health Information Network Advisory Council (advisory council) to advise state agencies on the development of the health information infrastructure. The members and duties are outlined.

The committee substitute requires the Agency for Health Care Administration (AHCA or agency) to promote the development of an electronic health information network as a public-private partnership and outlines its duties. It also, creates the Florida Health Information Network, Inc., (FHIN, Inc.) as a direct-support organization whose purpose is to support the agency in developing the network.

The agency is required to prepare a business case analysis for the implementation of an electronic health information network, which is to be submitted to the Council on Efficient Government (council) by October 1, 2007. The council must submit its evaluation of the business case to the Governor, the advisory council, the AHCA, and the Legislature by December 1, 2007. The committee substitute requires a competitive procurement for implementation of the network. Funds must be specifically appropriated by law before a contract may be issued.

The committee substitute appropriates an unspecified sum from nonrecurring general revenue funds to the AHCA for the 2007-08 fiscal year.

This committee substitute creates s. 408.064, F.S., and one undesignated section of law.

II. Present Situation:

Agency for Health Care Administration

Section 20.42, F.S., creates the AHCA. 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 the agency.

The agency has been delegated some authority regarding electronic health records and the creation of a health information network under the Florida Statutes. Those statutory provisions, however, are rather broad and leave unanswered many questions regarding the network. Sections 408.05(4)(a)9., (b), and (c), and 408.062(5), F.S., direct the agency to:

- Monitor innovations in the health information technology industry and support the development and use of electronic health records and the development of a health information network.
- Administer, manage, and monitor a grants program to not-for profit organizations, regional health information organizations (RHIO), public health departments, or state agencies that submit proposals for advancing the development of a health information network.
- Integrate health data from state agencies and share the data with health care practitioners through a state health information network.
- Develop and implement a strategy for the sharing of electronic health records among health care facilities, health care providers, and health insurers.

The agency is authorized to develop rules to facilitate the functionality and protect the confidentiality of electronic health records and is required to report to the Governor, the Speaker of the House of Representatives, and the President of the Senate on legislative recommendations to 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

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

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, claims/payer-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 is authorized to 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 Florida Health Information Network, Inc.

In order to be prepared to implement the Florida health information infrastructure as a private initiative, if it was decided that the infrastructure would be developed completely in the private sector, the chair of the advisory board established and incorporated the FHIN, Inc. The corporation papers were filed on April 5, 2005. The FHIN, Inc., is registered as a not-for-profit corporation. As of this time, no state money has gone to the corporation.

Florida Health Information Network (FHIN) Grant Program

This program provides matching support to eligible organizations that endeavor to advance Florida's health information infrastructure. Funded projects must include health information exchange among two or more competing provider organizations and demonstrate the sharing of health information for purposes of patient care and public health, or they can implement an outreach program to encourage the rapid adoption of electronic health records by physicians and other health practitioners.

The grant program funds up to 50 percent of the cost of an eligible project in one of the following categories:

- Category 1 – Assessment and Planning, not to exceed \$150,000.
- Category 2 – Operations and Evaluation, not to exceed \$500,000.
- Category 3 – Training and Technical Assistance, not to exceed \$200,000.

There are required reports and deliverables associated with receiving the grants.

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 5 planning grants, 3 implementation grants, and 1 technical assistance grant.

The Legislature appropriated \$2 million for the FHIN grants program for FY 2006-07. Of that amount, \$1,768,843 has been awarded for seven health information exchange projects. The remainder of the \$2 million was awarded to JaxCare conditioned upon it working out a collaboration agreement with another provider in Jacksonville that had also received a grant. The agreement was never reached, so these funds have not been used.

² See the draft plan at: <http://www.fdhc.state.fl.us/dhit/meetings.shtml> (See January 12, 2006, Board Meeting)(Last visited on April 6, 2007).

³ *Draft White Paper: Florida Health Information Network Architectural Considerations for State Infrastructure*. Available at: http://www.fdhc.state.fl.us/dhit/FHIN_White_Paper.shtml (last visited on April 6, 2007).

Grant award criteria were not established or approved by the Legislature in the Florida Statutes, but were recommended by the Governor's Health Information Infrastructure Advisory Board and implemented by the AHCA in the selection process. Under the FHIN Grant Agreement, any intellectual property created under the grant is the property of the grantee, subject to the right of use by the AHCA.

The Governor's Recommended Budget for FY 2007-08 includes \$3.8 million for the FHIN grants program.

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 4-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.
- 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.

Direct-Support Organizations

There is no definition of a direct-support organization in the Florida Statutes, although numerous such organizations are created in the Florida Statutes. Direct-support organizations are incorporated under the provisions of ch. 617, F.S., but are limited in their powers to the powers specified in their statutory authorization. Typically, direct-support organizations are created by a governmental entity to assist that governmental entity in carrying out a specific duty or program. The direct-support organization operates under a contract with the governmental entity. The direct-support organization is governed by a board of directors appointed by the governmental entity that established the organization.

Business Cases for Outsourcing

For any proposed outsourcing, a state agency is required to prepare a business case that justifies the proposal to outsource pursuant to s. 287.0574(4), F.S. The business case must include the following:

- A detailed description of the proposed service to be outsourced;
- A description and analysis of the state agency’s current performance of the proposed service;
- The goals to be achieved by the outsourcing including the rationale;
- A citation to the legal authority for outsourcing;
- A description of the available options for achieving the goals;
- An analysis of the advantages and disadvantages of each option;
- A description of the current market for the contractual services;
- A cost-benefit analysis documenting the direct and indirect specific baseline costs, savings, and qualitative and quantitative benefits involved in or resulting from the implementation of the recommended option or options. This must include detailed information;
- A description of differences among state agency policies and processes that may be applicable;
- A description of the specific performance standards that must be met to ensure adequate performance;
- The projected timeframe for key events;

- A plan to ensure compliance with the public records law;
- A contingency plan for contractor nonperformance and implementation;
- A state agency's transition plan for changes in personnel, business processes, and communication with stakeholders;
- A plan for ensuring disability access in compliance with state and federal laws; and
- A description of legislative and budgetary actions necessary to accomplish the proposed outsourcing.

State agency business cases are submitted to the Council on Efficient Government created in s. 287.0573, F.S., for review and evaluation.

III. Effect of Proposed Changes:

Section 1. Creates s. 408.064, F.S., titled the Florida Health Information Network Act. The intent of the Legislature 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 committee substitute creates the Florida Health Information Network Advisory Council in the Executive Office of the Governor to advise state agencies on the development of Florida's electronic health information infrastructure. The advisory council will consist of the following members:

- The Secretary of Health Care Administration or the secretary's designee;
- The Secretary of Health or the secretary's designee;
- The Secretary of Management Services or the secretary's designee;
- One member representing health insurers appointed by the Chief Financial Officer;
- Three members appointed by the Governor, one representing hospitals, one representing allopathic physicians, and one representing a health care information technology business in the state;
- Three members appointed by the President of the Senate, one representing a regional health information organization, one representing a college of medicine in the state, and one representing pharmacies in the state; and
- Three members appointed by the Speaker of the House of Representatives, one representing a regional health information organization, one representing osteopathic physicians and one representing a health care information technology business in the state.

The members will be appointed to a 4-year term and are eligible for reappointment. For purposes of staggering the terms of members, the Governor, the President of the Senate, and the Speaker of the House of Representatives will each initially appoint one member to a 2-year term and one member to a 3-year term. The members of the advisory council will not receive compensation, but will be eligible for per diem and travel expenses. The AHCA will provide staff support to the advisory council.

The AHCA will promote the development of an electronic health information network as a public-private partnership and in doing so will have the following duties:

- Promote an integrated approach to efforts to create a secure network for communication of electronic health information;
- Develop and implement specific programs or strategies relating to regional or local health information networks;
- Specify standards among regional and local health information networks and other participants to promote effective statewide and interstate interoperability;
- Assess 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;
- Establish privacy, security, operational, and technical standards, based on widely accepted standards or standards accepted by national standard-setting organizations, among regional and local health information networks;
- Develop annual budgets, including funding from public and private entities, and user fees; and
- Take commercially reasonable measures to protect the agency's intellectual property, including obtaining patents, trademarks, and copyrights where appropriate.

The committee substitute creates the FHIN, Inc., as a direct-support organization whose purpose is to support the AHCA in developing a statewide electronic health information network. The FHIN, Inc., must be incorporated under ch. 617, F.S., and approved by the Department of State, organized and operated to raise funds, and determined by the agency to be consistent with the agency goals regarding the network. The direct-support organization will be managed by a board of directors having 12 members appointed by the Secretary of Health Care Administration. The members will serve without compensation and will be appointed for 4-year terms, except that initially, 4 members will be appointed for 2-year terms and 4 members will be appointed for 3-year terms.

The direct support organization is subject to the open-records and open-meetings requirements of s. 24, Art. I of the State Constitution, ch. 119, F.S., and s. 286.011, F.S. The direct-support organization will be subject to an audit pursuant to s. 11.45(8), F.S., and by the agency. The audit report will be submitted within 9 months after the end of the fiscal year to the Auditor General and to the agency.

The direct-support organization will operate under contract with the agency. The written contract must provide for:

- Approval of the articles of incorporation and bylaws by the agency;
- Submission of an annual budget to be approved by the agency;
- Certification by the agency that the direct-support organization is complying with the terms of the contract. The certification is required annually and must be reported in the minutes of a direct-support organization meeting;
- The reversion of moneys and property should the direct-support organization cease to be approved or exist;

- The date of the fiscal year which is to be from July 1 to June 30;
- The disclosure of material provisions as well as the distinction between the direct-support organization and the agency; and
- Expenditures may not be used for lobbying.

The AHCA is required to prepare a business case analysis for the implementation of an electronic health information network. This analysis must be submitted to the Council on Efficient Government for its review and evaluation by October 1, 2007. This analysis must meet the requirements of s. 287.0574(4), F.S. It must include the costing of three specific organizational delivery models:

- A state agency model in which all delivery is public;
- A hybrid model in which a state agency procures part of the project and acts as a master integrator; and
- A sourced model in which a private entity is contracted for the entire project and the state agency is the contract manager.

The Council on Efficient Government must provide its evaluation of the business case analysis to the Governor, the Florida Health Information Network Advisory Council, the AHCA, and the Legislature by December 1, 2007.

The committee substitute requires that, notwithstanding the provisions of s. 287.057, F.S., any procurement issued by a state agency, other than for implementation by the agency itself, after the business case analysis is delivered, must be competitively procured with an invitation to negotiate, a request for proposals or an invitation to bid. It further requires that a contract may not be executed to implement a statewide health information network unless all funds are specifically appropriated by law.

The AHCA may adopt rules as necessary to administer this section.

Section 2. The committee substitute appropriates an unspecified sum from nonrecurring general revenue funds to the AHCA for the 2007-08 fiscal year for the purpose of paying for the expenses of the advisory council, the direct-support organization, and conducting the business case analysis.

Section 3. Provides that this act will take effect upon becoming a law.

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 provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

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:

None.

C. Government Sector Impact:

Specific funding has not yet been determined. Funds will be needed for the travel and per diem expenses of the Florida Health Information Network Advisory Council. Funds will be needed to conduct the business case analysis. Funds will also be needed for the direct-support organization.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
