

154-248AX

Bill No. HB 3077

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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11 Representative(s) Goode offered the following:

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13 **Amendment (with title amendment)**

14 Remove from the bill: everything after the enacting clause,

15

16 and insert in lieu thereof:

17

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

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

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(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.

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1 Principles of common law and equity as to assignment, lien,  
 2 ~~and subrogation, comparative negligence, assumption of risk,~~  
 3 ~~and all other affirmative defenses normally available to a~~  
 4 ~~liable third party, are to be~~ abrogated to the extent  
 5 necessary to ensure full recovery by Medicaid from third-party  
 6 resources. ~~such principles shall apply to a recipient's right~~  
 7 ~~to recovery against any third party, but shall not act to~~  
 8 ~~reduce the recovery of the agency pursuant to this section.~~  
 9 ~~The concept of joint and several liability applies to any~~  
 10 ~~recovery on the part of the agency.~~ It is intended that if the  
 11 resources of a liable third party become available at any  
 12 time, the public treasury should not bear the burden of  
 13 medical assistance to the extent of such resources. ~~Common-law~~  
 14 ~~theories of recovery shall be liberally construed to~~  
 15 ~~accomplish this intent.~~

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

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

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

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

28 (b) Situations in which the department learns of the  
 29 existence of a liable third party ~~is liable and the liability~~  
 30 or in which third-party benefits available are discovered  
 31 ~~either before~~ or become available after medical assistance has

1 been provided by Medicaid.

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

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

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

24 (a)~~(b)~~ The department is automatically subrogated to  
25 any rights that an applicant, recipient, or legal  
26 representative has to any third-party benefit for the full  
27 amount of medical assistance provided by Medicaid. Recovery  
28 pursuant to the subrogation rights created hereby shall not be  
29 reduced, prorated, or applied to only a portion of a judgment,  
30 award, or settlement, but is to provide full recovery by the  
31 department from any and all third-party benefits. Equities of

1 a recipient, his or her legal representative, a recipient's  
2 creditors, or health care providers shall not defeat, reduce,  
3 or prorate recovery by the department as to its subrogation  
4 rights granted under this paragraph.

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

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

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

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

27 a. Endorsing any draft, check, money order, or other  
28 negotiable instrument representing third-party benefits that  
29 are received on behalf of the recipient as a third-party  
30 benefit.

31 b. Compromising claims to the extent of the rights

1 assigned, provided that the recipient is not otherwise  
2 represented by an attorney as to the claim.

3 (c)~~(d)~~ The department is entitled to, and has, an  
4 automatic lien for the full amount of medical assistance  
5 provided by Medicaid to or on behalf of the recipient for  
6 medical care furnished as a result of any covered injury or  
7 illness for which a third party is or may be liable, upon the  
8 collateral, as defined in s. 409.901.

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

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

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

24 b. The date of injury.

25 c. The period for which medical assistance was  
26 provided.

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

29 e. The names and addresses of all persons claimed by  
30 the recipient to be liable for the covered injuries or  
31 illness.

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

3           4. If the claim of lien is filed within 1 year after  
4 the later of the date when the last item of medical care  
5 relative to a specific covered injury or illness was paid, or  
6 the date of discovery by the department of the liability of  
7 any third party, or the date of discovery of a cause of action  
8 against a third party brought by a recipient or his or her  
9 legal representative, record notice shall relate back to the  
10 time of attachment of the lien.

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

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

24           7. No release or satisfaction of any cause of action,  
25 suit, claim, counterclaim, demand, judgment, settlement, or  
26 settlement agreement shall be valid or effectual as against a  
27 lien created under this paragraph, unless the department joins  
28 in the release or satisfaction or executes a release of the  
29 lien. An acceptance of a release or satisfaction of any cause  
30 of action, suit, claim, counterclaim, demand, or judgment and  
31 any settlement of any of the foregoing in the absence of a

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

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

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

1           10. The clerk of the circuit court for each county in  
2 the state shall endorse on a claim of lien filed under this  
3 paragraph the date and hour of filing and shall record the  
4 claim of lien in the official records of the county as for  
5 other records received for filing. The clerk shall receive as  
6 his or her fee for filing and recording any claim of lien or  
7 release of lien under this paragraph the total sum of \$2. Any  
8 fee required to be paid by the department shall not be  
9 required to be paid in advance of filing and recording, but  
10 may be billed to the department after filing and recording of  
11 the claim of lien or release of lien.

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

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

21           (a) Recovery of such benefits shall be collected  
22 directly from:

23           1. Any third party;

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

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



1 third-party payor for medical services provided to the  
2 recipient; or

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

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

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

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

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

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

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

30 (b) Appear as a witness at a court or other  
31 proceeding.

1 (c) Provide information, or attest to lack of  
2 information, under penalty of perjury.

3 (d) Pay to the department any third-party benefit  
4 received.

5 (e) Take any additional steps to assist in  
6 establishing paternity or securing third-party benefits, or  
7 both.

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

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

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

31 ~~(b) In any action brought pursuant to this subsection~~

1 ~~wherein a third party is liable due to its manufacture, sale,~~  
 2 ~~or distribution of a product, the agency shall be allowed to~~  
 3 ~~proceed under a market share theory, provided that the~~  
 4 ~~products involved are substantially interchangeable among~~  
 5 ~~brands, and that substantially similar factual or legal issues~~  
 6 ~~would be involved in seeking recovery against each liable~~  
 7 ~~third party individually.~~

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

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

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

28       (a) If either the recipient, or his or her legal  
 29 representative, or the department brings an action against a  
 30 third party, the recipient, or the recipient's legal  
 31 representative, or the department, or their attorneys, shall,

1 within 30 days after filing the action, provide to the other  
2 written notice, by personal delivery or registered mail, of  
3 the action, the name of the court in which the case is  
4 brought, the case number of such action, and a copy of the  
5 pleadings. If an action is brought by either the department,  
6 or the recipient or the recipient's legal representative, the  
7 other may, at any time before trial on the merits, become a  
8 party to, or shall consolidate his or her action with the  
9 other if brought independently. Unless waived by the other,  
10 the recipient, or his or her legal representative, or the  
11 department shall provide notice to the other of the intent to  
12 dismiss at least 21 days prior to voluntary dismissal of an  
13 action against a third party. Notice to the department shall  
14 be sent to an address set forth by rule. Notice to the  
15 recipient or his or her legal representative, if represented  
16 by an attorney, shall be sent to the attorney, and, if not  
17 represented, then to the last known address of the recipient  
18 or his or her legal representative. ~~The provisions of this~~  
19 ~~subsection shall not apply to any actions brought pursuant to~~  
20 ~~subsection (9), and in any such action, no notice to~~  
21 ~~recipients is required, and the recipients shall have no right~~  
22 ~~to become a party to any action brought under such subsection.~~

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

28 (c) In the event of judgment, award, or settlement in  
29 a claim or action against a third party, the court shall order  
30 the segregation of an amount sufficient to repay the  
31 department's expenditures for medical assistance, plus any

1 other amounts permitted under this section, and shall order  
2 such amounts paid directly to the department.

3 (d) No judgment, award, or settlement in any action by  
4 a recipient or his or her legal representative to recover  
5 damages for injuries or other third-party benefits, when the  
6 department has an interest, shall be satisfied without first  
7 giving the department notice and a reasonable opportunity to  
8 file and satisfy its lien, and satisfy its assignment and  
9 subrogation rights or proceed with any action as permitted in  
10 this section.

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

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

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

1 judgment, award, or settlement.

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

5 3. The remaining amount from the recovery shall be  
6 paid to the recipient.

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

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

23 (h) Except as otherwise provided in this section,  
24 actions to enforce the rights of the department under this  
25 section shall be commenced within 5 years after the date a  
26 cause of action accrues, with the period running from the  
27 later of the date of discovery by the department of a case  
28 filed by a recipient or his or her legal representative, or of  
29 discovery of any judgment, award, or settlement contemplated  
30 in this section, or of discovery of facts giving rise to a  
31 cause of action under this section ~~the provision of medical~~

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1 ~~assistance to a recipient. Each item of expense provided by~~  
2 ~~the agency shall be considered to constitute a separate cause~~  
3 ~~of action for purposes of this subsection. The defense of~~  
4 ~~statute of repose shall not apply to any action brought under~~  
5 ~~this section by the agency. Nothing in this paragraph affects~~  
6 or prevents a proceeding to enforce a lien during the  
7 existence of the lien as set forth in subparagraph (6)(c)9.

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

26 ~~(12)(13)~~ No action taken by the department shall  
27 operate to deny the recipient's recovery of that portion of  
28 benefits not assigned or subrogated to the department, or not  
29 secured by the department's lien. The department's rights of  
30 recovery created by this section, however, shall not be  
31 limited to some portion of recovery from a judgment, award, or

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1 settlement. Only the following benefits are not subject to the  
2 rights of the department: benefits not related in any way to a  
3 covered injury or illness; proceeds of life insurance coverage  
4 on the recipient; proceeds of insurance coverage, such as  
5 coverage for property damage, which by its terms and  
6 provisions cannot be construed to cover personal injury,  
7 death, or a covered injury or illness; proceeds of disability  
8 coverage for lost income; and recovery in excess of the amount  
9 of medical benefits provided by Medicaid after repayment in  
10 full to the department.

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

24 ~~(14)~~(15) The department is authorized to enter into  
25 agreements to enforce or collect medical support and other  
26 third-party benefits.

27 (a) If a cooperative agreement is entered into with  
28 any agency, program, or subdivision of the state, or any  
29 agency, program, or legal entity of or operated by a  
30 subdivision of the state, or with any other state, the  
31 department is authorized to make an incentive payment of up to



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1 15 percent of the amount actually collected and reimbursed to  
2 the department, to the extent of medical assistance paid by  
3 Medicaid. Such incentive payment is to be deducted from the  
4 federal share of that amount, to the extent authorized by  
5 federal law. The department may pay such person an additional  
6 percentage of the amount actually collected and reimbursed to  
7 the department as a result of the efforts of the person, but  
8 no more than a maximum percentage established by the  
9 department. In no case shall the percentage exceed the lesser  
10 of a percentage determined to be commercially reasonable or 15  
11 percent, in addition to the 15-percent incentive payment, of  
12 the amount actually collected and reimbursed to the department  
13 as a result of the efforts of the person under contract.

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

28 (c) An agreement pursuant to this subsection may  
29 permit reasonable litigation costs or expenses to be paid from  
30 the department's recovery to a person under contract with the  
31 department.

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1           (d) Contingency fees and costs incurred in recovery  
2 pursuant to an agreement under this subsection may, for  
3 purposes of determining state and federal share, be deemed to  
4 be administrative expenses of the state. To the extent  
5 permitted by federal law, such administrative expenses shall  
6 be shared with, or fully paid by, the Federal Government.

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

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

25           (17)~~(18)~~ A recipient or his or her legal  
26 representative or any person representing, or acting as agent  
27 for, a recipient or the recipient's legal representative, who  
28 has notice, excluding notice charged solely by reason of the  
29 recording of the lien pursuant to paragraph (6)(d), or who has  
30 actual knowledge of the department's rights to third-party  
31 benefits under this section, who receives any third-party

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1 benefit or proceeds therefrom for a covered illness or injury,  
2 is required either to pay the department the full amount of  
3 the third-party benefits, but not in excess of the total  
4 medical assistance provided by Medicaid, or to place the full  
5 amount of the third-party benefits in a trust account for the  
6 benefit of the department pending judicial or administrative  
7 determination of the department's right thereto. Proof that  
8 any such person had notice or knowledge that the recipient had  
9 received medical assistance from Medicaid, and that  
10 third-party benefits or proceeds therefrom were in any way  
11 related to a covered illness or injury for which Medicaid had  
12 provided medical assistance, and that any such person  
13 knowingly obtained possession or control of, or used,  
14 third-party benefits or proceeds and failed either to pay the  
15 department the full amount required by this section or to hold  
16 the full amount of third-party benefits or proceeds in trust  
17 pending judicial or administrative determination, unless  
18 adequately explained, gives rise to an inference that such  
19 person knowingly failed to credit the state or its agent for  
20 payments received from social security, insurance, or other  
21 sources, pursuant to s. 414.39(4)(b), and acted with the  
22 intent set forth in s. 812.014(1).

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

28 (b)~~(a)~~ The department is authorized to investigate and  
29 to request appropriate officers or agencies of the state to  
30 investigate suspected criminal violations or fraudulent  
31 activity related to third-party benefits, including, without

1 limitation, ss. 414.39 ~~409.325~~ and 812.014. Such requests may  
2 be directed, without limitation, to the Medicaid Fraud Control  
3 Unit of the Office of the Attorney General, or to any state  
4 attorney. Pursuant to s. 409.913, the Attorney General has  
5 primary responsibility to investigate and control Medicaid  
6 fraud.

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

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

- 18 1. Until such time as the department takes final
- 19 agency action;
- 20 2. Until such time as the Department of Legal Affairs
- 21 ~~Attorney General~~ refers the case for criminal prosecution;
- 22 3. Until such time as an indictment or criminal
- 23 information is filed by a state attorney in a criminal case;
- 24 or
- 25 4. At all times if otherwise protected by law.

26 ~~(19) In cases of suspected criminal violations or~~  
27 ~~fraudulent activity, on the part of any person including a~~  
28 ~~liable third party, the department is authorized to take any~~  
29 ~~civil action permitted at law or equity to recover the~~  
30 ~~greatest possible amount, including without limitation, treble~~  
31 ~~damages under s. 772.73. In any action in which the recipient~~

1 ~~has no right to intervene, or does not exercise his or her~~  
2 ~~right to intervene, any amounts recovered under this~~  
3 ~~subsection shall be the property of the agency, and the~~  
4 ~~recipient shall have no right or interest in such recovery.~~

5       (18)~~(20)~~ In recovering any payments in accordance with  
6 this section, the department is authorized to make appropriate  
7 settlements.

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

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

20           (a) The secretary of the department and the Insurance  
21 Commissioner shall enter into a cooperative agreement for  
22 requesting and obtaining information necessary to effect the  
23 purpose and objective of this section.

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

31           2. All information obtained pursuant to subparagraph

1 1. is confidential and exempt from s. 119.07(1).

2 3. The cooperative agreement or rules adopted under  
3 this subsection may include financial arrangements to  
4 reimburse the reporting entities for reasonable costs or a  
5 portion thereof incurred in furnishing the requested  
6 information. Neither the cooperative agreement nor the rules  
7 shall require the automation of manual processes to provide  
8 the requested information.

9 (b) The department and the Department of Insurance  
10 jointly shall adopt rules for the development and  
11 administration of the cooperative agreement. The rules shall  
12 include the following:

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

15 2. A method for furnishing requested information.

16 3. Procedures for requesting exemption from the  
17 cooperative agreement based on an unreasonable burden to the  
18 reporting entity.

19 ~~(21)(23)~~ The department is authorized to adopt rules  
20 to implement the provisions of this section and federal  
21 requirements.

22 Section 2. Paragraph (a) of subsection (9) of section  
23 624.424, Florida Statutes, is amended to read:

24 624.424 Annual statement and other information.--

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

31 Section 3. Any action filed prior to March 1, 1998,

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

13 Section 4. This act shall take effect upon becoming a  
 14 law and shall operate retroactively to July 1, 1994, except as  
 15 provided in section 3.

16  
 17

18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 On page 1, lines 3-9,  
 21 remove from the title of the bill:

22

23 and insert in lieu thereof:

24 amending s. 409.910, F.S.; limiting the scope  
 25 of liability for which Medicaid benefits must  
 26 be repaid; authorizing the Department of  
 27 Children and Family Services to file certain  
 28 civil actions to recover damages; amending s.  
 29 624.424, F.S.; conforming a cross reference;  
 30 preserving certain actions; providing for  
 31 retroactive application; providing an effective

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