

## Members

Lisa Rodriguez  
AHCA, CHAIR

Kate Doyle  
Florida Hospital Association

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

Diane Gaddis  
Community Health Centers  
Alliance

Diane Godfrey  
Florida Hospital

Jan J. Gorrie  
Ballard Partners

Gabriel Hartsell  
Galloway, Johnson,  
Tompkins, Burr & Smith,  
PLC

Melanie Brown-Woofter  
Florida Council for  
Community  
Mental Health

Samuel Lewis  
Feldman Gale, P.A.

Marjorie McNeill  
Florida Health Information  
Management Association

Julie Meadows-Keefe  
Grossman, Furlow & Bayó

Kimberly Tendrich  
Florida Department of  
Health

Mary Thomas  
FL Medical Association

Wences Troncoso  
FL Association of Health  
Plans



## AGENDA

### Health Information Exchange Legal Work Group

**Meeting Date:** December 1, 2017  
**Time:** 10:00 a.m. – 12:00 p.m. (ET)

**Location:** Agency for Health Care Administration  
Building 3, Conference Room D

**Access:** [GoToWebinar](#)-Dial-in information provided at registration

TIME	ITEM	PRESENTER
<b>Call to Order, Welcome and Roll Call</b>		
10:00-10:05	Welcome Roll Call	Lisa Rodriguez Dana Watson
<b>Review &amp; Approve Minutes</b>		
10:05-10:15	December 5, 2016 meeting	Lisa Rodriguez
<b>Previous Action Items</b>		
10:15-10:20	December 5, 2016	Dana Watson
<b>Program Updates</b>		
10:20-10:30	Florida HIE Program Transition CMS Funding Opportunities Health Information Exchange Study HIPAA - State Law Crosswalk Search Tool	Heidi Fox
<b>Discussion Items</b>		
10:30-10:45	AHCA Consent Governance	Heidi Fox
10:45-11:00	State Gateway Agreements	Heidi Fox
11:00-11:20	Data Retention Addendum to ENS Agreement	Heidi Fox
<b>Meeting Summary</b>		
11:50-12:00	Action Items Adjourn	Lisa Rodriguez

**Next Meeting:** December 2018

# MINUTES

## Health Information Exchange Legal Work Group Conference Call (HIE LWG)

**Meeting Date:** December 5, 2016

**Time:** 2:00 p.m. – 4:00 p.m.

**Location:** Call-in Number: (888) 670-3525  
Pass Code: 934-890-7894#

**Members Present:** Kathy Pilkenton, Chair; Kate Doyle, Florida Hospital Association; Diane Godfrey, Florida Hospital; Julie Meadows-Keefe, City of Tallahassee; Samuel Lewis via phone, Feldman Gale; Kimberly Tendrich via phone, Florida Department of Health; and Mary Thomas, Florida Medical Association.

**Members Absent:** William P. Dillon, Messer, Caparello; Diane Gaddis, Community Health Centers Alliance; Jan Gorrie, Ballard Partners; Gabriel Hartsell, Galloway, Johnson, Tompkins, Burr & Smith PLC; and Wences Troncoso, Florida Association of Health Plans.

**Staff Present:** Vance Burns, Heidi Fox, Carrie Gaudio, Michael Hardy, Nikole Helvey, Pamela King, Aaron Parsons and Dana Watson.

**Meeting Materials:** Draft Changes to Event Notification Service (ENS) Subscription Agreement; Draft changes to Patient Look-Up Service Subscription Agreement; and Draft changes to the General Participation Terms and Conditions.

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

### Call to Order, Welcome and Roll Call

Chair Kathy Pilkenton, called the meeting of the Health Information Exchange Legal Work Group (LWG) to order at 2:00 p.m., welcomed members and guests, and Dana Watson conducted the roll call, determining that a quorum was present.

### Approval of Minutes

The work group reviewed the minutes from the December 4, 2015 LWG meeting as well as the minutes from the March 28, 2016 conference call. Ms. Julie Meadows-Keefe made the motion to approve, Ms. Diane Godfrey seconded the motion and both sets of minutes were unanimously approved.

### Proposed Changes to the Health Information Exchange Subscription Agreements

Ms. Fox told the work group that much of the language struck from the agreement was related to the American Recovery and Reinvestment Act (ARRA) funding. Another broad change is the use of citations for Federal or State statutes rather than providing statutes language. Also, provisions which are not enforceable have been removed from the agreements. Ms. Fox also noted that the Business Associate Agreement and the Qualified Service Organization Agreement were changed from being sections within the Florida HIE General Participation Terms and Conditions to being attachments to the same in order to improve their visibility.

Another change is to update the Florida HIE's consent policy for the Patient Look-Up Service from "consent to query" to "consent to release." Ms. Diane Godfrey questioned the timing of the proposed move to "consent to release", noting that changing the consent model could be a large expense to hospital participants as well as a disruption to the providers using the HIE. Ms. Fox responded that the Florida HIE is the only HIE organization using the "consent to query" model, and most HIE organizations use "consent to release" already, using the consent to query form for the Florida HIE. Ms. Godfrey also stated concerns regarding how the change would affect the "look back" period.

### **Patient Look-Up Service Agreement**

Ms. Fox directed the work group to the subscription agreements in their materials. She began with the Patient Look-Up Service (PLU) agreement. The first change is to the name of the agreement, removing the words “and delivery” from the title. Definitions to “delivery service”, “continuity of care document”, “Florida form”, and “authorization form” were removed from the agreement. The “Florida form” language will be restored if the HIE does not transition to the “consent to release” model. The ban on filtering data has been also been removed.

Ms. Fox also reported that the Service Level Agreements would be included in each of the subscription agreements. Another change to the PLU agreement is that the vendor no longer has to retain the audit trail data for 8 years. Ms. Keefe inquired what was currently being stored. Ms. Fox responded that only the metadata from the transactions was stored.

Among other changes, the provision regarding the minimum patient data set for look-up requests has been updated and participant organizations are no longer required to have a privacy manager pursuant to the agreement.

Finally, Ms. Fox reported that the PLU fees are included in Exhibit 1 of the agreement. Ms. Keefe asked why the price had increased. Ms. Fox explained that the costs are the same, only the maintenance fees are included in the base price. Ms. Godfrey stated that her organization did pay for maintenance, she thought that paying a maintenance fee was optional. Ms. Fox clarified to the work group that all participants have to pay the maintenance fee. Ms. Godfrey asked why a change was being made to annual fees. Ms. Fox responded that the fees, which will be set by the Agency, have always been annual and the participants would still be invoiced quarterly. The Agency has funding from the Centers for Medicare and Medicaid (CMS) to help organizations with the costs for connecting to the HIE.

### **Event Notification Service Agreement**

Included in the changes to the ENS agreement is the deletion of the requirement to hold audit trail data for 8 years. After discussion, the Agency agreed to investigate how long audit trail data should be retained by the vendor and update the draft language accordingly. Another suggested change was to remove the sentence on minimum necessary PHI in the Permitted Purposes section of the ENS agreement, as the language is thought to duplicate requirements already found in 45 CFR. Mr. Lewis and Ms. Godfrey both suggested retaining the minimum necessary PHI language.

Attachment A includes the network operating policies and technical requirements specific to the ENS. Provisions for “forwarding alert messages” and “acknowledgement” were deleted from the document. Ms. Godfrey voiced concern about striking the “acknowledgement” provision, due to the potential benefits of the provision of meeting contractual obligations by participating hospitals. A brief discussion of the practical difficulties of enacting the provision then followed, including comments on its unclear wording.

The ENS fee schedule is located in Exhibit 1 of the ENS agreement. The schedule includes the minimum annual fee as well as a charge of \$1.50 per patient per year for the first 50,000 patients and \$0.25 per patient per year for each patient thereafter. There are no fees for participants acting as a data source. Participants acting as a data source which desire to also participate as recipients of data are charged \$0.50 per patient per year for the first 50,000 patients and \$0.25 per patient per year for each patient thereafter. Ms. Godfrey responded that the fees were too high and Ms. Fox stated that Harris can review the fees and possibly reduce the per patient fee.

### **General Terms and Conditions**

Ms. Fox directed the work group to the General Terms and Conditions. She stated that the way the agreements were drafted, the more detailed language would be included in the separate PLU and ENS agreements, and the terms and conditions would include more general language relevant to both HIE services.

The first change to the Terms and Conditions is the deletion of language relating to breach, citing the law rather than stating it. Vendor responsibilities were discussed next. The language preventing the vendor from storing health data was struck from the Permitted Purposes section of the Terms and Conditions, while maintaining the existing language that prohibits the vendor from using health data in any way not permitted by the relevant subscription agreement.

The phrase “Alerting Services” was added to the network operations to be provided by the vendor. The vendor will also be required to keep an updated data source list on a public website. The “Accounting for Disclosures” provision was

struck as no Personal Health Information (PHI) is being stored beyond the metadata. Other provisions were deleted that were included in the past due to the requirements tied to the American Recovery and Reinvestment Act (ARRA) that were never implemented in final rule. Ms. Fox reported that the only change to the Participant responsibilities is to remove the requirement for organizations to hold on to consent forms collected from the patients. Both the Business Associate Agreement (BAA) and the Qualified Service Organization (QSO) provisions were moved from the main body of the Florida HIE General Participation Terms and Conditions and are now listed as Attachments A and B respectively.

Ms. Fox noted that health plans interested in participating in ENS have previously raised concerns about the Indemnification provisions within the General Participation Terms and Conditions, but that Agency legal review of the current language raised no concerns. Work group members were encouraged to review the existing indemnification language and provide feedback to the Agency. The Agency proposed no changes to the existing language during the meeting.

Ms. Fox asked the work group and audience to submit their comments by January 30, 2017. She also gave the work group a brief description of the Sunshine Laws, instructing them to not communicate on these topics outside of a noticed meeting.

**Adjournment:**

There being no further business to discuss, the committee adjourned at 3:30 p.m.

**Action Items**

1. Remove the DRAFT watermark from the agreements and place the word DRAFT in the header.
2. Send members revised agreements for review with recommended changes from today's meeting.
3. Meet with Diane Godfrey re:
  - a. Consent model
  - b. ENS per patient per year fees for data sources

**Action Items from December 5, 2016 Legal Work Group Meeting**

<b>Item</b>	<b>Resolution</b>
Remove the DRAFT watermark from the agreements and place the word DRAFT in the header.	<b>Complete</b>
Send members revised agreements for review with recommended changes from today's meeting.	<b>Complete</b>
Meet with Diane Godfrey re: a. Consent model b. ENS per patient per year fees for data sources	<b>Complete</b>

[Public Meetings](#) [Public Records](#) [Contact Us](#) [Site Map](#)   



## AGENCY FOR HEALTH CARE ADMINISTRATION

[HOME](#) [ABOUT US](#) [MEDICAID](#) [LICENSURE & REGULATION](#) [FIND A FACILITY](#) [REPORT FRAUD](#)

### HIPAA - State Law Crosswalk Search Site

[Home](#) [Search](#) [Reports](#) [Help](#)

This site is designed to assist individuals in identifying and becoming aware of the applicable requirements of the federal privacy regulations arising from the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and of Florida state law. The search tool assists individuals in identifying and becoming aware of the applicable requirements of both HIPAA and Florida law with regard to the use and disclosure of protected health information.

The information on this site is only intended as general summary information that is made available to the public. It is **not** intended to provide specific legal advice or take the place of either written law or regulations. This site does **not** substitute for legal guidance. Please read the full [disclaimer and terms of use](#) before using this site.

Please see the Help pages for more information about using the site and about its purpose.

For more information on using this site, please contact: [HIPAAXWALK Application Support Staff](#)

[Privacy Policy](#) [Doing Business with AHCA](#) [Refund Policy](#) [Disclaimer](#) [Contact Webmaster](#) [Find a Facility](#) [Download Adobe Reader](#)

© 2017 Florida Agency for Health Care Administration



**Data Retention Addendum to the Florida Health Information Exchange  
Subscription Agreement for Event Notification Service**

By this Addendum, Audacious Inquiry LLC (“Vendor”) and the other undersigned party (hereinafter referred to as “Participant”) agree to amend the current Florida Health Information Exchange Subscription Agreement for Event Notification Service in effect between the Vendor and the Participant (“ENS Agreement”) as follows:

1. Data Retention: The Vendor may retain Encounter Data received from the Participant for the following purposes:
  - a. To create and maintain a Panel on behalf of the Participant
  - b. To include or derive additional Encounter Data in Alert Messages
  - c. To enhance matching of Encounter Data to Participant Panels
  - d. To facilitate the location of patient records at healthcare facilities
  - e. For other Permitted Purposes outlined in the ENS Agreement and as mutually agreed by the parties to this Addendum, as specified below:
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
2. Reaffirmation of the ENS Agreement: The ENS Agreement continues in full force and effect in accordance with its terms, except as expressly amended by this Addendum.
3. Effective Date: This Addendum to the ENS Agreement becomes effective when fully executed.

IN WITNESS WHEREOF, this Addendum has been entered into and executed by officials duly authorized to bind their respective parties.

**Vendor**

Entity Name: Audacious Inquiry, LLC  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Participant**

Entity Name: \_\_\_\_\_  
By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_