

# MINUTES

## Health Information Exchange Legal Work Group Meeting (HIE LWG)

**Meeting Date:** January 18, 2013  
**Time:** 10:00 a.m. – 12:15 p.m.  
**Location:** Agency for Health Care Administration  
Bldg.3, Conference Room A  
2727 Mahan Drive  
Tallahassee, FL 32308

**Members Present:** Kathy Pilkenton, Chair; Bill Bell, Florida Hospital Association; Tom Randle for Carol Berkowitz, Leading Age Florida; William P. Dillon, Messer, Caparello & Self; Diane Gaddis, Community Health Centers Alliance; Diane Godfrey, Florida Hospital; Jan Gorrie, Ballard Partners; Gabriel Hartsell, Galloway, Johnson, Tompkins, Burr & Smith PLC; Samuel Lewis, Feldman Gale; Julie Meadows-Keefe, Grossman, Furlow and Bayó; Holly Miller, Florida Medical Association; Jennifer Schunke, Florida Health Information Management Association; and Kimberly Tendrich, Florida Department of Health.

**Members Absent:** Lynn McCartney, Florida Justice Association; Karen A. Koch, Florida Council for Community Mental Health, Inc.; and Amy Rosa, South Florida Regional Extension Center.

**Staff Present:** Alex Añé, Dylan Dunlap, Heidi Fox, Jeff Gregg, Pam King, Carolyn Turner and Dana Watson.

**Interested Parties Present:** Jim Bracher, Florida Association of Health Plans; Gloria Deckard, FIU; Jordan Firfer, Florida Blue; Melissa Hargiss, Harris Corporation; Nancy Hayt, Florida Hospital/Adventist; André Hébert, Harris Corporation; Heather Hilliard, Florida Hospital/Adventist; Davidson James, Florida Hospital/Adventist; Julia E. Smith, Julia E. Smith, P.A.; and Patrick Wiggins, Grossman, Furlow and Bayó.

**Meeting Materials:** Agenda, Minutes of April 13, 2012 meeting, Florida Health Information Exchange (Florida HIE) Participation Agreement Overview; Patient Look-Up (PLU) Subscription Agreement (redline); Direct Secure Messaging (DSM) Subscription Agreement (redline); General Participation Terms and Conditions (redline); SERCH/Florida Health Information Service Provider (HISP) Agreement.

**Copies of meeting materials are posted at:**  
<http://www.fhin.net/content/committeesAndCouncils/index.shtml>

**Call to Order, Welcome and Roll Call:** Ms. Kathy Pilkenton called the meeting of the Health Information Exchange Legal Work Group (HIE LWG) to order at 10:00 a.m., welcomed members and guests, and conducted the roll call.

**Review and Approval of Minutes:** Ms. Pilkenton asked the committee to review the minutes from the April 13, 2012, meeting. There were no corrections.

**Participation Agreement Overview:** Ms. Turner gave a brief overview of the purpose and history in the development of the Florida Health Information Exchange (Florida HIE) subscription agreements. There is a separate agreement for each of the two services of the Florida HIE: Patient Look-Up (PLU) and Direct Secure Messaging (DSM). The agreements were developed in 2010 and first put into use in 2011.

The DSM agreement was changed to permit uses beyond treatment in 2012. Treatment, payment and operations are permitted uses. PLU continues to be restricted to treatment. The PLU agreement was revised in 2012 to conform to the federal guidance on 42 CFR Part 2.

The subscription agreements in use are posted on the Florida HIE website (<https://www.florida-hie.net/>).

**Proposed Changes to Patient Look-Up Agreement:** Ms. Turner briefly reviewed each of the proposed changes to the Patient Look-Up (PLU) agreement of the Florida HIE as follows:

- 1) Remove reference to permitted use of patient data in health care fraud and abuse detection
- 2) Adding provision to explicitly permit participants to enable PLU access to unaffiliated providers and related requirements
- 3) Requiring health care provider to co-sign agreement if Participant is an information technology vendor
- 4) Eliminate Medicaid claims data 72 hour patient notice of emergency access
- 5) Clarifying language pertaining to DOH technical requirements
- 6) Adding requirements for web access controls

There were no comments on items 1), 4), and 5).

Mr. Bill Dillon asked how users would be vetted under the proposed HIE access. Ms. Turner indicated the same responsibilities of Participants regarding system access by Participant Users would apply. She noted that additional web access controls is also being proposed.

Ms. Diane Godfrey noted that physicians may be charged by a node as part of a package arrangement that does not include a specific PLU access fee. She indicated that the proposed language may not be sufficient to cover this arrangement.

Ms. Godfrey also suggested that the language specifying types of Participants Users be revised to include medical staff. Mr. Sam Lewis suggested using "Participant Users" in the language proposed.

Mr. Gabriel Hartsell expressed concern about broadening access to physicians not sharing data through the Network. What is to stop such a user from accessing the PLU for marketing purposes? He suggested that Participants have the option of rejecting such requests.

Ms. Fox explained that use of the PLU for marketing is not permitted, access can be obtained only one patient at a time and usage is monitored by audit logs of any transactions.

Ms. Diane Gaddis suggested a time limit be placed on access to the PLU if data is not eventually shared by the health care provider. Ms. Godfrey and Mr. Hartsell agreed.

Ms. Julie Meadows-Keefe said that there is language in the final Privacy Rule recently issued that allows an exception to sale of data for HIE services remuneration. However, such activities cannot become a profit center under this exception.

Ms. Godfrey noted that the provisions in the PLU agreement differ from that of DSM. She suggested the language be aligned addressing notice for changes in fees and fee reductions.

Mr. Dillon asked for a definition of health information technology vendor. Ms. Turner indicated that the intent is to address electronic health record vendors that bring in multiple group practices to share data in the Network.

Members discussed the intent and evolving concept of who would be a Participant to bring in additional health care providers, primarily group practices, in addition to hospitals.

**Proposed Changes to the Direct Secure Messaging Agreement:** Ms. Turner briefly reviewed each of the proposed changes to the Direct Secure Messaging (DSM) agreement of the Florida HE as follows:

- 1) Expanded permitted uses of DSM to exchange of Health Data as permitted by Applicable Law.
- 2) Add that vendor may offer connections to other email clients which may be used by DSM users in addition to DSM web access
- 3) Provide that fee reductions do not require 90 day notice

There were no comments on items 1) and 3).

Mr. Davidson James and Mr. Hartsell suggested the language regarding email clients be clarified to exclude insecure connections. Mr. André Hébert explained the security requirements being implemented. Mr. Jordan Firfer noted it was important to not imply Florida HIE responsibility for systems employed by Participant Users. Ms. Fox asked for suggestions to clarify the language further.

**Proposed Changes General Terms and Conditions:** Ms. Turner explained that the General Terms and Conditions are applicable to both PLU participants and DSM registrants. She briefly reviewed each of the proposed changes to the General Terms and Conditions of the Florida HIE as follows:

- 1) Revise breach definition to be consistent with federal breach notification definition (section 1)
- 2) Revise section 3(b)(ii) regarding network reports required of Participants under Federal grants
- 3) Add NIST Level 3 requirements for identification vetting to section 5(b)
- 4) Specify Vendor responsibilities for handling consumer complaints related to possible breach (Section 7)
- 5) Clarify section 8(a) regarding accurate participant information that this section does not refer to Health Data.
- 6) Reword section 14 regarding party liability and the sovereign immunity provisions of Section 768.28 Florida Statutes.
- 7) Reword section 17 regarding indemnification exceptions for certain participants.

There were no comments on items 3), 5), 6), and 7).

Ms. Turner indicated that the recently issued federal definition of breach in the Privacy Rule would be inserted. Ms. Meadows-Keefe suggested that the agreements be reviewed for any changes in citations as a result of the revisions in the final Privacy Rule just issued.

Ms. Godfrey suggested that the language regarding network reports be clarified as to what happens if a Participant determines preparation of a report is not feasible or cost prohibitive. Ms. Turner indicated the intent is that Participants would not be required to report if preparing the report is not feasible.

Ms. Godfrey expressed concern about possible breach notification to the Agency by the HIE vendor. Participants are already required to report breaches. This would add reporting of possible breaches. Ms. Fox indicated the Agency needs to know because it involves the Agency's vendor. The Agency would wait on the Participant for a determination of breach, if any.

Mr. Lewis suggest a timeframe for vendor reporting to the Participant be included and without unreasonable delay. Ms. Godfrey suggested that it be specified that the vendor report to the contract manager.

**Introduction of SERCH/Florida HISP (DRESA v. 2.0) Agreement:** Ms. Turner briefly reviewed the sections of the DRESA 2.0. These include responsibilities of parties, party user controls, permitted purposes, prohibited use, compliance with patient confidentiality laws, and representations. She noted that a similar document is being used by Connect Virginia which originated it. The Southeast Regional HIT-HIE Collaboration is also reviewing the document and considering using it as a standard template for HISP to HISP agreements.

Ms. Kimberly Tendrich suggested that the permitted uses be revised to clarify that public health reporting is a permitted use.

**Agency Update:** Ms. Turner reported that the Agency adopted rule amendments May 14, 2012 that revised the rules for the patient authorization forms previously adopted in July 2010. She stated that the changes were made to conform to federal guidelines issued in July 2010 on 42 CFR Part 2 requirements for the release of substance abuse treatment records. Ms. Turner said the additional clarification of the forms and a Spanish language version of the two forms are included. She indicated that the rule amendments and forms, showing changes, are posted under "Rule Amendment History" on the FHIN website. The adopted rule is posted under "Patient Authorization Rule."

Ms. Turner noted that the Florida HIE successfully completed a HISP to HISP connection with Alabama as part of the Behavioral Health Data Exchange Project. The technical connection was completed in July and participants exchanged de-identified test data beginning in August. Florida facilities participating were Apalachee Center, Circles of Care, and Manatee Glens. Ms. Turner said that the project's final reports would be distributed to LWG members when available.

Ms. Turner reported that the State HIE Cooperative Agreement Strategic and Operational Plan update containing the Privacy and Security Framework was approved by ONC September 7, 2012. The SOP is posted on [www.FHIN.net](http://www.FHIN.net) under Florida HIE Cooperative Agreement.

**Meeting Summary, Next Steps and Adjourn:** Ms. Fox reviewed the action items from the meeting:

- 1) The Agency will continue to receive comments on the Florida HIE subscription agreements through February 1, 2013.
- 2) The proposed changes to the PLU agreement will be revised to refer to Participant Users instead of listing types of participant users.
- 3) The federal breach definition from the Privacy Rule released January 17, 2013 will be inserted.
- 4) The agreements will be checked for cross-references to the Privacy Rule and updated as appropriate
- 5) The proposed PLU agreement will be revised to address the time limited nature of free access without any corresponding sharing of data by the provider.
- 6) The section on fees in the PLU agreement will be modified to add that fees can be changed upon ninety (90) day notice but a fee reduction can be put into effect immediately.
- 7) The PLU agreement will be modified regarding information technology vendors to define or clarify.
- 8) The DSM agreement reference to email clients will be modified to clarify regarding secure connections.
- 9) The General Terms and Conditions will be modified to clarify HIE vendor responsibilities in reporting consumer complaints regarding possible breaches received by the vendor.
- 10) The General Terms and Conditions will be clarified regarding Participant responsibilities to produce reports required under grants.
- 11) The DRESA v. 2.0 will be revised to clarify that public health reporting is a permitted use.

**Adjournment:**

There being no further business to discuss, the committee adjourned at 12:15 p.m.