TAX: Health Care Provider Assessments (Public Medical Assistance Trust Fund)
ISSUE: Reduction in certain provider assessments
BILL NUMBER(S): HB 55 (similar to SB 254)
SPONSOR(S): Representative Fasano
MONTH/YEAR COLLECTION IMPACT BEGINS: FY 2002-03
DATE OF ANALYSIS: January 29, 2001

SECTION 1: NARRATIVE

a. Current Law:

An assessment of 1% of annual net operating revenues is currently levied on hospitals for those revenues derived from outpatient services (see s. 395.701(2)(b), F.S.), and on the following health care providers- ambulatory surgical centers, clinical laboratories, and diagnostic imaging centers (see s. 395.7015(2)(a), F.S.).

b. Proposed Change:

The assessment described above would be reduced from 1% to 0.5%, beginning with revenues earned on or after July 1, 2001. There is no change to the assessment on hospital revenues derived from the provision of inpatient services.

SECTION 2: DESCRIPTION OF DATA & SOURCES

Current assessment data on the affected providers.

SECTION 3: ASSUMPTIONS & RATIONALE

Assumes that the reduced assessment rate will be effective for revenues earned on or after July 1, 2001. Because of lag in reporting revenues and in determining the assessments, the reduction on revenues will not be felt until FY 2002-03.

SECTION 4: METHODOLOGY

Reduction derived from current forecasts of revenues to the Public Medical Assistance Trust Fund.

SECTION 5: IMPACT SUMMARY (DETAILS ATTACHED)

State Impact - All Funds	FY 2001-02 Annualized	FY 2001-02 Cash	FY 2002-03 Cash
High			
Middle	- $34.2 million	$0	- $34.2 million
Low			

Consensus Estimate Adopted: 01/29/01	FY 2001-02 Annualized	FY 2001-02 Cash	FY 2002-03 Cash
General Revenue	See comment below		
Total State Impact	- $34.2 million	$0	- $34.2 million
Total Local Impact	none	none	none
Total Impact	- $34.2 million	$0	- $34.2 million

Note that while the effect of this bill will reduce revenue to the Public Medical Assistance Trust Fund, the practical effect is to require an additional General Revenue expenditure of $34.2 million for Medicaid in FY 2002-03. This is because the Public Medical Assistance Trust Fund is used as a state funds source for the Medicaid program. If the Medicaid program is reduced to accommodate the loss of assessment revenue, there will also be a loss of $41.8 million of federal matching funds. The bill requires the loss of revenue to be made up by an appropriation from General Revenue or the AHCA Tobacco Settlement Trust Fund.

AGENCY FOR HEALTH CARE ADMINISTRATION
2001 BILL ANALYSIS

BILL #:	HB 55
RELATED TO:	Public Medical Assistance Trust Fund
SPONSOR(S)	Representative Fasano
COMPANION BILL:	SB 254 (S)
REVIEWER NAME & DEPARTMENT:	Tony Swinson, Medicaid Program Analysis
CONTACT NUMBER:	488-9190/SC 278-9190
COORDINATED WITH:	

I. SUMMARY:

Reduces the annual assessment on each hospital's annual net operating revenues attributable to outpatient services from 1 percent to 0.5 percent. Hospital net operating revenues attributable to inpatient services will continue to be subject to the assessment at 1.5 percent. The fiscal impact of this provision is a $28.8 million reduction in assessment revenues to the Public Medical Assistance Trust Fund (PMATF).
Reduces the annual assessment on the net operating revenues of ambulatory surgical centers, clinical laboratories, and diagnostic-imaging centers from 1 percent to 0.5 percent. The fiscal impact of this provision is a $5.35 million reduction in assessment revenues to the PMATF.
Provides that the Legislature shall provide an annual appropriation from the General Revenue Fund or the Agency for Health Care Administration Tobacco Settlement Trust Fund in an amount sufficient to replace the funds lost due to the reduction in the rate of assessments on health care facilities.
Provides an appropriation (amount not specified) from the General Revenue Fund to the Agency for the reductions in the assessment revenues for the PMATF.
Provides that the act shall take effect only upon written confirmation that the amendments contained in the act will not adversely affect the use of the remaining assessments as state match for the Medicaid program.

II. PRESENT SITUATION:

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 PMATF and to determine

1. Whether any provisions of sections 395.701, 395.7015, and 409.918, Florida Statutes, 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 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, whose members were appointed by the Governor, the Speaker of the House, 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 believe 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 includes 13 findings and 7 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.

<u>Phase One of Task Force Recommendations</u>

1. Chapter 2000-256, Laws of Florida (2000 House Bill 2339), provided for the implementation 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.

2. Approval from federal authorities that the amendments provided by ch. 2000-256 did not adversely affect the use of the remaining assessments as state matching funds was received on September 20, 2000.
3. The reduction in assessments from 1.5 percent to 1 percent will be effective on all revenues earned on and after July 1, 2000.

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 Section 395.701, Florida Statutes. This section imposes upon each hospital in Florida an assessment in an amount equal to 1.5 percent of the hospital's net operating revenue. The assessment is determined by the hospital budget review section within the Agency for Health Care Administration (AHCA) based on the financial reports each hospital is required to report to the Agency. Within six months after each hospital's fiscal year end, budget review 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.

Annual Assessment on Health Care Entities

The 1991 Florida Legislature created Section 395.7015, Florida Statutes, that imposes 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; clinical laboratories licensed under s. 483.091 (with certain exclusions); freestanding radiation therapy centers providing treatment through the use of radiation therapy machines that are registered under s. 404.22 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 s. 458.311, s. 458.313, s. 458.317, s. 459.006, s. 459.007, or s. 459.0075

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

Chapter 2000-256, Laws of Florida (Committee Substitute for House Bill 2339) amended sections 395.701 and 395.7015, Florida Statutes. Section 16 of the law amended section 395.701, Florida Statutes, relating to 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.

Section 17 of the law amended section 395.7015, Florida Statutes, 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 will 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 to the assessments did not jeopardize the use of the remaining assessments as state match.

Public Medical Assistance Trust Fund

Section 409.918, Florida Statutes, creates the Public Medical Assistance Trust Fund. All assessments collected pursuant to sections 395.701 and 395.7015, Florida Statutes, 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.

The Social Services Estimating Conference met on November 9, 2000 and adopted the following estimates for the Public Medical Assistance Trust Fund for FY 2001-2002:

Estimated revenues:	
Assessments on hospitals	$223,300,000
Assessments on other health care entities	10,700,000
Cigarette tax distribution to PMATF	111,700,000
Interest	2,700,000
Total estimated revenues	$348,400,000
Estimated expenditures:	
Hospital inpatient services	$348,200,000
Administration	200,000
Total estimated expenditures	$348,400,000
Estimated 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:
    (i). The fee must be broad based and uniform or the state must receive a waiver of these requirements;
    (ii). The payer of the fee cannot be held harmless; and
    (iii). 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:

The bill reduces the assessments on ambulatory surgical centers, diagnostic imaging centers, clinical laboratories, and hospital-based outpatient services from the current rate of 1 percent to 0.5 percent and directs the Legislature to annually appropriate sufficient funds from other sources to replace the income lost from the repeal of the assessments.

The reduction in the rate of assessments outlined above will mean that approximately $34.15 million in revenues will be lost to the Public Medical Assistance Trust Fund. Alternative state funding will be required. If the alternative state funding is not appropriated, the Medicaid program will be required to reduce services by $78.4 ($34.15 million state and $44.25 million federal matching funds). The bill provides for an appropriation from the General Revenue Fund of an unspecified amount to replace the funds lost due to the repeal of the assessments.

IV. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 395.701(2)(b), F.S., relating to annual assessments on hospitals' net operating revenues to fund public medical assistance. Provides that the annual assessment on hospital outpatient net operating revenues is reduced from 1 percent to 0.5 percent. The assessment on hospital inpatient net operating revenue remains at 1.5 percent. Clarifies s. 395.701 to reflect that the section applies to inpatient and outpatient services.

Section 2: Amends s. 395.7015(2)(a), F.S., relating to annual assessments on health care entities. Reduces the annual assessment on the net operating revenues of ambulatory surgical centers, diagnostic imaging centers, clinical laboratories, and hospital-based outpatient services from the current rate of 1 percent to 0.5 percent.

Section 3: Provides that the Legislature shall appropriate each fiscal year from the General Revenue Fund or the Agency for Health Care Administration Tobacco Settlement Trust Fund an amount sufficient to replace the funds lost due to the reduction of this act in the assessment on hospital outpatient revenues and on other health care entities under s. 395.701 and s. 395.7015, Florida Statutes, respectively, and to maintain federal financial participation.

Section 4: Provides an appropriation from the General Revenue Fund (amount not specified) to replace the reduced revenues to the Public Medical Assistance Trust Fund due to the reduction in the rates of assessments.

Section 5: Provides that the act shall take effect upon the Agency for Health Care Administration receiving written confirmation from the federal Health Care Financing Administration that the amendments in the act will not adversely affect the use of the remaining assessments as state match for the Medicaid program.

V. AFFECTED AGENCIES AND GROUPS:

Agency for Health Care Administration
Florida Hospital Association
Florida Society of Ambulatory Surgical Centers

VI. FISCAL IMPACT:

A. FISCAL IMPACT ON STATE AGENCIES / FUNDS:

1. Non-Recurring Impact:

	Amount Year 1 (FY 01-02)	Amount Year 2 (FY 02-03)
None	$0	$0

2. Recurring Impact:

	Amount Year 1 (FY 01-02)	Amount Year 2 (FY 02-03)
Revenues:		
General Revenue (Section 4) *	$0	$34,150,000
Assessments:		
Hospitals (Section 1)	($0)	($28,800,000)
Ambulatory Surgical Centers (Section 2)	($0)	($1,203,750)
Diagnostic Imaging Centers (Section 2)	($0)	($1,725,375)
Clinical Laboratories (Section 2)	$0)	($2,420,875)
Total Assessments **	($0)	($34,150,000)

* Assumes that the Legislature will appropriate General Revenue to replace the reduced revenue from assessments.

** Assumes that the reduced assessment rate will be effective for revenues earned by the hospitals after July 1, 2001. Because of the lag in the reporting of revenues by providers and the verification and certification of the reports by the Agency for Health Care Administration, the reduction in revenues will not be felt until FY 2002-03.

Expenditures:
Shift in Hospital Inpatient Services Due to Decrease in Assessments

	Amount Year 1 (FY 01-02)	Amount Year 2 (FY 02-03)
Hospital Inpatient Services (Sections 1 and 2)		
General Revenue	$0	$34,150,000
Public Medical Assistance Trust Fund	($0)	($34,150,000)
Total Hospital Inpatient Services	$0	$0

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

	Year 1	Year 2
Sub-Total Non-Recurring Revenues	$ 0	$ 0
Sub-Total Recurring Revenues	$ 0	($34,150,000)
Total Revenues	$ 0	($34,150,000)

Sub-Total Non-Recurring Expenditures	**$**	**0**	**$**	**0**
Sub-Total Recurring Expenditures	**$**	**0**	**$**	**0**
Total Expenditures	**$**	**0**	**$**	**0**

Difference (Total Revenues - Total Expenditures) $0 ($34,150,000)

5. **Funding of Expenditures**

Fund ID	Fund%	Amount
General Revenue (000298)	N/A	$34,150,000
Public Medical Assistance TF (565006)	N/A	($34,150,000)

B. FISCAL IMPACT ON LOCAL GOVERNMENT AS A WHOLE:

None

2. **Recurring Impact**

None

3. **Long Run Effects Other Than Normal Growth**

None

C. DIRECT FISCAL IMPACT ON PRIVATE SECTOR:

1. **Direct Private Sector Costs:**

None

2. **Direct Private Sector Benefits:**

Hospitals' taxes will be decreased by an estimated $28.8 million per year. Other health care entities will benefit from a tax decrease of $5.35 million.

3. **Effects on Competition, Private Enterprise and Employment Markets:**

None

D. FISCAL COMMENTS:

Recommend that current language in section 5 be deleted and new language added to provide that the effective date of the act is July 1, 2001.

Recommend that the wording in Section 3 "..Agency for Health Care Administration Tobacco Settlement Trust Fund.." be changed to "..the Tobacco Settlement Trust Fund..".

The Health Care Financing Administration does not consider a change in rate alone to be a provision that would impact the permissibility of a provider tax/assessment.

VII. LIMITED GOVERNMENT CHECK LIST:

1. Reports and Studies Required: No

   Bill Section Number(s):
   Description:

2. Commission, Council, Task Force or Board Created or Revised: No

   Name of Commission, Council or Board:
   Number of Members:
   Number of Governor's Appointee's:
   Date by which Appointments Must be Made:
   Description:

3. Rule Authorization: No

   New Authority: No
   Does the bill require the agency to promulgate a rule? No
   Is a rule necessary to implement the act? May need to amend current rule.
   Does the bill provide sufficient guidance to the agency to promulgate a rule that meets legislative intent? Yes
   Description:

4. Rule Reductions: No

   Does the bill repeal an existing rule? No
   Does the bill reduce rulemaking authority? No
   Does the bill codify existing rules? No
   Description:

5. Does the bill reduce government: No

   Explain:

6. Does the bill increase fees or taxes? No

   Explain:

7. Does the bill contain mandates or a burden to either Local Government or to the Private Sector? No

   Explain how, and when was the last time of the increase?:

8. Does the legislation link to the agencies strategic plan and to its budget? No

   Explain:

9. Does the bill create more regulation of an activity by a profession or business? No

   Explain:

10. Does the bill limit or expand commercial or individual freedom? No

   Explain:

VIII. LEGAL ISSUES:

1 Does the proposed legislation conflict with existing state laws or rules? If so, what laws and/or rules? No

2. Does the proposed legislation conflict with existing federal law or regulations? If so, what laws and/or regulations? No

3. Does the proposed legislation raise significant constitutional concerns under the U.S. or Florida Constitution (e.g. separation of powers? Access to the courts, equal protection, free speech, establishment clause, impairment of contracts)? No

4. Is the proposed legislation likely to affect the interest of the Florida Bar, Judiciary or State Attorneys/Public Defenders? No

5. Is the proposed legislation likely to generate litigation and if so, from what interest group or parties?

   A class action lawsuit already has been certified seeking relief from the assessment on non-hospital facilities. It is Hameroff vs. PMATF.