

# The State Law Ceiling – Effects of State Laws on the Establishment of an Interoperable Electronic Health Record

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### Clinical Source Systems



Pharmacy



Inpatient

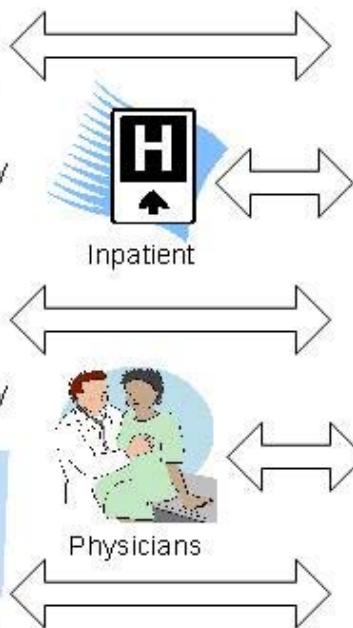
Laboratory



Radiology



Physicians



### RHIO Infrastructure

#### Business Convener

Bring together health care stakeholders.  
Manage Business Associate Agreements  
Enable data-sharing among providers

#### Security Management

Certify providers to access health care records  
Authorize access to records  
Log record access activity

#### Identity Management

Identify patient records with MPI  
Match patient records with an RLS

#### Information Management

Gathers patient data into Minimal Clinical Dataset  
Provide data access through a Web-based portal  
Provide access to the FHIN

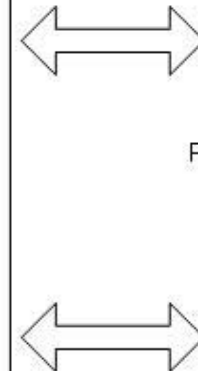
### Web-based Portal



Physician Portal



Patient Portal



## Where are we going?

- Creation of a National Health Information Network.
- April 27, 2004, President Bush signed and Executive Order relating to the development of and implementation of a nationwide interoperable health information infrastructure to improve the quality and efficiency of health care.

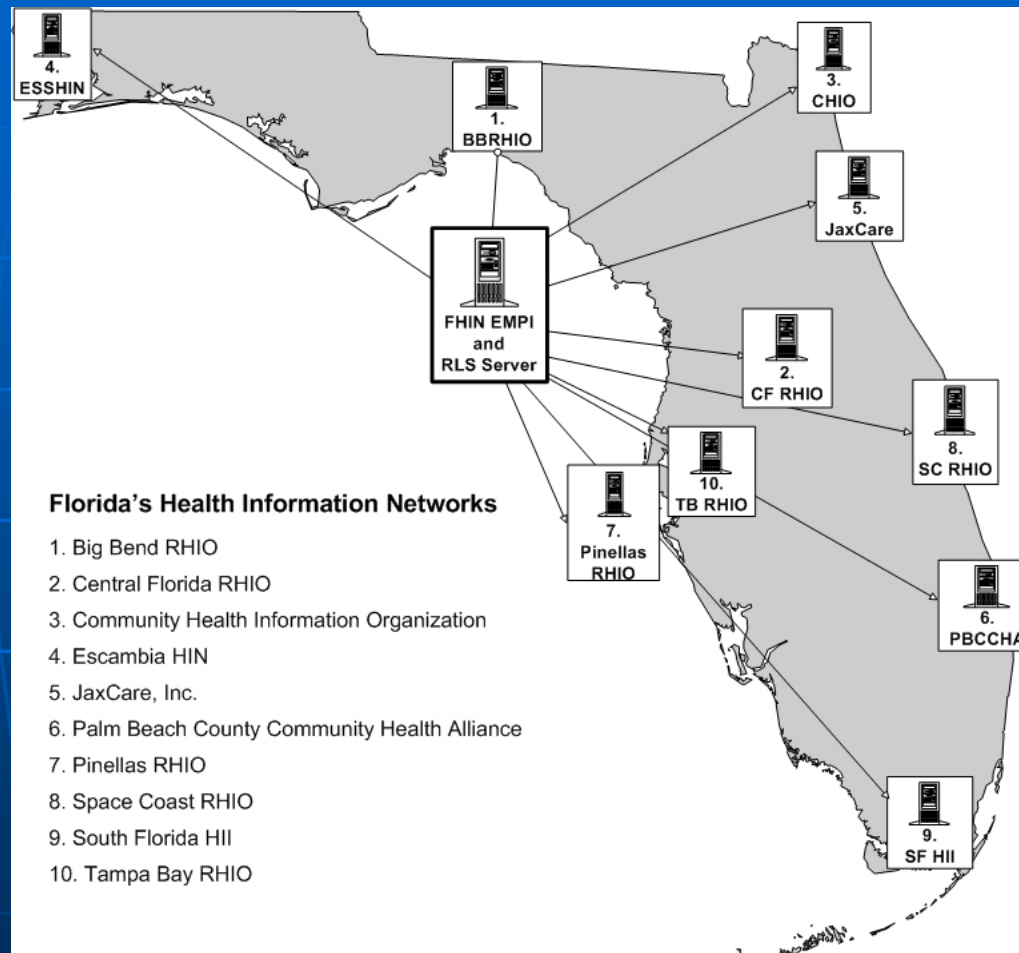
- To have an interoperable health record on a national level there must be an infrastructure built from the ground up.
  - Local
  - Regional
  - State
  - Inter-state

## State Efforts

- Progress toward an interoperable health record varies greatly among the 50 states.
- Development Issues
  - Funding/Sustainable Business Model
  - Education (Providers/Consumers)
  - Physician EMR Adoption
  - HIPAA and State law

# Florida

- Florida currently has at least 10 health information exchanges operating.
- Most are in the formative stages and a few are engaged in a limited exchange of data.



## Florida Privacy and Security Project (HISPC – RTI)

- Florida was one of 33 States and one territory that received contracts from RTI to analyze barriers to the exchange of health information
- Florida engaged a broad cross section of stakeholders via four distinct working groups



- Variations Work Group
- Legal Work Group
- Solutions Work Group
- Implementations Work Group
  - Each group consisted of different stakeholders.

# Florida Project Overview

- 18 RTI scenarios, plus 4 Florida specific scenarios related to health information exchange.
- 140 responses received.
- Responses included:
  - Detailed Business Practices
  - Legal Rationale for the Practices

# Florida Project Overview

- Some of the Barriers Identified
  - Misinterpretation of HIPAA
  - Inconsistent federal and state laws
  - Fear of violating the rules or litigation
  - Insufficient use of electronic health information due to the complexity of technology
  - Longstanding cultural trends and norms within organizations

# What stands in our way?

- Florida law in many cases is more stringent than HIPAA
- HIPAA is the Floor and ***not*** the ceiling.

45 CFR 160.203

Provides that a more stringent state law is not preempted by HIPAA

*More Stringent = provides the patient with greater protection for their information or provides them with greater access to their information.*

- Analysis from Florida stakeholders revealed varying degrees of knowledge and application of Florida law.
- Florida has numerous laws relating to the use and disclosure of medical records.
- The laws are spread out over multiple chapters of the Florida statutes.
- Many stakeholders incorrectly believed that as long as they followed HIPAA they were in compliance.

# What stands in our way?

- Specific Examples from the State of Florida
  - Hospital Records – 395.3025(4)(a), F.S.
  - Substance abuse – 397.501(7)(a), F.S.
  - HIV Test Results - 381.004(3)(e), F.S.
  - Genetic Tests - 760.40(2), F.S.
  - State Medicaid Law

# What Stands in our way?

- 395.3025(4)(a), F.S.
- (4) Patient records are confidential and must not be disclosed without the consent of the person to whom they pertain, but appropriate disclosure may be made without such consent to:
  - (a) Licensed facility personnel and attending physicians for use in connection with the treatment of the patient.
- 456.057(7), F.S.
- 7)(a) Except as otherwise provided in this section and in s. 440.13(4)(c), such records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient. However, such records may be furnished without written authorization under the following circumstances:

# Example 1

The emergent transfer of health information between two healthcare providers when the status of the patient is unsure.

Patient X presents to emergency room of General Hospital in State A. She has been in a serious car accident. The patient is an 89 year old widow who appears very confused. Law enforcement personnel in the emergency room investigating the accident indicate that the patient was driving. There are questions concerning her possible impairment due to medications. Her adult daughter informed the ER staff that her mother has recently undergone treatment at a hospital in a neighboring state and has a prescription for an antipsychotic drug. The emergency room physician determines there is a need to obtain information about Patient X's prior diagnosis and treatment during the previous inpatient stay.



## Example 1

- In order for a Florida provider to comply with applicable Florida law they would need to have knowledge of:
  - 395.3025(4), F.S.
  - 395.3025(2), F.S.
  - 394.4615, F.S.
  - 765.205(2), F.S.

## Example 2

The non-emergent transfer of health information.

Patient X is HIV positive and is having a complete physical and an outpatient mammogram done in the Women's Imaging Center of General Hospital in State A. She had her last physical and mammogram in an outpatient clinic in a neighboring state. Her physician in State A is requesting a copy of her complete records and the radiologist at General Hospital would like to review the digital images of the mammogram performed at the outpatient clinic in State B for comparison purposes. She also is having a test for the BrCa gene and is requesting the genetic test results of her deceased aunt who had a history of breast cancer.

## Example 2

- In order for a Florida provider to comply with applicable Florida law they would need to have knowledge of:
  - 456.057, F.S.
  - 395.3025, F.S.
  - 381.004, F.S.
  - 760.40, F.S.

## Example 3

A physician treating a former Medicaid patient at a rural health clinic needs information on the patient's congestive heart failure treatment regimen. The doctor decides to access the Medicaid EHR. The patient gives oral consent.

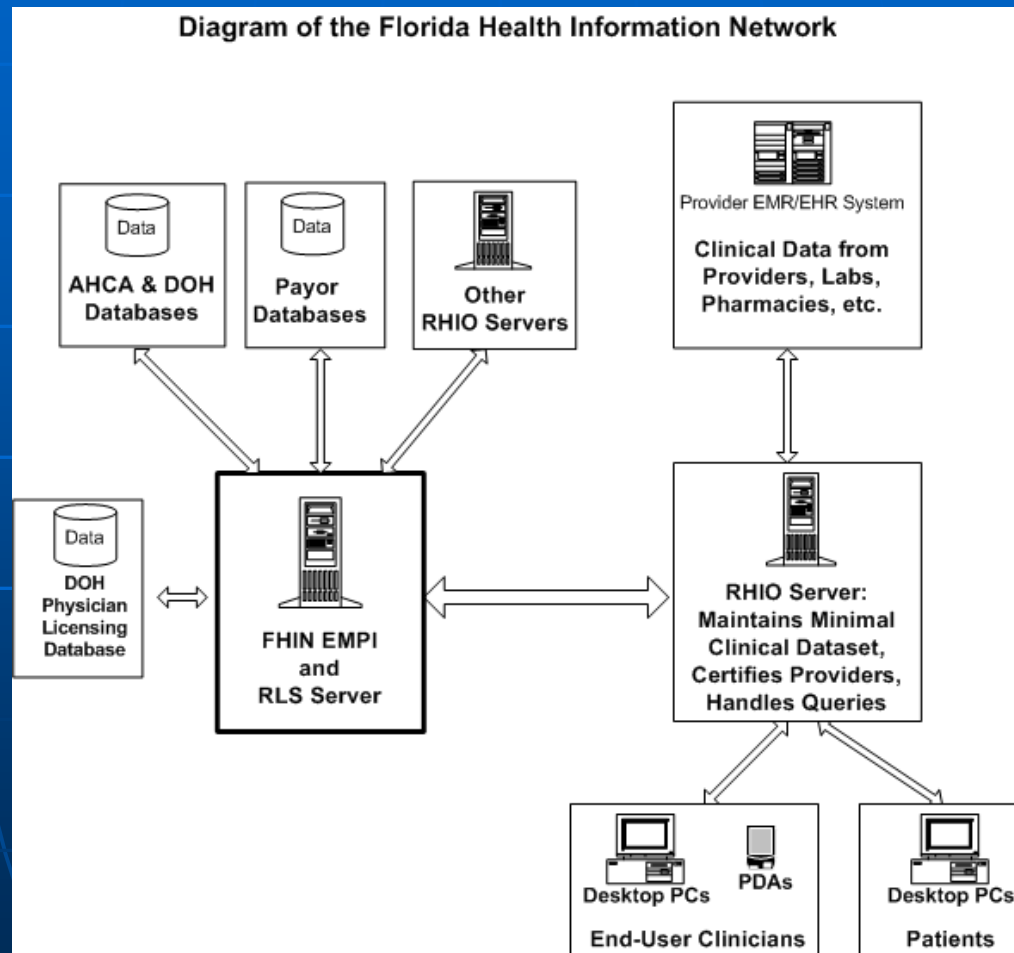
- Interpretation of Medicaid Law
  - 409.907, F.S.
  - 42 CFR §§ 431.300 – 307

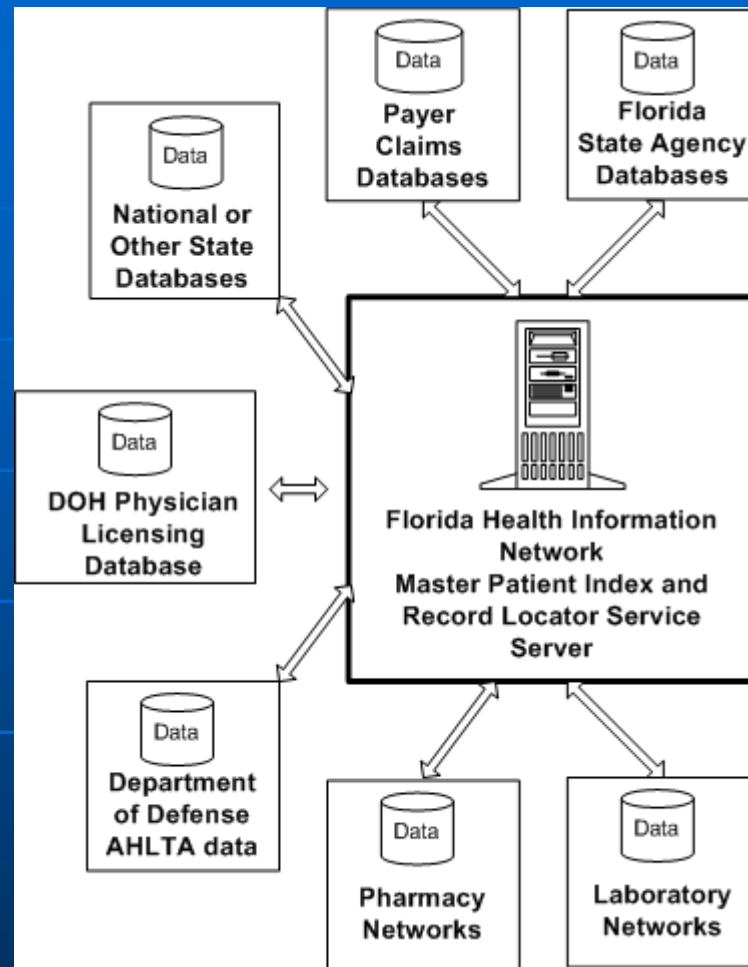
# So how do we get there?

## Florida – Proposed Solutions

- Introduce and adopt legislation to create the Florida Health Information Network
  - FHIN which would among other things coordinate/facilitate appropriate legislative changes.

# Florida





## So how do we get there?

### Florida – Proposed Solutions

- Ensure that the definitions related to health information sharing and exchange that presently exist in statute are consistent with the present meaning in a paper and electronic environment
- Revise statutes to allow for emergency sharing of patient information.



- Consolidate all Florida health information statutes into a single chapter.
- Eventually resolve conflicts between Florida laws and between Florida laws and HIPAA.
- Establish guidelines to facilitate the flow of health information between the Florida Medicaid Program and non-Medicaid providers.
- Legislate model documents.

# Current Florida Legislative Activity

- Creation of the FHIN
- HB 1121 & 1123
- SB 2348 & 2350
- SB 2582

# Florida Web Links

- <http://ahca.myflorida.com/dhit/index.shtml>
  - FHIN
  - Privacy and Security Project (HISPC-RTI)

<http://www.myfloridahouse.gov/>

<http://www.flsenate.gov/>

# National Conference of Commissioners On Uniform State Laws

- NCCUSL representative attended all Florida Project work group meetings.
- NCCUSL has formed a committee to look in the issue.