

By the Committee on Rules and Calendar; and Senators Clary, Williams, Dyer, Ostalkiewicz and Horne

305-2176-98

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A bill to be entitled
An act relating to third-party liability;
amending s. 409.910, F.S.; limiting the scope
of liability for which Medicaid benefits must
be repaid; amending s. 624.424, F.S.;
conforming a cross-reference; barring certain
civil actions; providing for retroactive
application; providing a savings clause for
certain actions; providing an effective date.

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

Section 1. Section 409.910, Florida Statutes, is amended to read:

409.910 Responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.--

(1) It is the intent of the Legislature that Medicaid be the payor of last resort for medically necessary goods and services furnished to Medicaid recipients. All other sources of payment for medical care are primary to medical assistance provided by Medicaid. If benefits of a liable third party are discovered or become available after medical assistance has been provided by Medicaid, it is the intent of the Legislature that Medicaid be repaid in full and prior to any other person, program, or entity. Medicaid is to be repaid in full from, and to the extent of, any third-party benefits, regardless of whether a recipient is made whole or other creditors paid. Principles of common law and equity as to assignment, lien, and subrogation, ~~comparative negligence, assumption of risk, and all other affirmative defenses normally available to a liable third party,~~ are to be abrogated to the extent

1 necessary to ensure full recovery by Medicaid from third-party
2 resources; ~~such principles shall apply to a recipient's right~~
3 ~~to recovery against any third party, but shall not act to~~
4 ~~reduce the recovery of the agency pursuant to this section.~~
5 ~~The concept of joint and several liability applies to any~~
6 ~~recovery on the part of the agency. It is intended that if the~~
7 ~~resources of a liable third party become available at any~~
8 ~~time, the public treasury should not bear the burden of~~
9 ~~medical assistance to the extent of such resources. Common-law~~
10 ~~theories of recovery shall be liberally construed to~~
11 ~~accomplish this intent.~~

12 (2) This section may be cited as the "Medicaid
13 Third-Party Liability Act."

14 (3) Third-party benefits for medical services shall be
15 primary to medical assistance provided by Medicaid.

16 (4) After the department has provided medical
17 assistance under the Medicaid program, it shall seek recovery
18 of reimbursement from third-party benefits to the limit of
19 legal liability and for the full amount of third-party
20 benefits, but not in excess of the amount of medical
21 assistance paid by Medicaid, as to:

22 (a) Claims for which the department has a waiver
23 pursuant to federal law; or

24 (b) Situations in which the department learns of the
25 existence of a liable third party ~~is liable and the liability~~
26 or in which third-party benefits ~~available~~ are discovered
27 ~~either before~~ or become available after medical assistance has
28 been provided by Medicaid.

29 (5) An applicant, recipient, or legal representative
30 shall inform the department of any rights the applicant or
31 recipient has to third-party benefits and shall inform the

1 department of the name and address of any person that is or
2 may be liable to provide third-party benefits. When the
3 department provides, pays for, or becomes liable for medical
4 services provided by a hospital, the recipient receiving such
5 medical services or his or her legal representative shall also
6 provide the information as to third-party benefits, as defined
7 in this section, to the hospital, which shall provide notice
8 thereof to the department in a manner specified by the
9 department.

10 (6) When the department provides, pays for, or becomes
11 liable for medical care under the Medicaid program, it has the
12 following rights, as to which the department may assert
13 independent principles of law, which shall nevertheless be
14 construed together to provide the greatest recovery from
15 third-party benefits:

16 ~~(a) The agency has a cause of action against a liable~~
17 ~~third party to recover the full amount of medical assistance~~
18 ~~provided by Medicaid, and such cause of action is independent~~
19 ~~of any rights or causes of action of the recipient.~~

20 (a)~~(b)~~ The department is automatically subrogated to
21 any rights that an applicant, recipient, or legal
22 representative has to any third-party benefit for the full
23 amount of medical assistance provided by Medicaid. Recovery
24 pursuant to the subrogation rights created hereby shall not be
25 reduced, prorated, or applied to only a portion of a judgment,
26 award, or settlement, but is to provide full recovery by the
27 department from any and all third-party benefits. Equities of
28 a recipient, his or her legal representative, a recipient's
29 creditors, or health care providers shall not defeat, reduce,
30 or prorate recovery by the department as to its subrogation
31 rights granted under this paragraph.

1 **(b)**~~(c)~~ By applying for or accepting medical
2 assistance, an applicant, recipient, or legal representative
3 automatically assigns to the department any right, title, and
4 interest such person has to any third-party benefit, excluding
5 any Medicare benefit to the extent required to be excluded by
6 federal law.

7 1. The assignment granted under this paragraph is
8 absolute, and vests legal and equitable title to any such
9 right in the department, but not in excess of the amount of
10 medical assistance provided by the department.

11 2. The department is a bona fide assignee for value in
12 the assigned right, title, or interest, and takes vested legal
13 and equitable title free and clear of latent equities in a
14 third person. Equities of a recipient, the recipient's legal
15 representative, his or her creditors, or health care providers
16 shall not defeat or reduce recovery by the department as to
17 the assignment granted under this paragraph.

18 3. By accepting medical assistance, the recipient
19 grants to the department the limited power of attorney to act
20 in his or her name, place, and stead to perform specific acts
21 with regard to third-party benefits, the recipient's assent
22 being deemed to have been given, including:

23 a. Endorsing any draft, check, money order, or other
24 negotiable instrument representing third-party benefits that
25 are received on behalf of the recipient as a third-party
26 benefit.

27 b. Compromising claims to the extent of the rights
28 assigned, provided that the recipient is not otherwise
29 represented by an attorney as to the claim.

30 **(c)**~~(d)~~ The department is entitled to, and has, an
31 automatic lien for the full amount of medical assistance

1 provided by Medicaid to or on behalf of the recipient for
2 medical care furnished as a result of any covered injury or
3 illness for which a third party is or may be liable, upon the
4 collateral, as defined in s. 409.901.

5 1. The lien attaches automatically when a recipient
6 first receives treatment for which the department may be
7 obligated to provide medical assistance under the Medicaid
8 program. The lien is perfected automatically at the time of
9 attachment.

10 2. The department is authorized to file a verified
11 claim of lien. The claim of lien shall be signed by an
12 authorized employee of the department, and shall be verified
13 as to the employee's knowledge and belief. The claim of lien
14 may be filed and recorded with the clerk of the circuit court
15 in the recipient's last known county of residence or in any
16 county deemed appropriate by the department. The claim of
17 lien, to the extent known by the department, shall contain:

18 a. The name and last known address of the person to
19 whom medical care was furnished.

20 b. The date of injury.

21 c. The period for which medical assistance was
22 provided.

23 d. The amount of medical assistance provided or paid,
24 or for which Medicaid is otherwise liable.

25 e. The names and addresses of all persons claimed by
26 the recipient to be liable for the covered injuries or
27 illness.

28 3. The filing of the claim of lien pursuant to this
29 section shall be notice thereof to all persons.

30 4. If the claim of lien is filed within 1 year after
31 the later of the date when the last item of medical care

1 relative to a specific covered injury or illness was paid, or
2 the date of discovery by the department of the liability of
3 any third party, or the date of discovery of a cause of action
4 against a third party brought by a recipient or his or her
5 legal representative, record notice shall relate back to the
6 time of attachment of the lien.

7 5. If the claim of lien is filed after 1 year after
8 the later of the events specified in subparagraph 4., notice
9 shall be effective as of the date of filing.

10 6. Only one claim of lien need be filed to provide
11 notice as set forth in this paragraph and shall provide
12 sufficient notice as to any additional or after-paid amount of
13 medical assistance provided by Medicaid for any specific
14 covered injury or illness. The department may, in its
15 discretion, file additional, amended, or substitute claims of
16 lien at any time after the initial filing, until the
17 department has been repaid the full amount of medical
18 assistance provided by Medicaid or otherwise has released the
19 liable parties and recipient.

20 7. No release or satisfaction of any cause of action,
21 suit, claim, counterclaim, demand, judgment, settlement, or
22 settlement agreement shall be valid or effectual as against a
23 lien created under this paragraph, unless the department joins
24 in the release or satisfaction or executes a release of the
25 lien. An acceptance of a release or satisfaction of any cause
26 of action, suit, claim, counterclaim, demand, or judgment and
27 any settlement of any of the foregoing in the absence of a
28 release or satisfaction of a lien created under this paragraph
29 shall prima facie constitute an impairment of the lien, and
30 the department is entitled to recover damages on account of
31 such impairment. In an action on account of impairment of a

1 | lien, the department may recover from the person accepting the
2 | release or satisfaction or making the settlement the full
3 | amount of medical assistance provided by Medicaid. Nothing in
4 | this section shall be construed as creating a lien or other
5 | obligation on the part of an insurer which in good faith has
6 | paid a claim pursuant to its contract without knowledge or
7 | actual notice that the department has provided medical
8 | assistance for the recipient related to a particular covered
9 | injury or illness. However, notice or knowledge that an
10 | insured is, or has been a Medicaid recipient within 1 year
11 | from the date of service for which a claim is being paid
12 | creates a duty to inquire on the part of the insurer as to any
13 | injury or illness for which the insurer intends or is
14 | otherwise required to pay benefits.

15 | 8. The lack of a properly filed claim of lien shall
16 | not affect the department's assignment or subrogation rights
17 | provided in this subsection, nor shall it affect the existence
18 | of the lien, but only the effective date of notice as provided
19 | in subparagraph 5.

20 | 9. The lien created by this paragraph is a first lien
21 | and superior to the liens and charges of any provider, and
22 | shall exist for a period of 7 years, if recorded, after the
23 | date of recording; and shall exist for a period of 7 years
24 | after the date of attachment, if not recorded. If recorded,
25 | the lien may be extended for one additional period of 7 years
26 | by rerecording the claim of lien within the 90-day period
27 | preceding the expiration of the lien.

28 | 10. The clerk of the circuit court for each county in
29 | the state shall endorse on a claim of lien filed under this
30 | paragraph the date and hour of filing and shall record the
31 | claim of lien in the official records of the county as for

1 other records received for filing. The clerk shall receive as
2 his or her fee for filing and recording any claim of lien or
3 release of lien under this paragraph the total sum of \$2. Any
4 fee required to be paid by the department shall not be
5 required to be paid in advance of filing and recording, but
6 may be billed to the department after filing and recording of
7 the claim of lien or release of lien.

8 11. After satisfaction of any lien recorded under this
9 paragraph, the department shall, within 60 days after
10 satisfaction, either file with the appropriate clerk of the
11 circuit court or mail to any appropriate party, or counsel
12 representing such party, if represented, a satisfaction of
13 lien in a form acceptable for filing in Florida.

14 (7) The department shall recover the full amount of
15 all medical assistance provided by Medicaid on behalf of the
16 recipient to the full extent of third-party benefits.

17 (a) Recovery of such benefits shall be collected
18 directly from:

19 1. Any third party;

20 2. The recipient or legal representative, if he or she
21 has received third-party benefits;

22 3. The provider of a recipient's medical services if
23 third-party benefits have been recovered by the provider;
24 notwithstanding any provision of this section, to the
25 contrary, however, no provider shall be required to refund or
26 pay to the department any amount in excess of the actual
27 third-party benefits received by the provider from a
28 third-party payor for medical services provided to the
29 recipient; or

30 4. Any person who has received the third-party
31 benefits.

1 (b) Upon receipt of any recovery or other collection
2 pursuant to this section, the department shall distribute the
3 amount collected as follows:

4 1. To itself, an amount equal to the state Medicaid
5 expenditures for the recipient plus any incentive payment made
6 in accordance with paragraph (14)(a).

7 2. To the Federal Government, the federal share of the
8 state Medicaid expenditures minus any incentive payment made
9 in accordance with paragraph (14)(a) and federal law, and
10 minus any other amount permitted by federal law to be
11 deducted.

12 3. To the recipient, after deducting any known amounts
13 owed to the department for any related medical assistance or
14 to health care providers, any remaining amount. This amount
15 shall be treated as income or resources in determining
16 eligibility for Medicaid.

17 (8) The department shall require an applicant or
18 recipient, or the legal representative thereof, to cooperate
19 in the recovery by the department of third-party benefits of a
20 recipient and in establishing paternity and support of a
21 recipient child born out of wedlock. As a minimal standard of
22 cooperation, the recipient or person able to legally assign a
23 recipient's rights shall:

24 (a) Appear at an office designated by the department
25 to provide relevant information or evidence.

26 (b) Appear as a witness at a court or other
27 proceeding.

28 (c) Provide information, or attest to lack of
29 information, under penalty of perjury.

30 (d) Pay to the department any third-party benefit
31 received.

1 (e) Take any additional steps to assist in
2 establishing paternity or securing third-party benefits, or
3 both.

4 (f) Paragraphs (a)-(e) notwithstanding, the department
5 shall have the discretion to waive, in writing, the
6 requirement of cooperation for good cause shown and as
7 required by federal law.

8 ~~(9) In the event that medical assistance has been
9 provided by Medicaid to more than one recipient, and the
10 agency elects to seek recovery from liable third parties due
11 to actions by the third parties or circumstances which involve
12 common issues of fact or law, the agency may bring an action
13 to recover sums paid to all such recipients in one proceeding.
14 In any action brought under this subsection, the evidence code
15 shall be liberally construed regarding the issues of causation
16 and of aggregate damages. The issue of causation and damages
17 in any such action may be proven by use of statistical
18 analysis.~~

19 ~~(a) In any action under this subsection wherein the
20 number of recipients for which medical assistance has been
21 provided by Medicaid is so large as to cause it to be
22 impracticable to join or identify each claim, the agency shall
23 not be required to so identify the individual recipients for
24 which payment has been made, but rather can proceed to seek
25 recovery based upon payments made on behalf of an entire class
26 of recipients.~~

27 ~~(b) In any action brought pursuant to this subsection
28 wherein a third party is liable due to its manufacture, sale,
29 or distribution of a product, the agency shall be allowed to
30 proceed under a market share theory, provided that the
31 products involved are substantially interchangeable among~~

1 ~~brands, and that substantially similar factual or legal issues~~
2 ~~would be involved in seeking recovery against each liable~~
3 ~~third party individually.~~

4 (9)~~(10)~~ The department shall deny or terminate
5 eligibility for any applicant or recipient who refuses to
6 cooperate as required in subsection (8), unless cooperation
7 has been waived in writing by the department as provided in
8 paragraph (8)(f). However, any denial or termination of
9 eligibility shall not reduce medical assistance otherwise
10 payable by the department to a provider for medical care
11 provided to a recipient prior to denial or termination of
12 eligibility.

13 (10)~~(11)~~ An applicant or recipient shall be deemed to
14 have provided to the department the authority to obtain and
15 release medical information and other records with respect to
16 such medical care, for the sole purpose of obtaining
17 reimbursement for medical assistance provided by Medicaid.

18 (11)~~(12)~~ The department may, as a matter of right, in
19 order to enforce its rights under this section, institute,
20 intervene in, or join any legal or administrative proceeding
21 in its own name in one or more of the following capacities:
22 individually, as subrogee of the recipient, as assignee of the
23 recipient, or as lienholder of the collateral.

24 (a) If either the recipient, or his or her legal
25 representative, or the department brings an action against a
26 third party, the recipient, or the recipient's legal
27 representative, or the department, or their attorneys, shall,
28 within 30 days after filing the action, provide to the other
29 written notice, by personal delivery or registered mail, of
30 the action, the name of the court in which the case is
31 brought, the case number of such action, and a copy of the

1 pleadings. If an action is brought by either the department,
2 or the recipient or the recipient's legal representative, the
3 other may, at any time before trial on the merits, become a
4 party to, or shall consolidate his or her action with the
5 other if brought independently. Unless waived by the other,
6 the recipient, or his or her legal representative, or the
7 department shall provide notice to the other of the intent to
8 dismiss at least 21 days prior to voluntary dismissal of an
9 action against a third party. Notice to the department shall
10 be sent to an address set forth by rule. Notice to the
11 recipient or his or her legal representative, if represented
12 by an attorney, shall be sent to the attorney, and, if not
13 represented, then to the last known address of the recipient
14 or his or her legal representative. ~~The provisions of this~~
15 ~~subsection shall not apply to any actions brought pursuant to~~
16 ~~subsection (9), and in any such action, no notice to~~
17 ~~recipients is required, and the recipients shall have no right~~
18 ~~to become a party to any action brought under such subsection.~~

19 (b) An action by the department to recover damages in
20 tort under this subsection, which action is derivative of the
21 rights of the recipient or his or her legal representative,
22 shall not constitute a waiver of sovereign immunity pursuant
23 to s. 768.14.

24 (c) In the event of judgment, award, or settlement in
25 a claim or action against a third party, the court shall order
26 the segregation of an amount sufficient to repay the
27 department's expenditures for medical assistance, plus any
28 other amounts permitted under this section, and shall order
29 such amounts paid directly to the department.

30 (d) No judgment, award, or settlement in any action by
31 a recipient or his or her legal representative to recover

1 damages for injuries or other third-party benefits, when the
2 department has an interest, shall be satisfied without first
3 giving the department notice and a reasonable opportunity to
4 file and satisfy its lien, and satisfy its assignment and
5 subrogation rights or proceed with any action as permitted in
6 this section.

7 (e) Except as otherwise provided in this section,
8 notwithstanding any other provision of law, the entire amount
9 of any settlement of the recipient's action or claim involving
10 third-party benefits, with or without suit, is subject to the
11 department's claims for reimbursement of the amount of medical
12 assistance provided and any lien pursuant thereto.

13 (f) Notwithstanding any provision in this section to
14 the contrary, in the event of an action in tort against a
15 third party in which the recipient or his or her legal
16 representative is a party and in which the amount of any
17 judgment, award, or settlement from third-party benefits,
18 excluding medical coverage as defined in subparagraph 4.,
19 after reasonable costs and expenses of litigation, is an
20 amount equal to or less than 200 percent of the amount of
21 medical assistance provided by Medicaid less any medical
22 coverage paid or payable to the department, then distribution
23 of the amount recovered shall be as follows:

24 1. Any fee for services of an attorney retained by the
25 recipient or his or her legal representative shall not exceed
26 an amount equal to 25 percent of the recovery, after
27 reasonable costs and expenses of litigation, from the
28 judgment, award, or settlement.

29 2. After attorney's fees, two-thirds of the remaining
30 recovery shall be designated for past medical care and paid to
31 the department for medical assistance provided by Medicaid.

1 3. The remaining amount from the recovery shall be
2 paid to the recipient.

3 4. For purposes of this paragraph, "medical coverage"
4 means any benefits under health insurance, a health
5 maintenance organization, a preferred provider arrangement, or
6 a prepaid health clinic, and the portion of benefits
7 designated for medical payments under coverage for workers'
8 compensation, personal injury protection, and casualty.

9 (g) In the event that the recipient, his or her legal
10 representative, or the recipient's estate brings an action
11 against a third party, notice of institution of legal
12 proceedings, notice of settlement, and all other notices
13 required by this section or by rule shall be given to the
14 department, in Tallahassee, in a manner set forth by rule. All
15 such notices shall be given by the attorney retained to assert
16 the recipient's or legal representative's claim, or, if no
17 attorney is retained, by the recipient, the recipient's legal
18 representative, or his or her estate.

19 (h) Except as otherwise provided in this section,
20 actions to enforce the rights of the department under this
21 section shall be commenced within 5 years after the date a
22 cause of action accrues, with the period running from the
23 later of the date of discovery by the department of a case
24 filed by a recipient or his or her legal representative, or of
25 discovery of any judgment, award, or settlement contemplated
26 in this section, or of discovery of facts giving rise to a
27 cause of action under this section ~~the provision of medical~~
28 ~~assistance to a recipient. Each item of expense provided by~~
29 ~~the agency shall be considered to constitute a separate cause~~
30 ~~of action for purposes of this subsection. The defense of~~
31 ~~statute of repose shall not apply to any action brought under~~

1 ~~this section by the agency.~~ Nothing in this paragraph affects
2 or prevents a proceeding to enforce a lien during the
3 existence of the lien as set forth in subparagraph (6)(c)9.

4 (i) Upon the death of a recipient, and within the time
5 prescribed by ss. 733.702 and 733.710, the department, in
6 addition to any other available remedy, may file a claim
7 against the estate of the recipient for the total amount of
8 medical assistance provided by Medicaid for the benefit of the
9 recipient. Claims so filed shall take priority as class 3
10 claims as provided by s. 733.707(1)(c). The filing of a claim
11 pursuant to this paragraph shall neither reduce nor diminish
12 the general claims of the department under s. 414.28, except
13 that the department may not receive double recovery for the
14 same expenditure. Claims under this paragraph shall be
15 superior to those under s. 414.28. The death of the recipient
16 shall neither extinguish nor diminish any right of the
17 department to recover third-party benefits from a third party
18 or provider. Nothing in this paragraph affects or prevents a
19 proceeding to enforce a lien created pursuant to this section
20 or a proceeding to set aside a fraudulent conveyance as
21 defined in subsection (16).

22 (12)~~(13)~~ No action taken by the department shall
23 operate to deny the recipient's recovery of that portion of
24 benefits not assigned or subrogated to the department, or not
25 secured by the department's lien. The department's rights of
26 recovery created by this section, however, shall not be
27 limited to some portion of recovery from a judgment, award, or
28 settlement. Only the following benefits are not subject to the
29 rights of the department: benefits not related in any way to a
30 covered injury or illness; proceeds of life insurance coverage
31 on the recipient; proceeds of insurance coverage, such as

1 coverage for property damage, which by its terms and
2 provisions cannot be construed to cover personal injury,
3 death, or a covered injury or illness; proceeds of disability
4 coverage for lost income; and recovery in excess of the amount
5 of medical benefits provided by Medicaid after repayment in
6 full to the department.

7 (13)~~(14)~~ No action of the recipient shall prejudice
8 the rights of the department under this section. No
9 settlement, agreement, consent decree, trust agreement,
10 annuity contract, pledge, security arrangement, or any other
11 device, hereafter collectively referred to in this subsection
12 as a "settlement agreement," entered into or consented to by
13 the recipient or his or her legal representative shall impair
14 the department's rights. However, in a structured settlement,
15 no settlement agreement by the parties shall be effective or
16 binding against the department for benefits accrued without
17 the express written consent of the department or an
18 appropriate order of a court having personal jurisdiction over
19 the department.

20 (14)~~(15)~~ The department is authorized to enter into
21 agreements to enforce or collect medical support and other
22 third-party benefits.

23 (a) If a cooperative agreement is entered into with
24 any agency, program, or subdivision of the state, or any
25 agency, program, or legal entity of or operated by a
26 subdivision of the state, or with any other state, the
27 department is authorized to make an incentive payment of up to
28 15 percent of the amount actually collected and reimbursed to
29 the department, to the extent of medical assistance paid by
30 Medicaid. Such incentive payment is to be deducted from the
31 federal share of that amount, to the extent authorized by

1 federal law. The department may pay such person an additional
2 percentage of the amount actually collected and reimbursed to
3 the department as a result of the efforts of the person, but
4 no more than a maximum percentage established by the
5 department. In no case shall the percentage exceed the lesser
6 of a percentage determined to be commercially reasonable or 15
7 percent, in addition to the 15-percent incentive payment, of
8 the amount actually collected and reimbursed to the department
9 as a result of the efforts of the person under contract.

10 (b) If an agreement to enforce or collect third-party
11 benefits is entered into by the department with any person
12 other than those described in paragraph (a), including any
13 attorney retained by the department who is not an employee or
14 agent of any person named in paragraph (a), then the
15 department may pay such person a percentage of the amount
16 actually collected and reimbursed to the department as a
17 result of the efforts of the person, to the extent of medical
18 assistance paid by Medicaid. In no case shall the percentage
19 exceed a maximum established by the department, which shall
20 not exceed the lesser of a percentage determined to be
21 commercially reasonable or 30 percent of the amount actually
22 collected and reimbursed to the department as a result of the
23 efforts of the person under contract.

24 (c) An agreement pursuant to this subsection may
25 permit reasonable litigation costs or expenses to be paid from
26 the department's recovery to a person under contract with the
27 department.

28 (d) Contingency fees and costs incurred in recovery
29 pursuant to an agreement under this subsection may, for
30 purposes of determining state and federal share, be deemed to
31 be administrative expenses of the state. To the extent

1 permitted by federal law, such administrative expenses shall
2 be shared with, or fully paid by, the Federal Government.

3 (15)~~(16)~~ Insurance and other third-party benefits may
4 not contain any term or provision which purports to limit or
5 exclude payment or provisions of benefits for an individual if
6 the individual is eligible for, or a recipient of, medical
7 assistance from Medicaid, and any such term or provision shall
8 be void as against public policy.

9 (16)~~(17)~~ Any transfer or encumbrance of any right,
10 title, or interest to which the department has a right
11 pursuant to this section, with the intent, likelihood, or
12 practical effect of defeating, hindering, or reducing recovery
13 by the department for reimbursement of medical assistance
14 provided by Medicaid, shall be deemed to be a fraudulent
15 conveyance, and such transfer or encumbrance shall be void and
16 of no effect against the claim of the department, unless the
17 transfer was for adequate consideration and the proceeds of
18 the transfer are reimbursed in full to the department, but not
19 in excess of the amount of medical assistance provided by
20 Medicaid.

21 (17)~~(18)~~ A recipient or his or her legal
22 representative or any person representing, or acting as agent
23 for, a recipient or the recipient's legal representative, who
24 has notice, excluding notice charged solely by reason of the
25 recording of the lien pursuant to paragraph (6)(d), or who has
26 actual knowledge of the department's rights to third-party
27 benefits under this section, who receives any third-party
28 benefit or proceeds therefrom for a covered illness or injury,
29 is required either to pay the department the full amount of
30 the third-party benefits, but not in excess of the total
31 medical assistance provided by Medicaid, or to place the full

1 amount of the third-party benefits in a trust account for the
2 benefit of the department pending judicial or administrative
3 determination of the department's right thereto. Proof that
4 any such person had notice or knowledge that the recipient had
5 received medical assistance from Medicaid, and that
6 third-party benefits or proceeds therefrom were in any way
7 related to a covered illness or injury for which Medicaid had
8 provided medical assistance, and that any such person
9 knowingly obtained possession or control of, or used,
10 third-party benefits or proceeds and failed either to pay the
11 department the full amount required by this section or to hold
12 the full amount of third-party benefits or proceeds in trust
13 pending judicial or administrative determination, unless
14 adequately explained, gives rise to an inference that such
15 person knowingly failed to credit the state or its agent for
16 payments received from social security, insurance, or other
17 sources, pursuant to s. 414.39(4)(b), and acted with the
18 intent set forth in s. 812.014(1).

19 (a) In cases of suspected criminal violations or
20 fraudulent activity, the department may take any civil action
21 permitted at law or equity to recover the greatest possible
22 amount, including, without limitation, treble damages under
23 ss. 772.11 and 812.035(7).

24 (b)~~(a)~~ The department is authorized to investigate and
25 to request appropriate officers or agencies of the state to
26 investigate suspected criminal violations or fraudulent
27 activity related to third-party benefits, including, without
28 limitation, ss. 409.325 and 812.014. Such requests may be
29 directed, without limitation, to the Medicaid Fraud Control
30 Unit of the Office of the Attorney General, or to any state
31 attorney. Pursuant to s. 409.913, the Attorney General has

1 primary responsibility to investigate and control Medicaid
2 fraud.

3 (c)~~(b)~~ In carrying out duties and responsibilities
4 related to Medicaid fraud control, the department may subpoena
5 witnesses or materials within or outside the state and,
6 through any duly designated employee, administer oaths and
7 affirmations and collect evidence for possible use in either
8 civil or criminal judicial proceedings.

9 (d)~~(c)~~ All information obtained and documents prepared
10 pursuant to an investigation of a Medicaid recipient, the
11 recipient's legal representative, or any other person relating
12 to an allegation of recipient fraud or theft is confidential
13 and exempt from s. 119.07(1):

14 1. Until such time as the department takes final
15 agency action;

16 2. Until such time as the Department of Legal Affairs
17 ~~Attorney General~~ refers the case for criminal prosecution;

18 3. Until such time as an indictment or criminal
19 information is filed by a state attorney in a criminal case;
20 or

21 4. At all times if otherwise protected by law.

22 ~~(19) In cases of suspected criminal violations or~~
23 ~~fraudulent activity, on the part of any person including a~~
24 ~~liable third party, the department is authorized to take any~~
25 ~~civil action permitted at law or equity to recover the~~
26 ~~greatest possible amount, including without limitation, treble~~
27 ~~damages under s. 772.73. In any action in which the recipient~~
28 ~~has no right to intervene, or does not exercise his or her~~
29 ~~right to intervene, any amounts recovered under this~~
30 ~~subsection shall be the property of the agency, and the~~
31 ~~recipient shall have no right or interest in such recovery.~~

1 (18)~~(20)~~ In recovering any payments in accordance with
2 this section, the department is authorized to make appropriate
3 settlements.

4 (19)~~(21)~~ Notwithstanding any provision in this section
5 to the contrary, the department shall not be required to seek
6 reimbursement from a liable third party on claims for which
7 the department determines that the amount it reasonably
8 expects to recover will be less than the cost of recovery, or
9 that recovery efforts will otherwise not be cost-effective.

10 (20)~~(22)~~ Entities providing health insurance as
11 defined in s. 624.603, and health maintenance organizations
12 and prepaid health clinics as defined in chapter 641, shall
13 provide such records and information as are necessary to
14 accomplish the purpose of this section, unless such
15 requirement results in an unreasonable burden.

16 (a) The secretary of the department and the Insurance
17 Commissioner shall enter into a cooperative agreement for
18 requesting and obtaining information necessary to effect the
19 purpose and objective of this section.

20 1. The department shall request only that information
21 necessary to determine whether health insurance as defined
22 pursuant to s. 624.603, or those health services provided
23 pursuant to chapter 641, could be, should be, or have been
24 claimed and paid with respect to items of medical care and
25 services furnished to any person eligible for services under
26 this section.

27 2. All information obtained pursuant to subparagraph
28 1. is confidential and exempt from s. 119.07(1).

29 3. The cooperative agreement or rules adopted under
30 this subsection may include financial arrangements to
31 reimburse the reporting entities for reasonable costs or a

1 portion thereof incurred in furnishing the requested
2 information. Neither the cooperative agreement nor the rules
3 shall require the automation of manual processes to provide
4 the requested information.

5 (b) The department and the Department of Insurance
6 jointly shall adopt rules for the development and
7 administration of the cooperative agreement. The rules shall
8 include the following:

9 1. A method for identifying those entities subject to
10 furnishing information under the cooperative agreement.

11 2. A method for furnishing requested information.

12 3. Procedures for requesting exemption from the
13 cooperative agreement based on an unreasonable burden to the
14 reporting entity.

15 (21)~~(23)~~ The department is authorized to adopt rules
16 to implement the provisions of this section and federal
17 requirements.

18 Section 2. Paragraph (a) of subsection (9) of section
19 624.424, Florida Statutes, is amended to read:

20 624.424 Annual statement and other information.--

21 (9)(a) Each authorized insurer shall, pursuant to s.
22 409.910(20)~~s. 409.910(22)~~, provide records and information to
23 the Department of Health ~~and Rehabilitative Services~~ to
24 identify potential insurance coverage for claims filed with
25 that department and its fiscal agents for payment of medical
26 services under the Medicaid program.

27 Section 3. This act shall take effect upon becoming a
28 law and shall operate retroactively to July 1, 1994, except
29 that any action filed prior to March 1, 1998, any appeal of
30 such action, any matter related to such action, any
31 enforcement of the terms of a settlement agreement entered in

1 such action, or any action filed prior to March 1, 1998, in
2 which the parties have agreed to settle and the trial court
3 has approved the settlement agreement, whether or not the time
4 to appeal the approval of such settlement has expired, remains
5 covered by and shall proceed under the law as it existed on
6 the date of the filing of such action. If any settlement
7 agreement entered in any such action filed prior to March 1,
8 1998, is overturned, canceled, or terminated, or is altered in
9 any material manner by subsequent court order, such action
10 remains covered by and shall proceed under the law as it
11 existed on the date of the filing of such action.

12
13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
14 COMMITTEE SUBSTITUTE FOR
15 Senate Bills 1192, 628 & 1412

16 The three bills combined into this committee substitute differ
17 from the committee substitute as indicated below:

18 Senate Bill 1192 as originally filed only expressed the
19 Legislature's intent that the scope of the application of the
20 amendments enacted by Chapter 94-251, Laws of Florida,
21 relating to Medicaid third-party liability be clarified.

22 Senate Bill 628 reversed the legislative action of the 1994
23 amendments and prohibited the resulting settlement from being
24 maintained or enforced.

25 Senate Bill 1412 limited the application of the 1994
26 amendments solely to the recovery of costs for the treatment
27 of disease or injury caused by the use of cigarettes.

28 The committee substitute reverses the legislative action of
29 the 1994 amendments, but allows the settlement to be enforced.
30
31