

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 911

Electronic Health Information

SPONSOR(S): Hudson

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 958

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Health Care Regulation Policy Committee</u>	<u></u>	<u>Holt</u>	<u>Calamas</u>
2)	<u>Health Care Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Health & Family Services Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

House Bill 911 requires the Agency for Health Care Administration (AHCA) to adopt, by rule, a Florida Health Information Exchange 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 an 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 bill directs AHCA 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 electronic health record. The bill provides AHCA the authority to establish guidelines for services provided by regional extension centers to Medicaid providers.

The bill requires the State Consumer Health Information and Policy Advisory Council to develop AHCA's strategic plan for the adoption and use of electronic health records. The bill revises the list of stakeholders with which AHCA must collaborate concerning the clearinghouse of information on electronic prescribing and amends the electronic prescribing annual report requirements.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect July 1, 2010

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Health Information Technology Definitions

Discussions of health information technology often contain numerous technical terms that are difficult to understand for those who are not familiar with such usage. In addition, there is very little agreement amongst organizations in the health information technology community regarding the definitions of these terms. However, for the purposes of this analysis, the following terms are used:

- **Electronic Health Record (EHR).** Also known as an electronic medical record, an electronic health record is a computer-based record of one or more clinical encounters between a healthcare provider and a specific patient. An EHR may include a number of data items, from patient demographics to diagnostic images.
- **Electronic Health Records System (EHR system).** An electronic health record system is a software program that allows computer-based management of clinical information documenting the delivery of health care to multiple patients. An EHR system may include multiple functionalities, such as management of procedure results and electronic entry of clinical and prescription data.
- **Electronic Prescribing System (E-Prescribing System).** An electronic prescribing system is a software program for electronically creating and transmitting a prescription to a participating pharmacy. An e-prescribing system maintains a record of a patient's prescriptions and notifies a health care practitioner of conflicting medications. EHR systems generally include e-prescribing functionality; however, an e-prescribing system may also be purchased and operated independently.
- **Regional Health Information Organization (RHIO).** A regional health information organization is a neutral organization with a defined governance structure which is composed of and facilitates collaboration among its stakeholders in a given medical trading area, community, or region through secure electronic health information exchange to advance the effective and efficient delivery of healthcare for individuals and communities. The geographic footprint of a RHIO can range from a local community to a large multi-state region.

Applicability of EHR and E-Prescribing systems

Widespread adoption of EHR and e-prescribing systems holds the promise of improving patient safety and reducing the cost of health care by preventing unnecessary procedures. However, in a 2005 report, the National Center for Health Statistics (NCHS) within the United States Centers for Disease Control and Prevention noted that adoption of information technology within the health care sector is trailing behind other sectors in the economy of the United States.¹ The adoption of EHRs by hospitals and physicians has been particularly slow.

As part of its annual National Health Care Survey², NCHS found that, from 2001 through 2003:

- The most frequent IT application used in physician offices was an electronic billing system. Nearly three-fourths (73 percent) of physicians submitted claims electronically. Electronic submission of claims was more likely among physicians in the Midwest and South, in nonmetropolitan areas, among physicians under 50 years of age, and for physicians with 10 or more managed care contracts. Physicians in medical specialties such as psychiatry, dermatology, or sports medicine (among others) were least likely to submit claims electronically.
- EHRs were used more frequently in hospital settings (31 percent in emergency departments) than in physician offices (17 percent). Among physician office practices, there were no statistically significant differences in EMR use by region, metropolitan status, specialty physician age, type of practice, or number of managed care contracts.

A more recent 2007 NCHS report indicates that physician office use of EHR systems continues to grow; roughly 29 percent use full or partial (i.e., part paper) EHR systems, a 22 percent increase since 2005, and a 60 percent increase since 2001.³ The report also noted that EHR system use was higher in health maintenance organizations than among private practice physicians.⁴

Federal Health Information Technology Efforts

The federal government has embarked upon recent initiatives to incentivize the adoption of health information technology.

The first initiative is an incentive payment program for the adoption of an EHR system and reporting and performance on 26 quality measures.⁵ The program began in 2008 and will operate over a five-year period in two phases in 12 locations. The first phase began on June 1, 2009.⁶ The second phase includes six counties in the Jacksonville area, namely Baker, Clay, Duval, Nassau, Putnam and St. Johns counties.⁷

The second initiative is the E-Prescribing Incentive Program, which, beginning January 1, 2009, provides incentive payments to health care practitioners for e-prescribing.⁸ A successful e-prescriber under the program will gain an incentive payment of 2 percent in calendar years 2009 and 2010; 1 percent in calendar years 2011 and 2012; and .5 percent in calendar year 2013.⁹ Health care

¹ C.W. Burt and E. Hing, *Use of Computerized Clinical Support Systems in Medical Settings: United States, 2001–03*, Advance Data from Vital and Health Statistics no. 353, March 15, 2005.

² Centers for Disease Control and Prevention, National Health Care Surveys, available at: http://www.cdc.gov/nchs/nhcs/nhcs_surveys.htm (last viewed March 21, 2010).

³ E. Hing, C.W. Burt, and D. Woodwell, *Electronic Medical Record Use by Office-Based Physicians and Their Practices: United States, 2006*, Advance Data from Vital and Health Statistics no. 393, October 26, 2007.

⁴ *Id.*

⁵ Centers for Medicare and Medicaid Services, "Electronic Health Records Demonstration," available at: http://www.cms.hhs.gov/DemoProjectsEvalRpts/downloads/EHR_DemoSummary.pdf (last viewed March 20, 2010).

⁶ *Id.*

⁷ *Id.*

⁸ Centers for Medicare and Medicaid Services, "E-Prescribing Incentive Program Overview," available at: <http://www.cms.hhs.gov/ERXincentive/> (last viewed March 20, 2010).

⁹ Centers for Medicare and Medicaid Services, "Medicare's Practical Guide to the E-Prescribing Incentive Program," available at: <http://www.facs.org/ahp/pqri/2009erxprogramguide.pdf> (last viewed March 20, 2010) (In order to be a "successful" e-prescriber, a health

practitioners who do not qualify as successful e-prescribers will be penalized beginning in 2012; the penalty is 1 percent in 2012; 1.5 percent in 2013; and 2 percent in 2014.¹⁰

American Recovery and Reinvestment Act of 2009 Funded Programs

In addition to these incentive programs, the Centers for Medicare and Medicaid Services (CMS) published a proposed rule in December 2009 to implement provisions of The American Recovery and Reinvestment Act of 2009 (ARRA). The rule provided incentive payments for the meaningful use of certified EHR technology. The CMS proposed rule phases in criteria for demonstrating meaningful use in three stages through 2013. In addition, the Office of the National Coordinator 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 AHCA 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.¹¹ 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.

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:¹²

- 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, 2010.¹³ 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.¹⁴ Several counties in Florida are currently not covered by one of these four Regional Extension Centers.¹⁵

care practitioner must "report the e-prescribing quality measure through [his or her] Medicare Part B claims on at least 50% of applicable cases during the reporting year").

¹⁰ *Id.*

¹¹ Florida Health Information Network, Medicaid Electronic Health Record Incentive Program, *available at*: <http://www.fhin.net/FHIN/MedicaidElectronicHealthRecordIncentiveProgram.shtml> (last viewed March 20, 2010).

¹² Federal Register, Vol. 74, No. 101., (May 28, 2009).

¹³ Florida Health Information Network, Regional Extension Centers, Health Choice Network Funding Award, *available at*: <http://www.fhin.net/FHIN/RegExtCenters.shtml> (last viewed March 20, 2010).

¹⁴ Florida Health Information Network, Regional Extension Centers, *available at*: <http://www.fhin.net/FHIN/RegExtCenters.shtml> (last viewed March 20, 2010).

¹⁵ Florida Health Information Network, Regional Extension Centers, *available at*: <http://www.fhin.net/FHIN/RegExtCenters.shtml> (last viewed March 20, 2010).

Florida Health Information Technology Efforts

Florida Health Information Network Grants Program

In 2006, the Legislature authorized AHCA to administer a grants program to advance the development of a health information network.¹⁶ According to AHCA¹⁷, grants are currently awarded to RHIOs in three categories:¹⁸

- Assessment and planning grants, which support engaging appropriate healthcare stakeholders to develop a strategic plan for health information exchange in their communities.
- Operations and evaluation grants, which support projects that demonstrate health information exchange among two or more competing provider organizations.
- Training and technical assistance grants, which support practitioner training and technical assistance activities designed to increase physician and dentist use of electronic health record systems.

From Fiscal Year 2005-2006 through Fiscal Year 2007-2008, a total of \$5.5 million has been appropriated by the legislature to fund the grants program. No funding was appropriated in Fiscal Year 2008-2009 or 2009-2010.

Electronic Prescribing Clearinghouse

In 2007, the Legislature created the Electronic Prescribing Clearinghouse within AHCA.¹⁹ The stated intent of the clearinghouse is to promote the implementation of electronic prescribing by health care practitioners, health care facilities, and pharmacies in order to prevent prescription drug abuse, improve patient safety, and reduce unnecessary prescriptions.²⁰ AHCA is required to annually publish a report by January 31 regarding the progress of implementing electronic prescribing.

Florida Health Records Exchange Act

In 2009, the Florida Legislature enacted the Florida Electronic Health Records Exchange Act (Act) 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. 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.

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

¹⁶ s. 408.05(4)(b), F.S.

¹⁷ Agency for Health Care Administration, Florida Center for Health Information and Policy Analysis, Health Information Exchange Coordinating Committee Meeting, Proposed Changes to FY 2008 – 2009 FHIN Grant Program Requirements, *available* at: www.fhin.net/FHIN/.../ProposedChangesFHINgrantRequirements122607.pdf (last viewed March 21, 2010).

¹⁸ *Id.*

¹⁹ ch. 2007-156, L.O.F.

²⁰ *Id.*

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.²¹

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.²² The council is required to meet at least quarterly.²³

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;²⁴
- Developing a review process to ensure cooperative planning among agencies that collect or maintain health-related data;²⁵ and
- Creating ad hoc issue-oriented technical workgroups on an as-needed basis to make recommendations to the council.²⁶

Effects of the Bill

The bill requires the State Consumer Health Information and Policy Advisory Council to develop AHCA's strategic plan for the adoption and use of EHR.

The bill defines "health information exchange participation agreement", and requires AHCA to identify and describe, by July 1, 2011, the elements of a Florida Health Information Exchange Participation Agreement (Agreement) for use by health care providers to specify the terms and conditions for the exchange of health information. AHCA is required to adopt this agreement by rule and post it on its website. The agreement must require the use of a universal patient authorization, which AHCA is to adopt by rule.

The bill provides that health care providers are not required to incorporate one or more of the uniform elements in an agreement. Additionally, health care providers that participate in health information exchange under the auspices of an agreement which contain 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 bill requires the AHCA to coordinate with regional extension centers to increase health care provider readiness to implement the use of electronic health records to enable them to participate in health information exchange, electronic prescribing and reporting of performance measures, which is required to qualify for federal and state electronic health record adoption incentive programs. The bill provides AHCA the authority to establish guidelines for services and conditions of participation for Medicaid providers.

The bill revises the list of stakeholders with which AHCA must collaborate with to create a clearinghouse of information on electronic prescribing. The bill requires that AHCA report on the metrics of the implementation of electronic prescribing and the report is to be published on its Internet website instead of being submitted to the Governor and the Legislature. The bill requires AHCA 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.

²¹ s. 408.05 (8)(a), F.S.

²² s. 408.05 (8)(a)1.-4., F.S.

²³ s. 408.05 (8)(c), F.S.

²⁴ s. 408.05 (8)(h)1., F.S.

²⁵ s. 408.05 (8)(h)2., F.S.

²⁶ s. 408.05 (8)(h)3., F.S.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 408.05, F.S., relating to the Florida Center for Health Information and Policy Analysis.
- Section 2.** Amends s. 408.051, F.S., relating to the Florida Electronic Health Records Exchange Act.
- Section 3.** Amends s. 408.0513, F.S., relating to the Florida Health Information Exchange Participation Agreement.
- Section 4.** Amends s. 408.0514, F.S., relating to regional extension centers.
- Section 5.** Amends s. 408.061, F.S., relating to data collection; uniform systems of financial reporting; information relating to physician charges; confidential information; and immunity.
- Section 6.** Amends s. 408.0611, F.S., relating to electronic prescribing clearinghouse.
- Section 7.** Amends s. 408.062, F.S., relating to research, analysis, studies, and reports.
- Section 8.** Amends s. 408.063, F.S., relating to dissemination of health care information.
- Section 9.** Provides that the bill takes effect July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

- 1. Revenues:
None.
- 2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

AHCA has sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES