

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**HEALTH REGULATION**  
**Senator Garcia, Chair**  
**Senator Sobel, Vice Chair**

**MEETING DATE:** Wednesday, December 8, 2010  
**TIME:** 1:30 —3:30 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Garcia, Chair; Senator Sobel, Vice Chair; Senators Altman, Bennett, Diaz de la Portilla, Fasano, Gaetz, Gardiner, Jones, Latvala, Norman, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Welcome and Introduction of Senators and Staff		Discussed
2	Overview of Committee Responsibilities		Presented
3	Review of Select 2010 Bills Referred to Committee		Discussed
4	<b>SJR 2</b> Haridopolos (Identical HJR 1)	Health Care Services; Proposes an amendment to the State Constitution to prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system. Permits a person or an employer to purchase lawful health care services directly from a health care provider. Permits a health care provider to accept direct payment from a person or an employer for lawful health care services, etc.  HR 12/08/2010 Favorable JU BC	Favorable Yeas 9 Nays 2
5	Presentation of Open Government Sunset Review of the Florida Center for Brain Tumor Research		Presented
6	Presentation on Overview of Medicaid Managed Care by the Agency for Health Care Administration		Presented

# SENATE COMMITTEE ON HEALTH REGULATION

Sandra Stovall, Staff Director  
Allen Brown, Chief Legislative Analyst  
Mandy O'Callaghan, Senior Attorney  
Caroline Fernandez, Intern  
Celia Georgiades, Senior Administrative Assistant

## Committee Responsibility Oversight

Agency for Health Care Administration  
Department of Health

## Staff Responsibilities

### ALLEN BROWN - CHIEF LEGISLATIVE ANALYST

#### Department Oversight Responsibility

#### *Agency for Health Care Administration*

##### ***Medicaid Program***

Medicaid services; Medicaid provider enrollment standards; Medicaid fraud recovery programs; Medicaid eligibility standards and determination; Medicaid waivers; Medically Needy Program; Supplemental Security Income (SSI); Federal Medicaid regulations; Medicaid fiscal agent; Pharmaceutical Assistance for the Elderly; MediPass; Medicaid HMOs; Provider Service Networks; Medicaid pharmacy policy; Medicaid prior authorization policy; and Medicaid Reform.

##### ***Health Insurance for Children***

CHIP; Florida Kidcare Program; Healthy Kids Program; Health insurance for low-income children (crosses administrative lines of the Agency for Health Care Administration, Department of Health, Department of Children and Family Services, Department of Insurance, and Florida Healthy Kids Corporation).

## ***Department of Health***

County Health Departments (excluding environmental health programs).

### ***Family Health Services***

Chronic Disease Prevention; Comprehensive Breast and Cervical Cancer Early Detection Program; Dental Health Programs; Epilepsy Case Management and Prevention Education; Family Planning Program; Healthy Start; Primary Care Services; Health Promotion and Wellness; Sexual Violence Prevention Program; School Health Services; Statewide Kidney Disease Program; Volunteer Health Care Provider Program; Child Nutrition Program; and Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and Nutrition Services; Early Childhood Comprehensive Systems (ECCS) Project; and Comprehensive Cancer Control Program.

### ***Health Access and Tobacco***

Local Health Planning Councils; Rural Health; Injury Prevention; Brain and Spinal Cord Injury Program; and Tobacco Prevention.

### ***Disease Control***

Disease Intervention Programs (HIV/AIDS, Sexually Transmissible Diseases, and Tuberculosis); Epidemiology Program; Immunization Program; Refugee Health Program; and A.G. Holley Hospital, the state's tuberculosis hospital.

### ***Children's Medical Services (CMS) Programs and Service***

CMS Network/Managed Care; Early Intervention Program (EIP); Clinic and Regional Programs; Prevention, Screening, and Perinatal Programs; Poison Information Centers; and Child Protection Teams and Sexual Abuse Treatment Program.

## ***General Areas of Responsibility***

Federal laws and regulations regarding Medicaid, Medicaid waivers; Social Security, Medicare employee benefits and the Employee Retirement Income Security Act of 1974 (ERISA); health insurance; health care fraud and abuse; and delivery of public health services.

## MANDY O'CALLAGHAN – SENIOR ATTORNEY

### **Department Oversight Responsibility**

#### ***Agency for Health Care Administration***

##### ***Agency Administration***

Health care policy; health care planning; health care statistics; performance-based program budgeting; and financial, human resources, and logistical support services

##### ***Licensure and regulation of health care facilities, health care service providers, and long-term care facilities***

The following facilities and services are regulated by the agency: abortion clinics; ambulatory surgical centers; assisted living facilities; birth centers; clinical laboratories; health care clinics; health maintenance organizations; health care services pools; home health agencies; hospice services; hospitals; licensure background screening; mobile surgical units; nursing home facilities, including personnel background screening; nurse registries; organ procurement organizations, tissue banks, and eye banks; and prescribed pediatric extended care centers.

##### ***Improvements in health care delivery***

Patient safety initiatives and development of an electronic health information infrastructure.

#### ***Department of Health***

##### ***Statewide Health and Support Services***

Information Resource Management; Performance Improvement; Planning, Evaluation, and Data Analysis; Public Health Statistics, Vital Records; Program Planning and Analysis; Information System Development and Support; Laboratory Services; Public Health Nursing; Correctional Medical Authority; Public Health Research Institutional Review Board; and Health Professional Recruitment.

##### ***Emergency Medical Operations***

Emergency Medical Services; Licensing of Emergency Medical Technicians and Paramedics; Emergency Medical Education; Emergency Operations; and Public Health Preparedness

##### ***Division of Medical Quality Assurance - Licensure of health care professionals and consumer complaint, investigative, and prosecutorial services***

The following professions are in the Division of Medical Quality Assurance: Board of Acupuncture; Board of Medicine; Board of Osteopathic Medicine; Board of Chiropractic Medicine; Board of Podiatric Medicine; Naturopathy; Board of Optometry; Board of Nursing; Board of Pharmacy; Board of Dentistry; Midwifery; Board of Speech-Language Pathology and Audiology; Board of Nursing Home Administrators; Board of Occupational

Therapy; Respiratory Therapy; Dietetics and Nutrition Practice; Athletic Trainers; Board of Orthotists and Prosthetists; Electrolysis; Board of Massage Therapy; Board of Clinical Laboratory Personnel; Medical Physicists; Board of Opticianry; Board of Hearing Aid Specialists; Board of Physical Therapy Practice; Board of Psychology; and Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling

Drugs, Devices, and Cosmetics Program; and Pain Management Clinics.

Sunrise review of health care professions asking to be regulated.

### ***Environmental Health Programs***

Public swimming and bathing places program; biomedical waste program; food hygiene program; mobile home parks, lodging parks, recreational vehicle parks, and recreational camps; group care facilities; tanning facilities program; migrant labor camps; public and private water programs; onsite sewage treatment and disposal systems; surface water quality; radiation control program (excluding radiology technologist licensure); environmental epidemiology; environmental toxicology; and environmental public health medicine.

Licensing of Radiological Technologists.

### **General Areas of Responsibility**

Law and Ethical Issues for Health Care Professionals - health care provider conflicts of interests, health care fraud and abuse, telemedicine and telepractice, informed consent, medical malpractice, privacy of medical records, credentialing of health care professionals, scope of practice issues, administrative procedures for the licensure and discipline of health care professionals, and other health care substantive issues affecting the licensure and regulation of health care professionals.

Law and health care ethics: abortion law, assisted suicide, advance directives, biomedical research, business law, health care surrogates, health care provider conflicts of interests relating to self-interested referrals, human-subject medical research, informed consent, telehealth, and right to privacy.

Health care market regulation: certificate-of-need regulation relating to health care facilities and long-term care facilities, health care delivery, private-sector market restructuring of health care, public-private partnerships (provision of governmental services through private contracts), and health care economics.

Innovations in the delivery of health care workforce education.

2010 SENATE BILLS REFERRED TO HEALTH REGULATION COMMITTEE  
SELECT BILLS

PASSED SENATE BUT NOT ENACTED

1	<p><u>Relief/Estrada/USF Board of Trustees [SPSC]</u>; Compensates Daniel and Amara Estrada, parents and guardians of Caleb Estrada, for the wrongful birth of Caleb Estrada and for damages sustained by Daniel and Amara Estrada as a result of negligence by employees of the University of South Florida Board of Trustees. Provides a limitation on the payment of fees and costs. CLAIM WITH APPROPRIATION: \$24,823,213.</p>	<p><b>by Health Regulation; Jones</b> (SB 34 / Similar HB 1437 - Not heard in the House)</p>	<p>YEAS 30 NAYS 4; Died in Messages</p>
2	<p><u>Health Care Services [SPSC]</u>; Proposes the creation of Section 28 of Article I of the State Constitution, relating to health care services to preserve the freedom of Florida residents to provide for their own health care.</p>	<p><b>by Health Regulation; Baker; (CO-INTRODUCERS) Fasano; Storms; Negron; Bennett; Haridopolos; Gaetz; Oelrich; Richter; Dockery; Gardiner</b> (SB 72 / Identical HB 37)</p>	<p>Joint Resolution; Signed by Officers and filed with Secretary of State. Florida Supreme Court struck from ballot.</p>
3	<p><u>Mobile Home and Recreational Vehicle Parks [SPSC]</u>; Specifies laws and rules to be enforced by the Department of Health. Provides for the adoption of rules. Revises applicability of recreational vehicle park requirements to mobile home parks. Revises permit requirements. Provides requirements for construction review and approval for private parks and camps. Revises requirements for permit applications. Revises fees charged to operators of certain parks or camps, etc.</p>	<p><b>by Health and Human Services Appropriations; Community Affairs; Health Regulation; Dean</b> (SB 354 / Similar HB 197 - Died in House committee)</p>	<p>YEAS 35 NAYS 0; Died in Messages</p>
4	<p><u>Programs to Prevent Violence [SPSC]</u>; Requires that an additional or increased court cost or surcharge be assessed against a defendant who pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, certain specified criminal offenses. Provides for proceeds of the additional court cost or surcharge to be deposited into the Rape Crisis Program Trust Fund or the Domestic Violence Trust Fund, etc.</p>	<p><b>by Criminal Justice; Fasano; (CO-INTRODUCERS) Gaetz; Wilson</b> (SB 400 / Identical HB 229)</p>	<p>YEAS 33 NAYS 0; Died in Messages</p>

2010 SENATE BILLS REFERRED TO HEALTH REGULATION COMMITTEE  
SELECT BILLS

5	<p><u>Health Care [SPSC]</u>; Prohibits the AHCA from issuing an initial license to a home health agency for the purpose of opening a new home health agency under certain conditions until a specified date. Authorizes the agency to revoke a home health agency license if the applicant or any controlling interest has been sanctioned for acts specified under a specified provision. Revises the list of employers who are eligible to enroll in the Florida Health Choices Program, etc.</p>	<p><b>by Health and Human Services Appropriations; Criminal Justice; Health Regulation; Gaetz</b> (SB 752)</p>	<p>YEAS 37 NAYS 0; Died in Messages</p>
6	<p><u>Electronic Health Information [SPSC]</u>; Revises provisions relating to the duties and responsibilities of the State Consumer Health Information and Policy Advisory Council. Requires the AHCA to develop uniform elements of a Florida Health Information Exchange Participation Agreement for use by health care providers. Requires the ACHA to coordinate with regional extension centers to implement the use of electronic health records, etc.</p>	<p><b>by Health and Human Services Appropriations; Judiciary; Health Regulation; Ring</b> (SB 958 / Compare HB 911)</p>	<p>Substituted CS/CS/HB 911 with amendments; House refused to concur; Senate refused to recede (Died in House returning messages)</p>
7	<p><u>Dentists/Dental Hygienists [SPSC]</u>; Requires persons who apply for licensure renewal as a dentist or dental hygienist to furnish certain information to the DOH in a dental workforce survey. Requires the Board of Dentistry to issue a nondisciplinary citation and a notice for failure to complete the survey within a specified time. Authorizes certain business entities to pay for prescription drugs obtained by practitioners licensed under specified provisions, etc.</p>	<p><b>by Governmental Oversight and Accountability; Health Regulation; Richter; (CO-INTRODUCERS) Gaetz; Sobel; Wilson</b> (SB 970 / Similar HB 537 - Died in House committee)</p>	<p>YEAS 37 NAYS 0; Died in Messages</p>
8	<p><u>Pub. Rec./Dental Workforce Surveys [SPSC]</u>; Provides an exemption from public records requirements for information contained in dental workforce surveys submitted by dentists or dental hygienists to the Department of Health as a condition for license renewal. Provides exceptions to the exemption. Provides for future legislative review and repeal of the exemption under the Open Government Sunset Review Act. Provides a statement of public necessity.</p>	<p><b>by Governmental Oversight and Accountability; Richter</b> (SB 972 / Similar HB 539 - Died in House committee)</p>	<p>YEAS 37 NAYS 0; Died in Messages</p>

2010 SENATE BILLS REFERRED TO HEALTH REGULATION COMMITTEE  
SELECT BILLS

9	<p><u>Epidemiological Monitoring Systems [SPSC]</u>; authorizes the Department of Health to collaborate with and disclose certain information to the United States Centers for Disease Control and Prevention for specified purposes.</p>	<p><b>by Garcia; (CO-INTRODUCERS) Sobel</b> (SB 1424 / Similar HB 683 - Died in House committee)</p>	<p>YEAS 37 NAYS 0; Died in Messages</p>
10	<p><u>Emergency Medical Services Personnel/Training/HIV [SPSC]</u>; Deletes the requirement that any person who applies to be certified or is certified as an emergency medical technician, paramedic, or 911 emergency dispatcher must complete an educational course approved by the Department of Health regarding the human immunodeficiency virus and acquired immune deficiency syndrome, etc.</p>	<p><b>by Higher Education; Oelrich</b> (SB 1734 / Identical HB 1489 - Died in House committee)</p>	<p>YEAS 34 NAYS 0; Died in Messages</p>
11	<p><u>Blood Establishments [SPSC]</u>; Prohibits local governments from restricting access to public facilities or infrastructure for certain activities based on whether a blood establishment is operating as a for-profit organization or not-for-profit organization. Requires that certain blood establishments disclose specified information on the Internet. Exempts certain blood establishments from the requirements to be permitted as a prescription drug manufacturer and register products, etc</p>	<p><b>by Health Regulation; Health Regulation</b> (SB 1818 / Compare HB 509)</p>	<p>Substituted CS/CS/HB 509; YEAS 35 NAYS 0; (Died in House returning Messages)</p>
12	<p><u>Health Care [SPSC]</u>; Amends provision relating to Drug-Free Workplace Act; revises distribution of funds from civil penalties imposed for traffic infractions by county courts; directs DOH to accept funds from counties, municipalities, &amp; certain other entities for purchase of certain products made available under contract with U.S. Department of Health &amp; Human Services for manufacture &amp; delivery of such products in response to public health emergency, etc.</p>	<p><b>by Policy &amp; Steering Committee on Ways and Means; Health Regulation; Gardiner</b> (SB 2434 Substituted CS/CS/CS/HB 1143)</p>	<p>Passed both houses: Senate YEAS 23 NAYS 16; House YEAS 76 NAYS 44; Vetoed by Governor</p>
13	<p><u>Medical Devices [SPSC]</u>; Requires certain entities to notify local emergency services medical directors of the locations of automated external defibrillators. Revises the list of exemptions from the requirement that certain persons engaged in the manufacture, repackaging, or assembly of medical devices hold a device manufacturer permit, etc.</p>	<p><b>by Community Affairs; Health Regulation; Altman</b> (SB 2556 / Similar HB 1355 - Died in House committee)</p>	<p>YEAS 38 NAYS 0; Died in Messages</p>

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Health Regulation Committee

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BILL:               SJR 2

INTRODUCER:    Senator Haridopolos

SUBJECT:         Health Care Services

DATE:             December 2, 2010      REVISED:   \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	O'Callaghan	Stovall	HR	<b>Favorable</b>
2.	_____	_____	JU	_____
3.	_____	_____	BHA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This is a joint resolution proposing the creation of Section 28 of Article I of the State Constitution, to preserve the freedom of Florida residents to provide for their own health care by:

- Ensuring that any person, employer, or health care provider is not compelled to participate in any health care system;
- Authorizing a person or employer to pay directly, without using a third party such as an insurer or employer, for health care services without incurring penalties or fines; and
- Authorizing a health care provider to accept direct payment for health care services without incurring penalties or fines.

The joint resolution also does not allow a law or rule to prohibit the purchase or sale of health insurance in private health care systems and specifies certain aspects of health care that are not affected by this constitutional amendment. The joint resolution also defines terms that are used within the proposed constitutional amendment. The joint resolution includes the statement that is to be placed on the ballot at the next general election or at an earlier special election.

This joint resolution does not amend, create, or repeal any sections of the Florida Statutes.

## II. Present Situation:

### Federal Health Care Reform<sup>1</sup>

On March 21, 2010, Congress enacted national health care reform under the Patient Protection and Affordable Care Act, often referred to as the Affordable Care Act (ACA).<sup>2</sup> On March 30, 2010, Congress enacted the Health Care and Education Reconciliation Act<sup>3</sup> to amend the ACA. The new federal law will bring sweeping changes to the U.S. health care system and, among other things, it will:<sup>4</sup>

- **Extend health insurance coverage** to about 32 million people who currently lack it, leading to coverage of about 94 percent of nonelderly Americans.<sup>5</sup> The cost of coverage expansions will total \$940 billion from fiscal 2010 to fiscal 2019.<sup>6</sup> However, considering other changes made under the new federal law, the overhaul will reduce the deficit by a net \$138 billion over the same period.<sup>7</sup>
- **Create state-based exchanges**, or marketplaces, where individuals without employer-provided insurance can buy health care coverage.<sup>8</sup> Federal subsidies will be available to help cover the cost for individuals who earn between 133 percent and 400 percent of the federal poverty level (or \$24,352 to \$73,240 for a family of three in 2010).<sup>9</sup>
- **Expand Medicaid eligibility** to all individuals with incomes of up to 133 percent of the federal poverty level. ACA specifies that in all states, the federal government will cover the entire cost of coverage to newly eligible people from 2014 through 2016. In 2017, federal matching funds for all states will cover 95 percent of the costs for the newly eligible people. The rate would be 94 percent in 2018, 93 percent in 2019 and 90 percent in 2020 and afterward.<sup>10</sup>
- **Provide a one-time, \$250 rebate for Medicare beneficiaries** who fall into a prescription drug coverage gap known as the “doughnut hole” in 2010 and seek to

<sup>1</sup> For a more detailed summary of the health insurance provisions in the federal health care reform initiatives, see the National Conference of State Legislatures website:

<http://www.ncsl.org/Default.aspx?TabID=160&tabs=831,139,1156#1156> (last visited Nov. 29, 2010).

<sup>2</sup> Pub. L. No. 111-148, 124 Stat. 119 (2010).

<sup>3</sup> Pub. L. No. 111-152, 124 Stat. 1029 (2010).

<sup>4</sup> The format for the following information was adopted from a Consumer Watchdog blog, *A summary of the health care change we got*, March 26, 2010, available at <http://www.consumerwatchdog.org/blog/summary-health-care-change-we-got> (last visited on Nov. 29, 2010).

<sup>5</sup> See Congressional Budget Office, *Summary of Preliminary Analysis of Health and Revenue Provisions of Reconciliation Legislation Combined with H.R. 3590 as Passed by the Senate, Table 2.*, available at <http://www.cbo.gov/ftpdocs/113xx/doc11355/hr4872.pdf>, March 18, 2010 (last visited Nov. 29, 2010).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2.

<sup>8</sup> U.S. Department of Health & Human Services HealthCare.gov, *Timeline: What's Changing When: Establishing Health Care Exchanges*, available at <http://www.healthcare.gov/law/timeline/index.html#event39-pane> (last visited Nov. 29, 2010).

<sup>9</sup> See, Phil Galewitz, *Consumers Guide to Health Reform*, Kaiser Health News, April 13, 2010, available at <http://www.kaiserhealthnews.org/Stories/2010/March/22/consumers-guide-health-reform.aspx> (last visited Nov. 29, 2010). See also National Conference of State Legislatures, *American Health Benefit Exchanges*, November 18, 2010, available at <http://www.ncsl.org/IssuesResearch/Health/AMERICANHEALTHBENEFITEXCHANGES/tabid/21393/Default.aspx#basics> (last visited Nov. 29, 2010).

<sup>10</sup> National Conference of State Legislatures, *Medicaid and CHIP Eligibility Table by State*, July 1, 2010, available at <http://www.ncsl.org/default.aspx?tabid=20044> (last visited Nov. 29, 2010).

eliminate the gap entirely within 10 years.<sup>11</sup> Starting in 2011, the overhaul creates a discount of 50 percent on brand-name drugs for beneficiaries who fall into the gap.<sup>12</sup> The discount will increase to 75 percent by 2020, with the government paying the rest of the cost of the drugs.

- **Impose new regulations on health insurance companies.** Beginning 6 months after enactment, health insurers may rescind group or individual coverage only with clear and convincing evidence of fraud or intentional misrepresentation by an enrollee.<sup>13</sup> Insurance plans also are required to allow parents to continue coverage for dependent children who would otherwise not have health insurance until a child reaches his or her 26th birthday.<sup>14</sup> Insurers are barred from setting lifetime limits on the dollar value of health care and may not set any annual limits on the dollar value of health care provided, also effective 6 months after enactment.<sup>15</sup>
- **Require individuals to obtain health insurance** or failure to maintain coverage will result in a penalty that is the greater of a flat fee \$95 in 2014; \$325 in 2015; and \$695 in 2016 or the following percent of the excess household income above the threshold amount required to file a tax return—1 percent of income in 2014; 2 percent of income in 2015; and 2.5 percent of income in 2016 and subsequent years.<sup>16</sup>
- **Penalize employers with more than 50 workers** who have employees who obtain subsidies to purchase coverage through the exchanges. In 2014, the monthly penalty assessed to the employer for each full-time employee who receives a subsidy will be one-twelfth of \$3,000 for any applicable month.<sup>17</sup>
- **Impose an excise tax on high-premium health care plans**, often referred to as “Cadillac plans,” beginning in 2018. The tax will apply to plans costing \$10,200 for individual coverage and \$27,500 for family coverage.<sup>18</sup>
- **Increase the Medicare payroll tax** for individuals making more than \$200,000 and couples making more than \$250,000 and impose an additional 3.8 percent surtax on investment income.<sup>19</sup>
- **Create a 2.3 percent excise tax on the sale of medical devices by manufacturers and importers.** The following devices are exempted from the tax: eyeglasses, contact lenses,

<sup>11</sup> U.S. Department of Health & Human Services HealthCare.gov, *Filling the Medicare Part D “Donut Hole,”* July 7, 2010, available at <http://www.healthcare.gov/law/provisions/donuthole/donuthole.html> (last visited on Nov. 29, 2010).

<sup>12</sup> *Id.*

<sup>13</sup> U.S. Department of Health & Human Services, *Affordable Care Act Implementation FAQs: Rescissions*, Sept. 20, 2010, available at [http://www.hhs.gov/ociio/regulations/implementation\\_faq.html](http://www.hhs.gov/ociio/regulations/implementation_faq.html) (last visited on Nov. 30, 2010).

<sup>14</sup> U.S. Department of Health & Human Services, *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Businesses and Families*, available at [http://www.hhs.gov/ociio/regulations/adult\\_child\\_faq.html](http://www.hhs.gov/ociio/regulations/adult_child_faq.html) (last visited Nov. 30, 2010).

<sup>15</sup> HealthReform.gov, *Fact Sheet: The Affordable Care Act’s New Patient’s Bill of Rights*, June 22, 2010, available at [http://www.healthreform.gov/newsroom/new\\_patients\\_bill\\_of\\_rights.html](http://www.healthreform.gov/newsroom/new_patients_bill_of_rights.html) (last visited on Nov. 30, 2010).

<sup>16</sup> Joy Johnson Wilson, *WHO GOES WHERE & WHY—THE NUTS AND BOLTS OF THE NEW HEALTH LAW*, National Conference of State Legislatures, July 25, 2010, available at [http://www.ncsl.org/portals/1/documents/health/HealthSum\\_WilsonLS10.pdf](http://www.ncsl.org/portals/1/documents/health/HealthSum_WilsonLS10.pdf) (last visited Nov. 30, 2010).

<sup>17</sup> Hinda Chaikind et al., *Private Health Insurance Provisions in the Patient Protection and Affordable Care Act (PPACA)*, Congressional Research Service, May 4, 2010, available at <http://www.ncsl.org/documents/health/PrivHlthIns2.pdf> (last visited Nov. 30, 2010).

<sup>18</sup> Jenny Gold, “Cadillac” Insurance Plans Explained, Kaiser Health News, March 18, 2010, available at <http://www.kaiserhealthnews.org/Stories/2010/March/18/Cadillac-Tax-Explainer-Update.aspx> (last visited Nov. 30, 2010).

<sup>19</sup> Tax Foundation, *Examples of Taxpayers Facing Medicare Tax Increase under Health Care Bill*, March 22, 2010, available at <http://www.taxfoundation.org/publications/show/26041.html> (last visited Nov. 30, 2010).

- hearing aids, and any device specified by the Secretary of the Treasury that is of a type that is generally purchased by the public at retail for individual use.<sup>20</sup>
- **Impose new fees on health insurers.** Beginning in 2014, an annual flat fee of \$8 billion will be levied on the industry. It rises to \$11.3 billion in 2015 and 2016, \$13.9 billion in 2017, and \$14.3 billion in 2018. In 2019, these fees will be adjusted by the same rate as the growth in health insurance premiums.<sup>21</sup>
  - **Levy annual fee on certain manufacturers and importers of branded prescription drugs,** totaling \$2.5 billion for 2011, \$2.8 billion per year for 2012 and 2013, \$3.0 billion for 2014 through 2016, \$4.0 billion for 2017, \$4.1 billion for 2018, and \$2.8 billion for 2019 and thereafter.<sup>22</sup>

In 2008, approximately 60 percent of the U.S. population had employment-based health insurance.<sup>23</sup> Other individuals chose to obtain coverage on their own in the nongroup market. Others qualified for health coverage through Medicare, Medicaid, and other government programs. Still others had no defined health coverage.

### State Legislative and Executive Branch Implementation of ACA

As of September 27, 2010, at least 25 states have enacted or adopted legislation or taken official action to form a committee, task force, or board concerning health reform implementation.<sup>24</sup> Additionally, at least 14 governors have issued executive orders to begin the process of health reform implementation.<sup>25</sup>

The following figure represents such legislative and executive branch actions.<sup>26</sup>

<sup>20</sup> National Conference of State Legislatures, *Timeline/Summary of Tax Provisions in the Health Reform Laws*, 4, available at <http://www.ncsl.org/documents/health/TimelineSumTax.pdf> (last visited Nov. 30, 2010).

<sup>21</sup> Janemarie Mulvey, *Health-Related Revenue Provisions: Changes Made by H.R. 4872, the Health Care and Education Reconciliation Act of 2010*, Congressional Research Service, Mar. 24, 2010, available at <http://www.ncsl.org/documents/health/HlthRelRevProvs.pdf> (last visited Nov. 30, 2010).

<sup>22</sup> *Id.*

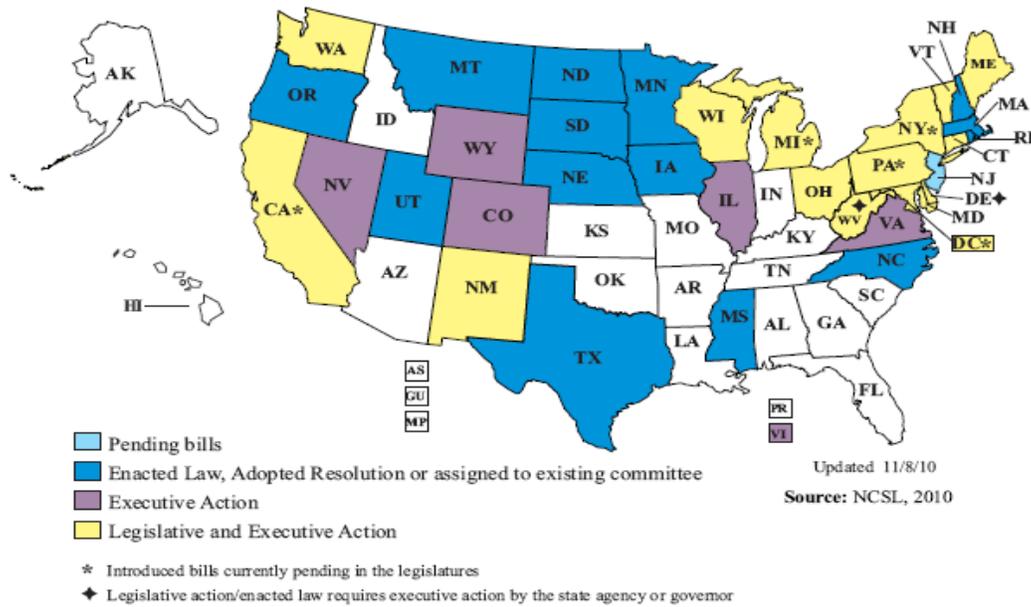
<sup>23</sup> U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2008*, 20 (Sept. 2009), available at <http://www.census.gov/prod/2009pubs/p60-236.pdf> (last visited Nov. 29, 2010).

<sup>24</sup> National Conference of State Legislators, *State Actions to Implement Federal Health Reform*, Nov. 22, 2010, available at <http://www.ncsl.org/default.aspx?tabid=20231#Legislative> (last visited Nov. 30, 2010).

<sup>25</sup> *Id.*

<sup>26</sup> Figure found on the National Conference of State Legislatures website. See *supra* note 24.

### State Actions Implementing Health Reform



### State Legislation Opposing Certain Health Reforms

In response to the federal health care reform, state legislators in at least 40 states have filed legislation to limit, alter, or oppose certain state or federal action, including single-payer provisions and mandates that would compel the purchase of health care insurance.<sup>27</sup> In 30 of the states, the legislation includes a proposed constitutional amendment by ballot.

The following figure represents those states introducing legislation opposing certain health care reforms.



<sup>27</sup> National Conference of State Legislators, *State Legislation and Actions Challenging Certain Health Reforms, 2010*, Nov. 27, 2010, available at <http://www.ncsl.org/?tabid=18906> (last visited Nov. 30, 2010).

The Florida Legislature, during the 2010 regular legislative session, passed House Joint Resolution 37. House Joint Resolution 37 was a proposed state constitutional amendment that sought to:

- Prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system;
- Permit a person or employer to purchase lawful health care services directly from health care provider; and
- Permit health care providers to accept direct payment from a person or employer for lawful health care services.<sup>28</sup>

The proposed constitutional amendment was to appear as Amendment 9 on the November 2, 2010, state election ballot for voter approval or disapproval. However, on July 29, 2010, Amendment 9 was thrown off the ballot following a court ruling by Leon County Circuit Judge James Shelfer. Judge Shelfer said the ballot title and summary was misleading and could confuse voters. On August 31, 2010, the Florida State Supreme Court agreed with Judge Shelfer and ordered that Amendment 9 was inappropriate and must be removed from the ballot.<sup>29</sup>

### State-based Federal Court Challenges

As of November 2010, there are three distinct state-based federal court challenges to the federal health reform laws.<sup>30</sup> In Florida, in the case of *State of Florida v. U.S. Department of Health and Human Services*,<sup>31</sup> Federal District Judge Roger Vinson ruled on October 14, that two of six counts alleged in the complaint can go to trial.<sup>32</sup>

In the Virginia case, *Commonwealth of Virginia v. Sebelius*,<sup>33</sup> Federal District Judge Henry Hudson declined in early August to dismiss the suit and heard oral arguments on October 18, indicating he would rule before the end of 2010.<sup>34</sup>

A suit was also filed in Michigan on behalf of four residents of southwest Michigan in *Thomas More Law Center v. Obama*.<sup>35</sup> However, Federal District Judge George Steeh dismissed the case, stating that choosing not to obtain health insurance coverage qualifies as an example of “activities that substantially affect interstate commerce,” meaning the federal regulation falls within the ambit of the federal government’s Commerce Clause powers under the U.S. Constitution.<sup>36</sup>

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<sup>28</sup> CS/CS/HJR 37 (2010 Reg. Session), available at

<http://www.flsenate.gov/data/session/2010/House/bills/billtext/pdf/h003703er.pdf> (last visited Dec. 1, 2010).

<sup>29</sup> *Supra* note 26. See also *Florida Department of State v. Mona Mangat*, Case No. SC10-1527 (Fla. 2010), available at <http://www.floridasupremecourt.org/decisions/2010/sc10-1527.pdf> (last visited Dec. 1, 2010).

<sup>30</sup> *Supra* note 24.

<sup>31</sup> Case No.3:2010-cv-0009, N. D. Fla., filed March 23, 2010 (initiated by Florida Attorney General Bill McCollum, but joined by 12 other state Attorneys General).

<sup>32</sup> *Supra* note 24.

<sup>33</sup> Civil Action No. 3:10-cv-188, E.D. Va., filed March 23, 2010, by the Virginia Attorney General.

<sup>34</sup> *Supra* note 24. Virginia became the first state in the nation to enact legislation opposing certain health reforms. Virginia enacted a state statute entitled “Health insurance coverage not required,” which became law on March 10, 2010, and was included as an additional challenge to the federal health reform law in the court complaint. See s. [38.2-3430.1:1](#), VA Code, (2010).

<sup>35</sup> Case No. 2:10-cv-11156-GCS-RSW, E.D. Mich., filed March 23, 2010.

<sup>36</sup> *Supra* note 24.

The bases for these suits rely on some of the following constitutional principles.

#### *Commerce Clause*

Congress has the power to regulate interstate commerce under the Commerce Clause of the U.S. Constitution,<sup>37</sup> including local matters and things that “substantially affect” interstate commerce. Proponents of reform assert that although health care delivery is local, the sale and purchase of medical supplies and health insurance occurs across state lines, thus regulation of health care is within Commerce Clause authority. Arguing in support of an individual mandate, proponents point to insurance market de-stabilization caused by the large uninsured population as reason enough to authorize Congressional action under the Commerce Clause.<sup>38</sup> Opponents suggest that the decision not to purchase health care coverage is not a commercial activity and cite to *United States v. Lopez* which held that Congress is prohibited from “...unfettered use of the Commerce Clause authority to police individual behavior that does not constitute interstate commerce.”<sup>39</sup>

#### *Tax and Spend for the General Welfare*

The Tax and Spend Clause of the U.S. Constitution<sup>40</sup> provides Congress with taxation authority and also authorizes Congress to spend funds with the limitation that spending must be in pursuit of the general welfare of the population. To be held constitutional, Congressional action pursuant to this Clause must be reasonable.<sup>41</sup> With respect to the penalty or fine on individuals who do not have health insurance, proponents suggest that Congress’ power to tax and spend for the general welfare authorizes the crafting of tax policy which in effect encourages and discourages behavior.<sup>42</sup> Opponents cite U.S. Supreme Court case law that prohibits “a tax to regulate conduct that is otherwise indisputably beyond [Congress’] regulatory power.”<sup>43</sup>

#### *The Tenth Amendment and the Anti-Commandeering Doctrine*

The Tenth Amendment of the U.S. Constitution reserves to the states all power that is not expressly reserved for the federal government in the U.S. Constitution. Opponents of federal reform assert that the individual mandate violates federalism principles because the U.S. Constitution does not authorize the federal government to regulate health care. They argue, “...state governments – unlike the federal government – have greater, plenary authority and police powers under their state constitutions to mandate the purchase of health insurance.”<sup>44</sup>

Further, opponents argue that the state health insurance exchange mandate may violate the anti-

<sup>37</sup> U.S. CONST. art. I, s. 8, cl. 3.

<sup>38</sup> Jack M. Balkin, *The Constitutionality of the Individual Mandate for Health Insurance*, N. Eng. J. Med. 362:6, at 482, Feb. 11, 2010, available at <http://www.nejm.org/doi/pdf/10.1056/NEJMp1000087> (last visited Dec. 1, 2010).

<sup>39</sup> Peter Urbanowicz and Dennis G. Smith, *Constitutional Implications of an “Individual Mandate” in Health Care Reform*, The Federalist Society for Law and Public Policy, 4 (July 10, 2009).

<sup>40</sup> U.S. CONST. art. I, s. 8, cl. 1.

<sup>41</sup> *Helvering v. Davis*, 301 U.S. 619 (1937).

<sup>42</sup> Mark A. Hall, *The Constitutionality of Mandates to Purchase Health Insurance*, Legal Solutions in Health Reform project, O’Neill Institute, 7, available at [http://www.law.georgetown.edu/oneillinstitute/national-health-law/legal-solutions-in-health-reform/Papers/Individual\\_Mandates.pdf](http://www.law.georgetown.edu/oneillinstitute/national-health-law/legal-solutions-in-health-reform/Papers/Individual_Mandates.pdf) (last visited Dec. 1, 2010).

<sup>43</sup> David B. Rivkin and Lee A. Casey, *Illegal Health Reform*, Washington Post, August 22, 2009, A15, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/21/AR2009082103033.html> (last visited Dec. 1, 2010). Rivkin and Lee cite to *Bailey v. Drexel Furniture*, 259 U.S. 20 (1922), a Commerce Clause case which held that Congress has the authority to tax as a means of controlling conduct.

<sup>44</sup> *Id.*

commandeering doctrine which prohibits the federal government from requiring state officials to carry out onerous federal regulations.<sup>45</sup> Proponents for reform suggest that Tenth Amendment jurisprudence only places wide and weak boundaries around Congressional regulatory authority to act under the Commerce Clause.<sup>46</sup>

### **Florida Health Insurance**

Florida law does not require state residents to have health insurance coverage. However, Florida law does require drivers to carry Personal Injury Protection (PIP), which includes certain health care coverage, as a condition of receiving a state driver's license.<sup>47</sup> Additionally, Florida law requires most employers to carry workers' compensation insurance, which includes certain health care provisions for injured workers.<sup>48</sup>

The average number of uninsured Floridians from 2007 through 2009 was almost 21 percent of the state population, or approximately 3,795,000 persons out of a total 18,176,000.<sup>49</sup>

### **Constitutional Amendments**

Section 1, Article XI of the State Constitution authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office, or at a special election held for that purpose.<sup>50</sup> Section 5(e), Article XI of the State Constitution requires 60-percent voter approval for a constitutional amendment to take effect. An approved amendment will be effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.<sup>51</sup>

### **III. Effect of Proposed Changes:**

The joint resolution creates Section 28 in Article I of the Florida Constitution to refer to health care services. Several terms are defined in the resolution, including the following:

- "Compel" includes the imposition of penalties or fines;
- "Direct payment" or "pay directly" means payment for lawful health care services without a public or private third party, not including any employer, paying for any portion of the service;
- "Health care system" means any public or private entity whose function or purpose is the management of, processing of, enrollment of individuals for, or payment, in full or in

<sup>45</sup> Matthew D. Adler, *State Sovereignty and the Anti-Commandeering Cases*, *The Annals of the American Academy of Policy and Social Science*, 574, at 158 (March 2001).

<sup>46</sup> Hall, *supra* note 40, at 8-9.

<sup>47</sup> Section 627.736, F.S.

<sup>48</sup> Chapter 440, F.S.

<sup>49</sup> See U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage: 2009 - Tables & Figures: Number and Percentage of People Without health Insurance Coverage by State Using 2- and 3-Year Averages: 2006-2007 and 2008-2009*, available at <http://www.census.gov/hhes/www/hlthins/data/incpovhlth/2009/tables.html> (last visited Nov. 30, 2010).

<sup>50</sup> FLA. CONST. art. XI, s. 5(a).

<sup>51</sup> FLA. CONST. art. XI, s. 5(e).

part, for health care services, health care data, or health care information for its participants;

- “Lawful health care services” means any health-related service or treatment, to the extent that the service or treatment is permitted or not prohibited by law or regulation, which may be provided by persons or businesses otherwise permitted to offer such services; and
- “Penalties or fines” means any civil or criminal penalty or fine, tax, salary or wage withholding or surcharge, or any named fee with a similar effect established by law or rule by an agency established, created, or controlled by the government which is used to punish or discourage the exercise of rights protected under this section. However, the term “rule by an agency” may not be construed to mean any negotiated provision in any insurance contract, network agreement, or other provider agreement contractually limiting copayments, coinsurance, deductibles, or other patient charges.

The proposed constitutional amendment is intended to preserve the freedom of Florida residents to provide for their own health care by:

- Prohibiting a law or rule from compelling, directly or indirectly, any person, employer, or health care provider to participate in any health care system;
- Authorizing a person or employer to pay directly for lawful health care services without incurring penalties or fines; and
- Authorizing a health care provider to accept direct payment for lawful health care services from a person or employer without incurring penalties or fines.

The proposed constitutional amendment does not allow any law or rule to prohibit the purchase or sale of health insurance in private health care systems, unless the law or rule is reasonable and necessary and does not substantially limit a person’s options.

The proposed constitutional amendment states that it does not:

- Affect which health care services a health care provider is required to perform or provide;
- Affect which health care services are permitted by law;
- Prohibit care provided pursuant to workers’ compensation laws;
- Affect laws or rules in effect as of March 1, 2010;
- Affect health care systems, provided the health care system does not have provisions that punish a person or employer for paying directly for lawful health care services or a health care provider for accepting direct payment from a person or employer for lawful health care services. However, this section may not be construed to prohibit any negotiated provision in any insurance contract, network agreement, or other provider agreement contractually limiting copayments, coinsurance, deductibles, or other patient charges; and
- Affect any general law passed by a two-thirds vote of the membership of each house of the legislature after the effective date of this section, if the law states with specificity the public necessity that justifies an exception from this section.

The specific statement to be placed on the ballot is provided. This language summarizes the provisions in the constitutional amendment, except it omits the definitions of terms used in the amendment.

An effective date for the amendment is not specified. Therefore, the amendment, if approved by the voters, will take effect on the first Tuesday after the first Monday in January following the election at which it is approved.<sup>52</sup>

**Other Potential Implications:**

The proposed constitutional amendment does not affect laws in existence before March 1, 2010. The proposed constitutional amendment provides that it does not affect any general law passed by a two-thirds vote of the membership of each house of the legislature **after** the effective date of the proposed constitutional amendment. The proposed constitutional amendment would not be effective until after the next general election or special election. Therefore, a gap in time is created, during which newly enacted laws, if any, that fall within the parameters of the constitutional amendment might be ruled unconstitutional should the proposed constitutional amendment become effective.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The provisions of the joint resolution have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the joint resolution have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of the joint resolution have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

If this proposed constitutional amendment is adopted by the voters in Florida, it will directly affect any law or rule that is enacted or adopted after March 1, 2010, by the State of Florida or a local government concerning personal freedoms related to health care coverage.

**Supremacy Clause**

A federal law, depending upon its nature and scope, could preempt the effect of this proposed constitutional amendment. The Supremacy Clause of the U.S. Constitution establishes federal law as the “supreme law of the land, and invalidates state laws that interfere with or are contrary to federal law.”<sup>53</sup> However, the Tenth Amendment to the

<sup>52</sup> FLA. CONST. art. XI, s. 5(e).

<sup>53</sup> *ABC Charters, Inc. v. Bronson*, 591 F.Supp.2d 1272 (S.D. Fla. 2008) (quoting *Lozano v. City of Hazleton*, 496 F.Supp.2d 477, 518 (M.D. Pa. 2007)); see also U.S. CONST., art. VI.

U.S. Constitution provides that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. Therefore, courts have consistently interpreted the Tenth Amendment to mean that “[t]he States unquestionably do retain a significant measure of sovereign authority. . . to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government.”<sup>54</sup>

In conducting a preemption analysis in areas traditionally regulated by the states, there is a presumption against preemption.<sup>55</sup> There are three types of preemption:

- Express preemption;
- Field preemption; and
- Conflict preemption.

“Conflict preemption” occurs when “it is impossible to comply with both federal and state law, or when state law stands as an obstacle to the objectives of federal law.”<sup>56</sup>

“Field preemption” occurs when federal regulation in a legislative field is so pervasive that Congress left no room for the states to supplement it.<sup>57</sup> “Express preemption” occurs when federal law explicitly expresses Congress’ intent to preempt a state law.<sup>58</sup>

The Florida constitutional amendment could be subject to a preemption challenge if the amendment is perceived to conflict with a federal law or rule adopted after March 1, 2010, governing health care. If a court concludes that that the amendment does directly conflict with a federal law or rule adopted after March 1, 2010, the Florida constitutional provision could be deemed unconstitutional.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

None.

### C. Government Sector Impact:

The Division of Elections (division) is required to publish the proposed constitutional amendment twice in a newspaper of general circulation in each county. The average cost per word to advertise an amendment is \$94.68. Therefore, the division estimates the cost for advertising this constitutional amendment is \$65,140.<sup>59</sup>

<sup>54</sup> *New York v. United States*, 505 U.S. 144, 156 (1992) (quoting 3 J. Story, *Commentaries on the Constitution of the United States* 752 (1833)).

<sup>55</sup> 10 FLA. JUR 2D s. 139 *Constitutional Law* (2010).

<sup>56</sup> *Supra* note 41, at 1301.

<sup>57</sup> *Id.* at 1304.

<sup>58</sup> *Id.* at 1298.

<sup>59</sup> Department of State, Bill Analysis: SB 72 (Nov. 18, 2009).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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# **OPEN GOVERNMENT SUNSET REVIEW**

**(PUBLIC RECORDS EXEMPTION)**

**Florida Center for Brain  
Tumor Research  
(FCBTR)**

# BACKGROUND

## Open Government Sunset Review Act s. 119.15, F.S.

- 5 year review of new exemption or amendment to an existing exemption
- Exemption repealed on October 2<sup>nd</sup> of the 5<sup>th</sup> year\*
- Unless the Legislature acts to reenact the exemption.

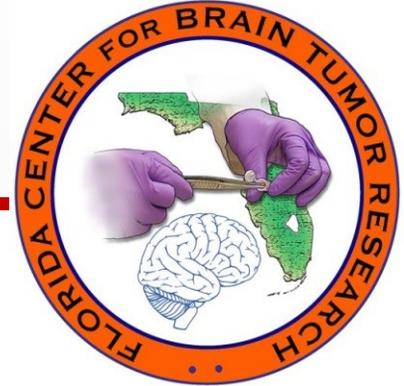
## FCBTR Public Records Exemption s. 381.8531, F.S.

- Individuals' medical records
- Information received from individuals from another state or nation or the Federal Government that is confidential or exempt under their laws or federal law



\*FCBTR's exemption is to be repealed October 2, 2011 if no Legislative action.

# FLORIDA CENTER FOR BRAIN TUMOR RESEARCH



- History- Established by the Florida Legislature July 1, 2006, with a \$500,000 appropriation.
- Purpose- To discover and develop cures and treatment for brain tumors by:
  - Coordinating with state's universities, hospitals, and the biomedical industry;
  - Expanding the state's economy by attracting biomedical researchers and research companies to the state;
  - Developing and maintaining a brain tumor registry;
  - Fostering collaboration with brain cancer organizations;
  - Providing a central repository of brain tumor biopsies;
  - Improving and monitoring brain tumor biomedical research;
  - Facilitating funding opportunities;
  - Fostering improved technology transfer of brain tumor research findings into clinical trials and widespread public use
- Scientific Advisory Council- A council within the FCBTR required to meet at least annually.

# FINDINGS

- The FCBTR does not obtain a copy of donor's medical records.
  - Registry receives tissue samples, information that identifies an individual donor, and some information extracted from medical records.
- FCBTR receives information from persons from other states or nations or the Federal Government that is confidential and exempt under the laws of those states, nations, or the Federal Government.
- FCBTR expressed a need to release protected health information (PHI), as defined by the Health Insurance Portability and Accountability Act (HIPAA), consistent with federal and state laws, when the recipient has received Institutional Review Board (IRB) approval in accordance with 45 CFR 46.

# RECOMMENDATIONS

- The Legislature re-enact and modify the public records exemption in s. 381.8531, F.S. by:
  - Deleting the exemption for an individual's "medical record" and instead exempt specific information in the registry and repository that identifies a donor;
  - Re-enacting the exemption related to information received by FCBTR from persons of other states or nations or the Federal Government; and
  - Authorizing the release of PHI, as defined by the HIPAA, when the recipient has received IRB approval in accordance with 45 CFR 46 for projects related to brain tumors.\*

\*Should the Legislature chose to adopt these recommendations a 2/3 vote is required for passage.



# Q u e s t i o n s ?



# ***Florida Medicaid: Program Overview***

***Roberta K. Bradford  
Deputy Secretary for Medicaid  
Florida Agency for Health Care Administration***

***Presented to the Senate Health Regulation Committee***

***December 8, 2010***

# *Medicaid*

## *A State and Federal Partnership*

- In 1965, the federal Social Security Act was amended to establish two major national health care programs:
  - Title XVIII (Medicare).
  - Title XIX (Medicaid).
- Medicaid is jointly financed by state and federal funds.
- States administer their programs under federally approved state plans.

# *The Medicaid Program*

## *Major Federal Requirements*

- States must submit a Medicaid State Plan to the federal Centers for Medicare and Medicaid Services (CMS).
- Mandatory eligibility groups and services must be covered.
- Services must be available statewide in the same amount, duration and scope.
- In order for states to implement programs which deviate from their state plan (to vary by geographic areas, amount, duration and scope), the state must request a waiver.
- A waiver is a program requested by a state and approved by the Centers for Medicare and Medicaid Services (CMS) that waives certain provisions of the Social Security Act.

# *Medicaid Structure*

- Federal Medicaid laws mandate certain benefits for certain populations.
- Medicaid programs vary considerably from state to state, and within states over time.
- State Medicaid programs vary because of differences in:
  - optional service coverages.
  - limits on mandatory and optional services.
  - optional eligibility groups.
  - income and asset limits on eligibility.
  - provider reimbursement levels.

# *Medicaid Structure*

## *(continued)*

- Medicaid does not cover all low income individuals.
  - 27% of children.
  - 51.2% of deliveries.
  - 63% of nursing home days.
  - 1,162,020 adults - parents, aged and disabled.

# Medicare vs. Medicaid

	<b>Medicare</b>	<b>Medicaid</b>
<b>Enacted by Congress</b>	1965	1965
<b>Alternate Program Name</b>	Title XVIII	Title XIX
<b>Financing</b>	Employee/Employer Payroll Tax; Premiums; Federal General Revenue	Federal and State Governments – Matching Rates Based on Per Capita Income
<b>Eligibility</b>	Not Income Based; All Persons Age 65+; Certain Younger Persons on Social Security Disability or Based on Disability and Specific Condition (ESRD); Totally and Permanently Disabled (24 months)	Income Based; All Ages; Mandatory Eligibility Groups; Optional Eligibility Groups
<b>Cost Sharing</b>	<p><b>Part A Premium</b> For most there is no premium. Buy-in available for those not otherwise qualified (\$461 for 2010)</p> <p><b>Part A Deductible</b> \$1,100/Benefit Period (2010)</p> <p><b>Part B Premium</b> \$110.50 (2010)</p> <p><b>Part B Deductible</b> \$155 (2010)</p> <p><b>Part B Coinsurance</b> 20%</p> <p><b>Part D Coinsurance up to 25% / Annual Deductible \$310</b></p> <p>Co-payments are variable with Income</p> <p>Low Income Subsidies are provided for the above</p>	Nominal; Spend Down for Medically Needy Individuals
<b>Administering Agency</b>	HHS/CMS/Carriers – Financed by Federal Government and Beneficiary Cost Sharing	States – Jointly Financed by State and Federal Governments; Medicaid Programs Vary by State
<b>Benefits</b>	<p><b>Part A</b> Hospital Insurance for Hospital Care, Skilled Nursing Facilities, Hospice and Some Home Health Care (Qualifying Contributions)</p> <p><b>Part B</b> Medical Insurance for Physician Services, Outpatient Care and Other Medical Services</p> <p><b>Part C</b> Medicare+Choice – Health Maintenance Organization Coverage</p> <p><b>Part D</b> Medicare Prescription drug Insurance</p>	Acute and Long Term Care; Federal Mandated Services and State Optional Services

# *Florida Medicaid – A Snapshot*

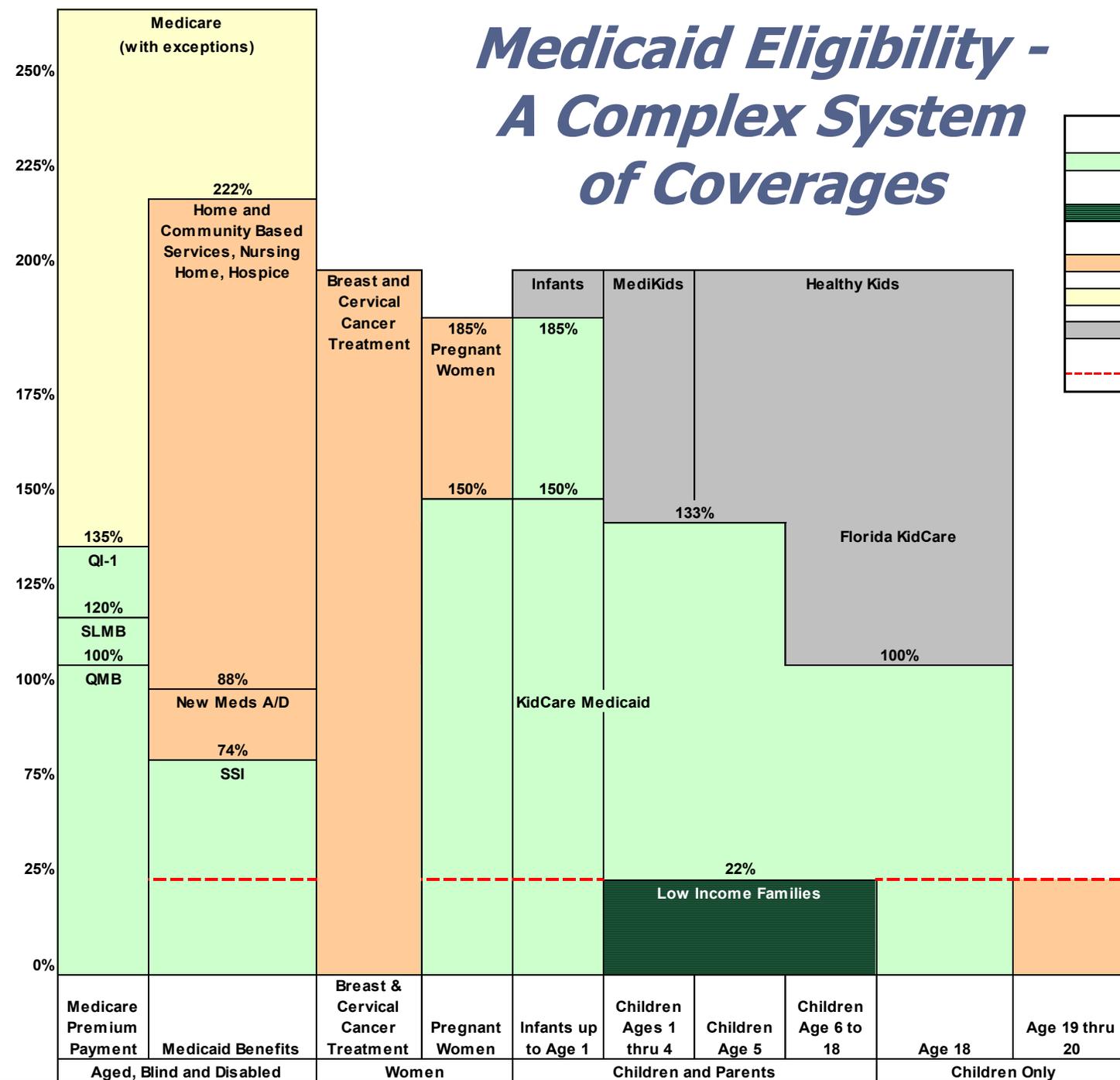
<p><b><i>Expenditures</i></b></p>	<ul style="list-style-type: none"> <li>• \$20.2 billion estimated spending in Fiscal Year 2010-11</li> <li>• Federal-state matching program –64.83% federal, 35.17% state.</li> <li>• Florida will spend approximately \$6,802 per eligible in Fiscal Year 2010-2011.</li> <li>• 45% of all Medicaid expenditures cover hospitals, nursing homes, Intermediate Care Facilities for the Developmentally Disabled (ICF/DD's); Low Income Pool and Disproportionate Share Payments.</li> <li>• Fifth largest nationwide in Medicaid expenditures.</li> </ul>
<p><b><i>Eligibles</i></b></p>	<ul style="list-style-type: none"> <li>• 2.97 million eligibles.</li> <li>• Elders, disabled, families, pregnant women, children in families below poverty.</li> <li>• Fourth largest Medicaid population in the nation.</li> </ul>
<p><b><i>Providers/Plans</i></b></p>	<ul style="list-style-type: none"> <li>• Approximately 107,000 enrolled Fee-For-Service providers; 18 HMOs and 6 PSNs.</li> </ul>

## *Who's Eligible?*

- Medicaid eligibility is determined by:
  - Categorical groups, i.e., pregnant women; families and children; and aged, blind, and disabled individuals.
  - Income.
  - Assets.
  - Citizenship.
  - Residency.
  - Cooperation with Child Support Enforcement (when one or both parents are absent from the home).
  - Medical need for home and community-based services, and persons in nursing facilities.
  - Level of medical bills (for Medically Needy).



# Medicaid Eligibility - A Complex System of Coverages



- Mandatory Medicaid coverage (entitlement).
- Mandatory Medicaid coverage for low-income families using 1996 AFDC income standard (entitlement).
- Optional Medicaid coverage (entitlement).
- Federal Medicare coverage (entitlement).
- Optional child insurance coverage (non-entitlement).
- Optional Medically Needy income spend down level (entitlement).

Family Size	**Monthly Income
1	\$903
2	\$1,214
3	\$1,526
4	\$1,838
5	\$2,149
6	\$2,461
7	\$2,773
8	\$3,084
Each Additional	\$312

\*Coverage for infants up to 185% Federal Poverty Level is required in order for states to receive Title XXI funding.

\*\*Federal Poverty Level as of January 2010

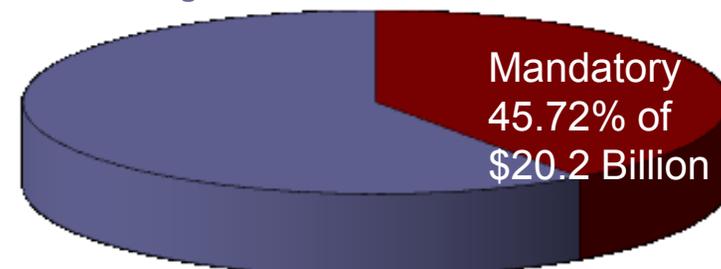
## *Estimates*

- Notes that figures within this presentation represent estimates from the July 2010 Caseload estimating conference and the August 2010 Expenditures estimating conference.

# *Florida Medicaid Mandatory Services*

- Advanced Registered Nurse Practitioner Services
- Early & Periodic Screening, Diagnosis and Treatment of Children (EPSDT)/Child Health Check-Up
- Family Planning
- Home Health Care
- Hospital Inpatient
- Hospital Outpatient
- Independent Lab
- Nursing Facility
- Personal Care Services
- Physician Services
- Portable X-ray Services
- Private Duty Nursing
- Respiratory, Speech, Occupational Therapy
- Rural Health
- Therapeutic Services for Children
- Transportation

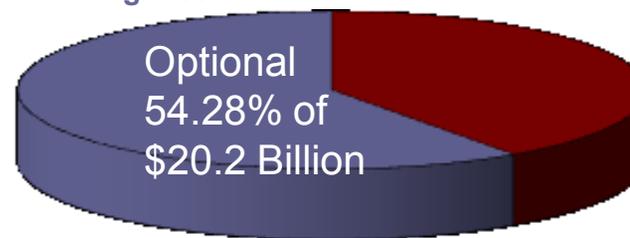
Florida Medicaid Mandatory Services for All Eligibles FY 2010-11



# Florida Medicaid Optional Services\*

- Adult Dental Services
- Adult Health Screening
- Ambulatory Surgical Centers
- Assistive Care Services
- Birth Center Services
- Hearing Services
- Vision Services
- Chiropractic Services
- Community Mental Health
- County Health Department Clinic Services
- Dialysis Facility Services
- Durable Medical Equipment
- Early Intervention Services
- Healthy Start Services
- Home and Community-Based Services
- Hospice Care
- Intermediate Care Facilities/ Developmentally Disabled
- Intermediate Nursing Home Care
- Optometric Services
- Physician Assistant Services
- Podiatry Services
- Prescribed Drugs
- Primary Care Case Management (MediPass)
- Registered Nurse First Assistant Services
- School-Based Services
- State Mental Hospital Services
- Subacute Inpatient Psychiatric Program for Children
- Targeted Case Management)

Florida Medicaid Optional Services for All Eligibles FY 2010-11

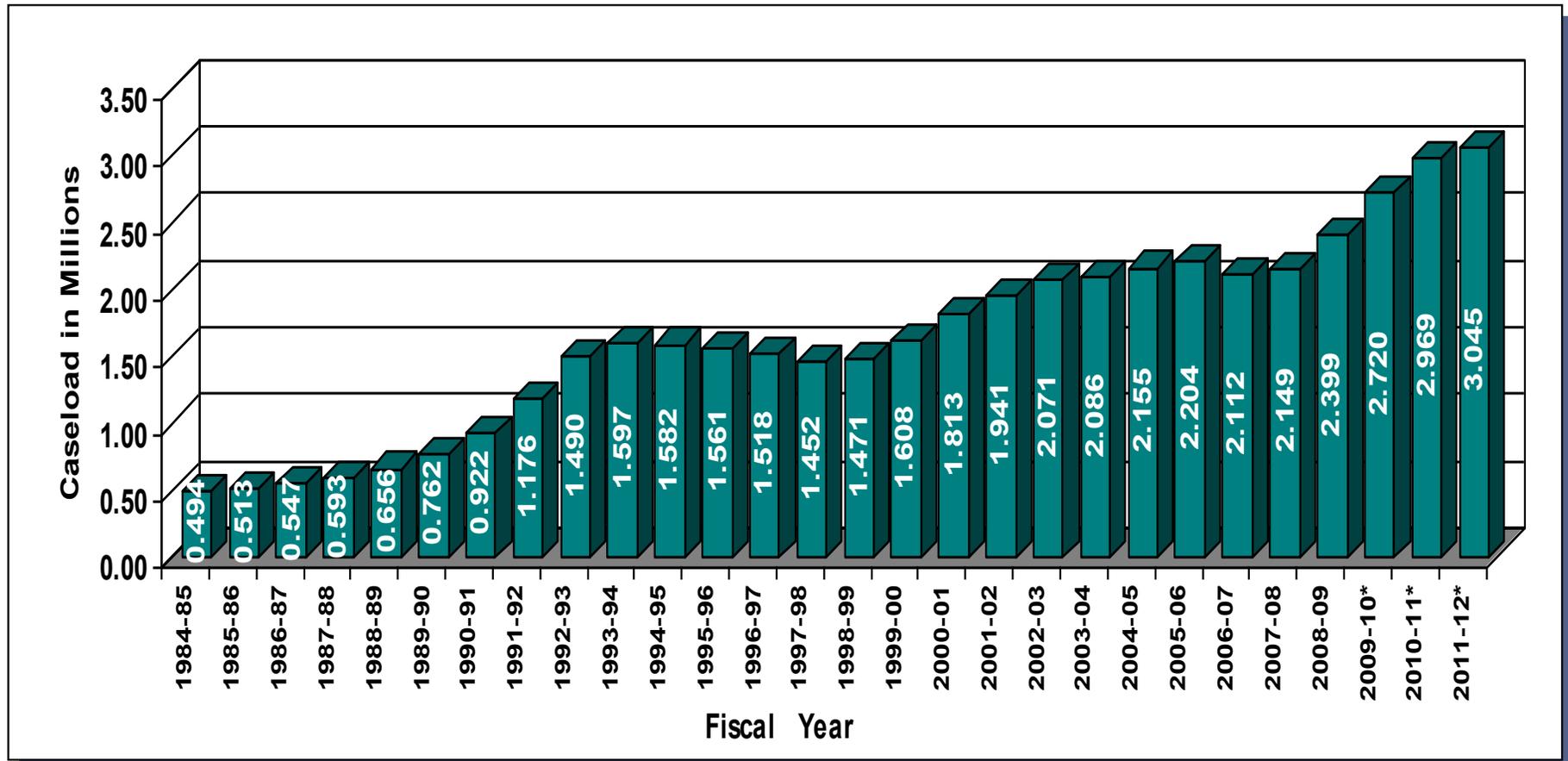


\*States are required to provide any medically necessary care required by child eligibles.

# *Who Can Provide Medicaid Services?*

- Any willing health care practitioner or entity who:
  - provides one of the Medicaid covered services;
  - submits an application to Medicaid;
  - is licensed or certified to practice in the State of Florida;
  - is not terminated from any government health care program; and
  - signs an agreement with Medicaid.
- Managed Care plans with appropriate provider networks.

# *Growth in Medicaid Average Monthly Caseload*



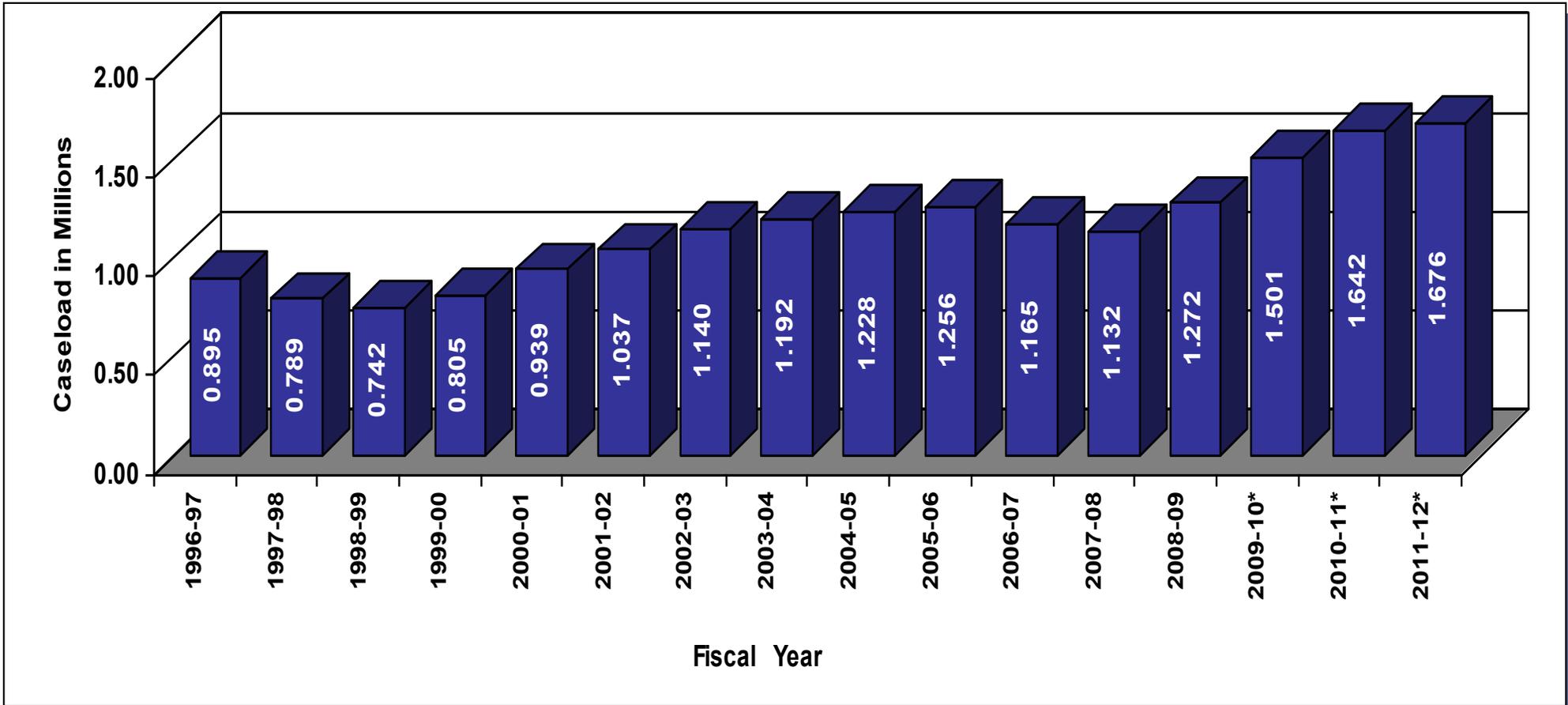
Source: Medicaid Services Eligibility Subsystem Reports.

\*FY 2009-10 July 2010 Caseload Social Services Estimating Conference.

\*FY 2010-11 July 2010 Caseload Social Services Estimating Conference.

\*FY 2011-12 July 2010 Caseload Social Services Estimating Conference.

# Growth in Medicaid Average Monthly Caseload for TANF



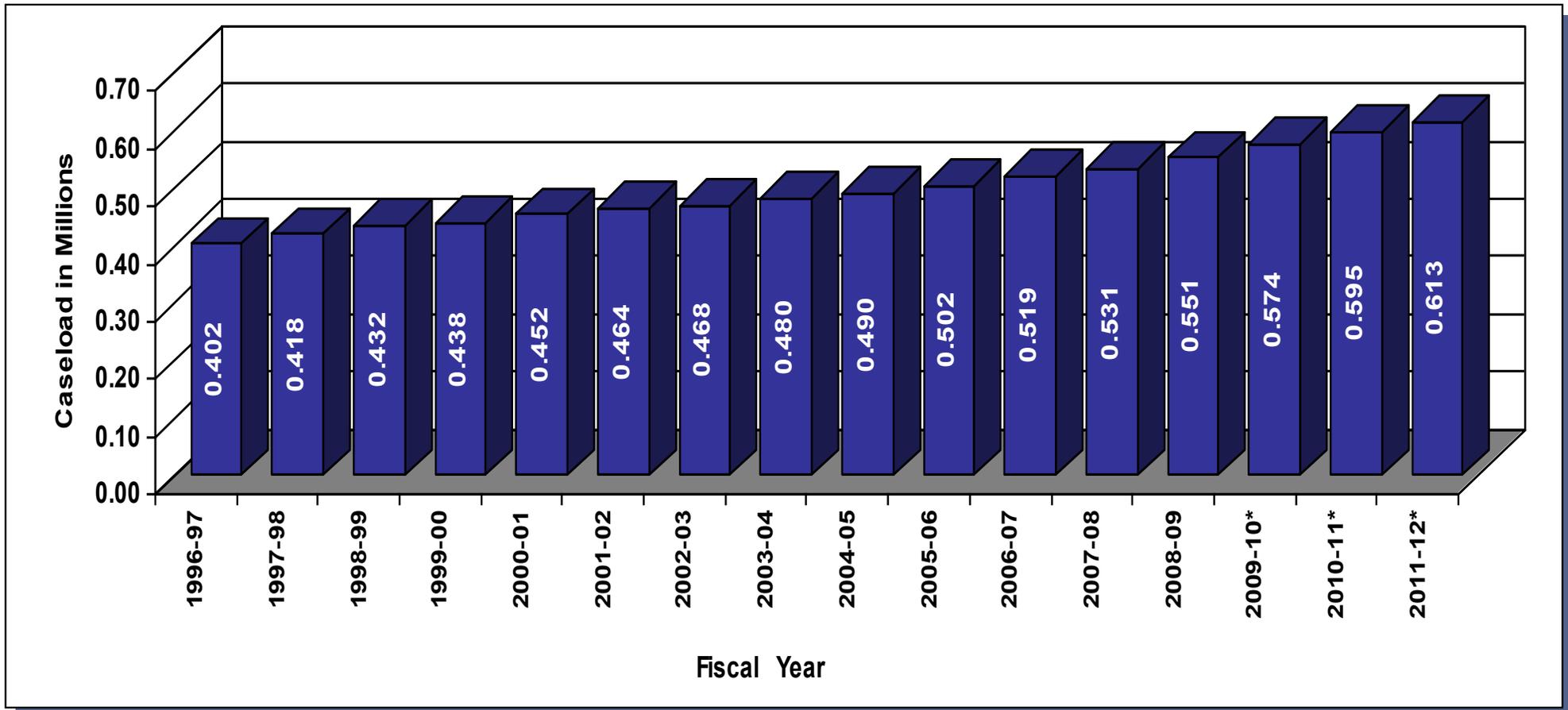
Source: Medicaid Services Eligibility Subsystem Reports. Caseload includes TANF and SOBRA Children

\*FY 2009-10 July 2010 Caseload Social Services Estimating Conference.

\*FY 2010-11 July 2010 Caseload Social Services Estimating Conference.

\*FY 2011-12 July 2010 Caseload Social Services Estimating Conference.

# Growth in Medicaid Average Monthly Caseload for SSI



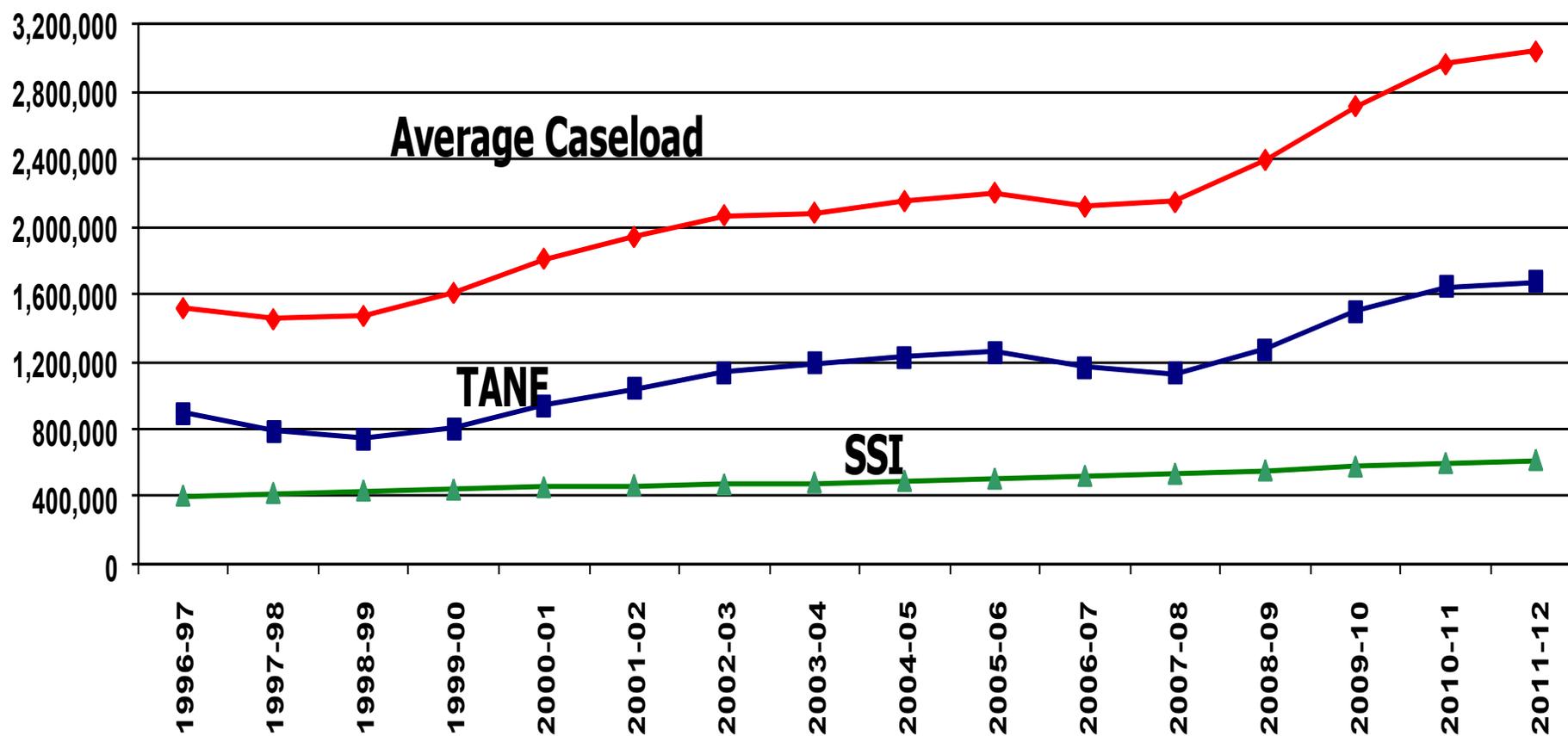
Source: Medicaid Services Eligibility Subsystem Reports.

\*FY 2009-10 July 2010 Social Services Estimating Conference.

\*FY 2010-11 July 2010 Social Services Estimating Conference.

\*FY 2011-12 July 2010 Social Services Estimating Conference.

## Average Monthly Caseload including TANF and SSI



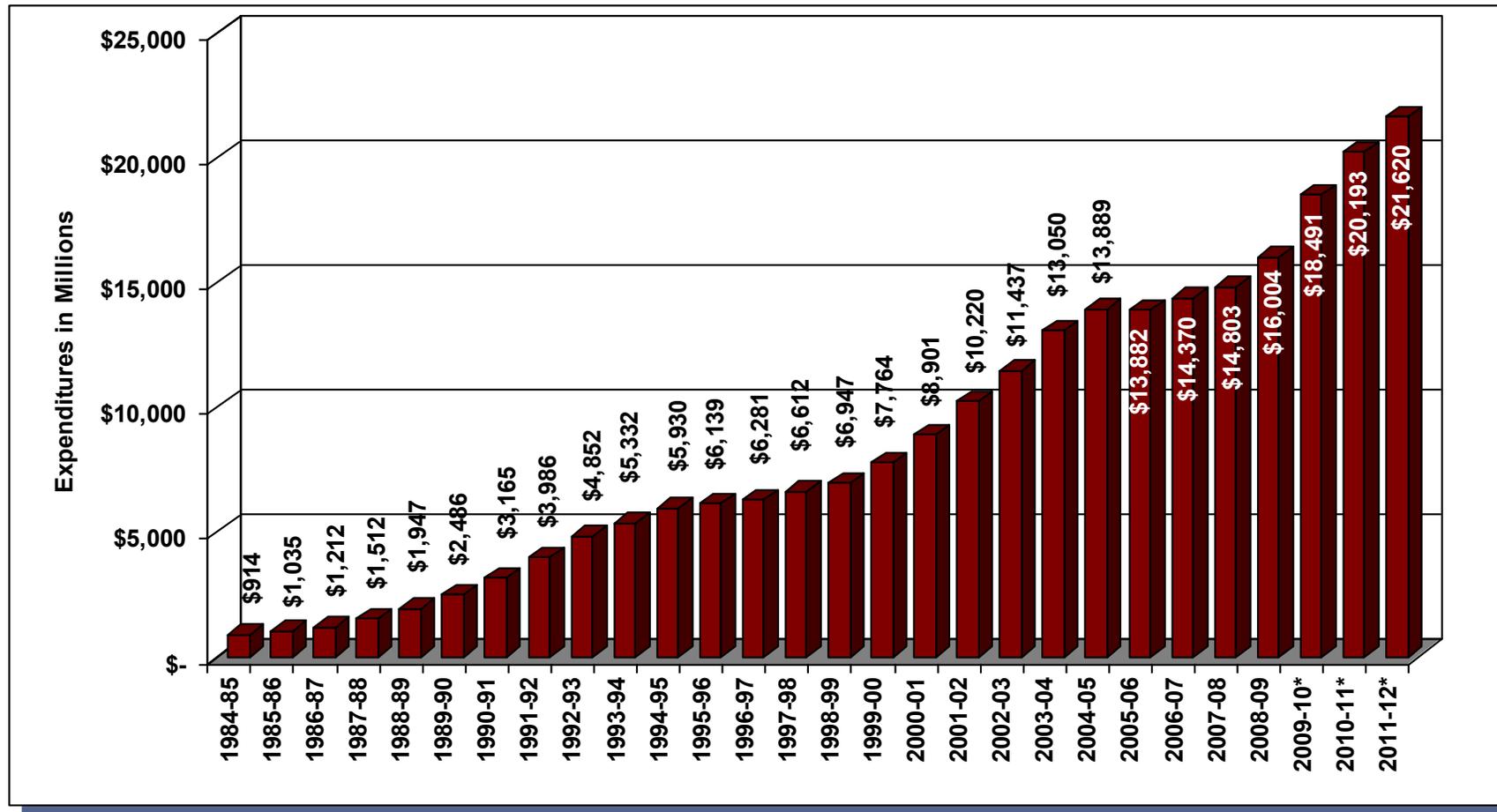
# Title XIX Federal Medical Assistance Percentage (FMAP)

<b>Federal Fiscal Year</b>	<b>Federal Share</b>	<b>State Share</b>	<b>Total</b>
<b>2005</b>	58.89%	41.11%	100%
<b>2006</b>	58.76%	41.24%	100%
<b>2007</b>	56.83%	43.17%	100%
<b>2008</b>	55.40%	44.60%	100%
<b>2009</b>	67.64%	32.36%	100%
<b>2010</b>	64.83%	35.17%	100%
<b>2011</b>	56.04%	43.96%	100%

# *TANF and SSI Related Eligibility Groups for 2010-11*

	Total Budget	Avg Monthly Caseload	PMPM
Supplemental Security Income (SSI)	\$10,682,030,927	595,097	\$1,496
Temporary Assistance for Needy Families (TANF)	\$2,888,309,665	876,731	\$275
Medically Needy	\$1,102,910,637	43,425	\$2,117
Children < = 100% of Poverty	\$1,199,343,261	693,771	\$144
Children > 100% of Poverty	\$152,176,541	71,663	\$177
Children – Medicaid Expansion Under Title XXI	\$3,334,416	790	\$352
Pregnant Women < = 100% of Poverty	\$726,100,064	68,674	\$881
Pregnant Women > 100% of Poverty	\$155,691,796	15,088	\$860
Family Planning Waiver	\$12,148,383	52,120	\$19
Categorically Eligible	\$524,799,560	226,477	\$193
Elderly and Disabled (MEDS AD)	\$743,088,189	38,404	\$1,612
Qualified Medicare Beneficiaries (QMB/SLMB/QI)	\$516,433,338	278,452	\$155
Refugee General Assistance	\$21,580,660	7,969	\$226
Other	\$1,464,679,257	N/A	N/A
<b>Total</b>	<b>\$20,192,626,694</b>	<b>2,968,661</b>	<b>\$567</b>

# Growth In Medicaid Service Expenditures



Source: Medicaid Services' Budget Forecasting System Reports.

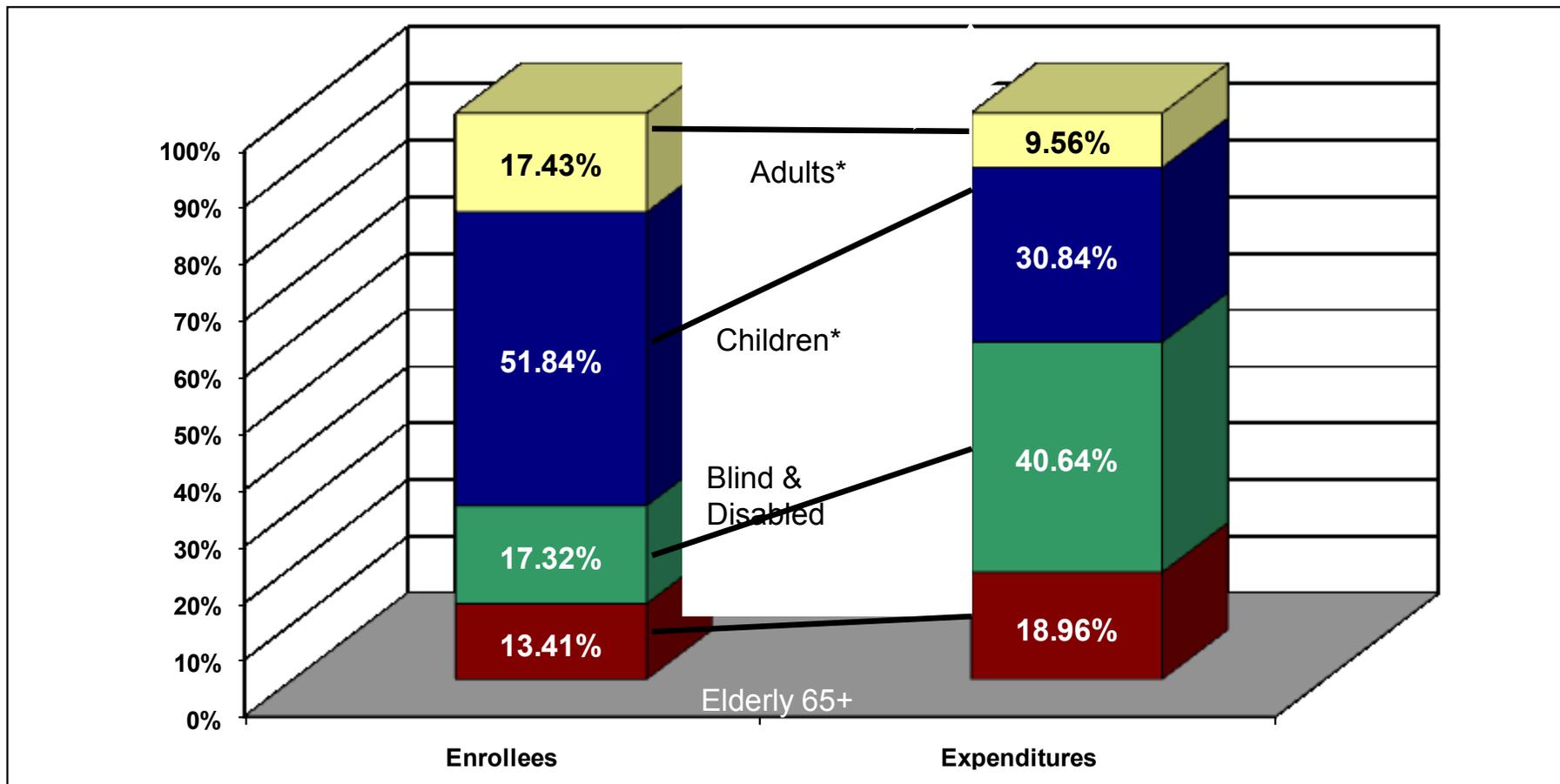
\*FY 2009-10 Estimated Final Expenditures.

\*FY 2010-11 August 2010 Social Services Estimating Conference.

\*FY 2011-12 August 2010 Social Services Estimating Conference.

# Medicaid Budget - How it is Spent

## Fiscal Year 2009-10



\* Adults and children refers to non disabled adults and children.

# Medicaid Spending for Fiscal Year 2010-11

Service	FY 2010-11 Estimated Spending	Percent of Total
Hospital Inpatient Services	\$3,797,901,173	18.81%
Prepaid Health Plans	\$3,125,828,565	15.48%
Nursing Home Care	\$2,903,605,738	14.38%
Prescribed Medicine/Drugs & Part D	\$1,694,364,084	8.39%
Physician Services	\$1,191,907,167	5.90%
Supplemental Medical Insurance	\$1,177,758,564	5.83%
Hospital Outpatient Services	\$1,074,193,151	5.32%
Home & Community Based Services	\$1,000,476,633	4.95%
Low Income Pool	\$1,000,249,994	4.95%
Intermediate Care Facility/DD	\$362,423,190	1.79%
Nursing Home Diversion Waiver	\$347,884,910	1.72%
Hospice Services	\$340,131,687	1.68%
Disproportionate Share Hospital Payments	\$246,570,577	1.22%
Private Duty Nursing Services	\$192,248,924	0.95%
Early and Periodic Screening/Children	\$188,316,688	0.93%
Other	\$1,549,765,649	7.67%
<b>Total</b>	<b>\$20,192,626,694</b>	<b>100.00%</b>

## *Medicaid Enrollment in Florida Today*

- The Florida Medicaid program is growing at an unprecedented rate, with enrollment anticipated to grow to more than 3 million enrollees during 2011-2012.
- Expenditures are anticipated to grow to more than \$21 billion during 2011-2012.
- Medicaid recipients in Florida receive services through several different delivery systems, each with a different level of care coordination.

# *The Evolution of Florida Medicaid Delivery Systems*

**1970 - 1983**

**Fee-for-Service**

**1984 - 1997**

**HMOs – Since 1984  
MediPass (PCCM) – Since 1991**

**1997 -2003**

**Provider Service Network - Since 2000  
Disease Management  
Nursing Home Diversion  
Other Alternative Plans - Since 2001**

**2004 - Present**

**Outcomes Management/Improved Clinical Decision Making  
Quality Assurance  
Fraud and Abuse Controls  
Medicaid Reform Pilot (2006)**

## *Fee-For-Service*

- The fee-for-service system serves those Medicaid recipients who are not eligible for or enrolled in MediPass, Managed Care or Disease Management.
  - The recipients include new eligibles, those in the Medically Needy program, the Family Planning Waiver, or residing in institutions.
- Fee-for-service recipients may receive services from any enrolled Medicaid provider, with limited coordination of care.
- Within the fee-for-service system enrolled Medicaid providers have the option to choose whether they accept a certain number of clients or whether they accept new Medicaid clients.
- Providers do not bear any financial risk for their patients.
- There are more than 107,000 enrolled and 71,000 active providers (providers who have had a paid claim within the past 12 months).

## *MediPass*

- MediPass is the Florida Medicaid primary care case management program.
- Services to MediPass members are reimbursed on a fee-for-service basis.
- MediPass primary care providers are paid a \$2.00 per member per month case management fee.
- Primary care providers (PCPs) are responsible for providing primary care and authorizing the specialty care provided to their MediPass enrollees.
- Services such as vision, hearing, dental, mental health and family planning services are not managed by the MediPass PCP.
- MediPass providers do not bear risk for their patients but do have requirements in place for case management, care coordination, and preventative care.
- There are approximately 2,500 enrolled MediPass provider practices with 5,000 total individual providers.

## *Medicaid Provider Service Networks*

- Provider Service Networks (PSN) are defined in s. 409.912 (4)(d), as an integrated health care delivery system owned and operated by a health care provider, or group of affiliated health care providers which provides a substantial proportion of the health care items and services under a contract directly through the provider or group of affiliated providers.
- PSNs are reimbursed on a fee-for-service or capitated basis.
- PSNs are required by contract to ensure that their enrollees have access to all Medicaid state plan services and a complete network of providers.
- The PSN does bear risk for enrolled recipients.
- Capitated PSNs must meet qualifications similar to HMOs.
- There are currently 6 PSNs participating in Florida Medicaid (reform and non-reform).

## *Health Maintenance Organizations*

- A Health Maintenance Organization (HMO) is an entity licensed under Chapter 641, Florida Statutes.
- HMOs provide comprehensive Medicaid services to a defined population of Medicaid recipients.
- The Agency contracts with HMOs on a prepaid fixed monthly rate per member (i.e. capitation rate) for which the HMO assumes all risk for providing covered services to their enrollees.
- HMOs are required by contract to ensure that their enrollees have access to all Medicaid state plan services and a complete network of providers. HMO networks are not limited to Medicaid participating providers.
- Some plans have expanded their benefits beyond those normally required; example: preventive adult dental.
- There are currently 18 HMOs participating in Florida Medicaid (reform and non-reform).

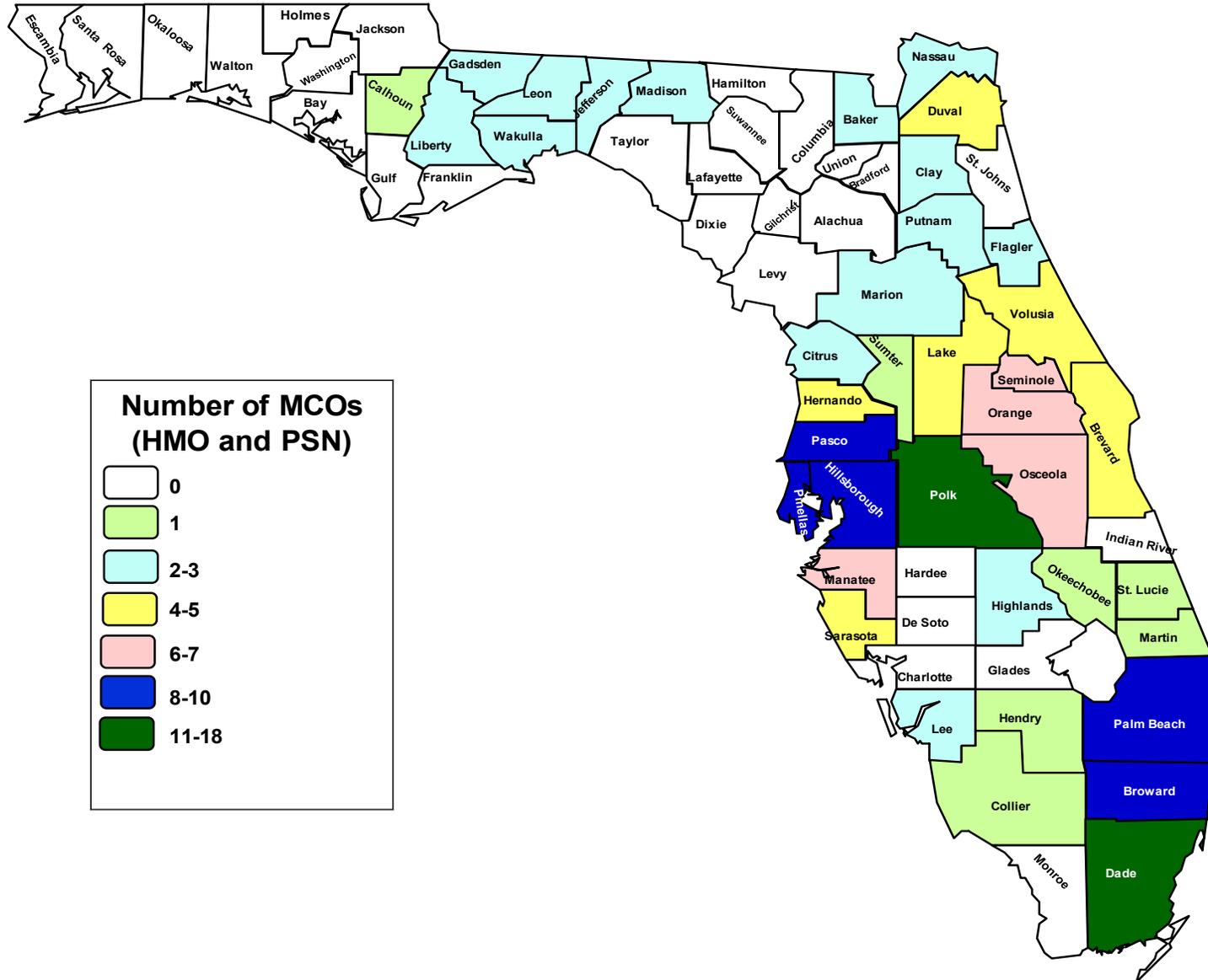
# *Managed Care in Florida Medicaid Medicaid Enrollment Today*

*(November 1, 2010)*

<b>Delivery System</b>	<b>Number of Plans</b>	<b>Non-Reform County Enrollment as of November 1, 2010</b>	<b>Reform County Enrollment as of November 1, 2010</b>	<b>Statewide Enrollment</b>
Health Maintenance Organization (Non-Reform)	17	940,126	963	941,089
Health Maintenance Organization (Reform)	8	0	154,066	154,066
FFS Provider Service Network	3	8,458	116,827	125,285
Capitated Provider Service Network	3	57,702	0	57,702
Minority Physician Network	1	13,626	125	13,751
Nursing Home Diversion	17	17,036	2,851	19,887
Fee-For-Service	N/A	806,026	131,769	937,795
MediPass	N/A	599,098	5,472	604,570

NOTE: Most recent enrollment data available is for November 1, 2010. Since that time, the remaining MPN has ceased operation.

# Managed Care in Florida Medicaid by County as of December 1, 2010



## ***Who is Eligible Managed Care Florida's 1915(b) Managed Care Waiver***

- Florida's 1915(b) Managed Care Waiver (non-reform) provides the State with the authority to mandatorily assign eligible beneficiaries and, within specific areas of the state, limit choice to approved providers.
- Some beneficiaries are *required* to enroll with a managed care provider, some have the *option* of enrolling with a managed care provider and some are *prohibited* from enrolling with a managed care provider. These beneficiaries can be referred to as “mandatory”, “voluntary”, or “excluded” from managed care enrollment.

## *Who is Eligible Managed Care Florida's 1115 Medicaid Reform Waiver*

- Allows Florida Medicaid to conduct a Pilot requiring managed care plan enrollment for most Medicaid eligibles in certain areas of the state.
- Provides the State with the authority to mandatorily assign eligible beneficiaries.
- Provides authority to enroll additional populations not included under the 1915(b) Managed Care Waiver:
  - Children with Chronic Conditions
  - Children in Foster Care
  - SOBRA Pregnant women
  - Individuals with Medicare coverage

# *Voluntary and Excluded Groups*

- Groups not required to enroll include (but are not limited to)
  - Recipients without full Medicaid benefits (Dual eligibles, Medically Needy, Family Planning, etc.)
  - Recipients residing in an institution (nursing home, ICF/DD, etc.)
  - Foster Care Children
  - Breast and Cervical Cancer eligibles

## *Services Provided*

- Capitated health plans are required to provide their enrollees with all Medicaid state plan services, with certain exceptions.
- Some services have been “carved out” from the rates paid to capitated plans and are provided to plan enrollees through other service delivery systems outside of the plan network. Examples include:
  - Long term care
    - Nursing Home
    - Home and Community Based Waivers

## *Benefits of Managed Care*

- Contract requirements ensure accountability
- Improve access to health care services.
- Recipient choice.
- Flexibility to offer services not otherwise covered
- Slow the rate of growth of expenditures:
  - Improved care coordination
  - Reduction of over-utilization
  - Effective method of fighting fraud

## *Critical Issues for Managed Care*

- Issues needing resolution:
  - Hospital Rate Negotiation with Managed Care plans
  - Impact on “carve outs” (Behavioral Health, Dental, Transportation)
  - Impact on Intergovernmental Transfers (exempt rate, buy-backs, DSH)
  - Low Income Pool funding

***Questions?***