SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 598

SPONSOR: Senator Fasano

SUBJECT: Public Medical Assistance

DATE: March 2, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Wilson	HC	Favorable
2.			FT	
3.			AHS	
4.			AP	
5.			RC	
6.				

I. Summary:

This bill eliminates the one percent annual assessment on the net operating revenues of ambulatory surgical centers, diagnostic imaging centers, clinical laboratories, and hospital-based outpatient services. The assessment revenues are currently deposited into the Public Medical Assistance Trust Fund and are used to provide a portion of the state matching funds required for Medicaid hospital inpatient services. The $60 million fiscal impact from the elimination of the assessments will require additional General Revenue or other state funding or the reduction of Medicaid expenditures by a total of $146.1 million.

This bill substantially amends ss. 395.701 and 395.7016, F.S., and repeals s. 395.7015, F. S.

II. Present Situation:

The Public Medical Assistance Trust Fund

Part IV of chapter 395, F.S., consisting of ss. 395.701, 395.7015, and 396.7016, F.S., relates to the Public Medical Assistance Trust Fund (PMATF), which is created in s. 409.918, F.S. Revenues collected from assessments on the specified health care providers under Part IV of chapter 395, F.S., are used to fund Medicaid-reimbursed hospital inpatient services. Through use of such trust fund moneys, the State pays for Medicaid services provided to medically indigent State residents.

Section 409.918, F S., creates the Public Medical Assistance Trust Fund. All assessments collected pursuant to ss. 395.701 and 395.7015, F.S., are deposited into the Public Medical Assistance Trust Fund. The assessments, combined with the projected revenues from hospital assessments, cigarette taxes, and interest earnings are fully utilized each year in the General Appropriations Act.

Annual Assessment on Hospitals

The 1984 Florida Legislature enacted the "Health Care Access Act" and the "Public Medical Assistance Act" which included the establishment of s. 395.701, F.S. This section imposes upon each hospital in Florida an assessment in an amount equal to one and a half percent of the hospital's net operating revenue. The hospital budget review section within the Agency for Health Care Administration (Agency) determines the assessment based on the financial reports each hospital is required to report to the Agency. Within six months after each hospital's fiscal year end, the budget review section certifies the assessment to the Agency's Bureau of Finance and Accounting.

The assessment is payable to and collected by the Agency in equal quarterly amounts; on or before the first day of each calendar quarter, beginning with the first full calendar quarter that occurs after the certification is made. Provision is made for an administrative fine for failure of any hospital to pay its assessment by the first day of the calendar quarter on which it is due, with a larger fine for failure to pay within 30 days after the date due.

Chapter 98-192, Laws of Florida, provided an exemption from the assessment on hospital net operating revenues for outpatient radiation therapy services provided by a hospital. The exemption was contingent upon the Agency receiving written confirmation from the federal Health Care Financing Administration (HCFA) that the change would not adversely affect the use of the remaining assessments as state match for the Medicaid program. The Agency received such confirmation from HCFA.

Chapter 2000-256, Laws of Florida, (Committee Substitute for House Bill 2339) amended s. 395.701, F. S. Section 16 of the law amended s. 395.701, F.S., relating to the assessment imposed upon hospitals, by reducing the assessment on the annual net operating revenues for outpatient services from 1.5 percent to 1 percent. The assessment on net operating revenues attributable to inpatient services was kept at 1.5 percent.

The projected assessment revenue for the assessment on hospital net operating revenues is $252.6 million for FY 2003-04 (November 6, 2002, Social Services Estimating Conference), including $60 million in assessments on the hospital outpatient net operating revenues.

Annual Assessment on Health Care Entities

The 1991 Florida Legislature created s. 395.7015, F.S., that imposed an annual assessment equal to 1.5 percent of the annual net operating revenues of certain health care entities. Section 395.7015, F.S., originally imposed the assessment on the following entities: ambulatory surgical centers and mobile surgical facilities licensed under s. 395.003, F.S.; clinical laboratories licensed under s. 483.091, F.S. (with certain exclusions); freestanding radiation therapy centers providing treatment through the use of radiation therapy machines that are registered under s. 404.22, F.S., and rules 10D-91.902, 10D-91.903, and 10D-91.904 of the Florida Administrative Code; and diagnostic-imaging centers that provide specialized services for the identification or determination of a disease through examination and also provide sophisticated radiological services which are rendered by a physician licensed under ss. 458.311, 458.313, 458.317, 459.006, 459.007, or 459.0075, F.S.

Chapter 98-192, Laws of Florida, provided for the elimination of the assessment on freestanding radiation therapy centers. The elimination of the exemption was contingent upon the Agency receiving written confirmation from the federal Health Care Financing Administration (HCFA) that the change would not adversely affect the use of the remaining assessments as state match for the Medicaid program. The Agency received such confirmation from HCFA.

Chapter 2000-256, Laws of Florida, (Committee Substitute for House Bill 2339) amended s. 395.7015, F.S. Section 17 of the law amended s. 395.7015, F.S., relating to the assessment imposed upon ambulatory surgical centers, clinical laboratories, and diagnostic imaging centers. The assessment was reduced from 1.5 percent to 1 percent of the annual net operating revenue of the health care entities.

Section 22 of the law required the Agency for Health Care Administration to receive written confirmation from the federal Health Care Financing Administration that the changes contained in such amendments would not adversely affect the use of the remaining assessments as state match for the state's Medicaid program. Notice was received from the Health Care Financing Administration on September 20, 2000, that the amendments provided by ch. 2000-256, Laws of Florida, to the assessments did not jeopardize the use of the remaining assessments as state match.

The Agency is currently appealing a final declaratory judgment that found s. 395.7015, F.S., to be unconstitutional, and that enjoined the Agency from imposing further assessments under the section. The action was stayed, pending appeal, and the Agency continues to bill for the assessments which are deposited into escrow pending the outcome of the appeal.

The assessments under s. 395.7015, F.S., are estimated at $17.3 million per year. As of December 31, 2002, the amount held in this escrow was $47,197,631.95. Because the funds are now deposited into escrow, the funds are not considered available for budgeting for expenditures. If the bill passes, the elimination of the assessment will have no immediate impact on the budget for Medicaid.

Public Medical Assistance Trust Fund Task Force

Section 192 of chapter 99-397, Laws of Florida (1999 House Bill 2125), created a seven-member task force to review the sources of funds deposited in the Public Medical Assistance Trust Fund (PMATF) and to determine:

1. Whether any provisions of ss. 395.701, 395.7015, and 409.918, F.S., were needed;
2. Whether the assessments are imposed equitably;
3. Whether the additional exemptions from, or inclusions within, the assessments are justified; and
4. The extent to which modifications in other statutory provisions requiring deposit of certain revenue into the PMATF could result in increased trust fund revenue.

The task force was also directed to provide an analysis of the budgetary impact of any recommended exemptions from, inclusions within, or modifications to existing assessments.

The task force, whose members were appointed by the Governor, the Speaker of the House of Representatives, and the President of the Senate, heard public testimony, reviewed data, and examined statutory and federal requirements. It found that while facilities affected by the assessment would like to see it repealed, they believed any lost funds should be replaced to prevent any cuts in Medicaid services. The task force found that while the provider tax provided vital funding for indigent health care services, the tax was unfairly applied to only certain health care providers. The economic and health care market conditions that existed when the assessment was created are not relevant to today's conditions, and that the funding of indigent health care is a broader societal problem rather than a responsibility of patients that receive health care or the providers of those services.

The task force report was submitted on December 1, 1999, to the President of the Senate, the Speaker of the House of Representatives, and the Governor. The task force report includes 13 findings and seven recommendations. The recommendations are:

1. The state should work toward total repeal of the PMATF assessment, provided the lost revenue is replaced from another source.
2. Such repeal should occur in stages.
3. Phase one should be implemented in FY 2000-01 by repealing the assessment on ambulatory surgical centers, diagnostic imaging centers, clinical laboratories, and hospital-based outpatient services.
4. The state should seek approval from federal authorities for exemption of hospital outpatient services to ensure that federal financial participation is not jeopardized.
5. The $85 million in revenue lost through the phase one repeal should be replaced in order to maintain the federal financial participation.
6. The replacement funds should come from tobacco funds or whatever other revenue source the Legislature finds appropriate. Tobacco funds represent a particularly appropriate funding source because of the health-related nature of the settlement.
7. The annual cap on hospital outpatient services for adults under Medicaid should be raised from the current $1,000 to $2,000.

Implementation of Phase One of Task Force Recommendations

Chapter 2000-256, Laws of Florida, (2000 House Bill 2339), provided for the implementation of a portion of phase one of the recommendations in FY 2000-01 by reducing the assessment from 1.5 percent to 1 percent for ambulatory surgical centers, diagnostic imaging centers, clinical laboratories, and hospital-based outpatient services. Approval from federal authorities that the amendments provided by ch. 2000-256, L.O.F., did not adversely affect the use of the remaining assessments as state matching funds was received on September 20, 2000. The reduction in assessments from 1.5 percent to 1 percent was effective on all revenues earned on and after July 1, 2000.

The Social Services Estimating Conference

The Social Services Estimating Conference met on November 6, 2002, and adopted the following estimates for the Public Medical Assistance Trust Fund for FY 2003-04:

Estimated revenues:	
Assessments on hospitals	$252,600,000
Assessments on other health care entities	0
Cigarette tax distribution to PMATF	112,100,000
Total estimated revenues	$364,700,000
Estimated expenditures:	
Hospital inpatient services	$364,500,000
Administration	200,000
Total estimated expenditures	$364,700,000
Estimated available ending cash balance	$0

Federal Laws and Rules Relating to Provider Taxes and Donations

Section 1903(w) of the Social Security Act specifies the treatment of revenues from provider-related donations and health care–related taxes in determining a state's medical assistance expenditures for which federal financial participation is available. Title 42, part 433 of the Code of Federal Regulations relates to health care-related provider taxes and donations. 42 CFR 433.55 defines a health care related tax as a licensing fee, assessment, or other mandatory payment that is related to:

1. Health care items or services;
2. The provision of, or the authority to provide, the health care items or services; or
3. The payment for the health care items or services.

42 CFR 433.56 defines the following separate classes of health care items or services for purposes of applying the provider donations and provider taxes provisions of federal rules:

1. Inpatient hospital services;
2. Outpatient hospital services;
3. Nursing facility services (other than services of intermediate care facilities for the mentally retarded);
4. Intermediate care facility services for the mentally retarded and similar services furnished by community-based residences for the mentally retarded, under a waiver under section 1915(c) of the Act, in a state in which, as of December 14, 1992, at least 85 percent of such facilities were classified as ICF/MRs prior to the grant of the waiver;
5. Physician services;
6. Home health care services;
7. Outpatient prescription drugs;
8. Services of health maintenance organizations and health insuring organizations;
9. Ambulatory surgical center services, as described for the purposes of the Medicare program in section 1832(a)(2)(F)(i) of the Social Security Act. These services are defined to include facility services only and do not include surgical procedures;
10. Dental services;
11. Podiatric services;
12. Chiropractic services;

13. Optometric/optician services;
14. Psychological services;
15. Therapist services, defined to include physical therapy, speech therapy, occupational therapy, respiratory therapy, audiological services, and rehabilitative specialist services;
16. Nursing services, defined to include all nursing services, including services of nurse midwives, nurse practitioners, and private duty nurses;
17. Laboratory and x-ray services, defined as services provided in a licensed, free-standing laboratory or x-ray facility. This definition does not include laboratory or x-ray services provided in a physician's office, hospital inpatient department, or hospital outpatient department;
18. Emergency ambulance services; and
19. Other health care items and services not listed above on which the state has enacted a licensing or certification fee, subject to the following:
    a. The fee must be broad based and uniform or the state must receive a waiver of these requirements;
    b. The payer of the fee cannot be held harmless; and
    c. The aggregate amount of the fee cannot exceed the state's estimated cost of operating the licensing or certification program.

Taxes that pertain to each class must apply to all items and services within the class, regardless of whether the items and services are furnished by or through a Medicaid-certified or licensed provider. Before calculating federal financial assistance, HCFA will deduct from a state's expenditures for medical assistance those funds from health care-related taxes received by a state or unit of local government if the taxes are not permissible health care–related taxes as specified by federal law/regulation.

Health care-related taxes are permissible under federal regulation if the taxes are broad-based, uniformly imposed, and do not violate hold harmless provisions. A health care-related tax is considered broad based if the tax is imposed on at least all health care items or services in the class or providers of such items or services furnished by all non-federal, non-public providers in the state, and is imposed uniformly. A health care-related tax is considered uniformly imposed if it meets any one of the following:

1. If the tax is a licensing fee or similar tax imposed on a class of health care services (or providers of those health care services), the tax is the same amount for every provider furnishing those items or services within the class.
2. If the tax is a licensing fee or similar tax imposed on a class of health care services (or providers of those health care services), on the basis of the number of beds (licensed or otherwise) of the provider, the amount of the tax is the same for each bed of each provider of those items or services in the class.
3. If the tax is imposed on provider revenue or receipts with respect to a class of items or services (or providers of those items or services), the tax is imposed at a uniform rate for all services (or providers of those items or services) in the class on all the gross revenues or receipts, or on net operating revenues relating to the provision of all items or services in the state, unit, or jurisdiction. Net operating revenue means gross charges of facilities less any deducted amounts for bad debts, charity care, and payer discounts.

4. The tax is imposed on items or services on a basis other than those specified above, e.g., an admission tax, and the state establishes to the satisfaction of the Secretary of Health and Human Services that the amount of the tax is the same for each provider of such items or services in the class.

A tax imposed on a class of health care items or services will not be considered to be imposed uniformly if it meets either of the following criteria:

1. The tax provides for credits, exclusions, or deductions which have as its purpose, or results in, the return to the providers of all, or a portion, of the tax paid, and it results, directly or indirectly, in a tax program in which the net impact of the tax and payments is not generally redistributive and the amount of the tax is directly correlated to the payments under the Medicaid program.
2. The tax holds taxpayers harmless for the cost of the tax.

III. Effect of Proposed Changes:

Section 1. Amends s. 395.701, F.S., relating to annual assessments on hospitals' net operating revenues to fund public medical assistance. It eliminates the 1 percent annual assessment on hospital outpatient net operating revenues. The assessment on hospital inpatient net operating revenue remains at 1.5 percent.

Section 2. Repeals s. 395.7015, F.S., relating to annual assessments on health care entities. It eliminates the 1 percent annual assessment on the net operating revenues of ambulatory surgical centers, diagnostic imaging centers, clinical laboratories, and hospital-based outpatient services.

Section 3. Amends s. 395.7016, F.S., relating to annual appropriation, to delete a cross-reference to s. 395.7015, F.S., which this bill repeals. The effect would be that the reductions in assessments under ch. 2000-256, L.O.F., will not necessarily be offset by General Revenue Funds or Tobacco Settlement Funds.

Section 4. Provides that the bill will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill 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 this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

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

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill repeals an assessment on revenues of ambulatory surgical centers, diagnostic imaging centers, clinical laboratories, and hospital-based outpatient services.

B. Private Sector Impact:

Ambulatory surgical centers, diagnostic imaging centers, and clinical laboratories would no longer be assessed one percent of their net operating revenues to fund public medical assistance. The estimated total savings to these entities is $17.3 million. Hospital-based outpatient services would no longer be assessed one percent of their net operating revenues to fund public medical assistance. The estimated total savings to hospitals is $60 million.

C. Government Sector Impact:

The Agency estimates a loss of $60 million to the Public Medical Assistance Trust Fund. The Legislature would have to appropriate general revenue or other state funds sufficient to make up for the loss in revenue to the Public Medical Assistance Trust Fund or reduce the Medicaid budget by $146.1 million to reflect the loss in revenue (state and federal match).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.