

Privacy and Security Solutions for Interoperable Health Information Exchange

Analysis of Florida Statutes Related to Health Information Exchange

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Analysis of Florida Statutes Related to Health Information Exchange

Executive Summary

In the first phase of Florida's Health Information Security and Privacy Collaboration (HISPC) Project a variety of issues were identified as potential barriers to the appropriate exchange of electronic health information. The term "barrier(s)" as used in the first phase of the project referred to a condition or requirement that would impede appropriate electronic health information exchange (eHIE) from one party to another party. The project found that the current Florida legal environment as applicable to eHIE was a type of barrier that needs to be systematically examined and evaluated for potential reform. .

While the term "barrier(s)" is often viewed negatively as preventing a desired event from occurring, in the case of Florida law such negative connotation would not necessarily be accurate. Florida's laws applicable to eHIE largely serve to protect an individual's right to privacy with regard to that individual's identifiable health information. The "barriers" created by Florida laws provide individuals with a degree of control over the use and disclosure of individually identifiable health information. However, it is the number of Florida laws applicable to eHIE, many of which are not consistent with the HIPAA privacy rule or one another, which appear to create an unintended barrier to eHIE.

As previously identified in Phase I of Florida's HISPC Project, there are many Florida laws, designed largely for "paper-based" exchange, which would be considered more stringent than the HIPAA privacy regulation. Accordingly, to lawfully use or disclose individually identifiable health information in Florida such proposed use or disclosure would need to be appropriately authorized under Florida law, either by the individual or by operation of law. The use or disclosure of information is often times less than efficient due to the current confusion with regard to which law, HIPAA, Florida law or both, is applicable. With regard to eHIE, such confusion, threatens to greatly reduce or eliminate many of the efficiencies created via the electronic exchange of information.

In light of the unintended barriers to eHIE which appear to exist in Florida law, Phase II of the Florida HISPC Project reconvened its Legal Work Group to review and analyze those Florida laws applicable to eHIE. Specifically, the analysis sought to determine the following:

1. **Ownership and Control** – Under Florida law who owns the medical record -- the patient or provider -- and what degree of control does the patient have with regard to their medical record?

2. **Patient Consent and Access** –Is patient consent required to use or disclose information found in the patient’s medical record and what degree of access would a patient have with regard to information contained in their medical record?
3. **Re-disclosure of Information and Emergency Access to Information** – Under Florida law were there any requirements regarding the re-disclosure of a patient’s information beyond an initial authorized disclosure? Additionally were there any provisions that would allow for the accessing of a patient’s medical record in an emergency situation in which the patient would otherwise be unable to consent to such use or disclosure?
4. **Electronic Transmission and Electronic Signatures** – Were there any provisions under Florida law that addressed the electronic signing of patient records as well as the electronic transmission of such records?

The analysis was divided into the following categories of individuals or entities that would use or disclose individually identifiable health information:

1. **Health Care Providers**
 - a. Independent Health Care Providers
 - b. Hospitals
 - c. Clinical Laboratories
 - d. Pharmacy
 - e. Hospice
 - f. Mental Health Providers
 - g. Home Health
 - h. Substance Abuse Providers
 - i. Long Term Care Providers
 - j. Emergency Medical Services
2. **Government Health Care Providers**
 - a. Department of Education – School Health
 - b. Department of Health – County Health Departments
 - c. Department of Health – Children’s Medical Services
 - d. Department of Corrections
 - e. Agency for Persons with Disabilities – Developmental Disability Services
 - f. Department of Children and Families

3. Commercial Payers**4. Government Payers**

- a. Agency for Health Care Administration – Medicaid, Medikids
- b. Florida Healthy Kids
- c. Department of Financial Services – Worker’s Compensation
- d. Department of Management Services – State Group Insurance

5. Government Programs

- a. Agency for Health Care Administration
- b. Florida Department of Health – General
- c. Florida Department of Health – Immunizations Registry
- d. Department of Children and Families
- e. Department of Elder Affairs

Additionally, the analysis also addressed the following areas relating to the use and disclosure of individually identifiable health information:

1. Treatment of Sensitive Medical Information – (HIV, Mental Health, Substance Abuse, Sexually Transmitted Disease, Tuberculosis, and Genetic Information);
2. Minors;
3. Notification of Security Breach Requirements
4. Marketing and Sale of Health Data
5. Other (Florida Uniform Electronic Transaction Act and Collaborative Client Information Systems)

Finally, the analysis addressed the exemption from disclosure of individually identifiable health information that would otherwise be subject to disclosure under Florida’s Sunshine law (or Public Records law which will be discussed later in Sections II and V). Specifically, Attachments I & II to the analysis provide a listing, created by the Florida Attorney General’s Office, of laws exempting the disclosure of individually identifiable health information from Florida’s Sunshine Law.

Upon review of the initial statutory analysis, the Legal Work Group identified certain priority areas of law that need to be clarified and harmonized. These are areas for reform that would be most beneficial in enabling appropriate health information exchange. The following areas were identified for reform:

- 1) Align the health information exchange provisions for hospitals and physicians in Chapters 395 and 456, F.S.

- 2) Permit treating physician access in Chapter 483, F.S. related to clinical laboratories
- 3) Create a process for addressing uniform patient consent in law

The Legal Work Group also found that there is a need for continued review and analysis to determine the potential benefits of consolidation of health record laws.

I. Health Care Providers

Section I addresses the general Florida law requirements for non-government providers of health care with regard to medical records and/or patient information. This is not necessarily a preemption analysis but rather a general review of certain Florida laws that would be applicable in the analysis of health information exchange.

1. *Independent Health Care Providers*

The category of independent health care providers addresses those providers governed by Chapter 456, F.S. 456.057, F.S., generally, provides the requirements relating to the ownership and control of patient records.

Ownership and Control:

According to Florida law, medical records are generally owned and controlled by the health care practitioner that generates the medical record. Such records may also be owned by the employer of the health care practitioner that generated the record as well as a health care practitioner to whom medical records have been transferred to by a previous owner. 456.057(2) (a-k), F.S., specifies persons and entities that may not own medical records.

In addition to establishing the classification of “records owner”, 456.057(3), F.S., establishes the classification of “records custodian” which would be any person or entity that maintains medical records or any person or entity that obtains medical records from a records owner. The records custodian classification, which was added to the statute in 2006, expands the requirements of 456.057, F.S., by extending the requirements of the statute to persons and entities other than the records owner.

Patient Consent and Access:

456.057(6), F.S., requires a health care practitioner that generates a medical record to provide the subject of the record or the subject’s legal representative with a copy of all records and reports, excepting certain psychiatric records.

Generally, 456.057(7) (a), F.S., requires that the patient or the patient’s legal representative authorize the disclosure of the patient’s records. With limited exceptions, such authorization is required to be in writing. Written authorization

is not required for the disclosure of records between treating health care practitioners and providers involved in the care and treatment of the patient. (It should be noted that the term “providers” is not defined in the statute.) 456.057(7) (a) (1-5), F.S., provides several other exceptions to the written authorization requirement.

The requirements found in 456.057(7), F.S., apply to the general category of medical records. Medical records containing certain “sensitive” information as defined under either state or federal law may be accorded heightened authorization requirements. The treatment of sensitive information is addressed in Section VI of this summary.

Patient records pertaining to a worker’s compensation claim are also treated somewhat differently than they would be under 456.057, F.S. 440.13(4)(c), F.S., requires that all parties to the administration of the worker’s compensation system, including the patient’s employer and the Department of Financial Services, have reasonable access to the patient’s medical information. Such information would be limited to information related to the worker’s compensation claim at issue.

Re-disclosure of Information and Emergency Access to Information:

456.057(12), F.S., prohibits the re-disclosure of medical information without the “expressed written consent” of the patient or the patient’s legal representative. 456.057, F.S., is silent on the disclosure of patient information in a medical emergency. 456.057(7) (a), which allows for the disclosure, without consent, of information between treating health care providers would allow for an emergency disclosure. However, less clear would be the disclosure of such information by a records custodian that was not a treating practitioner. Arguably, 456.057(7) (a), F.S., only provides for disclosures, without consent, between “health care practitioners” and “providers” which may or may not include health information exchanges.

Electronic Transmission and Electronic Signatures:

Electronic transmission of patient information is not directly addressed in 456.057, F.S., however, 456.057(11), F.S., does require records owners to develop and implement policies, standards and procedures to protect the confidentiality and security of the medical records. Such requirement would, almost certainly, be construed to require that records owners ensure that electronic transmission be confidential and secure. Electronic signatures are addressed in 668.004, F.S., but only to the extent that such signatures have the same force and effect as a written signature.

2. Hospitals

Hospitals are governed by Chapter 395 of the Florida Statutes. 395.3025, F.S., provides the requirements relating to patient records.

Ownership and Control:

Ownership of patient records generated by a licensed facility does not appear to be directly addressed in statute. However, a reading of 395.3025, F.S., would imply that the licensed facility in which the patient record was created is the owner of the record while the patient has certain statutory rights of access to such records.

395.3025, F.S., does not apply to records maintained at a psychiatric care facility or to records of treatment for any mental or emotional condition which are governed by the provision of 394.4615, F.S. See 395.3025(2), F.S. 395.3025, F.S., does not apply to records of substance abuse impaired persons that are governed by 397.501, F.S. See 395.3025(3), F.S. 381.004(3)(g), addressing HIV test results, specifically exempts hospitals from the release requirements imposed on other health care practitioners

Patient Consent and Access:

395.3025(1), F.S., allows for the patient or the patient's guardian, curator or personal representative, or in the absence of one of those persons, to the next of kin of a decedent or the parent of a minor, or to anyone designated in writing by the patient, to receive a true copy of the patient's record for a charge as required by statute. If access to the patient's record is for the purpose of continuing care, the patient or the patient's representative is not required to pay a charge.

395.3025(4), F.S., requires the written consent of the patient or the patient's legal representative prior to the release of information, excepting the release of information to licensed facility personnel and attending physicians for treatment, administrative, risk management and quality assurance purposes. Similarly, compared to 456.057, F.S., licensed facility records may be released as required by law, including public health reporting, health oversight activities and pursuant to appropriate legal process or request.

Re-disclosure of Information and Emergency Access to Information:

395.3025(7) (a), F.S., prohibits the re-disclosure of patient treatment records unless expressly permitted by the written consent of the patient. Access to

treatment records for medical emergencies is not addressed and would therefore appear to be prohibited.

Electronic Transmission and Electronic Signatures:

Electronic transmission of patient information is not directly addressed in statute, however, it is addressed for hospitals in 59A -3.270, F.A.C. Hospitals are required to: 1) Provide for the confidentiality, integrity and security of data; 2) Provide uniform data definitions and methods for capturing and storing data, including electronic mediums and optical imaging; 3) Provide education and training in information management principles to decision-makers and other hospital personnel who generate, collect and analyze information; 4) Transmit information in a timely and accurate manner; and 5) Provide for the manipulation, communication and linkage of information. 59A-3.270 (1) (b-f), F.A.C. Electronic signature standards are not specifically addressed other than by 668.004, F.S., which provides that an electronic signature will have the same effect as a written signature.

3. *Clinical Laboratory*

Ownership and Control:

Ownership of patient records, in this case results of tests conducted by a laboratory, is not directly addressed in statute. However, clinical laboratories are required to maintain test records for all patient laboratory tests. See 59A-7.028(4), F.A.C.

Patient Consent and Access:

483.181(2), F.S. requires that laboratory test results must be reported directly to the licensed practitioner or other authorized person who requested the test. The patient would not have a right of access or the ability to consent to the disclosure of records maintained by the laboratory. An exception is made for an individual that submits his/her blood to a laboratory in connection with a home access HIV test kit approved by the FDA. See 483.181(1), F.S.

Re-disclosure of Information and Emergency Access to Information:

Re-disclosure of laboratory test results is not directly addressed in statute. Re-disclosure, from the ordering practitioner would be subject to the general re-disclosure requirements incumbent on the ordering practitioner. There does not

appear to be any provision in statute or rule that would authorize a clinical laboratory to release laboratory test results in a medical emergency.

Electronic Transmission and Electronic Signatures:

Electronic transmissions are not addressed, other than 59A-7.028(4), F.A.C., which authorizes records to be maintained in electronic media. Electronic signatures would have the same effect as a written signature. See 668.004, F.S.

4. Pharmacy

Ownership and Control:

Ownership and control of pharmacy records relating to the provision of pharmaceuticals to patients are not specifically addressed in statute. However, 465.0155, F.S., and 465.022, F.S., authorize the creation of administrative rules to govern pharmacy operations. 64B16-27.800, F.A.C., requires a pharmacy to maintain patient records for all new or refill prescriptions.

Patient Consent and Access:

465.017(2) (a), F.S., authorizes a patient to have access to his or her pharmacy records and requires the patient's or patient's legal representative's authorization to disclose the patient's pharmacy records. However, 465.017(2) (a), F.S., makes reference to requirements found in Chapter 456 of the Florida Statutes. Although under 456.057, F.S., pharmacies would not appear to be records owners they would appear to meet the definition of "records custodians" found in 456.057(3), F.S. As records custodians, it would appear that pharmacy records could be released to a provider involved in the care and treatment of the patient.

Re-disclosure of Information and Emergency Access to Information:

If considered a "records custodian," a pharmacy would be prohibited from re-disclosing a patient record without the written consent of the patient. See 456.057(12), F.S.

Emergency conditions do not appear to be directly addressed, however, 456.057(7) (a), F.S., would seem to allow for the release of such information by the pharmacy in its role as a records custodian.

Electronic Transmission and Electronic Signatures:

456.43, F.S., addresses “Electronic prescribing for medicinal drugs.” However, the statute does not address the actual electronic transmission of prescriptions. Electronic transmission in not addressed other than a patient record system must allow for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a new or refill prescription is presented for dispensing. An electronic signature would have the same effect as a written signature. See 668.004, F.S.

It should be noted that the status of electronic prescribing appears to be uncertain due to conflicting interpretations of existing Federal law. At the time of this writing it appears that the Federal Drug Enforcement Administration does not recognize electronic signatures for controlled substance prescriptions. The Drug Enforcement Administration’s position appears to reflect a literal reading of both 21 CFR 1306.11 and 21 CFR 1306.21.

21 CFR 1306.11 addresses the dispensing of controlled substances listed as Schedule II controlled substances by the Food and Drug Administration. (Schedule II controlled substances are substances which have a high potential for abuse). Prescriptions for Schedule II controlled substances must be in written form in order for a pharmacy to dispense the controlled substance absent a medical emergency. The prescription may be sent to a pharmacy via facsimile, provided that the original written prescription is presented to the pharmacy prior to the controlled substance being dispensed. (In the case of a medical emergency, a prescribing practitioner may call in an oral order to a pharmacy; however, the prescribing practitioner must provide the dispensing pharmacy with a written prescription within seven (7) days of providing the oral authorization). Arguably, 21 CFR 1306.11 would seem to create a barrier to electronic prescribing of Schedule II controlled substances as an electronic signature would not seem to satisfy the requirements of the rule.

21 CFR 1306.21 addresses the dispensing of controlled substances listed as Schedule III through Schedule V controlled substances by the Food and Drug Administration. Controlled substances listed in Schedules III through V may be dispensed by a pharmacy pursuant to a written prescription or via an oral prescription made by a prescribing health care provider. In the case of an oral prescription the dispensing pharmacy is required to reduce the oral prescription to writing. However, the signature of the dispensing practitioner is not required. Based on a literal reading of the language contained in 21 CFR 1306.21 electronic signatures for Schedule III through V controlled substances are not authorized nor are they specifically prohibited. Arguably, a prescribing practitioners’ ability to orally order certain controlled substances, without ever

signing a prescription, would seem to imply that a signed electronic prescription would be acceptable for Schedule III through Schedule V controlled substances.

5. Hospice

Ownership and Control:

400.6095, F.S., requires the creation of plan of care that would be part of the patient's medical record. 400.611(1-2), F.S., implies that the hospice provider is the records owner. 400.611(2), F.S., requires that clinically up to date records be kept and maintained for a period of five (5) years after the date of the last hospice service.

Patient Consent and Access:

400.611(3) (a), F.S., requires the express written informed consent of the patient or legal guardian. Patient access is not specifically addressed but would appear to be allowed under 400.611(3) (a), F.S.

Re-disclosure of Information and Emergency Access to Information:

Not specifically addressed.

Electronic Transmission and Electronic Signatures:

Electronic transmission is not specifically addressed. Electronic signatures would be acceptable to the same extent a written signature would be allowed under 668.004, F.S.

6. Mental Health Providers

Ownership and Control:

394.4615(1), F.S., requires that a clinical record be maintained for each patient. The mental health facility or service provider that creates a clinical record would appear to be the owner of the record. 65E - 4.014(3)(e), F.A.C., which would apply to mental health clients receiving state supported services, requires that mental health service providers have written policies and procedures regarding the content and maintenance of patient records.

Patient Consent and Access:

394.4615, F.S., requires the express written consent of the patient or the patient's legal guardian prior to release of the patient record. 394.4615(2 -9), F.S., specifies limited circumstances in which a patient's mental health record could be released without the consent of the patient or the patient's legal guardian.

394.4615(10), F.S., provides that a patient will have reasonable access to their clinical records, unless such access is determined to be harmful to the patient. A patient or the patient's legal representative is entitled to written notice of such a restriction.

Re-disclosure of Information and Emergency Access to Information:

Although the term "re-disclosure" is not used, 394.4615(1), F.S., indicates that the confidential status of the patient record is not lost by either authorized or unauthorized disclosure of the record.

There appears to be no reference to disclosure of patient information for emergency purposes. However, it should be noted that 394.4615(3) (a), F.S., does authorize the disclosure of patient information without the patient's consent when the patient has declared an intention to harm other persons.

Electronic Transmission and Electronic Signatures:

Electronic transmission of patient information does not appear to be addressed. However, 65E -4.014(3) (e), F.A.C., does require that adequate safeguards against loss, defacement, tampering or use by unauthorized persons be taken. Electronic signatures would be acceptable to the same extended a written signature would be allowed under 668.004, F.S.

7. Home Health**Ownership and Control:**

400.491(1), F.S., requires that a home health agency maintain a clinical record for each patient that receives skilled care. The record must be maintained for period of six (6) years following the termination of services to the patient.

Patient Consent and Access:

400.494(1), F.S., requires that all records shall be disclosed as allowed by the HIPAA Privacy Rule, excepting those records governed by the following statutes: 381.004, 385.202, 392.65, 384.29, 394.4615, 395.404, 397.501, and 760.40, F.S. Accordingly, consent would not be required for treatment, payment or health care operations as defined in the HIPAA Privacy Rule excepting those records of a "sensitive" nature that are expressly exempted by 400.494(1), F.S.

A patient's access to his/her own records is required under the HIPAA Privacy Rule.

Re-disclosure of Information and Emergency Access to Information:

Home health providers are required to abide by the HIPAA Privacy Rule, with the exception of certain specifically identified statutes mentioned above. Re-disclosure and emergency access is not addressed under Florida law. Accordingly, patient information could be disclosed by covered entities for treatment, payment and health care operations. See 45 CFR 164.502(a) (1) (ii).

Electronic Transmission and Electronic Signatures:

Electronic transmission is addressed in the context that transmission of a written order or plan of care by facsimile is allowed. See 59A-8.022(6) (a), F.A.C. While electronic signatures would be given the same effect as a written signature as described in 668.004, F.S., 59A-8.022(6) (b) (1), F.A.C., seems to have an enhanced requirement whereby an electronic signature must be appropriately authenticated and dated. Further, authentication must include signatures, written initials or computer secure access by a unique identifier of a primary author who has reviewed and approved the entry. Additionally, home health agencies must have safeguards in place to prevent unauthorized access to patient records and a process for reconstruction of the records in the event of a system failure.

8. Substance Abuse Providers**Ownership and Control:**

A substance abuse service provider would be considered the records owner and would be required to comply with applicable statutory requirements which include by reference the applicable requirements of 42 CFR Part 2 and 65D-30.004(12), F.A.C. Among other things, a substance abuse service facility would be required

to maintain records for a period of seven (7) years as well as comply with certain retention procedures as mandated by rules promulgated by the Department of Children and Families.

Patient Consent and Access:

397.501(7), F.S., requires the written consent of the client unless otherwise authorized by statute. (See 397.501(7) (a-j), F.S., listing numerous exceptions).

Minors:

It should be noted that pursuant to 397.501(7) (e) (1), F.S., a minor acting alone to obtain substance abuse treatment is authorized to provide consent to disclose information. Additionally, a parent or legal guardian of the minor client would be prevented from accessing client records without the client's consent. Also included in this restriction is any disclosure for financial reimbursement. Under 397.501(7)(e)(2), F.S., when the consent of a parent or guardian is required to obtain substance abuse treatment for a minor, both the parent/guardian and the minor would need to provide written consent prior to a disclosure.

397.501(7), F.S. does not directly address patient access. However, 42 CFR 2.23, incorporated by reference, does authorize patient access which does not need to be written.

Re-disclosure of Information and Emergency Access to Information:

397.501(7) (a), F.S., specifically incorporates all applicable federal confidentiality regulations. Accordingly, re-disclosure would be prohibited without the patient's express written consent. See 42 CFR 2.32.

397.501(7) (a) (1), F.S., authorizes disclosure to medical personnel in a medical emergency.

Electronic Transmission and Electronic Signatures:

Electronic transmission does not appear to be directly addressed. However, as 397.501(7) (a), F.S., incorporates applicable Federal confidentiality regulations, the privacy and security requirements of the HIPAA Security Rule, would arguably apply. Generally, in order to comply with the HIPAA Security Rule, which are found at 45 CFR 164.302-318, the transmissions would need to be in a manner that ensured the confidentiality, integrity and availability of the

information being transmitted. An electronic signature would have the same effect as a written signature. See 668.004, F.S.

9. Long Term Care Providers

Ownership and Control:

Records ownership is not specifically addressed. However, ownership is implied to the licensed nursing facility. See 400.145, F.S.

Patient Consent and Access:

400.145, F.S., indicates that a licensed facility shall furnish to the spouse, guardian, surrogate, proxy or attorney-in-fact a copy of the resident's records that are in the possession of the facility. However, 400.1415, F.S., requires a specific authorization (from whom is not indicated) permitting the use of patient information for the purposes of solicitation or marketing.

Patient access is not specifically addressed. However, 400.022(1) (j), F.S., requires that a resident be adequately informed of his or her medical condition, if competent.

Re-disclosure of Information and Emergency Access to Information:

Re-disclosure and emergency access are not specifically addressed.

Electronic Transmission and Electronic Signatures:

Electronic transmission is not specifically addressed. Electronic signatures would be given the same effect as a written signature. See 668.004, F.S.

10. Emergency Medical Services

Ownership and Control:

401.30(4), F.S., requires each licensee to maintain a record of all emergency calls which contain patient information.

Patient Consent and Access:

Pursuant to 401.30(4), F.S., EMS records may not be disclosed without the consent of the person to whom the records pertain. The type of consent (written, implied or oral) is not addressed. 401.30(4) (a-g), F.S., authorizes certain "appropriate" limited disclosures of patient information without the consent of the patient. The term "appropriate" is not defined. One such limited disclosure would be the person's guardian, the next of kin of the patient if deceased, or to a parent. Disclosure to hospital personnel in conjunction with treatment is also authorized.

401.30(4), F.S., authorizes patient access to an EMS record pertaining to the patient.

Re-disclosure of Information and Emergency Access to Information:

Re-disclosure is not specifically addressed. 401.30(4) (b), F.S., authorizes disclosure to hospital personnel for treatment purposes.

Electronic Transmission and Electronic Signatures:

Electronic transmission is not addressed. Electronic signatures would have the same effect as written signature. See 668.004, F.S.

II. Government Health Care Providers

Section II addresses the general Florida law requirements for government providers of health care with regard to medical records and/or patient information. This is not necessarily a preemption analysis but rather a general review of certain Florida laws that would be applicable in the analysis of health information exchange

Chapter 119, F.S., provides that public records, as described in 119.011(11), F.S., are available to the public for inspection and copying. However, records created by agencies or departments of the State of Florida in their role as health care providers are generally exempt from public inspection and copying even though the records would be considered “public records.” In addition to the partial review of government health care providers listed below, Attachment I contains a listing of exemptions to 119.07, F.S., for situations in which state government is a provider of health care.

1. *Department of Education – School Health*

Ownership and Control:

School health records consist of a cumulative health record which may include information on: immunizations status, health history, including treatment plan and any chronic conditions, screening tests, health examination report, documentation of injuries and of episodes of sudden illness referred for emergency health care, documentation of consultations with school personnel, students and parents regarding a student's health problems, documentation of a physician's orders and parental permission to administer medication or medical treatments. See 64F -6.005(1) (a-h), F.A.C. Cumulative health records are maintained by the school. Confidential medical information that is not a part of the cumulative health record shall be maintained in the private professional's office or the office of the school nurse.

Patient Consent and Access:

Written consent would be required by the student's parents or the student if qualified, to release information in the school record. However, 1002.22(3) (d) (1-14), F.S., provides an extensive list of entities/agencies that may receive a copy of the school record without the parent's or student's consent. The parent of the student or the student, if qualified, would be allowed access to the record.

Re-disclosure of Information and Emergency Access to Information:

Re-disclosure does not appear to be addressed. Emergency access to a student's record would be allowed pursuant to 1002.22(3) (d) (9), F.S., in a medical emergency.

1002.22(3) (d) (9), F.S., specifically authorizes the disclosure of the student record without consent to appropriate parties in connection with an emergency.

Electronic Transmission and Electronic Signatures:

Electronic transmission does not appear to be addressed. Electronic signatures would have the same effect as a written signature. See 668.004, F.S. It should be noted that 282.318, F.S., does require all state agencies to develop internal policies and procedures pertaining to information technology-related matters.

2. Department of Health – County Health Departments**Ownership and Control:**

The Department of Health, when acting as a health care provider, would be subject to the applicable requirements of 456.057, F.S., for services provided by the Department's health care providers. 64F- 10.008, F.A.C., indicates that providers and subcontractors shall maintain a current and complete health record. This provision, along with the requirements of 456.057, F.S., implies that providers and subcontractors would be considered the records owner unless ownership was otherwise assigned. However, 64F- 10.008(3) (b) & (4) authorizes the Department of Health to have access for administrative, quality and epidemiological purposes.

Patient Consent and Access:

456.057(7), F.S., would require that a patient or a patient's legal representative provide written consent for the release of the patient's medical records, with certain exceptions. Notable among the exceptions would be 456.057(7), F.S., which would allow the disclosure of patient records between treating providers for treatment purposes. 64F - 10.008(3), F.A.C., indicates that records are privileged and confidential and may not be disclosed without the consent of the person to who they pertain. Consent is not required between provider personnel for the care and treatment of the patient.

Patient access would be allowed as provided under 456.057, F.S. 64F - 10.008(3), F.A.C., also authorizes patient access.

Re-disclosure of Information and Emergency Access to Information:

Generally, 456.057(12), F.S., prohibits the re-disclosure of patient information without the express written consent of the patient. Release of patient information for emergency conditions is not specifically addressed in 456.057, F.S. However, for information other than "sensitive" information disclosures for emergency purposes, disclosure would be allowed under 456.057(7), F.S. 64F - 10.008(3), F.A.C., would also allow for the release of patient information for emergency treatment purposes.

Electronic Transmission and Electronic Signatures:

Not specifically addressed. 456.057(11), F.S., would appear to be applicable as would Department of Health standards for employees of the Department. Electronic signatures would have the same effect as a written signature. See 668.004, F.S. It should be noted that 282.318, F.S., does require all state agencies to develop internal policies and procedures relating to information technology-related matters.

3. Department of Health – Children’s Medical Services

Ownership and Control:

Children's Medical Services (CMS) primarily utilizes private health care practitioners for the provision of services to CMS patients. Accordingly, the requirements of 456.057, F.S., would be applicable. CMS does maintain a complete copy of the patient's record which would include records provided by other providers. 64C-1.003, F.A.C., requires CMS applicants and participants to furnish CMS with medical information.

Patient Consent and Access:

456.057(7), F.S., would require that a patient or a patient’s legal representative provide written consent for the release of the patient’s medical records. There are certain exceptions to the consent requirement. Notable among the exceptions would be 456.057(7), F.S., which would allow the disclosure of patient

records between treating providers for treatment purposes. Patient access would be allowed as provided under 456.057, F.S.

Re-disclosure of Information and Emergency Access to Information:

Generally, 456.057(12), F.S., prohibits the re-disclosure of patient information without the express written consent of the patient. Release of patient information for emergency conditions is not specifically addressed in 456.057, F.S. However, for information other than "sensitive" information disclosures for emergency purposes, disclosure would be allowed under 456.057(7), F.S.

Electronic Transmission and Electronic Signatures:

Not specifically addressed. 456.057(11), would appear to be applicable as would Department of Health standards for employees of the Department. Electronic signatures would have the same effect as a written signature. 668.004, F.S. It should be noted that 282.318, F.S., does require all state agencies to develop internal policies and procedures relating to information technology-related matters.

4. *Department of Corrections – Health Care Services*

Ownership and Control:

945.10(1), F.S., indicates that mental health, medical or substance abuse records shall be held by the Department of Corrections.

Patient Consent and Access:

Consent for the release of an inmate's medical record is treated similarly to those of non-inmates. Inmates must sign a Department of Corrections approved form (DC4-711B) which then must be submitted to a central processing point prior to the release of information.

945.10(3), F.S., provides that an inmate "may" be permitted limited access to his/her medical record upon a written request and the demonstration of exceptional need for the information contained in the Department's record. 33-601.901(2), F.A.C., provides that an inmate may have access to his/her own medical record upon the submission of a written request to the health services administrator. 33-601.901(4), F.A.C., prohibits an inmate from having access to

psychotherapy notes or substance abuse progress notes maintained by the Department.

Re-disclosure of Information and Emergency Access to Information:

Re-disclosure does not appear to be specifically addressed.

33-601.901(3) (a), F.A.C., appears to authorize the release of patient information to ensure that the inmate's overall health needs are met. 33-601.901(9) (e), F.A.C., specifically authorizes the release of patient information, subject to the requirements of 42 CFR Part 2, for emergency purposes.

Electronic Transmission and Electronic Signatures:

Electronic transmission of patient information does not appear to be addressed. Electronic signatures would be acceptable to the same extent a written signature would be allowed under 668.004, F.S. It should be noted that 282.318, F.S., does require all state agencies to develop internal policies and procedures relating to information technology-related matters.

5. Agency for Persons with Disabilities – Developmental Disability Services

Ownership and Control:

393.13(4) (i), F.S., requires that each client have a "central record" which shall be the property of the agency. This requirement appears to be for residential facilities operated by the Agency for Persons with Disabilities (APD). It should be noted that the ADP provider contract for outside independent contractor providers requires compliance with the HIPAA Privacy and Security regulations, specifically the execution of a Business Associate Agreement.

Patient Consent and Access:

The client or the client's legal guardian has the right to "waive" the confidentiality requirements found in 393.13(4)(i)(1), F.S. It is not specified whether such a waiver need be written, implied or oral. Additionally, 393.13(4) (i) (1) (a-d), F.S., provides for the release of the record without consent for certain specific situations.

393.14(4) (i) (2), F.S., provides the client or the client's parent or legal guardian with a right of access upon request.

Re-disclosure of Information and Emergency Access to Information:

Neither re-disclosure or emergency access appear to be directly addressed.

Electronic Transmission and Electronic Signatures:

Electronic transmission is not directly addressed. However, the ADP Provider Contract specifically requires an appropriate level of data security for all providers including audit trails and access controls. Electronic signatures are given the same effect as a written signature. See 668.004, F.S. It should be noted that 282.318, F.S., does require all state agencies to develop internal policies and procedures relating to information technology-related matters.

6. *Department of Children and Families*

Ownership and Control:

The Department of Children and Families (DCF) does provide, either directly or through contract, certain mental health and substance abuse services. Where DCF is the direct provider of services they would appear to be the records owner. Where services are provided indirectly through contract DCF would appear to have a right of access to such records. In both cases 394.4615, F.S., and 397.501, F.S., would appear to be applicable. Additionally, DCF has extensive operating procedures relating to the management and protection of personal health information. See DCF CF Operating Procedure No. 60-17.

Patient Consent and Access:

Generally patient access for information related to mental health treatment would be governed by 394.4615, F.S., which requires the express written consent of the patient or the patient's legal guardian prior to release of the patient record. 394.4615(2 -9), F.S., specifies limited circumstances in which a patient's mental health record could be released without the consent of the patient or the patient's legal guardian.

394.4615(10), F.S., provides that a patient will have reasonable access to their clinical records, unless such access is determined to be harmful to the patient. A patient or the patient's legal representative is entitled to written notice of such a restriction.

Patient access to information related to substance abuse treatment would be governed by 397.501, F.S., which requires the written consent of the client unless otherwise authorized by statute. (See 397.501(7) (a-j), F.S., listing numerous exceptions).

397.501(7), F.S. does not directly address patient access. However, 42 CFR 2.23, incorporated by reference, does authorize patient access which does not need to be written.

Re-disclosure of Information and Emergency Access to Information:

Although the term "re-disclosure" is not used, 394.4615(1), F.S., indicates that the confidential status of the patient record is not lost by either authorized or unauthorized disclosure of the record

There appears to be no reference to disclosure of patient information for emergency purposes. However, it should be noted that 394.4615(3) (a), F.S., does authorize the disclosure of patient information without the patient's consent when the patient has declared an intention to harm other persons

397.501(7) (a), F.S., specifically incorporates all applicable federal confidentiality regulations. Accordingly, re-disclosure would be prohibited without the patient's express written consent. See 42 CFR 2.32.

397.501(7) (a) (1), F.S., authorizes disclosure to medical personnel in a medical emergency.

Electronic Transmission and Electronic Signatures:

With regard to mental health services electronic transmission of patient information does not appear to be addressed. However, 65E -4.014(3) (e), F.A.C., does require that adequate safeguards against loss, defacement, tampering or use by unauthorized persons be taken

With regard to substance abuse services electronic transmission does not appear to be directly addressed. However, as 397.501(7) (a), F.S., incorporates applicable Federal confidentiality regulations, the privacy and security

requirements of the HIPAA Security Rule, would arguably apply. Generally, in order to comply with the HIPAA Security Rule, which are found at 45 CFR 164.302-318, the electronic transmissions would need to be in a manner that ensured the confidentiality, integrity and availability of the information being electronically transmitted. In both cases an electronic signature would have the same effect as a written signature. See 668.004, F.S.

II. Commercial Payers

Section III addresses the general Florida law requirements for commercial health care payers with regard to medical records and/or patient information. Information addressing the treatment of patient information by commercial insurers may, generally, be found in the following Florida statutes: 624.23, 624.308, 626.9651, 627.429, 627.4195, 627.668, 641.3007, 641.27, 641.515, 641.55, and 641.59, F.S. This is not necessarily a preemption analysis but rather a general review of certain Florida laws that would be applicable in the analysis of health information exchange.

Ownership and Control:

Commercial health insurers in Florida may be records owners of medical records in the event that the insurer is also the provider of health care. Commercial insurers may also have access to medical records and patient information in their capacity as an insurer. The requirements relating to the treatment of patient information are scattered throughout the above-listed sections of Florida Statutes. Additionally, significant guidance regarding the treatment of such information is provided in the relevant sections of the Florida Administrative Code which were drafted to comply with the applicable provisions of the Gramm-Leach-Bliley Act.

Patient Consent and Access:

69O-128.017, F.A.C., would generally require the written consent of the patient for the disclosure of “nonpublic personal health information”. Patient access does not appear to be directly addressed. However, 69O-128.020, F.A.C., requires compliance with the HIPAA Privacy Rule which would permit patient access.

Re-disclosure of Information and Emergency Access to Information:

Re-disclosure does not appear to be addressed. Emergency conditions do not appear to be addressed. However, 69O-128.07(2) (ff), F.A.C., would authorize the disclosure of non-public protected health information to a hospital or medical care provider in connection with the treatment of the patient.

Electronic Transmission and Electronic Signatures:

Electronic signatures would be valid to the same extent as a written signature. See 668.004, F.S. Electronic transmissions do not appear to be specifically addressed in statute or rule.

IV. Government Payers

Section IV addresses the general Florida law requirements for state government health care payers with regard to medical records and/or patient information. This is not necessarily a preemption analysis but rather a general review of certain Florida laws that would be applicable in the analysis of health information exchange.

1. *AHCA (Medicaid, Medikids, etc.)*

Ownership and Control:

Records maintained directly by AHCA or its contracted agents (business associates) would appear to be owned by AHCA and would be subject to all applicable statutory requirements. 42 CFR 431.300 – 307, provides the overall framework for the release and use of information about Medicaid applicants and recipients.

Patient Consent and Access:

Patient consent would be required for the release of information to an “outside source,” unless the information is to be used to verify income, eligibility, and the amount of medical assistance payment. See 42 CFR 431.306. Patient access would seem to be allowed via written request for such information.

Re-disclosure of Information and Emergency Access to Information:

Re-disclosure does not appear to be addressed. Patient information could be released in an emergency situation if time did not permit the obtaining of consent. Post-release notification would be required. See 42 CFR 431.306(e).

Electronic Transmission and Electronic Signatures:

Electronic signatures are valid to the same extent as a written signature. See 668.004, F.S. Electronic transmissions do not appear to be specifically addressed in statute or rule. It should be noted that 282.318, F.S., does require all state agencies to develop internal policies and procedures relating to information technology-related matters.

2. *Florida Healthy Kids*

Ownership and Control:

624.91(8), F.S., authorizes the Florida Healthy Kids Corporation to access medical records upon consent of a parent or guardian. It appears that medical records ownership would remain with the health care provider that created the record.

Patient Consent and Access:

All confidential information received by the Florida Healthy Kids Corporation may not be released without the written consent of the participant and/or parent or guardian. 624.91(8), F.S., would seem to allow patient/parent/guardian access to any records maintained by the corporation.

Re-disclosure of Information and Emergency Access to Information:

The term “re-disclosure” is not directly addressed. However, it can be assumed that release of confidential information would be subject to the same consent requirements mentioned above. Emergency access to medical information is not addressed.

Electronic Transmission and Electronic Signatures:

Electronic signatures are valid to the same extent as a written signature. See 668.004, F.S. Electronic transmissions do not appear to specifically addressed in statute or rule. It should be noted that 282.318, F.S., does require all state agencies to develop internal polices and procedures relating to information technology-related matters.

3. *Department of Financial Services – Worker’s Compensation*

Ownership and Control:

The Department of Financial Services may obtain medical records and medical reports in its capacity as the oversight agency for worker’s compensation programs in the state. The Department must maintain the confidentiality of

medical records held by the Department. However the Department may share such information with AHCA and the Department of Education in furtherance of its official duties.

Patient Consent and Access:

Consent for the release of records maintained by the Department does not appear to be addressed. Patient access to records maintained by the Department concerning the patient does not appear to be addressed.

Re-disclosure of Information and Emergency Access to Information:

Re-disclosure and emergency access do not appear to be addressed.

Electronic Transmission and Electronic Signatures:

Electronic signatures are valid to the same extent as a written signature. See 668.004, F.S. Electronic transmissions do not appear to specifically addressed in statute or rule. It should be noted that 282.318, F.S., does require all state agencies to develop internal polices and procedures relating to information technology-related matters.

4. Department of Management Services – State Group Insurance

Ownership and Control:

110.123(9), F.S., addresses medical records and medical claims records that are in the custody or control of the state group insurance program. Ownership of the records is not directly addressed.

Patient Consent and Access:

110.123(9), F.S., would require the written authorization of the patient or the patient's legal representative, excepting certain civil or criminal actions. 119.071(4) (b), F.S., would also require the patient's written authorization. Not specifically addressed, however, access appears to be available via written request.

Re-disclosure of Information and Emergency Access to Information:

Re-disclosure and emergency access do not appear to be addressed.

Electronic Transmission and Electronic Signatures:

Electronic signatures are valid to the same extent as a written signature. See 668.004, F.S. Electronic transmissions do not appear to specifically addressed in statute or rule. It should be noted that 282.318, F.S., does require all state agencies to develop internal polices and procedures relating to information technology-related matters.

V. Government Programs

Section V addresses the general Florida law requirements for state government oversight programs with regard to medical records and/or patient information. The listing below is meant to be representative of the general requirements of government programs and is not inclusive of all government programs in Florida. This is not necessarily a preemption analysis but rather a general review of certain Florida laws that would be applicable in the analysis of health information exchange. In addition to the partial review of government programs listed below, Attachment II contains a listing of exemptions to 119.07, F.S., for state government public health and other health-related programs.

1. *Agency for Health Care Administration - General*

Ownership and Control:

408.061, F.S., requires AHCA to collect data from health care facilities, health care providers and health insurers to carry out the agency's oversight duties. While not specifically addressed, AHCA would appear to be the owner of the collected data. 408.061(7), F.S., would require that any patient-identifiable information be maintained as confidential. Additionally, AHCA has categorized itself as a covered entity under HIPAA for all of its activities. Accordingly, except in cases where a more stringent (as that term is defined in the HIPAA Privacy Rule), state law exists, AHCA would abide by the applicable HIPAA requirements.

Patient Consent and Access:

Patient consent would not be required for the use of a patient's information for the purposes of 408.061, F.S. 408.061(7), F.S., would make patient records obtained by the agency confidential and exempt from the provisions of 119.07(1), F.S. However, 408.06(10), F.S., would allow confidential information to be released to other governmental entities and agencies contracting with AHCA to perform the duties of AHCA (business associates). 59B-9.023, F.A.C., relating to ambulatory patient data and 59E -7.015, F.A.C., relating to hospital and nursing home patient data, require that identifiable patient information be modified to protect patient confidentiality. Patient consent is not required for treatment, payment, health care operations, a limited (de-identified) data set, or with Institutional Review Board (IRB) approval as defined in the HIPAA Privacy Rule.

Patient access to data identifying the patient does not appear to be addressed. However, unless otherwise prohibited or excepted by law, AHCA, as a fully covered entity under HIPAA, would allow such access to the patient or whomever the patient authorizes in writing using a valid authorization that complies with HIPAA.

Re-disclosure of Information and Emergency Access to Information:

408.061(10), F.S., would require any entity or party receiving patient data to maintain the confidentiality of such data. Emergency access to patient information is not addressed.

Electronic Transmission and Electronic Signatures:

Electronic transmission is not specifically addressed. However, 408.0615, F.S., requires the secure maintenance and back up of data. An electronic signature has the same effect as a written signature. See 668.004, F.S. It should be noted that 282.318, F.S., does require all state agencies to develop internal policies and procedures relating to information technology-related matters.

2. *Florida Department of Health - General*

Ownership and Control:

381.0011, F.S., authorizes the Department of Health (DOH) to act as an assessor of the public health status and needs of the state via statewide data collection and other appropriate means. Accordingly, DOH would appear to be the owner of such collected data. 119.0712(1), F.S., indicates that all records relating to an individual person's health or eligibility for health related services held by the Department are confidential and exempt from 119.07(1), F.S. 381.0031(4), F.S., requires that information/reports submitted to DOH, in its role as a public health authority, remain confidential and may be made public only when necessary for public health.

Patient Consent and Access:

Generally, 119.0712(1) (a), F.S., would require the express written consent of the individual or the individual's legally authorized representative. It should be noted that with regard to the release of certain "sensitive" data, such as HIV test results, heightened consent requirements would apply. 119.0712, F.S., does to a

very limited extent authorize the disclosure of identifying information without the consent of the patient.

119.0712, F.S. would allow an individual to access information concerning themselves.

Re-disclosure of Information and Emergency Access to Information:

119.0712, F.S., does not directly address re-disclosure of patient information. However, re-disclosure could be prohibited based on other statutory requirements, such as those relating to HIV test results.

119.0712(1) (b), F.S., would authorize the disclosure of patient information in a medical emergency.

Electronic Transmission and Electronic Signatures:

Electronic signatures are valid to the same extent as a written signature. See 668.004, F.S. Electronic transmissions do not appear to specifically address in statute or rule. It should be noted that 282.318, F.S., does require all state agencies to develop internal policies and procedures relating to information technology-related matters.

3. *Florida Department of Health – Immunizations Registry*

Ownership and Control:

As authorized in 381.003, F.S, DOH maintains a registry for the prevention and control of vaccine-preventable diseases.

Patient Consent and Access:

A parent or guardian may refuse to have their child included in the immunization registry (See 381.003(1) (e), F.S.). However, if the child is included in the registry, the child's immunization records may be electronically transferred to entities that are required by law to have such records (See 381.003(3), F.S.). Additionally, certain licensed health care providers, may have access to immunization registry records (See 381.003(4), F.S.) 119.0712, F.S., would otherwise require the written consent of the individual or individual's legally authorized representative to release the patient's information, with certain limited

exceptions. 119.0712(1) (a), F.S., would also allow for patient/representative access to their information.

Re-disclosure of Information and Emergency Access to Information:

381.003(4), F.S., indicates that “a health care practitioner or other agency” that obtains information from the registry must maintain the confidentiality of such information in accordance with 456.057, F.S. 456.057(3)(b), F.S., would, arguably, make such practitioner a “records custodian” thereby requiring patient/parent/guardian consent to release such information absent an applicable exception under 456.057(7), F.S.

119.0712(1) (b), F.S., authorizes the release of information in a medical emergency.

Electronic Transmission and Electronic Signatures:

The immunization registry is in electronic form and allows for information to be transferred electronically. Transmission and signature standards are not addressed in statute or rule. However, DOH does have internal security protocols in place that comply with the HIPAA Security Rule.

4. Department of Children and Families - General

Ownership and Control:

The Department of Children and Families in its oversight role does have access to patient records and information. For example with regard to the oversight and inspection of mental and substance abuse facilities, 394.90 and 397.411, F.S., respectively, provide authority to access patient records.

Patient Consent and Access:

Although the Department, in its oversight function, has the right to access patient information, such information would not lose the confidentiality protections and access rights accorded by other provisions of Florida law. Such information is exempt from 119.07(1), F.S.

Re-disclosure of Information and Emergency Access to Information:

Re-disclosure and emergency access are not specifically addressed. However, underlying confidentiality provisions provided by other state laws would not be superseded.

Electronic Transmission and Electronic Signatures:

Electronic signatures are valid to the same extent as a written signature. See 668.004, F.S. Electronic transmissions do not appear to specifically addressed in statute or rule. It should be noted that 282.318, F.S., does require all state agencies to develop internal polices and procedures relating to information technology-related matters.

5. Department of Elder Affairs - General**Ownership and Control:**

430.105, F.S., seems to indicate that the Department of Elder Affairs (DEA) may maintain a record containing information relating to an individual's health status. 430.207, F.S., addresses records maintained by DEA Community Care for the Elderly Programs. 430.504, F.S., addresses records maintained by or for the Alzheimer's Disease Advisory Committee. 430.608, F.S., addresses records maintained by the DEA Home Care for the Elderly programs.

Patient Consent and Access:

All the previously cited statutory references require the written consent of the individual or his/her legal representative. Consent is not required to another governmental entity for the purposes of administering the department's programs for the elderly. Patient access is not directly addressed but may be implied.

Re-disclosure of Information and Emergency Access to Information:

Re-disclosure and emergency conditions do not appear to be addressed.

Electronic Transmission and Electronic Signatures:

Electronic transmission is not specifically addressed. However, 408.0615, F.S., requires the secure maintenance and back up of data. An electronic signature

has the same effect as a written signature. See 668.004, F.S. It should be noted that 282.318, F.S., does require all state agencies to develop internal policies and procedures relating to information technology-related matters.

VI. Treatment of Sensitive Medical Information

Florida law provides for enhanced patient privacy protections for many sensitive medical conditions. These enhanced patient privacy protections are above and beyond the privacy protections required by 456.057, F.S., and 395.3025, F.S. Generally, the enhanced privacy protections are applicable to medical conditions and information that might be considered socially stigmatizing.

1. *HIV Test Results*

381.004(3) (e), F.S., makes the identity of person upon whom an HIV test has been performed and the test results confidential and exempt from the provisions of 119.07, F.S. It should be noted that this statute applies only to HIV test results which are defined in 381.004(2) (b), F.S., to mean the “laboratory report” as entered into a medical record. It does not include test results reported to a health care provider by a patient.

The identity and HIV test results may only be released as authorized under 381.004(3) (e) (1-15), F.S. Among those to whom the test results may be released to are:

1. The subject of the test or the subject’s legally authorized representative.
2. Any person, designated in a legally effective release. It should be noted that a general medical release is not sufficient.
3. Health care providers consulting between themselves or with health care facilities to determine diagnosis and treatment. Arguably, this would be similar to the release of information to treating providers without patient consent as allowed under 456.057(7), F.S.

Re-disclosure of HIV test results would be subject to the requirements of 381.004, F.S., and would need to be accompanied by a written statement relating to the confidentiality of the test results as well as a statement regarding the prohibition against further disclosure of the test results that is not authorized by the patient or by law. See 381.004(3) (f), F.S.

760.50(5), F.S., also addresses the confidential nature of information relating to the medical condition or HIV/AIDS status of an individual held by employer. Specifically, the statute requires that every employer who provides or administers health insurance benefits of life insurance benefits to its employees shall maintain the confidentiality of an employee’s information.

2. Mental Health Records

394.4615, F.S., provides the parameters for the release of patient information created by mental health facilities and mental health providers. Specifically, 394.4615(1), F.S., requires the express and informed consent, by the patient or the patient's guardian or guardian advocate or, if the patient is deceased, the patient's personal representative or next of kin. The clinical record is exempt from the provisions of 119.07(1), F.S., and does not lose its confidential status by virtue of authorized or unauthorized disclosure. 394.4615, (2-9), F.S., provide the circumstances under which a patient clinical record could be released to a person other than the patient or the patient's legal representative. Notable would be the disclosure of information when the patient has a declared and intention to harm other persons.

394.4615, (10), F.S., would allow a patient to have reasonable access to their clinical records unless such access is determined by the patient's physician to be harmful to the patient. The patient or the patient's legal representative would be entitled to notice of any restrictions on access.

490.0147, F.S., applicable to professionals licensed by the Board of Psychology, requires that all confidential communications between the patient and the provider are confidential. Confidentiality may be waived in writing by the patient or when the provider believes that there is a clear and immediate probability of physical harm to the patient, to other individuals, or to society.

90.503, F.S., also establishes a right of confidentiality for communications between a patient and psychotherapist. Psychotherapist is broadly defined in 90.503(1) (a) (1-5), F.S.

3. Substance Abuse

397.501(7), F.S., governs the release of records created by substance abuse services providers as defined in 397.311(28), F.S. Such records are exempt from 119.07(1), F.S., and are otherwise confidential. 397.501(7) (a), F.S., also requires that the disclosure of records created by substance abuse service providers comply with applicable federal confidentiality regulations.

Generally, records created by substance abuse services providers may not be disclosed without the consent of the patient. However, such records may be disclosed to medical personnel in a medical emergency or to other service provider personnel to provide services to the patient. There are also other exceptions to the patient consent requirement relating to legal and/or health oversight activities.

4. Sexually Transmissible Diseases

Although only applicable to the Department of Health and its authorized representatives, 384.29, F.S., requires that all records relating to known or suspected cases of sexually transmissible diseases be exempt from 119.07(1), F.S., and be maintained in a confidential manner. Generally, such records may not be released without the consent of the patient absent one of the legal or health oversight exemptions provided in the statute. It should be noted that 384.29(d), F.S., does authorize disclosure without consent in a medical emergency. It should also be noted that also applicable to the Department of Health is 119.0712, F.S., which contains essentially the same confidentiality requirements found in 384.29, F.S.

5. Tuberculosis

Although only applicable to the Department of Health and its authorized representatives, 392.65, F.S., requires that all records relating to known or suspected cases of tuberculosis be exempt from 119.07(1), F.S., and be maintained in a confidential manner. Generally, such records may not be released without the consent of the patient absent one of the legal or health oversight exemptions provided in the statute. It should be noted that 392.65(d), F.S., does authorize disclosure without consent in a medical emergency. It should be noted that also applicable to the Department of Health is 119.0712, F.S., which contains essentially the same confidentiality requirements found in 392.65 F.S.

6. Genetic Information

760.40, F.S., addresses “DNA analysis” and includes DNA typing and genetic testing. Pursuant to 760.40(2) (a), F.S., the results of DNA analysis are confidential, exempt from the provisions of 119.07(1), F.S., and require the consent of the individual for release or disclosure. Unique in Florida law, 760.40(2) (a), F.S., provides that results of DNA analysis are the “exclusive property” of the person tested.

VII. Minors

In most cases health care decisions for minors and consequently the control of medical records relating to such decisions rest with the minor's parent or guardian. However, there are certain circumstances under Florida law in which a minor would be the ultimate decision maker with regard to the use and or disclosure of the minor's medical records. It should be noted that under the HIPAA Privacy Rule (45 CFR 164.502(g)(3)(i-ii)), a minor with sole authority to make their own health care decisions would be considered to have sole control over the use and disclosure of their medical information.

Minors are prevented from exercising control over the use and disclosure of medical records concerning them due to the "disability of nonage." Florida law, however, provides certain circumstances in which the disability of nonage would be removed specifically with regard to the use and disclosure of the minor's medical records. It should be noted that there are circumstances in which the disability of nonage can be removed for all matters involving the minor. However, this analysis only addresses situations relating to the use and disclosure of an unemancipated minor's medical information.

743.065(1), F.S., authorizes an unwed pregnant minor to consent to the performance of medical or surgical care or services relating to her pregnancy by a hospital or clinic or by a physician licensed under Chapters 458 or 459 of the Florida Statutes. Unclear is whether the condition of pregnancy would allow the minor to be able to control the use and disclosure of medical information regarding the minor that does not directly relate to the minor's pregnancy. However, given that almost any medical condition of a pregnant minor could arguably be deemed related to the pregnancy, there would be a compelling argument that the minor would have control over the use and disclosure of such medical information.

Also related to the pregnancy of an unwed minor would be the "Parental Notice of Abortion Act" found at 390.01114, F.S. Under this statute the parent of a minor child seeking an abortion would be entitled to notice of the prospective abortion unless one of the statutory exceptions applied. The statute provides for a judicial bypass of notification under certain circumstances.

A minor may also seek testing and treatment for sexual transmissible diseases without a parent's knowledge or consent. Pursuant to 384.30(2), F.S., no information may be directly or indirectly divulged to a minor's parent or guardian.

Pursuant to 397.501(7) (e) (1), F.S., a minor acting alone to obtain substance abuse treatment is authorized to provide consent to disclose information. Additionally, a parent or legal guardian of the minor client would be prevented

from accessing client records without the client's consent. Also included in this restriction is any disclosure for financial reimbursement. Under 397.501(7)(e)(2), F.S., when the consent of a parent or guardian is required to obtain substance abuse treatment for a minor, both the parent/guardian and the minor would need to provide written consent prior to a disclosure.

VIII. Notification of Breach Requirements

Florida's numerous medical records laws provide for the protection of information relating to the medical care provided to a patient, albeit not always in a consistent manner. Many of these laws provide for penalties, both administrative and criminal, for the improper use and/or disclosure of patient information. However, none of Florida's "medical records" laws provide a requirement to notify the patient or the patient's legal representative in the event of a breach of the security or confidentiality of the patient's information.

Florida law does, however, address more broadly the breach of security of confidential personal information in the possession of a third party. Specifically, 817.5681, F.S., requires that any person that conducts business in Florida and maintains computerized data in a system that contains personal information shall provide notice of any breach of security of the system. Specifically, the notice would need to be provided in the event that unencrypted personal information was, or was reasonably believed to have been, acquired by an unauthorized person. Notice of breach would generally need to be provided within 45 days after the determination of a breach. Failure to make notification of the breach in a timely manner could subject the notifying party to administrative fines.

While 817.5681, F.S., does provide some protection to individuals, the statute has limited application to a breach involving medical records. Under the 817.5681(5), F.S., personal information would only be information containing an individual's name and unencrypted data elements containing the individual's: 1) Social Security Number, 2) Driver's license number or Florida identification card number, or 3) Account number, credit card number or debit card number in combination with a security code, access code or password that would permit access to an individual's financial account. Unless a breach included the above-mentioned prerequisites for "personal information" the notification requirements would not appear to be applicable for many conceivable types of breaches of medical records.

IX. Marketing and Sale of Health Data

Similar to the HIPAA privacy regulation, Florida law also prohibits the use of a patient's information for marketing and solicitation purposes without the patient's written authorization. 456.057(7)(b), F.S., applicable to health care providers and 395.3025(7)(b), F.S., applicable to hospitals and ambulatory surgery centers both require the "specific written release or authorization permitting utilization of patient information for solicitation or marketing the sale of goods or services". Arguably, the aforementioned Florida laws are more stringent than 45 CFR 164.508(3)(i)(A), which would allow face-to-face marketing communications between the health care provider and the patient without the patient's authorization and 45 CFR 164.508(3)(i)(B), which would allow a health care provider to provide a patient with a promotional gift of nominal value without the patient's consent.

Related to marketing activities that may take place directly between a health care provider or health care facility and a patient is the sale of patient information to third parties for marketing purposes. The marketing requirements listed above arguably appear to apply to certain licensed facilities and/or licensed health care providers.¹ Additionally, the re-disclosure requirements found in 456.057(12), F.S., and 395.3025(7)(a), F.S., would seem to prohibit the secondary use of patient data for marketing purposes without the consent of the patient or the patient's representative.

¹ As mentioned in the review of Independent Health Care Providers, (page 10), the marketing requirements imposed on licensed health care providers by 456.057(7)(b), F.S., would arguably be applicable to non-health care providers meeting the definition of "records custodians" in 456.057(3), F.S.

X. Other

1. 668.50, F.S., Uniform Electronic Transaction Act

Aside from 668.004, F.S., which provides that an electronic signature shall have the same force and effect as a written signature, Florida law fails to provide a significant amount of guidance specifically related to the electronic transmission of health information or to the electronic signing of such information. However, Florida's Uniform Electronic Transaction Act does warrant mention in this analysis.

Found at 668.50, F.S., the Florida Uniform Electronic Transaction Act generally addresses electronic "transactions"². While not providing specific guidance with regard to the electronic transmission of information the statute does formally recognize and give legal effect to electronic transactions which would include electronic transactions relating to the provision of health care. The manner of securing electronic transactions is largely left to the parties exchanging information. See 668.50(10)(a), F.S.

Interestingly, the statute does specifically address the acceptance and distribution of electronic records by government agencies. 668.50(18)(b), F.S., requires governmental agencies utilizing electronic records and electronic signatures to give "due consideration to security". Finally, the statute does encourage, but does not mandate, interoperability of electronic records among government agencies of Florida and other states as well as the Federal Government and nongovernmental persons that interact with government agencies. See 668.50(19), F.S.

2. 163.61-65, F.S., Collaborative Client Information Systems

In addition to the numerous Florida laws affecting health information exchange there is a section of Florida law addressing the exchange of individual information between government agencies which appears to be sparsely known or utilized. 163.61 through 163.65, F.S., provides the framework for "Collaborative Client Information Systems" (CCIS). These systems, when utilized, allow for the sharing of "client" information between governmental agencies. The term "client" while not defined, appears to address individuals that receive assistance from or otherwise interact with government agencies.

Unless prohibited by law, government agencies participating in a CCIS would be allowed to share otherwise confidential client information, including health care

² 668.50(2)(p), F.S., defines a transaction to mean "an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, insurance or governmental affairs."

related information, without the consent of the client. However, it should be noted that 163.63, F.S., requires a CCIS to form a steering committee of all participating agencies to address the governance and operation of the CCIS. In a manner similar to what is suggested for regional health information networks, 163.63(2)(a-g), F.S., specifically requires a CCIS steering committee to enter into an agreement specifying at minimum:

- a) What information each agency will share with the collaborative;
- (b) How the information will be shared;
- (c) How clients will be notified that an agency participates in the collaborative;
- (d) Who in each agency will have access to the information;
- (e) The purposes to be served by sharing the information;
- (f) Assurances from each agency that it will maintain the confidentiality of the information as required by law; and
- (g) Other information decided upon by members of the information cooperative.

Attachment I

Government Health Care Provider Exemptions from 119.07(1), F.S.

(Source Florida Attorney General's Office – www.myfloridalegal.com)

Section 119.0712(1), F.S. -- Except as provided in the exemption, all personal identifying information, contained in records relating to an individual's personal health or eligibility for health-related services held by the Department of Health is confidential and exempt.

Section 163.64, F.S. -- An agency that participates in the creation or administration of a collaborative client information system may share client information, including confidential client information, with other members of the collaborative system as long as the restrictions governing the confidential information are observed by any other agency granted access to the confidential information.

Section 296.09(1), F.S. -- The health record and annual reevaluation of residents of the Veterans' Domiciliary Home of Florida are confidential and exempt from disclosure and must be preserved for a period of time as determined by the director

Section 381.004(3),(4),(5) and (6), F.S. -- Except as otherwise provided, human immunodeficiency virus test results, and the identity of any person upon whom a test has been performed, are confidential and exempt from s. 119.07(1). No person to whom the results of a test have been disclosed pursuant to this section may disclose the results to another person except as authorized in the section. Such confidential information is exempt from s. 119.07(1).

Section 381.0055(1) and (2), F.S. -- Information which is confidential by operation of law and which is obtained by the Department of Health and the health agencies specified in this section relating to quality assurance activities shall retain its confidential status and be exempt from s. 119.07(1). Such information which is obtained by a hospital or health care provider from the department or health agencies pursuant to this section shall retain its confidential status and be exempt from s. 119.07(1).

Section 381.0055(3), F.S. -- Portions of meetings, proceedings, reports and records of the Department of Health and the health agencies set forth in this section, which relate solely to patient care quality assurance and where specific persons or incidents are discussed are confidential and exempt from s. 286.011, and are confidential and exempt from s. 119.07(1).

Section 381.0056(5)(a)(16), F.S. -- Provisions in the school health services plan

developed pursuant to this section for maintenance of health records of individual students must be in accordance with s. 1002.22, relating to confidentiality of student records.

Section 384.29, F.S. -- All information and records held by the Department of Health and its authorized representatives relating to known or suspected cases of sexually transmissible diseases are confidential and exempt from s. 119.07(1). Such information may not be released or made public by the department or its representatives, or by a court or parties to a lawsuit, except as provided in the section. Except as provided in the section, information disclosed pursuant to a subpoena is confidential and exempt from s. 119.07(1).

Section 384.30(2), F.S. -- The fact of consultation, examination, and treatment of a minor for a sexually transmissible disease is confidential and exempt from s. 119.07(1) and shall not be divulged directly or indirectly, such as sending a bill for services rendered to a parent or guardian, except as provided in s. 384.29

Section 392.65, F.S. -- All information and records held by the Department of Health and its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis shall be strictly confidential and exempt from s. 119.07(1). Such information may not be released or made public by the department or its representatives, or by a court or parties to a lawsuit, except as authorized in the subsection. Except as provided in the section, information disclosed pursuant to a subpoena is confidential and exempt from s. 119.07(1).

Section 393.13(4)(i)(1), F.S. -- Central client records of persons with developmental disabilities are confidential and exempt from s. 119.07(1) and no part of such records shall be released except as authorized in this paragraph.

Section 394.4615(1) and (7), F.S. -- Clinical records of persons subject to "The Baker Act" are confidential and exempt from s. 119.07(1). Such records may be released only under the circumstances specified in this subsection. Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt.

Section 395.3025(4), F.S. -- Patient records are confidential and must not be disclosed without the consent of the person to whom they pertain except that appropriate disclosure may be made as provided in the subsection.

Section 395.3035(2), F.S. -- Certain public hospital records and information, as described in the subsection, are confidential and exempt from disclosure.

Section 395.4025(12), F.S. -- Patient care, transport, or treatment records or reports, or patient care quality assurance proceedings, records, or reports

obtained or made pursuant to this section (relating to trauma centers) or pursuant to other statutes cited in the subsection, must be held confidential by the Department of Health and are exempt from s. 119.07(1).

Section 397.501(7), F.S. -- Records of substance abuse service providers pertaining to the identity, diagnosis, and prognosis of and service provision to any individual client are confidential in accordance with Ch. 397 and federal confidentiality regulations, and are exempt from disclosure. Such records may not be disclosed without the client's written consent except under circumstances specified in the subsection.

Section 397.752, F.S. -- An inmate's substance abuse service records are confidential in accordance with s. 397.501(7).

Section 400.022(1)(m), F.S. -- Personal and medical records of nursing home residents are confidential and exempt from s. 119.07(1).

Section 401.30(4), F.S. -- Records of emergency calls which contain patient examination or treatment information are confidential and exempt from s. 119.07(1), and may not be disclosed except as provided in the subsection.

Section 402.22(3), F.S. -- Statutory confidentiality requirements apply to information used by interdisciplinary teams involved in decisions regarding the design and delivery of specified services to students residing in residential care facilities operated by the Department of Children and Family Services and the Agency for Persons with Disabilities, and such information is exempt from ss. 119.07(1) and 286.011.

Section 405.03, F.S. -- The identity of any person treated or studied as provided in this chapter (relating to medical information available for research) shall be confidential and exempt from s. 119.07(1).

Section 430.105, F.S. -- Personal identifying information in a record held by the Department of Elderly Affairs that relates to an individual's health or eligibility for or receipt of health-related, elder care or long-term care services is confidential and exempt from public disclosure requirements. Such information may be disclosed to another governmental entity for the purpose of administering the department's programs for the elderly or if the affected individual or his or her legal representative provides written consent.

Section 430.207, F.S. -- Information about functionally impaired elderly persons receiving services under the Community Care for the Elderly Act which is received by the Department of Elderly Affairs or its authorized employees, or by persons who provide services to functionally impaired elderly persons as

volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1).

Section 456.057(7)(a), F.S. -- Except as otherwise provided in the exemption, patient records generated by health care practitioners may not be furnished to any person other than the patient, his or her legal representative or other health care practitioners and providers involved in the patient's care and treatment.

Section 760.40(2) (a), F.S. -- Except as provided in the subsection, DNA analysis results information held by a public entity is exempt from s. 119.07(1).

Section 1002.22(3) (d), F.S. -- Every student has a right of privacy with respect to the educational records kept on him or her. Personally identifiable records or reports of the student and any personal information contained therein are confidential and exempt from s. 119.07(1) and may not be released without written consent of the student if he or she is qualified as provided therein, or the student's parent, to any individual, agency, or organization, except as set forth in the paragraph.

Section 1004.445(10), F.S. -- Personal identifying information relating to clients of programs created or funded through the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute as well as certain medical, trade secret and donor-identifying information is confidential and exempt from disclosure requirements.

Attachment II

Government Program Exemptions from 119.07(1), F.S.

(Source Florida Attorney General's Office – www.myfloridalegal.com)

Section 39.0132(4)(a)(1), F.S. -- All information obtained pursuant to this part in the discharge of official duty by any of the officials specified in the subsection is confidential and may not be disclosed to anyone other than persons entitled to receive such information under Ch. 39 or upon court order.

Section 39.0132(4)(a)(2), F.S. -- Information related to the best interests of a child, as determined by a guardian ad litem, which is held by a guardian ad litem, including but not limited to medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records; and any other information maintained by a guardian ad litem which is identified as confidential information under Ch. 39, F.S., is confidential and exempt from disclosure requirements and may not be disclosed to anyone except as authorized in the exemption.

Section 39.202(1), F.S. -- All records held by the Department of Children and Family Services concerning reports of child abandonment, abuse or neglect including reports made to the central abuse hotline and all records generated as a result of such reports are confidential and exempt from s. 119.07(1) and shall not be disclosed except as specifically authorized by this chapter. Such exemption from s. 119.07(1) applies to information in possession of those entities granted access pursuant to this section.

Section 39.202(2)(o), F.S. -- Access to records concerning reports of child abuse or neglect shall be granted to any person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect. Information identifying the person reporting abuse, abandonment, or neglect shall not be released, nor shall any information otherwise made confidential or exempt by law.

Section 39.202(6), F.S. -- All records and reports of the child protection team of the Department of Health are confidential and exempt from ss. 119.07(1) and 456.057, and shall not be disclosed, except as provided in the subsection.

Section 110.123(9), F.S. -- Patient medical records and medical claims records of state employees, former state employees, and their eligible covered dependents, in the custody or control of the state group insurance program are confidential and exempt.

Section 112.08(7), F.S. -- Medical records and medical claims records in the custody of county or municipal government relating to county or municipal employees, former county or municipal employees, or eligible dependents of such employees enrolled in a county or municipal group insurance plan or self-insurance plan are confidential and are exempt from s. 119.07(1). Such records shall not be furnished to any person other than the employee or the employee's legal representative, except as provided in the subsection.

Section 112.08(8), F.S. -- Patient medical records and medical claims records of water management district employees, former employees, and eligible dependents in the custody or control of a water management district under its group insurance plan established pursuant to s. 373.605 are confidential and exempt. Such records shall not be furnished to any person other than the employee or the employee's legal representative except as provided in the subsection.

Section 163.64, F.S. -- An agency that participates in the creation or administration of a collaborative client information system may share client information, including confidential client information, with other members of the collaborative system as long as the restrictions governing the confidential information are observed by any other agency granted access to the confidential information.

Section 296.09(1), F.S. -- The health record and annual reevaluation of residents of the Veterans' Domiciliary Home of Florida are confidential and exempt from disclosure and must be preserved for a period of time as determined by the director.

Section 381.0031(4), F.S. -- Information submitted in reports of diseases of public health significance to the Department of Health as required by this section is confidential and exempt from s. 119.07(1), and shall be open only when necessary to public health.

Section 381.004(3),(4),(5) and (6), F.S. -- Except as otherwise provided, human immunodeficiency virus test results, and the identity of any person upon whom a test has been performed, are confidential and exempt from s. 119.07(1). No person to whom the results of a test have been disclosed pursuant to this section may disclose the results to another person except as authorized in the section. Such confidential information is exempt from s. 119.07(1).

Section 381.0041(9), F.S. -- All blood banks shall be governed by the provisions of s. 381.004(3) relating to confidentiality of HIV test results and the identity of test subjects.

Section 381.0055(1) and (2), F.S. -- Information which is confidential by

operation of law and which is obtained by the Department of Health and the health agencies specified in this section relating to quality assurance activities shall retain its confidential status and be exempt from s. 119.07(1). Such information which is obtained by a hospital or health care provider from the department or health agencies pursuant to this section shall retain its confidential status and be exempt from s. 119.07(1).

Section 381.0055(3), F.S. -- Portions of meetings, proceedings, reports and records of the Department of Health and the health agencies set forth in this section, which relate solely to patient care quality assurance and where specific persons or incidents are discussed are confidential and exempt from s. 286.011, and are confidential and exempt from s. 119.07(1).

Section 381.0056(5)(a)(16), F.S. -- Provisions in the school health services plan developed pursuant to this section for maintenance of health records of individual students must be in accordance with s. 1002.22, relating to confidentiality of student records.

Section 381.0273, F.S. -- Information contained in patient safety data or other records of the Florida Patient Safety Corporation and its subsidiaries, advisory committees, or contractors and which identifies a patient, the person or entity reporting patient safety data, or a health care practitioner or facility, is confidential and exempt and may be disclosed only as provided in the exemption. Any portion of a meeting of the Corporation and its subsidiaries, advisory committees, or contractors during which such information is discussed is exempt from s. 286.011.

Section 381.775, F.S. -- Except as provided in the exemption, all oral and written records, information, letters, and reports received, made, or maintained by the Department of Health relative to any applicant for or recipient of services under the brain and spinal cord injury program are privileged, confidential, and exempt from s. 119.07(1). The in camera proceeding before designated officials to determine whether records are relevant to an inquiry and should be released and all records relating thereto are confidential and exempt from s. 119.07(1).

Section 381.8531, F.S. -- The following information held by the Florida Center for Brain Tumor Research is confidential and exempt from disclosure requirements: An individual's medical record and any information received from an individual from another state or nation or the federal government that is otherwise confidential or exempt pursuant to the laws of that state or nation or pursuant to federal law.

Section 382.008(6), F.S. -- All information relating to cause of death in all death and fetal death records and the parentage, marital status, and medical information included in all fetal death records are confidential and exempt from s.

119.07(1), except for health research purposes approved by the Department of Health, nor shall copies of same be provided except as provided in s. 382.025.

Section 382.025(3), F.S. -- Records or data issued by the Department of Health to government and research entities as set forth in this subsection are exempt from s. 119.07(1) and copies of records or data issued pursuant to this subsection remain the property of the department.

Section 382.025(4), F.S. -- Except as provided in this section, preparing or issuing certificates of live birth, death, or fetal death is exempt from the provisions of s. 119.07(1), F.S.

Section 383.14(3) (d), F.S. -- The confidential registry of cases maintained by the Department of Health pursuant to this section [relating to phenylketonuria and other metabolic, hereditary and congenital disorders] shall be exempt from s. 119.07(1).

Section 383.32(3), F.S. -- Birth center clinical records are confidential and exempt from s. 119.07(1). A client's clinical records shall be open to inspection only if the client has signed a consent to release information or the review is made for a licensure survey or complaint investigation.

Section 383.325, F.S. -- Inspection reports of birth centers which have been filed with or issued by any governmental agency are to be maintained as public information. However, any record which, by state or federal law or regulation, is deemed confidential shall be exempt from s. 119.07(1) and shall not be distributed or made available as public information unless or until such confidential status expires, except as provided in s. 383.32(2)(c) requiring records to be made available for audit by licensure personnel.

Section 384.26(2), F.S. -- All information gathered by the Department of Health and its authorized representatives in the course of contact investigation of sexually transmissible disease infection shall be considered confidential and exempt from s. 119.07(1), and subject to the provisions of s. 384.29.

Section 384.282(3), F.S. -- Except as provided in this section, the name of any person subject to proceedings initiated by the Department of Health relating to a public health threat resulting from a sexually transmissible disease, shall be confidential and exempt from s. 119.07(1).

Section 384.287(6), F.S. -- An authorized person who receives the results of a test for sexually transmissible disease pursuant to this section, which results disclose human immunodeficiency virus infection and are otherwise confidential pursuant to law, shall maintain the confidentiality of the information received and the identity of the person tested as required by s. 381.004.

Section 384.29, F.S. -- All information and records held by the Department of Health and its authorized representatives relating to known or suspected cases of sexually transmissible diseases are confidential and exempt from s. 119.07(1). Such information may not be released or made public by the department or its representatives, or by a court or parties to a lawsuit, except as provided in the section. Except as provided in the section, information disclosed pursuant to a subpoena is confidential and exempt from s. 119.07(1).

Section 384.30(2), F.S. -- The fact of consultation, examination, and treatment of a minor for a sexually transmissible disease is confidential and exempt from s. 119.07(1) and shall not be divulged directly or indirectly, such as sending a bill for services rendered to a parent or guardian, except as provided in s. 384.29.

Section 385.202(3), F.S. -- Information which discloses or could lead to the disclosure of the identity of any person whose condition or treatment has been reported and studied pursuant to this section relating to the statewide cancer registry shall be confidential and exempt from s. 119.07(1) except as provided in the subsection.

Section 390.01114(4)(e), F.S.-- A court that conducts proceedings for a waiver of the notice requirements pertaining to a minor seeking to terminate her pregnancy shall order that a confidential record be maintained. All hearings under this section, including appeals, shall remain confidential and closed to the public, as provided by court rule.

Section 390.01116, F.S. -- When a minor petitions a circuit court for a waiver, as provided in s. 390.01114, of the notice requirements pertaining to a minor seeking to terminate her pregnancy, any information in a record held by the circuit court or an appellate court which could be used to identify the minor is confidential and exempt from disclosure.

Section 390.0112(3), F.S. -- Reports concerning pregnancy termination which are submitted to the Agency for Health Care Administration pursuant to this section shall be confidential and exempt and shall not be revealed except upon court order in a civil or criminal proceeding.

Section 392.54(2), F.S. -- All information gathered by the Department of Health and its authorized representatives in the course of contact investigation of tuberculosis exposure or infection shall be confidential, subject to the provisions of s. 392.65. Such information is exempt from s. 119.07(1).

Section 392.545(3), F.S. -- The name of any person subject to proceedings initiated by the Department of Health relating to a public health threat from tuberculosis shall not be revealed by the department, its authorized

representatives, the courts, and other parties to the lawsuit except as permitted in s. 392.65.

Section 392.65, F.S. -- All information and records held by the Department of Health and its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis shall be strictly confidential and exempt from s. 119.07(1). Such information may not be released or made public by the department or its representatives, or by a court or parties to a lawsuit, except as authorized in the subsection. Except as provided in the section, information disclosed pursuant to a subpoena is confidential and exempt from s. 119.07(1).

Section 393.13(4)(i)(1), F.S. -- Central client records of persons with developmental disabilities are confidential and exempt from s. 119.07(1) and no part of such records shall be released except as authorized in this paragraph.

Section 394.4615(1) and (7), F.S. -- Clinical records of persons subject to "The Baker Act" are confidential and exempt from s. 119.07(1). Such records may be released only under the circumstances specified in this subsection. Any person, agency, or entity receiving information pursuant to this section shall maintain such information as confidential and exempt.

Section 394.907(7), F.S. -- Records of quality assurance programs of community mental health centers which relate solely to actions taken in carrying out the provisions of this section and records obtained by the Department of Children and Family Services to determine compliance with this section are confidential and exempt from s. 119.07(1). Meetings or portions of meetings of quality assurance program committees that relate solely to actions taken pursuant to this section are exempt from s. 286.011.

Section 395.0162(2), F.S. -- Any records, reports or documents which are confidential and exempt from s. 119.07(1), shall not be distributed or made available for purposes of compliance with this section (relating to inspection reports of licensed facilities) unless or until such confidential status expires.

Section 395.0197(7), F.S. -- An adverse incident report submitted by a facility licensed under Ch. 395 to the Agency for Health Care Administration pursuant to this subsection shall not be available to the public pursuant to s. 119.07(1) or any other law providing access to public records, except as authorized therein.

Section 395.0197(13), F.S. -- Records of licensed facilities which are obtained by the Agency for Health Care Administration under cited subsections in order to carry out the provisions of this section relating to incidents and injuries are not available to the public under s. 119.07(1), nor shall they be discoverable or

admissible in any civil or administrative action, except in disciplinary proceedings by the agencies set forth in the subsection.

Section 395.3035(2), F.S. -- Certain public hospital records and information, as described in the subsection, are confidential and exempt from disclosure.

Section 395.4025(12), F.S. -- Patient care, transport, or treatment records or reports, or patient care quality assurance proceedings, records, or reports obtained or made pursuant to this section (relating to trauma centers) or pursuant to other statutes cited in the subsection, must be held confidential by the Department of Health and are exempt from s. 119.07(1).

Section 395.404(1) (b), F.S. -- Trauma registry data obtained pursuant to this subsection are confidential and exempt from disclosure except as set forth in the statute.

Section 397.419(7), F.S. -- Records of substance abuse service providers which relate solely to actions taken in carrying out this section relating to quality assurance and records obtained by the Department of Children and Family Services to determine a provider's compliance with this section are confidential and exempt. Meetings or portions of meetings of quality assurance program committees that relate solely to actions taken pursuant to this section are exempt from s. 286.011.

Section 400.0077(1), F.S. -- Except as otherwise provided in the subsection, the following records relating to long-term care ombudsman councils are confidential and exempt from s. 119.07(1): resident records held by an ombudsman or by the state or a local ombudsman council; the names or identities of complainants or residents involved in a complaint; and any other information about a complaint.

Section 400.022(1) (m), F.S. -- Personal and medical records of nursing home residents are confidential and exempt from s. 119.07(1).

Section 400.0255(14), F.S. -- Except as provided in this subsection, in any proceeding under this section (relating to hearings of facility decisions to transfer or discharge nursing home residents) the following information concerning the parties is confidential and exempt from disclosure: names and addresses, medical services provided, social and economic conditions, personal information evaluations, medical data, and information verifying income eligibility and amount of medical assistance payments.

Section 400.119, F.S. -- Records of meetings of the risk-management and quality assurance committee of a long-term care facility, as well as incident reports filed with the facility's risk manager and administrator, notifications of the occurrence of an adverse incident, and adverse-incident reports from the facility are

confidential and exempt. Meetings of an internal risk management and quality assurance committee are exempt from open meetings requirements and are not open to the public.

Section 400.494(1), F.S. -- Information about patients received by persons employed by, or providing services to, a home health agency or received by the licensing agency through reports or inspection is confidential and exempt from s. 119.07(1) and shall be disclosed only as authorized in the exemption.

Section 400.611(3), F.S. -- Patient records of hospice care are confidential and may not be released except as provided in the subsection. Information obtained from patient records by a state agency pursuant to its statutory authority to compile statistical data is confidential and exempt from s. 119.07(1).

Section 400.945, F.S. -- Medical and personal identifying information about patients of a home medical equipment provider which is received by the licensing agency through reports or inspection is confidential and exempt.

Section 401.30(3), F.S. -- Reports to the Department of Health from emergency medical services licensed pursuant to Part III, Ch. 401, which cover statistical data are public records except that the names of patients and other patient identifying information contained in such reports are confidential and exempt from s. 119.07(1).

Section 401.414(3), F.S. -- A complaint concerning an alleged violation of Part III of Ch. 401, relating to emergency medical services, and all information obtained in the investigation by the Department of Health shall be confidential and exempt from s. 119.07(1) until 10 days after probable cause is found or the subject of the investigation waives confidentiality, whichever occurs first. However, the department is not prohibited from providing such information to a law enforcement or regulatory agency.

Section 401.425(5), F.S. -- The records obtained or produced by an emergency medical review committee providing quality assurance activities as described in subsections (1) through (4) of the section are exempt from disclosure and committee proceedings and meetings regarding quality assurance activities are exempt from open meetings requirements.

Section 402.22(3), F.S. -- Statutory confidentiality requirements apply to information used by interdisciplinary teams involved in decisions regarding the design and delivery of specified services to students residing in residential care facilities operated by the Department of Children and Family Services and the Agency for Persons with Disabilities, and such information is exempt from ss. 119.07(1) and 286.011.

Section 408.061(7), F.S. -- Portions of patient records obtained or generated by the Agency for Health Care Administration which contain identifying information of any person or the spouse, relative, or guardian of such person or any other identifying information which is patient-specific or otherwise identifies the patient, either directly or indirectly, are confidential and exempt from disclosure.

Section 408.061(10), F.S. -- Confidential health care information may be released to other governmental entities or to parties contracting with the Agency for Health Care Administration; however, the receiving entity shall retain the confidentiality of such information as provided in this section.

Section 409.910(17)(d), F.S. -- All information obtained and documents prepared pursuant to an investigation of a Medicaid recipient, the recipient's legal representative, or any other person relating to an allegation of recipient fraud or theft is confidential and exempt from s. 119.07(1): until such time as the Agency for Health Care Administration takes final agency action; until the case is referred for criminal prosecution; until an indictment or information is filed in a criminal case; or at all times if otherwise protected by law.

Section 409.920(8)(f), F.S. -- Pursuant to the conduct of the statewide program of Medicaid fraud control, the Attorney General shall safeguard the privacy rights of all individuals and provide safeguards to prevent the use of patient medical records beyond the scope of a specific investigation of fraud or abuse without the patient's written consent.

Section 410.037, F.S. -- Information about disabled adults receiving services under ss. 410.031-410.036 (relating to home care of disabled adults) which is received by the Department of Children and Family Services or its authorized employees, or by persons who provide services to disabled adults or elderly persons as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1). Such information may not be disclosed publicly in a manner that identifies a disabled adult without the written consent of the person or his or her legal guardian.

Section 410.605, F.S. -- Information about disabled adults receiving services under the Community Care for Disabled Adults Act which is received by the Department of Children and Family Services or its authorized employees, or by persons who provide services to disabled adults as volunteers or pursuant to contracts with the department is confidential and exempt from s. 119.07(1). Such information may not be disclosed publicly in a manner which would identify a disabled adult without the written consent of such person or the disabled adult's legal guardian.

Section 413.012(1), F.S. -- All records furnished to the Division of Blind Services in connection with state or local vocational rehabilitation programs and containing

information as to personal facts about applicants or clients given to the state or local vocational rehabilitation agency, its representatives or its employees in the course of the administration of the program including lists of names, addresses and records of client evaluations are confidential and exempt from s. 119.07(1).

Section 413.341(1), F.S. -- Oral and written records, information, letters and reports received, made, or maintained by the Division of Vocational Rehabilitation of the Department of Education relative to clients or applicants are privileged, confidential, and exempt from s. 119.07(1), and may not be released except as provided in the section.

Section 415.107(1), F.S. -- All records concerning reports of abuse, neglect or exploitation of a vulnerable adult, including reports made to the central abuse hotline and all records generated as a result of such reports are confidential and exempt from s. 119.07(1) and may not be disclosed except as authorized in ss. 415.101-415.113.

Section 415.107(3)(l), F.S. -- Access to records concerning reports of abuse, neglect or exploitation of a vulnerable adult shall be granted to any person in the event of the death of a vulnerable adult determined to be a result of abuse, neglect, or exploitation. Information identifying the person reporting abuse, neglect or exploitation shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

Section 430.105, F.S. -- Personal identifying information in a record held by the Department of Elderly Affairs that relates to an individual's health or eligibility for or receipt of health-related, elder care, or long-term care services is confidential and exempt from public disclosure requirements. Such information may be disclosed to another governmental entity for the purpose of administering the department's programs for the elderly or if the affected individual or his or her legal representative provides written consent.

Section 440.125, F.S. -- Medical records and reports of an injured employee and any information identifying an injured employee in medical bills provided to the Department of Financial Services pursuant to s. 440.13, are confidential and exempt, except as otherwise provided by this section and Ch. 440.

Section 440.132, F.S. -- Investigatory records of the Agency for Health Care Administration made or received pursuant to s. 440.134, and any examination records necessary to complete an investigation are confidential and exempt, until the investigation is completed or ceases to be "active," as that term is defined in the subsection, except that medical records which specifically identify patients must remain confidential and exempt.

Section 458.337(3), F.S. -- Records of a medical organization or hospital taking disciplinary action against a physician which have been furnished to the Department of Health for the purpose of disciplinary proceedings shall be confidential and exempt from s. 119.07(1).

Section 458.339(3), F.S. -- Medical reports pertaining to the mental and physical condition of physicians which are maintained by the Department of Health pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint is issued.

Section 458.341, F.S. -- Patient medical records obtained during a search of a physician's office by the Department of Health pursuant to this section are confidential and exempt from s. 119.07(1).

Section 459.016(3), F.S. -- Records of a medical organization taking disciplinary action against an osteopathic physician which have been furnished to the Department of Health for the purpose of disciplinary proceedings shall be confidential and exempt from s. 119.07(1).

Section 459.017(3), F.S. -- Medical reports pertaining to the mental and physical condition of osteopathic physicians which are maintained by the Department of Health pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint issued.

Section 459.018, F.S. -- Patient medical records obtained during a search of an osteopathic physician's office by the Department of Health pursuant to this section are confidential and exempt from s. 119.07(1).

Section 466.022(3), F.S. -- Peer review information regarding dentists obtained by the Department of Health as background information shall remain confidential and exempt from ss. 119.07(1) and 286.011 regardless of whether probable cause is found.

Section 466.0275(2), F.S. -- Medical reports pertaining to the mental and physical condition of dentists which are maintained by the Department of Health pursuant to this section shall remain confidential and exempt from s. 119.07(1) until probable cause is found and an administrative complaint is issued.

Section 624.91(8), F.S. -- Any identifying information, including medical records and family financial information, obtained by the Florida Healthy Kids Corporation pursuant to this subsection is confidential and exempt from s. 119.07(1). Such confidential information may not be released without the written consent of the participant or the parent or guardian of the participant.

Section 636.064(1) and (2), F.S. -- Information pertaining to the diagnosis, treatment, or health of an enrollee of a prepaid limited health service organization is confidential and exempt from disclosure, and shall only be available pursuant to specific written consent of the enrollee or as otherwise provided by law. Any proprietary financial information contained in contracts entered into with providers by prepaid limited health service organizations is confidential and exempt from disclosure.

Section 641.515(2), F.S. -- Patient-identifying information contained in reports and records prepared or obtained under cited statutes (relating to investigation of health maintenance organizations) by the Agency for Health Care Administration or by an outside source, is confidential and exempt from s. 119.07(1).

Section 641.55(5)(c), F.S. -- Except as otherwise provided in this subsection, any identifying information contained in the reports of a health maintenance organization filed with the Agency for Health Care Administration under this subsection is confidential and exempt from s. 119.07(1).

Section 641.55(6), F.S. -- Incident reports filed with the Agency for Health Care Administration by a health maintenance organization pursuant to this subsection are confidential and exempt from s. 119.07(1).

Section 641.55(8), F.S. -- Identifying information in records of a health maintenance organization which are obtained by the Agency for Health Care Administration pursuant to this section (internal risk management program) is confidential and exempt from s. 119.07(1). Identifying information contained in records obtained under s. 456.071 is exempt to the extent that it is part of the record of disciplinary proceedings made available to the public by the agency or appropriate board.

Section 641.67, F.S. -- The following information is confidential and exempt and may not be released except as provided in the exemption: patient records held by a district managed care ombudsman committee; the name or identity of a complainant who files a complaint with a committee; and any problem identified by a committee as a result of an investigation.

Section 641.68, F.S. -- That portion of an ombudsman committee meeting where patient records and information identifying a complainant are discussed is exempt from open meetings requirements.

Section 744.1076, F.S. -- A court order appointing a court monitor is confidential and exempt from public disclosure requirements. Reports of a court monitor relating to the medical condition, financial affairs, or mental health of the ward are confidential and exempt. The reports may be subject to inspection as determined by the court or upon a showing of good cause. Court determinations relating to a

finding of no probable cause and court orders finding no probable cause are confidential; however, such determinations and findings may be subject to inspection as determined by the court or upon a showing of good cause.

Section 760.40(2)(a), F.S. -- Except as provided in the subsection, DNA analysis results information held by a public entity is exempt from s. 119.07(1).

Section 760.50(5), F.S. -- Employers shall maintain the confidentiality of information relating to the medical condition or status of any person covered by health or life insurance benefits provided or administered by the employer. Such information in the possession of a public employer is exempt from s. 119.07(1).

Section 766.1115(4)(c), F.S. -- All patient medical records and any identifying information contained in adverse incident reports and treatment outcomes which are obtained by governmental entities contracting with health care providers under this paragraph, are confidential and exempt.

Section 766.305(3), F.S. -- Information furnished by a person seeking compensation under the Florida Birth-Related Neurological Injury Compensation Plan pursuant to this subsection shall remain confidential and exempt under the provisions of s. 766.315(5)(b), F.S.

Section 766.315(5)(b), F.S. -- A claim file in the possession of the Florida Birth-Related Neurological Injury Compensation Association or its representative is confidential and exempt until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law.

Section 768.28(16)(b), F.S. -- Claims files maintained by any risk management program administered by the state, its agencies and subdivisions are confidential and exempt until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Claims files records may be released to other governmental agencies as provided in the paragraph; such records held by the receiving agency remain confidential as provided in the paragraph.

Section 960.003(3), F.S. -- Results of human immunodeficiency virus tests performed pursuant to this section on persons charged with certain offenses are confidential and exempt and may not be disclosed to any person other than the individuals and entities identified in the subsection.

Section 1002.22(3)(d), F.S. -- Every student has a right of privacy with respect to the educational records kept on him or her. Personally identifiable records or reports of the student and any personal information contained therein are confidential and exempt from s. 119.07(1) and may not be released without

written consent of the student if he or she is qualified as provided therein, or the student's parent, to any individual, agency, or organization, except as set forth in the paragraph.

Section 1004.30, F.S. -- Certain records of university health services support organizations are made confidential; however, some records become public records at a specified time in the future. In addition, any portion of a governing board or peer review panel or committee meeting during which a confidential and exempt contract, document, record, marketing plan, or trade secret is discussed is exempt from s. 286.011. A person may petition a court for release of certain documents upon a finding of compelling public interest for release. The organization may petition a court for continued confidentiality upon a showing of good cause.

Section 1004.445(10), F.S. -- Personal identifying information relating to clients of programs created or funded through the Johnnie B. Byrd, Sr., Alzheimer's Center and Research Institute as well as certain medical, trade secret and donor-identifying information is confidential and exempt from disclosure requirements.

Attachment III

Legal Work Group Members

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Florida Department of Veterans' Affairs**

AARP

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Agency for Health Care Administration

Craig Smith, General Counsel

Blue Cross Blue Shield of Florida

Steven Smith, Director of State Relations

Family Network on Disabilities of Florida, Inc.

Richard La Belle, Executive Director

Florida Association of Health Plans

Rich Robleto, Executive Vice President

Florida Council for Community Mental Health

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Florida Health Care Association

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