**The Florida Senate**

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Health Regulation Committee

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| BILL: | CS/SB 958 |
| INTRODUCER: | Health Regulation Committee and Senator Ring |
| SUBJECT: | Electronic Health Information |
| DATE: | March 4, 2010 REVISED: |

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Stovall | Wilson | HR | **Fav/CS** |
| 2. | | | BI | |
| 3. | | | GO | |
| 4. | | | HA | |
| 5. | | | | |
| 6. | | | | |

## Please see Section VIII. for Additional Information:

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| A. COMMITTEE SUBSTITUTE..... | X | Statement of Substantial Changes |
| B. AMENDMENTS..... | | Technical amendments were recommended |
| | | Amendments were recommended |
| | | Significant amendments were recommended |

## I. Summary:

The committee substitute requires the Agency for Health Care Administration (Agency) to adopt, by rule, a Florida Health Information Exchange Participation Agreement (Florida HIE Participation Agreement) to facilitate the electronic exchange and use of health information. Use of this form is optional. However, a health care provider that participates in the exchange of health information in reliance on the agreement that contains all of the uniform elements does not violate any right of confidentiality and is immune from civil liability for accessing or releasing an identifiable health record.

The committee substitute requires the State Consumer Health Information and Policy Advisory Council (Council) to develop the Agency's strategic plan for the adoption and use of electronic health records (EHR).

The committee substitute requires the Agency to coordinate with regional extension centers to increase the readiness of health care providers to participate in implementing electronic health records and qualify for federal and state incentive programs for adoption of EHR. The Agency is authorized to establish guidelines for services provided by regional extension centers to Medicaid providers. The committee substitute also revises the list of stakeholders with which the

Agency must collaborate concerning the clearinghouse of information on electronic prescribing; requires the Agency to report annually on its health information network website metrics and related data for implementation of electronic prescribing and eliminates the annual report to the Governor and the Legislature of this information; requires the Agency to publish on its website total health care expenditures in the state; and repeals the requirement for the agency to publish a report of state health expenditures.

This bill substantially amends the following sections of the Florida Statutes: 408.05, 408.051, 408.061, 408.0611, 408.062, and 408.063.

This bill creates the following sections of the Florida Statutes: 408.0513 and 408.0514.

## II. Present Situation:

The Agency is responsible for developing and implementing a strategy for the adoption and use of electronic health records, including the development of an electronic health information network for the sharing of electronic health records among health care facilities, health care providers, and health insurers.[1]

**Electronic Health Records**

In 2009, the Florida Legislature enacted the Florida Electronic Health Records Exchange Act (Act)[2] in s. 408.051, F.S. In addition to defining terms, the Act authorizes the emergency release of identifiable health records without a patient's consent under certain conditions for use in the treatment of the patient for an emergency medical condition.

The Act also requires the Agency to develop a universal patient authorization form that may be used by a health care provider to document patient authorization for the use or release of an identifiable health record by July 1, 2010.[3] The Act provides that the use of this form to request an identifiable health record is optional. The exchange of an identifiable health record upon receipt of the universal patient authorization form creates a rebuttable presumption that the release of the record was appropriate and did not violate any right of confidentiality.

**Incentive Programs and Meaningful Use**

On December 30, 2009, the Centers for Medicare and Medicaid Services (CMS) published a proposed rule to implement provisions of The American Recovery and Reinvestment Act of 2009[4] (ARRA) that provide incentive payments for the meaningful use of certified EHR technology.[5] The CMS' proposed rule phases in criteria for demonstrating meaningful use in three stages through 2013.[6] Also on December 30, 2009, the Office of the National Coordinator

[1] Section 408.062(5), Florida Statutes.
[2] Ch. 2009-172, L.O.F.
[3] The Agency published a Notice of Proposed Rule Development on January 8, 2010, in Volume 36/01 of the Florida Administrative Weekly.
[4] Public Law 111-5.
[5] The proposed rule may be viewed at: <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a7c4a8> (Last visited on March 1, 2010).
[6] A summary of CMS' proposed definition of meaningful use is available at: <http://www.cms.hhs.gov/apps/media/press/factsheet.asp?Counter=3564> (Last visited on March 1, 2010).

for Health Information Technology issued an interim final regulation that sets initial standards, implementation specifications, and certification criteria for EHR technology.

The Medicare EHR incentive program will provide incentive payments to eligible professionals, eligible hospitals, and critical access hospitals that are meaningful users of certified EHR technology. The Medicaid EHR incentive program will provide incentive payments to eligible professionals and hospitals for efforts to adopt, implement, or upgrade certified EHR technology for meaningful use in the first year of their participation in the program and for demonstrating meaningful use during each of five subsequent years.

On February 26, 2010, the CMS announced that the Agency will receive $1.69 million in federal matching funds to cover 90 percent of the costs for the state's planning activities to implement and administer the EHR incentive payments to Medicaid providers. These planning activities will include conducting a comprehensive analysis to determine the current status of health information technology activities in the state and the creation of a State Medicaid Health Information Technology Plan.

**Regional Extension Centers**

The ARRA also provided grant funding for approximately 70 Health Information Technology Regional Extension Centers nationally to support health care providers with direct, individualized and on-site technical assistance in:

- Selecting a certified EHR product that offers best value for the providers' needs;
- Achieving effective implementation of a certified EHR product;
- Enhancing clinical and administrative workflows to optimally leverage an EHR system's potential to improve quality and value of care, including patient experience as well as outcome of care; and,
- Observing and complying with applicable legal, regulatory, professional and ethical requirements to protect the integrity, privacy and security of patients' health information.

Within Florida, The Health Choice Network Regional Extension Center was awarded an $8.5 million grant under this program on February 12, 2010. Currently, there are three additional proposed regional extension centers in Florida: the Rural / North Florida Regional Extension Center, USF – Paper Free Florida HIT Regional Extension Center, and UCF Medical School Regional Extension Center. Several counties in Florida are currently not covered by one of these four Regional Extension Centers.

Under the program, Regional Extension Centers are to focus their most intensive technical assistance on clinicians (physicians, physician assistants, and nurse practitioners) furnishing primary-care services, with a particular emphasis on individual and small group practices (fewer than 10 clinicians with prescriptive privileges). Regional Extension Centers will also focus intensive technical assistance on clinicians providing primary care in public and critical access hospitals, community health centers, and in other settings that predominantly serve uninsured, underinsured, and medically underserved populations.

All Regional Extension Centers are expected to be operating at full capacity by the end of December 2010. The performance of each Regional Extension Center will be evaluated every two years by a panel of private experts appointed by the federal Department of Health and

Human Services. Continued support for a Regional Extension Center after the conclusion of the second year of performance will be contingent on the panel's evaluation. In addition, by the end of December 2012, the Regional Extension Centers are expected to be largely self-sustaining and their need for continued federal support in the remaining two years of the program to be minimal.

**State Consumer Health Information and Policy Advisory Council**

The Council is established in s. 408.05(8), F.S., within the Agency to assist the Florida Center for Health Information and Policy Analysis (Florida Center) in reviewing the comprehensive health information system, including the identification, collection, standardization, sharing, and coordination of health-related data, fraud and abuse data, and professional and facility licensing data among federal, state, local, and private entities; and to recommend improvements for purposes of public health, policy analysis, and transparency of consumer health care information.

The Council consists of an employee of the Executive Office of the Governor, Office of Insurance Regulation, and Department of Education and 10 persons appointed by the Secretary of the Agency, representing other state and local agencies, state universities, business and health coalitions, local health councils, professional health-care-related associations, consumers, and purchasers. The council is required to meet at least quarterly.

The Council's duties and responsibilities include, but are not limited to:

- Developing a mission statement, goals, and plan of action for the identification, collection, standardization, sharing, and coordination of health-related data across federal, state, and local government and private sector entities;
- Developing a review process to ensure cooperative planning among agencies that collect or maintain health-related data; and

Creating ad hoc issue-oriented technical workgroups on an as-needed basis to make recommendations to the council.

## III. Effect of Proposed Changes:

**Section 1.** Amends s. 408.05, F.S., to add to the duties of the State Consumer Health Information and Policy Advisory Council. The additional duty is to develop the Agency's strategic plan for the adoption and use of electronic health records.

**Section 2.** Amends s. 408.051, F.S., to define additional terms used in the Florida Electronic Health Records Exchange Act, as well as additional related sections of law, and to re-order the definitions alphabetically. The new definitions include:

- "Agency" means the Agency for Health Care Administration; and
- "Health information exchange participation agreement" means a comprehensive, multiparty trust agreement that can be used by health care providers and other organizations, both public and private, that wish to participate in a health information exchange network. The agreement provides the legal framework that governs participation in the network by requiring the signatories to abide by a common set of terms and conditions to support the secure, interoperable exchange of health care data among authorized participants.

**Section 3.** Creates s. 408.0513, F.S., to require the Agency to identify and describe elements of a Florida HIE Participation Agreement for use by health care providers to specify the terms and conditions for the exchange of health information. The Agency is required to adopt this agreement by rule and post it on the Agency's website. The agreement must require the use of the universal patient authorization form that the Agency is required, in existing law, to adopt by rule. A health care provider is not required to use the Florida HIE Participation Agreement or to include any of the uniform elements in an agreement to participate in the exchange of health information. However, a health care provider that relies on the Florida HIE Participation Agreement that contains all of the uniform elements is granted immunity from civil liability for accessing or releasing an identifiable health record as a part of enterprise integration and does not violate any right of confidentiality.

**Section 4.** Creates s. 408.514, F.S., to require the Agency to coordinate with regional extension centers to increase the readiness of health care providers to implement the use of electronic health records in order to: participate in health information exchange; engage in electronic prescribing; and prepare, use, and report performance measures to qualify for federal and state incentive programs for EHR adoption. The Agency is authorized to establish guidelines for services provided to Medicaid providers by regional extension centers and conditions for state Medicaid participation and use of these services.

**Section 5.** Amends s. 408.061, F.S., with a technical amendment to delete reference to the rule citation that provides the instructions for inpatient data reporting.

**Section 6.** Amends s. 408.0611, F.S., to revise the list of stakeholders with which the Agency must collaborate concerning the clearinghouse of information on electronic prescribing. Regional health information organizations, health care consumers, and regional extension centers that promote the adoption of electronic health records are added to the list. Organizations that represent health care facilities, operate electronic prescription networks, and create electronic prescribing products, and health information organizations are deleted from the list.

The bill identifies the stakeholders that the Agency is required to convene quarterly concerning implementing electronic prescribing. These include the Council, or a work group representing e-prescribing, and other health information technology stakeholders.

Instead of reporting annually to the Governor and the Legislature on the implementation of electronic prescribing, the Agency is required to report metrics on implementation of electronic prescribing and other related data on its health information network website, annually.

**Section 7.** Amends s. 408.062, F.S., to require the Agency to publish on its website data that is currently collected related to health care expenditures in the state according to the sources of payment and the type of expenditure.

**Section 8.** Amends s. 408.063, F.S., to repeal the requirement for the Agency to publish annually a comprehensive report of state health expenditures that identifies the contribution of health care dollars made by all payers and the dollars expended in Florida by type of health care services.

**Section 9.** Provides an effective date of July 1, 2010.

## 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 the bill have no adverse 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. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides for the Agency to develop an agreement that might be used by health care providers and others to enable the electronic exchange and use of health information. Statutorily providing a mechanism upon which health care providers can rely, along with certain legal protections, might encourage and facilitate the electronic exchange and use of health information. This in turn will enhance the delivery of health care services and potentially help contain health care costs.

C. Government Sector Impact:

The Agency is required to adopt the Florida HIE Participation Agreement by rule and make the agreement available on the Agency's website.

## VI. Technical Deficiencies:

The language on lines 153 – 158 may be too broad inasmuch as simply relying on the agreement is not adequate. The health care provider must exchange the health information properly. Since the specific elements to be included in the Florida HIE Participation Agreement are not specified in statute, it is unknown whether this agreement will provide adequate safeguards to the receipt and release of confidential medical information.

The definition of health information exchange participation agreement provides for the use of the agreement by health care providers and other organizations that wish to participate in a health

information exchange network. However, the Florida HIE Participation Agreement is only for use by health care providers.

## VII. Related Issues:

None.

## VIII. Additional Information:

### A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Health Regulation on March 4, 2010:**

The committee substitute:

- Defines and uses the term "health information exchange participation agreement," rather than enterprise integration and enterprise integration agreement;
- Adds regional health information organizations to the list of stakeholders with which the Agency must collaborate concerning the clearinghouse of information on electronic prescribing; and
- Reinstates the requirement for the Agency to report total health care expenditures in the state according to the sources of payment and the type of expenditure, and requires this information to be published on the Agency's website.

### B. Amendments:

None.