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 and Human Services Appropriations Committee

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BILL: CS/CS/CS/SB 958

INTRODUCER: Health and Human Services Appropriations Committee, Judiciary Committee, Health Regulation Committee, and Senator Ring

SUBJECT: Electronic Health Information

DATE: April 13, 2010 REVISED: ____ ____ ____ ____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Wilson	HR	**Fav/CS**
2.	Naf	Wilson	GO	**Favorable**
3.	Treadwell	Maclure	JU	**Fav/CS**
4.	Kynoch	Hansen	HA	**Fav/CS**
5.				
6.				

Please see Section VIII. for Additional Information:

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

I. Summary:

The bill 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 participating 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 bill 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 bill 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 and use of EHR. The agency is

authorized to establish guidelines for services provided by regional extension centers to Medicaid providers. The bill 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.

The bill requires the agency to contract for the development of a single statewide infrastructure for the exchange of health information.

This bill has an insignificant fiscal impact. The agency has indicated it can implement the provisions of this bill within existing resources.

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 for Health Care Administration (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, ch. 2009-172, L.O.F., was enacted to create the Florida Electronic Health Records Exchange Act (act) in s. 408.051, F.S. In addition to defining terms, the act authorized 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.

By July 1, 2010, the act also required the agency to develop a universal patient authorization form that could be used by health care providers to document patient authorization for the use or release of an identifiable health record.[2] The act provided 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.

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[1] Section 408.062(5), F.S.

[2] The Agency published a Notice of Proposed Rule Development on January 8, 2010, in Volume 36/01 of the FLORIDA ADMINISTRATIVE WEEKLY.

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[3] (ARRA) which provide incentive payments for the meaningful use of certified electronic health records (EHR) technology.[4] The CMS's proposed rule phases in criteria for demonstrating meaningful use in three stages through 2013.[5] Also on December 30, 2009, 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 the 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. In addition, the CMS announced March 15, 2010, that the agency will receive $20.7m in federal matching funds over four years for the development of Florida's health information exchange infrastructure to facilitate the exchange of patient health information.

Regional Extension Centers

The American Recovery and Reinvestment Act of 2009 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.

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[3] Pub. L. No. 111-5.

[4] The proposed rule may be viewed at: http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a7c4a8 (last visited on Apr. 1, 2010).

[5] A summary of CMS's proposed definition of meaningful use is available at: http://www.cms.hhs.gov/apps/media/press/factsheet.asp?Counter=3564 (last visited on Apr. 1, 2010).

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:

- Rural/North Florida Regional Extension Center;
- University of South Florida – Paper Free Florida HIT Regional Extension Center; and
- University of Central Florida 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 is expected to be minimal.

State Consumer Health Information and Policy Advisory Council

The State Consumer Health Information and Policy Advisory Council (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. In addition, the council must 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, the Office of Insurance Regulation, and the 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.[6] The council is required to meet at least quarterly.[7]

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

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[6] Section 408.05(8)(a), F.S.

[7] Section 408.05(8)(c), F.S.

- 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.[8]

III. Effect of Proposed Changes:

The bill expresses the findings and intent of the Legislature in "Whereas" clauses that:

- The use of electronic health information technology has improved the quality of health care;
- The coordination of federally funded training and outreach activities with a state-based health information technology program will advance the adoption and meaningful use of electronic health records; and
- The Agency for Health Care Administration (agency) is responsible for developing a strategy for the implementation of an electronic health information network in Florida.

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;
- "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; and,
- "Health care practitioner" or "health care provider" means any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491.

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[8] Section 408.05(8)(h), F.S.

Section 3 creates s. 408.0513, F.S., to require the agency to identify and describe elements of a Florida Health Information Exchange (HIE) Participation Agreement ("the agreement") for use by health care providers and other organizations 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 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 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.[9]

In practice, the health care provider must exchange the health information properly. Because 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 for the receipt and release of confidential medical information. Thus, a health care provider may enjoy immunity by complying with the agreement, even if the provider fails to comply with other statutory requirements governing the exchange of this information.

The immunity provision may allow certain providers to escape liability even if release or access to the information is intentional or occurs by gross negligence on the part of the provider. The Legislature could consider providing that the health care provider is immune from civil liability if the provider relies on the agreement unless the access or release constitutes gross negligence or intentional, wanton, or willful misconduct.

Section 4 creates s. 408.0514, 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.

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[9] Existing law provides that patient records are confidential and must not be disclosed without consent of the person to whom they pertain, but appropriate disclosure may be made without such consent in a number of specified circumstances in statute. Section 395.3025, F.S.

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 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 State Consumer Health Information and Policy Advisory 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. In addition, the bill requires the agency to contract for the development of a single statewide infrastructure for the exchange of health information.

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 requires the Agency for Health Care Administration (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:

This bill has an insignificant fiscal impact. The agency has indicated it can implement the provisions of this bill within existing resources. The bill requires the agency to adopt the Florida HIE Participation Agreement by rule and make the agreement available on its website. In addition, the bill requires the agency report state health care expenditures in a specified manner and to publish the information on its website.

VI. Technical Deficiencies:

None.

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 and Human Services Appropriations Committee on April 13, 2010:
The committee substitute:

- Requires the Agency for Health Care Administration to contract for the development of a single statewide infrastructure for the exchange of health information; and
- Provides definitions of the terms “health care practitioner” or “health care provider.”

CS/CS by Judiciary on April 7, 2010:
The committee substitute conforms the provision in the bill regarding use of Florida HIE Participation Agreements with the definition of “health information exchange participation agreement” by referencing use of the agreement by health care providers *and other organizations.*

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.