

Draft

**Florida 2008 Legal Landscape  
and  
Status of Health Information Exchange  
Report**

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Harmonizing State Privacy Law Collaboration  
Privacy and Security Solutions of Interoperable Health Information Exchange  
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## Introduction

In May 2006, the Agency for Health Care Administration (Agency) was awarded a contract by RTI International, Inc., to participate in the nationwide Health Information Security and Privacy Collaboration (HISPC) Project. During this first contractual period, the Agency completed an analysis of barriers to health information exchange and produced an implementation plan for addressing these issues through an extensive round of meetings by stakeholder groups. The Agency received an extension of the HISPC contract in July 2007 to begin implementing selected objectives identified in the implementation plan as follows:

- Identify consensus recommendations for statutory changes to facilitate health information exchange;
- Conduct consumer and provider outreach and encourage greater participation;
- Development of a risk self-assessment tool for RHIOs; and
- Participate in multi-state collaborations and prepare proposals for extended activities of the collaborations in 2008.

During the second contract period the Agency convened the Project's Legal Work Group to consider and make legislative recommendations that would ameliorate legal barriers to health information exchange in Florida law. The Agency continued to broaden its outreach to consumer and patient advocacy groups and added consumer representation to the Legal Work Group. The Project produced a report, *Analysis of Florida Statutes Related to Health Information Exchange*, containing an extensive analysis of Florida law related to health information exchange and the legislative recommendations of the Legal Work Group.

The purpose of this report is to provide a brief overview of the status of health information exchange in Florida at the start of 2008. It includes an update on recently enacted and proposed bills related to health information exchange, public and private sector health information exchange projects, stakeholders active in promoting the initiative, and the activities of the Health Information Exchange Coordinating Committee that serves as the Florida project's steering committee.

## **Governance and Stakeholders**

In 2004 the Florida Legislature directed the Agency to develop a strategic plan for the adoption and use of electronic health records. In Section 408.062(5), F.S., the legislation provided that the Agency may develop rules to facilitate the functionality and protect the confidentiality of electronic health records.

This section was subsequently amended in 2006 to require that the Agency include in its strategy for the adoption and use of electronic health records the development of an electronic health information network for the sharing of electronic health records among health care facilities, health care providers, and health insurers. The Agency is to report to the Governor and Legislature on legislative recommendations to protect the confidentiality of electronic health records, which it has accomplished through the work of HISPC Project.

In 2005, the Agency issued a white paper proposing the Florida Health Information Network (FHIN). The FHIN was originally envisioned as a statewide health information server that would enable health care professionals to access a patient's medical records from any provider database connected to the network over a secure Internet connection. However, many stakeholders supported a more decentralized approach. The Agency focused on the funding of health information exchange pilot projects under the leadership of the Governor's Health Information Infrastructure Advisory Board.

The Governor's Advisory Board developed the Florida Health Information Network Grants Program, including program requirements and evaluation criteria. Beginning in FY 2005-2006, the Board evaluated FHIN Grant Program applications and recommended awards. Grant funding was \$1.5 million in Fiscal Year 2005-2006, \$2 million in Fiscal Year 2006-2007, and \$2 million in funding for Fiscal Year 2007-2008. According to the time limit set in the original Executive Order, the Advisory Board served out its term effective June 30, 2007.

In December 2007, the Agency established the Health Information Exchange Coordinating Committee (HIECC) under the State Consumer Health Information and Policy Advisory Council authorized in Section 408.05(8), F.S. The HIECC will continue the work of the Board by assisting the Agency in promoting the adoption and sharing of electronic health records. The HIECC will also serve as steering committee for the HISPC Project in 2008. Members of the Health Information Exchange Coordinating Committee are listed in Appendix A. The committee includes representatives of hospital and medical associations, regional health information organizations, health plans, rural health and consumer groups.

The Agency works with many professional associations and organizations at the local, state and national level to further health information technology initiatives. These include the Health Information Management and Systems Society (HIMSS), American

Health Information Management Association, State Alliance for e-Health, Florida Association of Chief Medical Information Officers, and many other professional groups.

### **Technical Assistance Activities**

The Legislature broadened the technical assistance responsibilities of the Agency and Florida Center related to health information technology with the passage of House Bill (HB) 7073 in 2006 and HB 1155 in 2007.

HB 7073 amended Section 408.05(4), F.S., providing that the Agency shall administer grants to advance the development of a health information network. This section also directs the Agency to integrate health care data from state agencies and make the health data available to health care practitioners through a state health information network. The Florida Center for Health Information and Policy Analysis (Florida Center) within the Agency is to provide technical assistance to support the health information network.

In HB 1155, the Legislature directed the Agency to collect information on the benefits of electronic prescribing and electronic prescribing software and disseminate information through the Agency's website in order to facilitate and promote the adoption of electronic prescribing.

Section 408.0611, F.S., provides that the Agency is to coordinate with private sector initiatives in the creation of the website and other activities. The Agency established the State Electronic Prescribing Advisory Panel and held its first meeting in October 2007 concurrent with the opening of the electronic prescribing clearinghouse website. The Agency is also a member of ePrescribe Florida, a private initiative working to increase electronic prescribing.

The Legislature directed the Agency to prepare an annual report on the progress of electronic prescribing implementation in Florida beginning with a first report to be issued in January 2008. The Florida 2007 Electronic Prescribing Report is available at: <http://ahca.myflorida.com/dhit/ElectronicPrescribing/Reports.shtml>.

## Legal Landscape for Health Information Exchange – Recent Legislation

Probably the most significant legislation related to health information exchange to be adopted within the last 5 years is the legislation related to medical records and records custodians. Other legislation of note includes notification of breach provisions adopted in 2005.

Senate Bill (SB) 1408, that creates and describes the functions of a *records custodian*, was adopted in 2006. Section 456.057, F.S., entitled “Ownership and control of patient records; report or copies of records to be furnished,” was amended to recognize a third party custodian of medical records which include pharmaceutical records. The provisions require the records custodian and any health care practitioner’s employer who is a records owner to be subject to the same statutory confidentiality and disclosure requirements for the records as the licensed or regulated health care practitioner who created the records.

A Senate Interim Project Report issued in October 2005 (Interim Project Report 2006-135) found that Florida law does not expressly provide an exception from written authorization by individual patients to a third party custodian who simply holds protected health information and is not actually delivering health care to a patient, such as a clerical worker hired to transcribe a physician’s medical records or an entity providing technical support to prescribing practitioners and dispensing pharmacists using an electronic prescribing system. The report noted that HIPAA does not resolve the matter because Florida law is not preempted in this area. It recommended that Section 456.057, F.S., be amended to recognize a third party custodian as was subsequently accomplished by SB 1408.

The legislation also amended Section 456.42, F.S., to specify the contents and format of a prescription that is “electronically generated and transmitted.” Such a prescription must be dated and signed by the prescribing practitioner only on the day issued, which signature may be in an electronic format. Section 456.43, F.S., was created that establishes certain safeguards to prevent using electronic prescribing to make more difficult the act of selecting any particular pharmacy or pharmaceutical by either a prescribing practitioner or a patient.

HB 481, which was adopted in 2005, created Section 817.5681, F.S., requiring that any person that conducts business in Florida and maintains computerized data in a system that contains personal information must 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 the 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.

Under Section 817.5681(5), F.S., personal information would be the combination of 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. In addition, the legislation amended Section 817.568, F.S., that describes criminal use of personal identification information and related sanctions. Medical records were included in the prohibitions and sanctions of this section.

### **Proposed Bills Related to Health Information Exchange**

In the 2008 legislative session, two bills related to health information exchange were introduced as of April 1, 2008.

HR 637 (and identical SB 1198) would create the eHealth Initiative Act in a new Section 408.051, F.S. The purpose of the legislation is to promote the establishment of interconnected statewide health information exchange through a coordinated effort. The proposed bill revises the Agency's authority to provide grants for health information exchange projects. The bill also creates the Electronic Medical Records System Adoption Loan Program for the purpose of providing a one-time, no-interest loan to eligible physicians licensed under Chapters 458 or 459, F.S., or to an eligible business entity whose shareholders are licensed under Chapters 458 or 459, F.S., for the initial costs of implementing an electronic medical record system.

The proposed bill addresses two priority recommendations of the Florida HISPC Project's Legal Work Group. The bill amends Section 395.3025(4), F.S., to provide that appropriate disclosure can be made to health care practitioner and providers involved in the care or treatment of the patient. The bill amends Section 483.181(2), F.S., to provide that appropriate disclosure may be made by the clinical laboratory to health care practitioners and providers involved in the care or treatment of the patient.

HB 1550 directs the Agency for Health Care Administration (Agency) to create the Patients' Medication History Website. The proposed bill creates a new Section 893.055, F.S., providing that the agency shall contract with a vendor to design and operate a secure, privacy-protected website that provides a health care practitioner, pharmacy, or pharmacist access to comprehensive patient medication history information. The bill provides that the contracted vendor shall:

- Subcontract with private-sector organizations that currently operate electronic prescribing networks that provide such medication history.
- Create a system to verify with the Department of Health that each health care practitioner, pharmacy, or pharmacist requesting access to the website holds a valid, active license.

HB 1550 is linked to SB 1540 that provides a public records exemption for identifying information contained in records held by any agency having access to or operating the medication histories website and provides for the release of confidential and exempt information to a patient who is identified in a record upon a written request for the purpose of verifying that information.

## **Health Information Exchange Topics Not Addressed in Florida Law**

There is no comprehensive electronic health records act in Florida Statutes. Generally, Florida law addresses creation, maintenance and use of medical records in separate practitioner and provider statutes with electronic formats treated as an adjunct topic. The *Analysis of Florida Statutes Related to Health Information Exchange* found many differences in how Florida law addresses specific topics such as release of medical records in an emergency or HIPAA preemption.

Some broader policy areas that could be addressed in a comprehensive electronic health records act include:

- Consumer protections regarding personal health records;
- Coordination of HIPAA and Florida law;
- Privacy and security standards for state health information networks;
- Release of sensitive or other restricted records in an emergency; and
- Patient or patient's guardian authentication requirements for release of records.

Some personal health records systems are not subject to the protections of the Federal Health Insurance Portability and Accountability Act (HIPAA). This could mean that the records contained in a PHR security may not necessarily meet the minimum standards of HIPAA and other consumer protections of HIPAA, such as release of information for marketing purposes, would not apply.

For HIPAA covered entities, the fact that a topic is not addressed in Florida law may mean that the provisions of HIPAA would govern which could be the intent. However, a comprehensive act has the potential to improve the coordination of State and Federal law and clarify the relationships.

HB 7073 amended Section 408.05(4), F.S., providing that the Agency shall integrate health care data from state agencies and make the health data available to health care practitioners through a state health information network. A comprehensive act could establish operational standards related to privacy and security that would facilitate data sharing agreements or contractual relationships between state agencies and health information networks. Such standards should include requirements to prevent individuals from easily obtaining access to another's records through intentional misrepresentation.

A comprehensive electronic health record act could also address specific barriers to health information exchange that deter access to health records by medical practitioners for purposes of treating patients such as access to hospital records, laboratory results and exceptions to patient consent requirements when a medical emergency occurs. The Project has previously made a recommendation to reconcile the health record disclosure language in the Florida Medical Practice Act (Chapter 456, F.S.) with Chapter 395, F.S., Hospital Licensing and Regulation, and Chapter 483, F.S., Health Testing Services (clinical laboratories).

## **Florida Medicaid and Other State Agency Health Information Exchange**

During 2007, Florida Medicaid began piloting an electronic health record system based on claims data. The new systems would enable limited health information exchange among Medicaid practitioners.

The Agency has explored the feasibility of coordinating practitioner access to the Medicaid system through the Florida Regional Health Information Organizations' (RHIOs') portals. As proposed, Medicaid physicians would access records on their Medicaid patients using a single sign-on through their RHIO web portal, which would greatly simplify their search for patient information.

Currently, the Florida Medicaid pharmacy claims data are used within the health information exchange operated by the Tampa Bay RHIO. The Agency has developed an initial scope of work for a proposal to provide practitioner access to Medicaid medication history and e-prescribing services via the RHIO web portals.

The Agency's program for providing point of care medication history information to Medicaid practitioners has been in operation since 2003. The software is free to all Medicaid providers in Florida for use on desktop or tablet computers. During the 2006 and 2007 program, metrics show that:

- Practitioners who used the system wrote about 25% fewer prescriptions on average than physicians who did not use the system.
- Participants save an average of \$48 more per month per patient on prescription claims to Florida Medicaid.
- Florida Medicaid reports \$1.8 - \$2 million in monthly savings from electronic prescribing.
- During 2006, users received more than 5,000 drug interaction alerts each week; more than 1,000 of which were of high or very high severity.

The Agency has explored the feasibility of sharing other types of data collected by state agencies for use by practitioners participating in health information exchanges. Data sets initially thought to offer the most utility to practitioners in addition to Florida Medicaid are data from the immunization registry maintained by the Department of Health, and hospital discharge, outpatient surgery and emergency department visit data collected by the Florida Center. In 2007, the Agency provided hospital patient data to the Palm Beach County Community Health Alliance to study the feasibility of linking the data and to evaluate its utility within their health information exchange.

Several of the RHIOs in Florida are also working with their local county health departments to share data.

## **Regional Health Information Organizations**

Prior to 2005, there were no RHIOs and few organized electronic health information exchanges operating in the State. The Florida Health Information Network grants program was initiated in FY 2005-2006 with an appropriation of \$1.5 million to spur the creation of pilot projects to demonstrate the feasibility of health information networks serving multiple stakeholders.

The Agency established award criteria and general policies for the program under the leadership of the Governor's Advisory Board. At a minimum, applicants for implementation grants must propose a project for health information exchange among two or more competing provider organizations and should demonstrate the sharing of health information for purposes of patient care and public health. Grant funding requires 50/50 matching funds from the applicant which must be a not-for-profit entity or unit of state or local government.

The first awards were issued in January 2006. The Agency has received \$2 million in each subsequent fiscal year to continue the pilot project. Currently, the Agency is funding nine projects that include seven implementation grants, one planning grant and one training grant. Figure 1 depicts the location of active current and previous grantees and includes one active organization in Ocala that has not received grant funding. Table I describes the type of technical models employed by each of the projects, whether centralized, federated or a hybrid.

For FY 2007-2008 grants, the Agency required that applicants for implementation grants propose certain operational metrics and also describe how project objectives will lead to or support sustainable health information exchange operations. Operational metrics are designed to provide comparable information about the number of providers using the system, the number of providers agreeing to share data or actually sharing data, the size of the health information exchange, and the amount of transactions. Upon award, grantees are required to publicly report the operational metrics quarterly. More information can be found at: <http://ahca.myflorida.com/dhit/RHIOs/RHIOsIndex.shtml>.

## **Rural Outreach**

In November 2007, the Federal Communication Commission awarded \$9.6 million to the Big Bend Regional Healthcare Information Organization (BBRHIO), a FHIN grantee. The award provides funding for the construction of a gigabit optical fiber network over the Florida LambdaRail to connect nine rural hospitals in the Florida panhandle. The broadband connections to rural hospitals will provide the infrastructure to enable the transfer of health information such as radiology reports from rural to urban centers. The Florida Center collaborated with BBRHIO in preparing the proposal and will be responsible for facilitating stakeholder outreach during the contract period to promote participation and the development of health information exchange applications.

## **Florida Association of RHIOs**

In 2007, the FHIN grantees and other organizations formed the Florida Association of RHIOs to maximize their collective resources and promote increased utilization of electronic health information exchange across the state. Its mission is to promote the development and maturing of health information exchange in Florida by collaborating, sharing expertise, skills and experience, and undertaking mutually beneficial efforts. The Florida Association of RHIOs will provide support in a variety of areas including community stakeholder support of consumers and providers, supporting the development of governance and viable business sustainability, collaboration on technical infrastructure and interface engines, and the development of standardized and consistent privacy and security policies and procedures. It can use its group buying power to purchase health information technology and business products and services at a sizable discount to members. Through leadership and collaboration, Florida Association of RHIOs offers a unique opportunity to address barriers to the effective exchange of protected health care information.

## **Other Private Sector Initiatives**

Three noteworthy private sector initiatives are described in this section. These initiatives involve significant amounts of collaboration and/or innovation to promote health information exchange.

### ePrescribe Florida

Electronic prescribing systems are a form of health information exchange that integrates prescribed medication data from multiple stakeholders, including pharmacy benefit managers, payers, and pharmacies. Through these systems, medication histories are now available for most prescriptions that were originally prescribed on paper.

Private pharmacy networks, such as SureScripts, eRx Network and RxHub, have created the infrastructure to enable electronic prescribing system in Florida and the country. These networks connect pharmacies and also connect pharmacy benefit managers with both pharmacies and physicians.

Practitioners can access a patient's medication history or send a prescription electronically using participating vendor products connected to this infrastructure. The e-prescribing system transmits information through the use of encrypted telecommunication transmission channels that ensure secure, bi-directional, electronic connectivity between physician practices and pharmacies.

Several key Florida stakeholders formed a collaboration called ePrescribe Florida in 2006. The objective of the group is to promote an understanding of the benefits of electronic prescribing and increase use by practitioners and pharmacies in the state. The collaboration is composed of the leading health plans, provider organizations and associations, retail pharmacy chains, and electronic prescribing infrastructure and application vendors.

More information about ePrescribe Florida including the extensive list of organizations involved can be found online at <http://www.ePrescribeFlorida.com>.

### Availity Care Profile/Health Information Network

Availity, a Florida-based Health Information Network, optimizes the sharing of health information between multiple health care stakeholders through a single, secure health information exchange. Availity exists to strengthen direct stakeholder relationships by delivering quality administrative, financial and clinical information to enable a more collaborative approach to health care delivery. Availity was founded in 2001 when Blue Cross and Blue Shield of Florida joined forces with Humana to form a partnership with a common vision, a common goal and a common solution – create a multi-payer solution that is Internet-based, HIPAA compliant and allowed competitors to cooperate on fundamental business needs so they can focus more on individual business services. Availity is utilized in 100% of all hospitals and 95% of all provider offices in the State of Florida.

Availity CareProfile is an electronic health record sourced from claims-based information from multiple health plans. A consolidated, longitudinal view of patients' health care information across physicians and providers helps improve patient safety, eliminates duplicate medical procedures and aids in reducing unnecessary services and fraudulent activities. CareProfile facilitates improved sharing of health information and interoperability among clinicians and health plans, bringing efficiencies and cost savings to the health care industry along with improved clinical outcomes. This service is offered to providers at no charge and is currently generally available in Florida. The service will be deployed to Texas providers this year.

Members can elect to opt out of sharing their information by contacting their participating health plan. To date, less than 1% of members have chosen to opt out of the CareProfile service. The disclosure of the information is permissible under the privacy and security laws of the Health Insurance Portability and Accountability Act (HIPAA) for treatment purposes only. The information is secured and protected according to the requirements of HIPAA.

Availity access is controlled by a Primary Access Administrator (PAA) within each customer organization. The PAA is responsible for assigning functional roles to users, revoking access and maintaining current information with Availity. Availity only deploys the CareProfile function to PAAs with organizations that treat patients, such as hospitals and physician practices.

### Misys Center for Community Health Leadership

The Misys Center for Community Health Leadership offers grants to communities to fund physician purchase of electronic medical record system software. In November, 2007, the Center announced that grants would be made available for physicians in Tampa

Bay area to apply for their choice of software funded by the project. As of January 2008, more than 850 health care providers from over 250 practice locations had applied.

The Misys grants program requires that there be a commitment to not only use of the electronic medical record software but also health information exchange among physicians receiving grants. Under the Misys grants program, the Misys Connect software must be the tool used to connect and enable data sharing among the participating community physicians. The program requires that physicians commit to engage both technical and clinical data within 12 months of the start of the project period and fully participate in project evaluation activities.

**HEALTH INFORMATION EXCHANGE  
COORDINATING COMMITTEE  
January 2008**

**Health Information Exchange Programs and Florida Association of RHIOs (FAR)**

- One member representing the FAR and one member from an operating Health Information Exchange in Florida. These members recuse themselves during FHIN Grant discussion, evaluation and recommendation processes:

Allen Byington – Big Bend Regional Healthcare Information Organization  
Robert Olmedo – Florida Association of RHIOs

**Hospitals and Clinics**

- One member from a hospital system utilizing an advanced Electronic Medical Records system:

Francis Koster – Nemours (retired)

**Rural Health**

- One member from a Federally Qualified Health Center or other rural health organization utilizing Electronic Medical Records, Telemedicine or Telehealth systems:

Kevin Kearns – Health Choice Networks

**Practitioners**

- Two member physicians utilizing an advanced electronic health records system in his or her practice:

TBD - Florida College of Emergency Physicians  
Dennis Saver, M.D. – Florida Academy of Family Physicians

**Professional Associations**

- Two members from an association supporting electronic health records systems:

Kathy Holzer – Florida Hospital Association  
Fred Whitson – Florida Medical Association

**Health Plans**

- One member from the health insurance industry:

Catherine Peper – Blue Cross and Blue Shield of Florida

**University**

- One member representing best practices work in the field of Health Information Technology field supporting Health Information Exchange sustainability and business development:

Duane Steward, Ph.D. – Healthcare Information Management Systems Society

**Consumers**

- One member representing a statistically significant consumer population in Florida:

Karen A. Koch, MSW, MEd

**Legal**

- One member representing Health Information Technology/Privacy Security law:

William Dillon, Esq. – Messer, Caparello & Self, P.A.

**State Government**

- One member from the Florida Department of Health:

Robert Harmon, M.D., Director - Duval County Health Department

Figure 1 -- Active Current and Previous FHIN Grantees

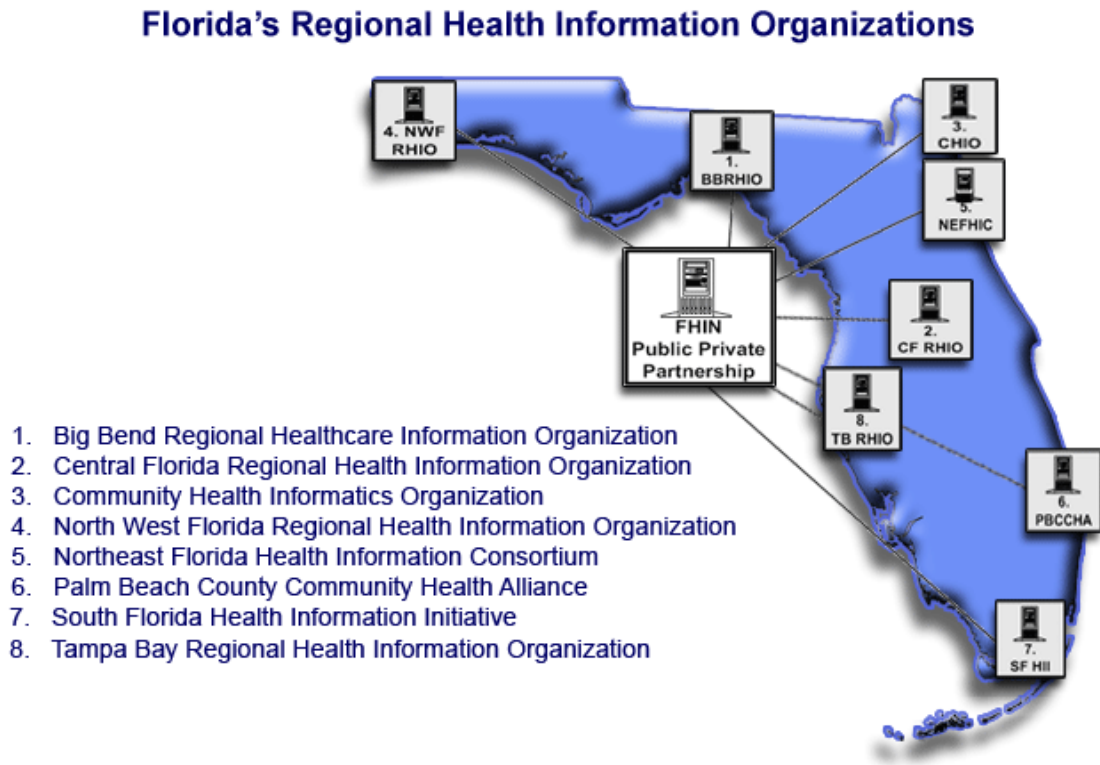


Table I – FHIN Grantee (RHIO) Technical Models

Organization	Location	Model
Big Bend Regional Healthcare Information Organization	Tallahassee	Hybrid (1)
Northeast Florida Health Information Network (NEFHIC - Duval County Health Department)	Jacksonville	Multi HIE Collaborative, Federated and Repository
Florida Healthcare Coalition/Central Florida Regional Health Information Organization	Orlando	Federated
North West Florida Regional Health Information Organization	Pensacola	Central Repository
Palm Beach County Community Health Alliance	West Palm Beach	Central Repository to Hybrid (2)
South Florida Health Information Initiative	Miami	Hybrid (1)
Tampa Bay Regional Research and Educational Foundation	Tampa	Hybrid (1)

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1) Hybrid – A hybrid model combines both federated and central repositories. Typically large hospitals would use a federated HIE model while small health care providers would tie into a central repository.

2) PBCCHA started with a central repository but will evolve into a hybrid as it adds larger providers such as hospitals.