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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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Representative(s) Goode offered the following:

Amendment (with title amendment)

Remove from the bill: Everything after the enacting clause
and insert in lieu thereof:

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.

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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

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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

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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

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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.

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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

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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,

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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

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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

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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. For the purposes of this
28 paragraph, an attorney's fee paid, payable, or negotiated, may
29 not exceed an amount calculated in accordance with the
30 lodestar process approved by the Florida Supreme Court, which
31 attorney's fee shall be set by the determination of the number

1 of hours reasonably expended on the matter and the reasonable
 2 hourly rate for the services provided by the private attorney.
 3 In contingent fee matters, the lodestar figure calculated may
 4 include a contingency risk multiplier not greater than 2.

5 (c) An agreement pursuant to this subsection may
 6 permit reasonable litigation costs or expenses to be paid from
 7 the department's recovery to a person under contract with the
 8 department.

9 (d) Contingency fees and costs incurred in recovery
 10 pursuant to an agreement under this subsection may, for
 11 purposes of determining state and federal share, be deemed to
 12 be administrative expenses of the state. To the extent
 13 permitted by federal law, such administrative expenses shall
 14 be shared with, or fully paid by, the Federal Government.

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

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

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1 Medicaid.

2 (17)~~(18)~~ A recipient or his or her legal

3 representative or any person representing, or acting as agent

4 for, a recipient or the recipient's legal representative, who

5 has notice, excluding notice charged solely by reason of the

6 recording of the lien pursuant to paragraph (6)(d), or who has

7 actual knowledge of the department's rights to third-party

8 benefits under this section, who receives any third-party

9 benefit or proceeds therefrom for a covered illness or injury,

10 is required either to pay the department the full amount of

11 the third-party benefits, but not in excess of the total

12 medical assistance provided by Medicaid, or to place the full

13 amount of the third-party benefits in a trust account for the

14 benefit of the department pending judicial or administrative

15 determination of the department's right thereto. Proof that

16 any such person had notice or knowledge that the recipient had

17 received medical assistance from Medicaid, and that

18 third-party benefits or proceeds therefrom were in any way

19 related to a covered illness or injury for which Medicaid had

20 provided medical assistance, and that any such person

21 knowingly obtained possession or control of, or used,

22 third-party benefits or proceeds and failed either to pay the

23 department the full amount required by this section or to hold

24 the full amount of third-party benefits or proceeds in trust

25 pending judicial or administrative determination, unless

26 adequately explained, gives rise to an inference that such

27 person knowingly failed to credit the state or its agent for

28 payments received from social security, insurance, or other

29 sources, pursuant to s. 414.39(4)(b), and acted with the

30 intent set forth in s. 812.014(1).

31 (a) In cases of suspected criminal violations of

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1 fraudulent activity, the department may take any civil action
2 permitted at law or equity to recover the greatest possible
3 amount, including, without limitation, treble damages under
4 ss. 772.11 and 812.035(7).

5 (b)(a) The department is authorized to investigate and
6 to request appropriate officers or agencies of the state to
7 investigate suspected criminal violations or fraudulent
8 activity related to third-party benefits, including, without
9 limitation, ss. 414.39 ~~409.325~~ and 812.014. Such requests may
10 be directed, without limitation, to the Medicaid Fraud Control
11 Unit of the Office of the Attorney General, or to any state
12 attorney. Pursuant to s. 409.913, the Attorney General has
13 primary responsibility to investigate and control Medicaid
14 fraud.

15 (c)(b) In carrying out duties and responsibilities
16 related to Medicaid fraud control, the department may subpoena
17 witnesses or materials within or outside the state and,
18 through any duly designated employee, administer oaths and
19 affirmations and collect evidence for possible use in either
20 civil or criminal judicial proceedings.

21 (d)(c) All information obtained and documents prepared
22 pursuant to an investigation of a Medicaid recipient, the
23 recipient's legal representative, or any other person relating
24 to an allegation of recipient fraud or theft is confidential
25 and exempt from s. 119.07(1):

26 1. Until such time as the department takes final
27 agency action;

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

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

1 or

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

3 ~~(19) In cases of suspected criminal violations or~~
4 ~~fraudulent activity, on the part of any person including a~~
5 ~~liable third party, the department is authorized to take any~~
6 ~~civil action permitted at law or equity to recover the~~
7 ~~greatest possible amount, including without limitation, treble~~
8 ~~damages under s. 772.73. In any action in which the recipient~~
9 ~~has no right to intervene, or does not exercise his or her~~
10 ~~right to intervene, any amounts recovered under this~~
11 ~~subsection shall be the property of the agency, and the~~
12 ~~recipient shall have no right or interest in such recovery.~~

13 (18)~~(20)~~ In recovering any payments in accordance with
14 this section, the department is authorized to make appropriate
15 settlements.

16 (19)~~(21)~~ Notwithstanding any provision in this section
17 to the contrary, the department shall not be required to seek
18 reimbursement from a liable third party on claims for which
19 the department determines that the amount it reasonably
20 expects to recover will be less than the cost of recovery, or
21 that recovery efforts will otherwise not be cost-effective.

22 (20)~~(22)~~ Entities providing health insurance as
23 defined in s. 624.603, and health maintenance organizations
24 and prepaid health clinics as defined in chapter 641, shall
25 provide such records and information as are necessary to
26 accomplish the purpose of this section, unless such
27 requirement results in an unreasonable burden.

28 (a) The secretary of the department and the Insurance
29 Commissioner shall enter into a cooperative agreement for
30 requesting and obtaining information necessary to effect the
31 purpose and objective of this section.

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1 1. The department shall request only that information
2 necessary to determine whether health insurance as defined
3 pursuant to s. 624.603, or those health services provided
4 pursuant to chapter 641, could be, should be, or have been
5 claimed and paid with respect to items of medical care and
6 services furnished to any person eligible for services under
7 this section.

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

10 3. The cooperative agreement or rules adopted under
11 this subsection may include financial arrangements to
12 reimburse the reporting entities for reasonable costs or a
13 portion thereof incurred in furnishing the requested
14 information. Neither the cooperative agreement nor the rules
15 shall require the automation of manual processes to provide
16 the requested information.

17 (b) The department and the Department of Insurance
18 jointly shall adopt rules for the development and
19 administration of the cooperative agreement. The rules shall
20 include the following:

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

23 2. A method for furnishing requested information.

24 3. Procedures for requesting exemption from the
25 cooperative agreement based on an unreasonable burden to the
26 reporting entity.

27 ~~(21)(23)~~ The department is authorized to adopt rules
28 to implement the provisions of this section and federal
29 requirements.

30 Section 2. Paragraph (a) of subsection (9) of section
31 624.424, Florida Statutes, is amended to read:

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1 624.424 Annual statement and other information.--
2 (9)(a) Each authorized insurer shall, pursuant to s.
3 409.910(20)~~s. 409.910(22)~~, provide records and information to
4 the Department of Health ~~and Rehabilitative Services~~ to
5 identify potential insurance coverage for claims filed with
6 that department and its fiscal agents for payment of medical
7 services under the Medicaid program.

8 Section 3. This act shall take effect upon becoming a
9 law and shall operate retroactively to July 1, 1994, except
10 that any action filed prior to March 1, 1998, any appeal of
11 such action, any matter related to such action, any
12 enforcement of the terms of a settlement agreement entered in
13 such action, or any action filed prior to March 1, 1998, in
14 which the parties have agreed to settle and the trial court
15 has approved the settlement agreement, whether or not the time
16 to appeal the approval of such settlement has expired, may
17 proceed under the law as it existed on the date of the filing
18 of such action, except that the amendments to Section
19 409.910(15), Florida Statutes, renumbered as Section
20 409.910(14), Florida Statutes, shall be applicable to such
21 action. If any settlement agreement entered in an action filed
22 prior to March 1, 1998, is overturned, canceled, or
23 terminated, or is altered in any material manner by subsequent
24 court order, such action may proceed under the law as it
25 existed on the date of the filing of such action, except that
26 the amendments to Section 409.910(15), Florida Statutes,
27 renumbered as Section 409.910(14), Florida Statutes, shall be
28 applicable to such action.

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

2 And the title is amended as follows:

3 remove from the title of the bill: everything before the
4 enacting clause

5

6 and insert in lieu thereof:

7

A bill to be entitled

8

An act relating to Medicaid provider fraud;

9

amending s. 409.910, F.S.; limiting the scope

10

of liability for which Medicaid benefits must

11

be repaid; limiting certain fees; amending s.

12

624.424, F.S.; conforming a cross-reference;

13

barring certain civil actions; providing for

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retroactive application; providing an effective

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date.

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