

Florida Privacy and Security Implementation Proposal

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**Agency for Health Care Administration
Florida Center for Health
Information and Policy Analysis
2727 Mahan Drive M.S. #16
Tallahassee, Florida 32308**

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Introduction

Florida's participation in the Health Information and Security Privacy Collaboration Project (Collaboration Project) of 2006-2007 resulted in the preparation of a comprehensive **Implementation Plan** for protecting the confidentiality of electronic health records through the development of the Florida Health Information Network (FHIN). The Implementation Plan envisions the creation of a more efficient, and effective, health care delivery system that provides patients and clinicians with immediate access to electronic health records through a privacy-protected and secure system of health information networks.

Having a system of health information networks will allow the secure delivery of electronic health records to physicians and other clinicians for routine purposes or in an emergency, safeguard health records in the event of a disaster, and improve the coordination of care for people with chronic conditions or conditions that require complex treatment regimens. The Florida Privacy and Security Project (Project) developed the implementation plan with the understanding that strong protections are necessary to ensure the security of the network and to encourage providers and consumers to use the system.

The Collaboration Project is part of a national effort managed by the U.S. Department of Health and Human Services Office of the National Coordinator for Health Information Technology (ONC), the Agency for Healthcare Research and Quality (AHRQ) and the National Governor's Association (NGA). The Collaboration Project has produced new information about variations in privacy practices, policies and laws related to the transfer of health records and a set of proposed solutions to allow electronic health information exchange. These solutions are uniquely tailored to address the specific needs and priorities of the 33 states and one U.S. territory that were engaged in the project.

The Agency for Health Care Administration (Agency) was awarded a contract by RTI International, Inc. (RTI) to participate in the Collaboration Project in May of 2006 as the lead Agency for Florida. The Agency is grateful for the opportunity to submit this proposal for continued funding to enable Florida's Project to begin implementing many of the solutions contained in the Implementation Plan submitted to RTI as part of the Collaboration Project.

Overview of Implementation Proposal

Florida's Implementation Plan contains many recommended activities to ensure the privacy and security of the Florida Health Information Network (FHIN) as it develops and expands. The Implementation Plan includes actionable work plans for each of four goals and eleven objectives, including activities, timeframes, and resource requirements. The Agency for Health Care Administration (Agency) is the lead initiator and monitor of the Implementation Plan.

During the six months of the Collaboration Project extension, the Agency proposes to carry out activities related to implementation plan Goal I, II, and III. Goal I calls for the establishment of uniform privacy policies to support the private and secure exchange of electronic health information through legislation and organizational policy changes. In order to address the legislative changes, the Agency proposes to establish a Legal Work Group to evaluate the current status of legal guidelines and make recommendations on the implementation of clear and concise legal standards for health information exchange. The recommendations would address conflicts between existing statutes, clearly provide for the sharing of patient information between treating health care providers in emergency circumstances, and include a plan for the consolidation of state laws related to the exchange of health information. This activity would include an assessment of Florida laws and regulations and the preparation of a summary of findings that would form the basis for a report to the Governor and Legislature to be prepared by the Agency.

To support organizational policy changes, the Agency proposes to develop a risk assessment tool for use by regional health information organizations (RHIOs) or other health information exchanges in developing risk mitigation strategies for the protection of consumers and participating providers. Organizations do not have policies and procedures to guide their involvement with RHIOs. For this reason, developing a risk mitigation strategy for Florida's RHIOs is an important strategy for supporting health information exchange. The deliverable from this activity will be the tool which will be in the public domain and available to other States. The use of the tool will help provide assurances to health care providers that the RHIO has assessed the risks to security and developed policies to protect patient health information.

The Agency also proposes to implement specific activities that will raise consumer awareness and enable both providers and consumers to be knowledgeable users of electronic health records (Goal III of the Implementation Plan) and activities related to the goal of adopting a secure technological infrastructure (Goal II of the Implementation Plan). The Agency proposes to engage consumers and providers in the development of the risk assessment tool and identify options for consumers to monitor access to their health records. As part of these activities, the Agency will increase provider and consumer awareness, identify provider and consumer champions, and establish a speakers' bureau to extend and continue the consumer outreach activities.

Florida proposes to conduct two major initiatives that address the three goals. The plans are presented in Tables 1 and 2. **Table 1** lists implementation proposal activities for Implementation Proposal I: Reform of State Laws and Risk Mitigation. **Table 2** lists implementation proposal activities for Implementation Proposal II: Health Care

Community Outreach and Engagement. The corresponding identification number from the Florida Final Implementation Plan Report is provided in each table.

Table 1	
Implementation Proposal I – Reform of State Laws and Risk Mitigation	
<i>Goal I Establish Uniform Privacy Policies</i>	
Implementation Plan Reference No.	Short Description of Activity
GI.O1.A2	Coordinate legal work group and develop legal standards
GI.O1.A3	Develop recommendation to consolidate laws and resolve inconsistency in current law
GI.O1.A5	Develop recommendations for emergency care
GI.O2.A4	Develop risk mitigation strategies

Table 2	
Implementation Proposal II – Health Care Community Outreach and Engagement	
<i>Goal II Establish and Secure Technological Framework</i>	
Implementation Plan Reference No.	Short Description of Activity
GII.O6.A2	Identify options for consumer access through personal health record systems
<i>Goal III Raising Community Awareness</i>	
Implementation Plan Reference No.	Short Description of Activity
GIII.07.A3	Establish speakers' bureau
GIII.08.A1	Foster provider champions
GIII.08.A2	Provider outreach
GIII.09.A1	Foster consumer champions
GIII.09.A2	Consumer outreach

Relevance of Proposal to Reducing Barriers to Health Information Exchange in Florida and other States

The Florida Privacy and Security Project (Project) found that a significant barrier to health information exchange in Florida is the difficulty of determining applicable law given the numerous laws and regulations that address various aspects of health information exchange in an often fragmented manner. Florida laws and regulations were created to address the transfer of paper documents from one entity to another and do not contemplate the benefits of the sharing of electronic records among groups of clinicians or provide guidelines for these types of activities.

Florida laws and regulations were found in many cases to be inconsistent with Federal law, most notably the HIPAA privacy and security regulations. Additionally, in several areas Florida law was found to be inconsistent with other applicable Florida law. These inconsistencies, among other things, have led to confusion among health care providers resulting in reluctance to participate in regional health information networks, reluctance to use or accept electronic prescribing, and a system that fails to meet its potential to better coordinate patient care or respond in an emergency.

The Florida Project found (as did other States) that reluctance to participate in health information exchange also stems from fears of litigation or other perceptions of increased risk that might occur as a result of the mistakes of other organizations participating in the health information exchange. The Project found that there is a lack of familiarity with electronic health information exchange at a practical level since few systems are operating on a widespread basis in Florida. Organizations do not have policies and procedures to guide their involvement with RHIOs. A risk mitigation tool to assist Florida's RHIOs in developing risk mitigation strategies will reduce these concerns by systematically addressing these issues.

Activities, Work Plans, and Measurable Project Outcomes

The Agency proposes to address the barriers in Florida law by working with stakeholders to gain support for statutory reform. Through the Collaboration Project extension, the Agency proposes to engage the services of an attorney with expertise in health law to develop specific proposals for reform of state laws and regulation for review by the Project's Legal Working Group in coordination with the Florida Bar Health Information Technology Committee. The Agency proposes to reconvene the Legal Working Group of the Florida Privacy and Security Project with the addition of representatives of the Florida Health Information Management Association and others as determined by the Secretary of the Agency.

The health law attorney will be responsible for completing a comprehensive assessment of the relevant law, prioritization of the legal issues, and the development of an informed approach to protecting the confidentiality of electronic health records and reducing unnecessary barriers to health information exchange. The health law attorney will coordinate the work of the Legal Working Group to include one face-to-face meeting and additional conference calls as required.

The measure of success of these activities will be the number of priority issues that are addressed through the revision, consolidation, or creation of statutes or rules to facilitate the electronic exchange of health records. The health law consultant will identify priority issues for presentation to the Legal Working Group. This process will assist in developing support for new legislation and provide a basis for quantifying the success of the statutory reform project.

Concurrent with the work on reform of state laws, the Agency proposes to engage the services of an information security consultant to develop a risk assessment tool in collaboration with RHIO representatives that can be used by them and other entities implementing health information exchanges. These organizations will be able to use the tool to systematically assess the risks to the security of their health information system and develop strategies for mitigating those risks. The assessment will include but not be limited to how well the organization is protecting the confidentiality of electronic health records and the rights of consumers in accessing to their personal health records.

The information security consultant will be responsible for completing a review of the existing resources and tools and developing a draft risk assessment tool. The tool will draw on the knowledge base of entity level risk assessment and address the unique aspects of health information exchange in an electronic environment where multiple entities participate. It will complement other tools recently developed to assist health information exchanges assess market readiness, financial risk, and sustainability.

The tool will include an important component that enables the organization to address the viewpoints and concerns of patients and consumers toward the security of their health records in health information exchange. The tool will also assess how well the organization has addressed the desires of consumers for access to their health records and their ability to monitor activities related to their personal health records. The tool will be web-based or compatible with desktop office products for ease of use as recommended by the consultant.

The information security consultant will present the beta tool to stakeholders at a conference to be held by the Agency and will make revisions based on the comments received. The Agency also proposes to contract with a State University to review the risk assessment tool. The State University medical informatics consultant will assist the information security consultant in the development of the tool. Success will be measured by the number of Florida RHIOs or other stakeholders who use the risk assessment tool to develop risk mitigation strategies and by their feedback concerning the value of the tool. It is anticipated that the tool will be refined and further developed by the Agency in future years. The project deliverable will be placed in the public domain and available for use in other States.

Coordination with Federal and Other Initiatives

The proposed activities will incorporate the work of other federal and national initiatives. Florida has been involved in many of the national initiatives through its work with the National Governor's Association and the State Alliance, the American Health Information Community, the American Health Information Management Association, E-Health Initiative, the Workgroup for Electronic Data Integration, and the Collaboration Project.

The lessons learned from these experiences will be incorporated into our work. Additionally, Florida will engage national experts in the activities while making all of the work produced from this project available to the public at the state and national level.

Stakeholder Engagement

The Agency proposes to hold six community forums to engage consumers, providers, and other stakeholders in the development of the risk assessment tool. The Agency will contract with a State University to plan, conduct and record the community forums. The medical informatics consultant will be responsible for selecting regional health information organizations (RHIOs) or other organizations operating health information exchanges in Florida to participate in the forums in coordination with the Agency.

The forums will include a consumer session and a provider session. The consumer sessions will be scheduled during evening hours to encourage the participation of the general public. The provider session will be scheduled the afternoon prior to or the morning following the consumer session as elected by the RHIO or other participating organization. The consumer session will be a public meeting and publicized to encourage a wide range of consumer participants. The provider session will include invited clinicians, hospital administrators, and other members or potential members as determined by the participating RHIO. Invited participants may include physicians and other clinicians, practice managers, privacy officers, and health information managers.

The medical informatics consultant will be responsible for coordinating with the selected organizations and the Agency regarding logistics and publicity for the forums.

At each session, the medical informatics consultant will present an overview of electronic health information exchange, the Agency's proposed privacy and security standards for health information exchange including consumer protections and right of access, and the purpose of the risk assessment project. The medical informatics consultant will solicit comments and questions from the audience and note any questions or concerns that are not answered or addressed in the discussion. The Implementation Project's technical coordinator or another designated person from the Agency will attend each session and assist the medical informatics consultant. A representative of the hosting RHIO will attend each session. The forums will contribute to the project team's understanding of the barriers to health information exchange, educate the community about the benefits of health information exchange, and also garner support for legislative action.

During and following the community forums, the medical informatics consultant will solicit provider and consumer champions, and assist the Agency in establishing a speakers' bureau to extend and continue the consumer outreach activities. The medical information consultant will recommend enhancements to the Risk Assessment Tool based on the comments received through the community forums. The medical information consultant shall review the Risk Assessment Tool for clarity and completeness with respect to the privacy frameworks cited by the Department of Health and Human Services, Office of the National Coordinator of Health Information Technology and the General Accounting Office (GAO) or other sources recommended by the medical information consultant. In making recommended enhancements to the Risk Assessment Tool, the medical information consultant shall also address community

standards regarding clinical care and the impact of privacy policies on patient care. **Attachment A** describes how the consumer forums will be used in the development of the Risk Assessment Tool.

The measure of success of the community engagement will be the number of providers and consumers who indicate a willingness to be contacted by the local organization regarding future activities and participation. An additional outcome will be the creation of the speakers' bureau.

Multi-State Collaborative Work Groups

The Agency proposes to participate in two multi-state collaborations to develop a strategy for advancing model legislation and consumer education. The project's health law attorney will participate in the collaborative work group that is addressing legal and statutory reform and attend meetings of this work group. The health law attorney will contribute legal support in the development of two policy briefs and a strategy document for advancing the goals set by the multi-state or regional collaborative work group. The Project Director or her designee will participate in the work group that is developing a communications strategy for promoting health information exchange to a wide range of stakeholders.

Resources and Project Schedule

A brief justification for the level of funding requested is provided in the attached Funding Criteria Checklist (**Attachment B**). **Attachment C** provides a monthly project schedule with milestones.

Next Steps

The Agency for Health Care Administration is the lead state agency assigned to promote the adoption of electronic health records and implement a strategy for creating an interoperable system of health information networks in Florida as provided in section 408.062 (5), F.S. Legislation enacted in 2004 also provides that the Agency will make recommendations to protect the confidentiality of electronic health records.

Recent accomplishments and new developments of the Florida Health Information Network (FHIN) initiative include:

- Funded six RHIOs implementing health information exchange projects to be operating in 2007;
- Published FHIN White Paper describing architecture of statewide network;
- Released draft FHIN Business Plan for discussion;
- Established a Memorandum of Understanding for data exchange with the Department of Defense;

- Legislation passed authorizing the Florida Center to create and maintain a clearinghouse on electronic prescribing;
- Publication of Privacy and Security Fact Sheet for the Florida Health Information Network; and,
- The Florida Legislature appropriated \$2 million for the FHIN Grants Program in 2007-2008.

During the first phase of the Project, the Governor's Health Information Infrastructure Advisory Board (Board) served as Steering Committee. It is expected that this Board will be replaced upon completion of its term of appointment June 30, 2007 by an Electronic Health Records Commission to be appointed by Governor Crist. The Agency is currently coordinating with the Office of the Governor as the lead Agency on this initiative.

The Agency has recently established a Health Information Technology Unit within the Florida Center for Health Information and Policy Analysis. The technology unit administers the FHIN grants program, develops standards for interoperable health information exchange, and provides technical support to promote growth of regional health information networks, electronic prescribing, and other health information exchanges.

The Agency will continue to develop uniform policies to ensure the privacy and security of electronic health information exchanges in Florida and the entire Florida Health Information Network. The Agency welcomes the opportunity to collaborate with other states regarding consumer education, the development of model legislation, the reform of federal laws and regulations, and other activities.

ATTACHMENT A

Risk Assessment Tool for Health Information Exchange: Assessing Consumer Rights, Protections, and Access

Risk Assessment Project Initiation

1. Statewide stakeholder meeting to introduce project
2. Refine Risk Assessment Project Plan including consumer outreach, engagement and educational materials

Risk Assessment Tool Development

3. Project coordinates with RHIOs or other stakeholders to hold community forums including providers, consumers groups, and general public*
4. Project gathers consumer input and concerns for risks associated with health information exchange
5. Project puts together a summary of the consumer risk assessment meetings
6. Stakeholders compare risk assessment plans from consumer meetings
7. Use summary and stakeholder consensus to create consumer component of Risk Assessment Tool
8. Publish beta Risk Assessment Tool for RHIOs and other health information exchanges
9. RHIOs work through beta Risk Assessment Tool and write evaluation or feedback
10. Feedback summarized at state level
11. Final draft of Risk Assessment Tool

Risk Assessment Tool Release

12. Publish Risk Assessment Tool
13. Disseminate nationally
14. Collaborate with other States for future refinements and dissemination

*These will not be focus groups.

ATTACHMENT B

Funding Criteria Checklist

Please complete and include this attachment as part of your proposal

Funding for the base State Implementation Proposal Section is capped at \$75,000. The funding amount may be increased if tasks are expanded to incorporate the following criteria:

	Hours
1. Level of effort (Labor hours)	1,714
2. Consumer Engagement (Is there a plan to actively engage consumers in the process?)	
a. Public Meetings to vet plans and gauge response by collecting unstructured public comment (No focus groups, surveys or interviews)	X
b. Consumer Outreach and Education campaign	□
c. Engagement of consumer advocacy groups (e.g., Identify groups) -- Librarians	X
d. Engagement and education of consumer advocacy groups	X
3. Replicable by another state; includes a deliverable “how to” guide for implementation, describing the steps undertaken and lessons learned (I.e., Could another state reasonably take what you’ve done and apply it in their own state to resolve and issue?)	X
4. Uses Certified EHR	□
5. Incorporates HIE Best Practices issued by Consensus Project – The Florida Health Information Network is a public-private partnership.	X
6. Employs harmonized standards recommended by AHIC	□
7. Includes matching funds or cost sharing	X
8. Includes plans for acquiring continuing funding from foundations, grants, stakeholders, etc (privacy and security work) – Florida Health Information Network Grants Program will be a continuing source of funding.	X

ATTACHMENT C

Month	Milestones
July 2007	Execution of Contracts Conference of RHIOs to Introduce Project Initial Risk Assessment Tool Mock-up Completed Recommendations to Legal Working Group Prepared
August 2007	Legal Working Group Meeting Two Public Forums Held Two Initial Collaborative Work Group Meetings
September 2007	Two Public Forums Held Draft Florida Legislation Prepared Preliminary Review of Risk Assessment Tool Completed
October 2007	Two Public Forum Held Two Final Collaborative Work Group Meetings
November 2007	Final State Report Completed National HISPC Collaboration Project Meeting Held Collaborative Strategy Reports Completed Publish beta Risk Assessment Tool
December 2007	Draft Florida Legislation Completed Final draft of Risk Assessment Tool Completed