SB 142 by **Hays**; (Similar to H 0097) Sovereign Immunity for Dentists and Dental Hygienists

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES
Senator Grimsley, Chair
Senator Flores, Vice Chair

MEETING DATE: Thursday, February 6, 2014
TIME: 9:00 —11:00 a.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Grimsley, Chair; Senator Flores, Vice Chair; Senators Bean, Benacquisto, Galvano, Garcia, Gibson, Lee, Montford, Richter, Smith, Sobel, and Thrasher

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 142** Hays (Similar H 97, Compare S 710)	Sovereign Immunity for Dentists and Dental Hygienists; Requiring a contract with a governmental contractor for health care services to include a provision for a health care provider licensed under specified provisions, as an agent of the governmental contractor, to allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient without forfeiting sovereign immunity; prohibiting the contribution from exceeding the actual amount of the dental laboratory charges; providing that the contribution complies with the requirements of s. 766.1115, F.S., etc. HP 10/08/2013 Favorable JU 01/14/2014 Favorable AHS 02/06/2014 AP	
2	Presentation on Governor's Fiscal Year 2014-2015 Budget Recommendations Michael Anway, Policy Coordinator, Health and Human Services Unit		
3	Comparison Report of PACE and Statewide Medicaid Managed Long-term Care Agency for Health Care Administration Department of Elder Affairs		
	Other Related Meeting Documents		

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.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL:	SB 142
INTRODUCER:	Senator Hays
SUBJECT:	Sovereign Immunity for Dentists and Dental Hygienists
DATE:	February 3, 2014
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stovall	Stovall	HP	**Favorable**
2.	Munroe	Cibula	JU	**Favorable**
3.	Brown	Pigott	AHS	**Pre-meeting**
4.			AP	

I. Summary:

SB 142 expands the circumstances under which a volunteer dentist or dental hygienist is not personally liable for negligence. Under existing law, the liability protections apply to free dental services provided to low-income patients pursuant to a government contract. Under the bill, the dentist or dental hygienist may accept voluntary contributions for the cost of laboratory work and retain the protections from personal liability.

The bill does not change the liability of the government entity that contracts with the dentist or dental hygienist to provide the free dental services. The government entity remains liable, subject to the state's sovereign immunity limitations, for any negligent dental services.

II. Present Situation:

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the Act). The Act was enacted in 1992 to encourage health care providers to provide care to low-income persons.[1] This section extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who provide volunteer, uncompensated health care services to low-income individuals as an agent of the state. These health care providers are considered agents of

[1] Low-income persons are defined in the Act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department. Section 766.1115(3)(e), F.S. A single individual whose annual income does not exceed $22,980 is at 200 percent of the federal poverty level using Medicaid data. *See 2013 Poverty Guidelines, Annual Guidelines* at: http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Eligibility/Downloads/2013-Federal-Poverty-level-charts.pdf (last visited December 13, 2013).

the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the Act.

Health care providers under the Act include:[2]

- A birth center licensed under ch. 383, F.S.[3]
- An ambulatory surgical center licensed under ch. 395, F.S.[4]
- A hospital licensed under ch. 395, F.S.[5]
- A physician or physician assistant licensed under ch. 458, F.S.[6]
- An osteopathic physician or osteopathic physician assistant licensed under ch. 459, F.S.[7]
- A chiropractic physician licensed under ch. 460, F.S.[8]
- A podiatric physician licensed under ch. 461, F.S.[9]
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of ch. 464, F.S., or any facility that employs nurses licensed or registered under part I of ch. 464, F.S., to supply all or part of the care delivered under the Act.[10]
- A dentist or dental hygienist licensed under ch. 466, F.S.[11]
- A midwife licensed under ch. 467, F.S.[12]
- A health maintenance organization certificated under part I of ch. 641, F.S.[13]
- A health care professional association and its employees or a corporate medical group and its employees.[14]
- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.[15]
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.[16]
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as a physician, physician assistant, nurse, or midwife.[17]
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, that delivers health care services provided by the listed licensed professionals, any federally

[2] Section 766.1115(3)(d), F.S.
[3] Section 766.1115(3)(d)1., F.S.
[4] Section 766.1115(3)(d)2., F.S.
[5] Section 766.1115(3)(d)3., F.S.
[6] Section 766.1115(3)(d)4., F.S.
[7] Section 766.1115(3)(d)5., F.S.
[8] Section 766.1115(3)(d)6., F.S.
[9] Section 766.1115(3)(d)7., F.S.
[10] Section 766.1115(3)(d)8., F.S.
[11] Section 766.1115(3)(d)9., F.S.
[12] Section 766.1115(3)(d)10., F.S.
[13] Section 766.1115(3)(d)11., F.S.
[14] Section 766.1115(3)(d)12., F.S.
[15] Section 766.1115(3)(d)13., F.S.
[16] Section 766.1115(3)(d)14., F.S.
[17] Section 766.1115(3)(d)15., F.S.

funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

A governmental contractor is defined in the Act as the Department of Health (DOH), a county health department, a special taxing district having health care responsibilities, or a hospital owned and operated by a governmental entity.[18]

A contract under the Act must pertain to volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient or any public or private third-party payor for the specific services provided to the low-income recipients covered by the contract.[19]

The Act further specifies additional contract requirements. The contract must provide that:

- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract.
- The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
- The health care provider must report adverse incidents and information on treatment outcomes.
- The governmental contractor or the health care provider must make patient selection and initial referrals.
- Patient care, including any follow-up or hospital care, is subject to approval by the governmental contractor.
- The health care provider is subject to supervision and regular inspection by the governmental contractor.[20]
- The health care provider must accept all referred patients; however, the contract may specify limits on the number of patients to be referred.[21]

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of actions related to medical negligence.[22]

The individual accepting services through this contracted provider cannot have medical or dental care insurance coverage for the illness, injury, or condition for which medical or dental care is sought.[23] Services not covered under the Act include experimental procedures and clinically unproven procedures. The governmental contractor must determine whether a procedure is covered.

[18] Section 766.1115(3)(c), F.S.
[19] Section 766.1115(3)(a), F.S.
[20] Section 766.1115(4), F.S.
[21] Rule 64I-2.003(2), F.A.C.
[22] Section 766.1115(5), F.S.
[23] Rule 64I-2.002(2), F.A.C.

The health care provider may not subcontract for the provision of services under this chapter.[24]

According to the DOH, from July 1, 2011, through June 30, 2012, 12,867 licensed health care volunteers (plus an additional 9,949 clinic staff volunteers) provided 433,191 health care patient visits with a total value of $231,530,324 under the Act.[25] The Florida Department of Financial Services, Division of Risk Management, reported on March 26, 2012, that nine claims had been filed against the Volunteer Health Care Provider Program under s. 766.1115, F.S., since February 15, 2000.[26]

Interpretation of s. 766.1115, F.S., varies across the state. In certain parts of the state, the statute is interpreted to mean that as long as there is transparency and clear proof that the volunteer provider is providing services, without receiving personal compensation, then the patient can pay a nominal amount per visit to assist in covering laboratory fees. In other parts of the state, the statute is interpreted to mean that if any monetary amount is accepted, then sovereign immunity is lost. Patients sometimes offer to pay a nominal contribution to cover some of the cost of laboratory fees that providers incur to pay third parties for items such as dentures for the patient. In many areas, the dentist is paying the cost of these fees from his or her own resources.[27]

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of such governments unless the immunity is expressly waived.

Article X, s. 13, of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive such immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to $200,000 for one incident and the total for all recoveries related to one incident is limited to $300,000.[28] The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.[29]

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[24] Rule 64I-2.004(2), F.A.C.
[25] Department of Health, *Volunteer Health Services 2011-2012 Annual Report*, available at: http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/vhsreportfinal12.pdf, (last visited December 13, 2013).
[26] *Id.* at Appendix B.
[27] Conversation with representatives of the Florida Dental Association on December 11, 2013.
[28] Section 768.28(5), F.S.
[29] *Id.*

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.[30] In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

> One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.[31]

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.[32] The court explained:

> Whether the [Children's Medical Services] CMS physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. . . . CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS[33] Manual and CMS Consultant's Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.
>
> Our conclusion is buttressed by HRS's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.[34]

III. Effect of Proposed Changes:

The bill expands the circumstances in which a volunteer dentist or dental hygienist is not personally liable for negligence. Under existing law, the liability protections apply to free dental services provided to low-income patients pursuant to a government contract. Under the bill, the dentist or dental hygienist may accept voluntary contributions for the cost of laboratory work and retain the protections from personal liability, provided such contributions do not exceed the actual cost of the laboratory work.

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[30] *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).
[31] *Id.*
[32] *Id.* at 703.
[33] Florida Department of Health and Rehabilitative Services, *Senate Bill 1016 (2013) Fiscal Analysis* (on file with the Senate Committee on Judiciary).
[34] *Stoll*, 694 So. 2d at 703 (Fla. 1997) (internal citations omitted).

The bill does not change the liability of the government entity that contracts with the dentist or dental hygienist to provide the free dental services. The government entity remains liable, subject to the state's sovereign immunity limitations, for any negligent dental services.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The DOH anticipates that a small number of dental laboratories will receive compensation for laboratory work for indigent patients.[35]

A dentist or dental hygienist may need to prepare additional documentation showing that any voluntary contribution for laboratory is reimbursement for costs, not compensation.[36]

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not provide a definition of the "costs of dental laboratory work" and does not indicate what may be included as part of those costs, e.g. whether a dentist's compensation to his

[35] *See* Department of Health, *Bill Analysis for SB 1016 (2013)*, March 13, 2013, (on file with the Senate Committee on Judiciary Committee).
[36] *Id.*

or her staff to coordinate laboratory work may be considered part of the costs of dental laboratory work related to the services provided to the patient.[37] The Legislature may wish to consider whether reimbursable costs for laboratory work should be defined.

VIII. Statutes Affected:

This bill substantially amends section 766.1115, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[37] *Id.*

By Senator Hays

11-00173A-14 2014142__

A bill to be entitled

An act relating to sovereign immunity for dentists and dental hygienists; amending s. 766.1115, F.S.; revising a definition; requiring a contract with a governmental contractor for health care services to include a provision for a health care provider licensed under ch. 466, F.S., as an agent of the governmental contractor, to allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient without forfeiting sovereign immunity; prohibiting the contribution from exceeding the actual amount of the dental laboratory charges; providing that the contribution complies with the requirements of s. 766.1115, F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section 766.1115, Florida Statutes, is amended, and paragraph (g) is added to subsection (4) of that section, to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

(3) DEFINITIONS.—As used in this section, the term:

(a) "Contract" means an agreement executed in compliance with this section between a health care provider and a governmental contractor which allows~~. This contract shall allow~~ the health care provider to deliver health care services to low-

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income recipients as an agent of the governmental contractor. The contract must be for volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services under this section, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or a ~~any~~ public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract.

(4) CONTRACT REQUIREMENTS.—A health care provider that executes a contract with a governmental contractor to deliver health care services on or after April 17, 1992, as an agent of the governmental contractor is an agent for purposes of s. 768.28(9), while acting within the scope of duties under the contract, if the contract complies with the requirements of this section and regardless of whether the individual treated is later found to be ineligible. A health care provider under contract with the state may not be named as a defendant in any action arising out of medical care or treatment provided on or after April 17, 1992, under contracts entered into under this section. The contract must provide that:

(g) Notwithstanding subsection (3), as an agent of the governmental contractor for purposes of s. 768.28(9), while acting within the scope of duties under the contract, a health care provider licensed under chapter 466 may allow a patient or a parent or guardian of the patient to voluntarily contribute a fee to cover costs of dental laboratory work related to the services provided to the patient. This contribution may not exceed the actual cost of the dental laboratory charges and is

deemed in compliance with this section.

A governmental contractor that is also a health care provider is not required to enter into a contract under this section with respect to the health care services delivered by its employees.

Section 2. This act shall take effect July 1, 2014.

GOVERNOR RICK SCOTT

Fiscal Year 2014-2015

Health and Human Services

Policy and Budget Recommendations

Foundation for Governor Scott's 2014-15 Budget

Reducing Taxes and Fees

- Supporting Florida families and businesses by reducing the amount of money paid to the government.

Reducing State Debt

- Reducing the tax burden on our children and grandchildren.

Eliminating Government Waste

- Requiring state agencies to recommend reductions in spending each year to eliminate government waste.

Investment Priorities for the Governor's 2014-15 Budget

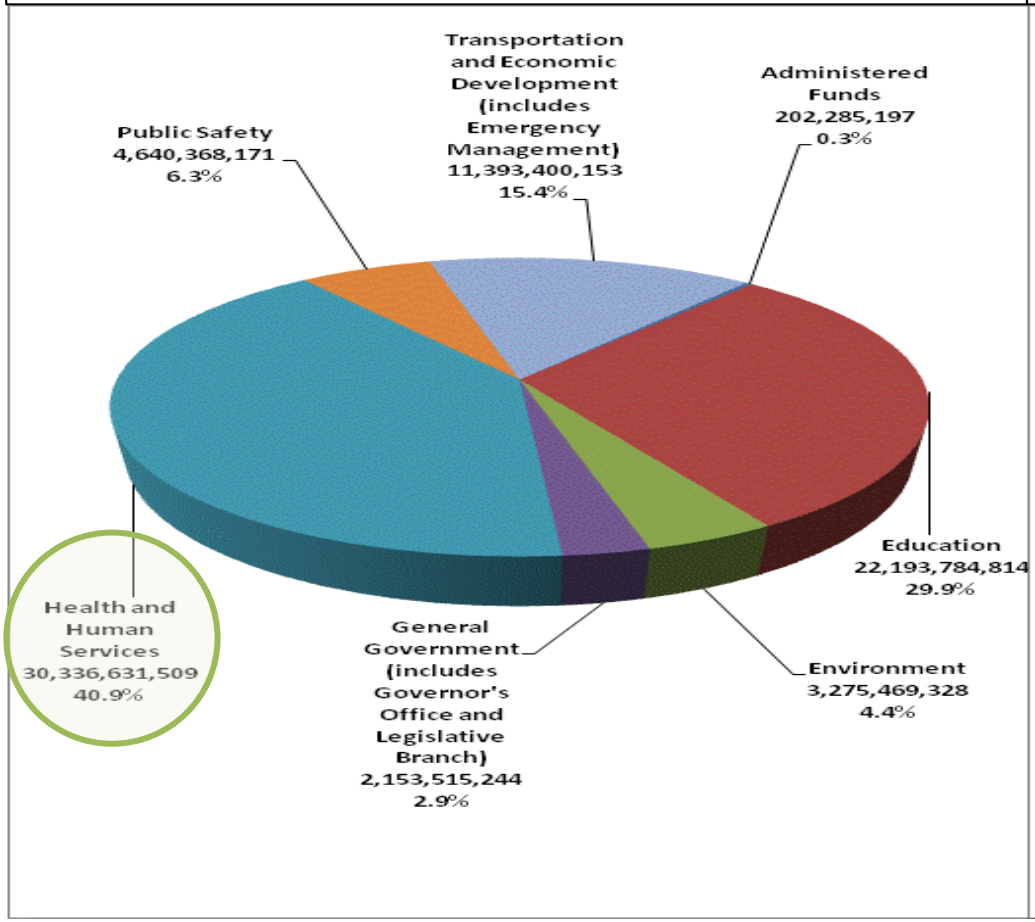
Create Jobs for the Next Generation

Invest in Education

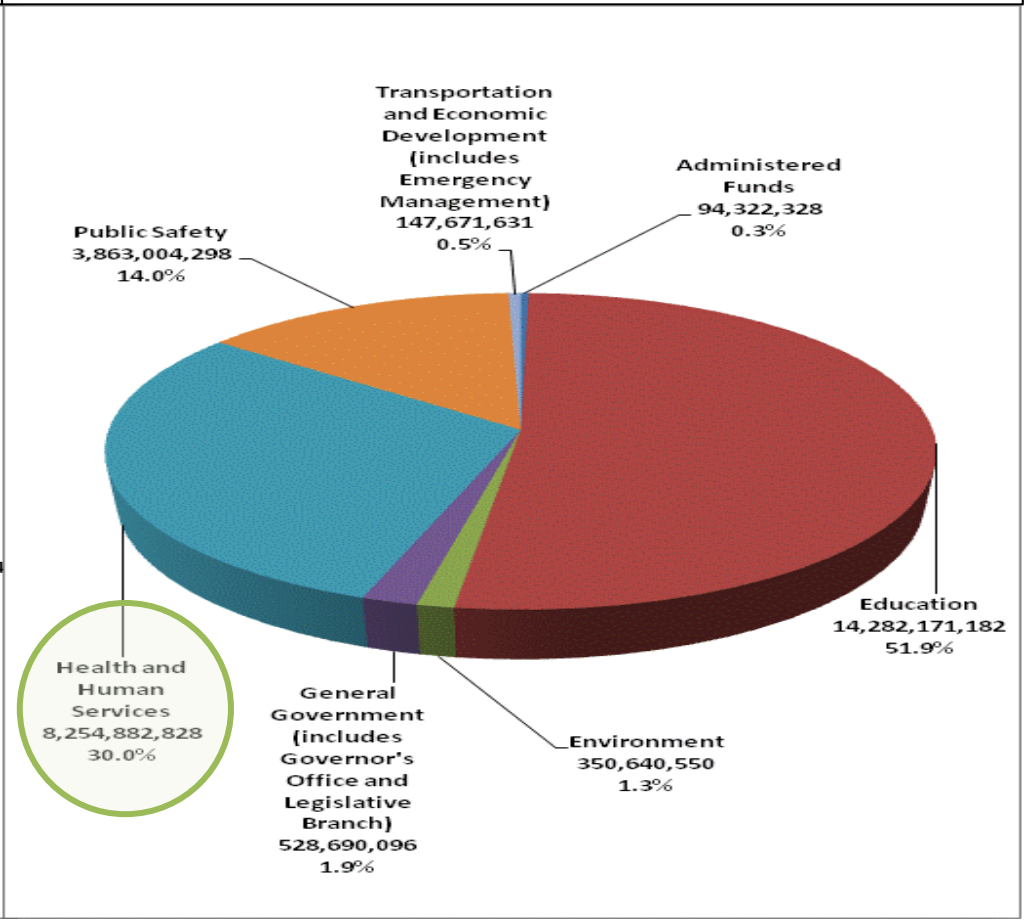
Strengthen Florida Families

Governor's Budget Recommendations Fiscal Year 2014-15 by Policy Area

Total Budget - $74.2 billion

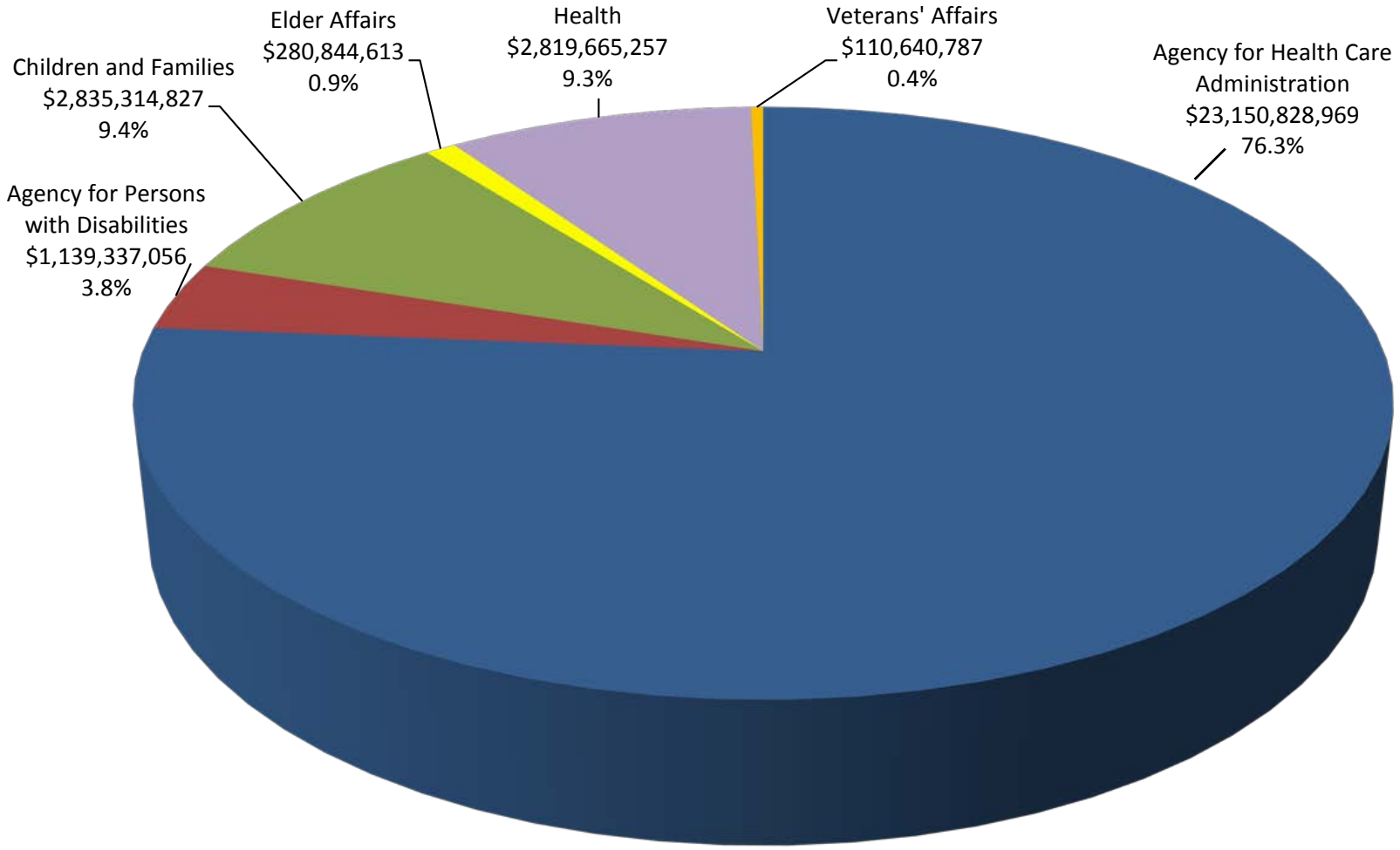


General Revenue - $27.5 billion



*Education Local Funding not included in above total: K-12 Local Funding $8.2 billion; Florida College System Tuition $851 million; K-12 Workforce Tuition $47.8million (total $ 9.1 billion).

Governor's Recommended Budget Fiscal Year 2014-15
Health and Human Services - $30.3 Billion



Eliminate Government Waste - HHS

#	Reduction	Positions	General Revenue	Trust Fund	Total
1	Administrative and Operational Efficiencies	(471)	(2,122,943)	(41,528,132)	(43,651,075)
2	Contract Savings		(614,018)	(1,145,337)	(1,759,355)
3	Real Estate Optimization		(1,159,033)	(2,556,136)	(3,715,169)
4	Medicaid DRG Transitional Payments ($32.5 m) Contract Reductions ($2.1 m)		(14,305,042)	(20,307,587)	(34,612,629)
5	Workload Adjustments		(8,446,429)	(15,614,748)	(24,061,177)
6	**Subtotal**	**(471)**	**(26,647,465)**	**(81,151,940)**	**(107,799,405)**
7	Unfunded Federal Budget			(17,426,956)	(17,426,956)
8	Unfunded Non-Federal Budget			(464,180)	(464,180)
9	**Grand Total**	**(471)**	**(26,647,465)**	**(99,043,076)**	**(125,690,541)**

Health and Human Services Highlights

Major Issues Funded	Amount
Cancer Treatment and Research Proposal	$60 million
Child Protection • DCF Child Protection Services • Healthy Families • Sheriffs Child Protection • DOH – Child Protection Teams	 $31.7 million & 447 FTE $ 7 million $8 million $2.8 million
Enriching Seniors	$33.6 million
Developmental Disabilities	$ 20 million
Veterans Nursing Homes	$1.6 million
Adoption Subsidies	$28.7 million
Mental Health Transitional Beds	$2.5 million
Maintain Current Year Funded Amounts: • Mental Health and Substance Abuse Services • Early Steps • Ounce of Prevention	 $16.7 million $3.6 million $1.9 million

Comparison of Budget Between Fiscal Years

Agency / Department	Fiscal Year 2013-14	Governor's Recommendations Fiscal Year 2014-15	Percent % Change
Agency for Health Care Administration	$24,018,888,351	$23,150,828,969	(3.61)%
Agency for Persons with Disabilities	$1,117,485,755	$1,139,337,056	1.96%
Department of Children and Families	$2,822,436,420	$2,835,314,827	0.46%
Department of Elder Affairs	$268,123,336	$280,844,613	4.74%
Department of Health	$2,832,548,681	$2,819,665,257	(0.45)%
Department of Veteran's Affairs	$93,970,369	$110,640,787	17.74%
Total	$31,153,447,912	$30,336,631,509	(2.62)%

Agency for Health Care Administration Highlights

Major Issues	General Revenue	Trust Funds	Total
Outpatient Prospective Payment – Ambulatory Patient Groups		$1,000,000	$1,000,000
Nursing Home Prospective Payment – Resource Utilization Groups		$1,000,000	$1,000,000
Advanced Data Analytics and Detection Services		$5,000,000	$5,000,000
Medicaid Long-Term Waiver List	$8,000,000	$11,559,901	$19,559,901

Agency for Persons with Disabilities Highlights

Major Issues	General Revenue	Trust Funds	Total
Medicaid Waiver Waitlist	$8,180,000	$11,820,000	$20,000,000
Supported Employment Waitlist	$1,000,000		$1,000,000
FCO – Billy Joe Rish Park	$1,000,000		$1,000,000

Department of Children and Families Highlights

Major Issues	FTE	General Revenue	Trust Funds	Total
Child Protection Investigators	447	$31,741,478		$31,741,478
Healthy Families		$7,000,000		$7,000,000
Sheriff's Child Protective Investigations		$8,056,814		$8,056,814
Mental Health Transitional Beds		$2,500,000		$2,500,000
Human Trafficking		$2,500,000		$2,500,000

Department of Elder Affairs Highlights

Major Issues	General Revenue	Trust Funds	Total
Enriching Seniors Initiative	$22,000,000	$11,559,901	$33,559,901
<u>This includes:</u> • Long-Term Care Waitlist Reduction • Alzheimer's Disease Initiative Waitlist Reduction • Community Care for the Elderly Waitlist Reduction • Long-Term Care Ombudsman Program • Statewide Public Guardianship Program	 • $8,000,000 • $4,000,000 • $4,000,000 • $3,000,000 • $3,000,000	• $11,559,901	

Department of Health Highlights

Major Issues	General Revenue	Trust Funds	Total
Cancer Treatment and Research Proposal	$42,400,000	$17,600,000	$60,000,000
Child Protection Teams	$2,816,127		$2,816,127
Alzheimer's Research	$3,000,000		$3,000,000
Temporary Assistance to Needy Families – Early Steps	$3,600,000		$3,600,000
Temporary Assistance to Needy Families – Ounce of Prevention	$1,900,000		$1,900,000

Department of Veterans' Affairs Highlights

Major Issues	General Revenue	Trust Funds	Total
New Nursing Homes		$1,584,000	$1,584,000
Additional Equipment		$206,075	$206,075
FCO – Maintenance and Repair of State-Owned Facilities for Veterans		$17,158,174	$17,158,174

Questions?

Senate Appropriations Subcommittee
on Health and Human Services - February 6, 2014

Program of All-Inclusive Care for the Elderly & Statewide Medicaid Managed Care Long-term Care Program Comparison Report

Line-Item 424, 2013/2014 General Appropriations Act (Chapter 2013-40, Laws of Florida):
"...the Department of Elder Affairs and the Agency for Health Care Administration shall provide a comprehensive report describing the program's organizational structure, scope of services, utilization, and costs; comparing these findings with similar information for managed long-term care implemented pursuant to s. 409.978, Florida Statutes; and evaluating alternative methods for integrating PACE with statewide managed long-term care."

Full report available at:

http://elderaffairs.state.fl.us/doea/Evaluation/PACE_Evaluation_2014.pdf

The goal of Program of All-Inclusive Care for the Elderly (PACE) and Statewide Medicaid Managed Care Long-term Care program (SMMC LTC) is to provide enrollees with needed care in the least restrictive setting, allowing individuals to maintain their independence for as long as possible.

PACE

- PACE organizations receive Medicare and Medicaid capitated payments in exchange for providing comprehensive long-term and acute care services
- Clients must be 55 years of age or older, meet nursing facility level of care, and reside in a designated service area
- Operating in 5 counties as of Oct 2013: Lee, Charlotte, Collier, Pinellas, and Miami-Dade (and Palm Beach as of Nov 2013)
- Serving clients since 2003. 724 clients enrolled with 3 organizations (as of Oct 2013). Fourth organization as of November 2013
- Employs interdisciplinary teams that ensure the provision of all Medicare and Medicaid-covered services determined medically necessary
- Care is centered around licensed adult day care centers
- One of seven Medicaid home and community-based long-term care programs not being rolled into the SMMC LTC program

SMMC

- SMMC LTC provides comprehensive long-term services and coordinates Medicaid acute care and Medicare services
- SMMC Medicaid Managed Assistance (MMA) provides acute care
- SMMC LTC will be available statewide as of March 1, 2014
- SMMC LTC: 6 HMOs and 1 provider service network expected to serve 90,000 individuals 18+, aged or disabled, who meet nursing facility level of care
- Some, but not all, of the SMMC LTC organizations will also be offering acute care services through MMA

Characteristics of Enrollees in PACE and SMMC LTC

- PACE and SMMC LTC enrollees have high levels of impairment and illness
- SMMC LTC enrollees have on average one more chronic health condition and need help with two more Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL) deficits than PACE enrollees
- PACE enrollees are more likely to report severe emotional problems, such as depression, while SMMC LTC enrollees have higher rates of cognitive impairments, such as Alzheimer's disease or related dementias
- Across all activities of daily living, a higher percentage of SMMC LTC enrollees need help compared to PACE enrollees

Cost of PACE Enrollees in PACE and SMMC

- SMMC LTC rates are not yet finalized for all regions
- The current average monthly weighted PACE rate is $2,468
- The statewide average monthly capitation rate for Home and Community Based Services is $1,273
    - LTC plans will be paid a blended rate above this rate of enrollees living in a community setting and enrollees residing in nursing facilities
- PACE: $18 million in Fiscal Year 2012-2013
- PACE costs $1.8 million per month
  (current costs for Sept 2013 through Aug 2014)
- If PACE enrollees were transitioned to SMMC, new SMMC rates would be set resulting in monthly cost of $1.5 million

Limitations of Report

- Comparison of service utilization not possible at this time,
- The descriptive profile presented in this report largely depicts the qualities of "expected" SMMC LTC enrollees
- SMMC LTC rates are not finalized
- Data reflecting how SMMC affects the health and quality of life of their enrollees not yet available

Alternatives for Integrating PACE with SMMC LTC

Note: Requiring PACE organizations to submit encounter data and performance measure data in the same format required of SMMC LTC organizations would help the State accurately compare the two programs.

Option 1: Maintain Florida's current PACE participation level

- Considerable investments have been made by organizations
- Additional time would allow a comparison of PACE and SMMC LTC

Option 2: Expand PACE in selected areas

- Legislative authority needed
- Legislature could direct DOEA and AHCA to create a methodology for determining the need for new PACE sites
- The extensive facility costs required to establish adult day care facilities could be a barrier

Option 3: Integrate PACE enrollees into SMMC LTC

- Many PACE enrollees age 55-64 may not be eligible for SMMC LTC
- This option would require legislative action as PACE is authorized in statute