

1                                   A bill to be entitled  
2           An act relating to Medicaid provider fraud;  
3           amending s. 409.910, F.S.; limiting the scope  
4           of liability for which Medicaid benefits must  
5           be repaid; limiting certain fees; amending s.  
6           624.424, F.S.; conforming a cross-reference;  
7           barring certain civil actions; providing for  
8           retroactive application; providing an effective  
9           date.

10

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

12

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

15

16           409.910 Responsibility for payments on behalf of  
17 Medicaid-eligible persons when other parties are liable.--

18

19           (1) It is the intent of the Legislature that Medicaid  
20 be the payor of last resort for medically necessary goods and  
21 services furnished to Medicaid recipients. All other sources  
22 of payment for medical care are primary to medical assistance  
23 provided by Medicaid. If benefits of a liable third party are  
24 discovered or become available after medical assistance has  
25 been provided by Medicaid, it is the intent of the Legislature  
26 that Medicaid be repaid in full and prior to any other person,  
27 program, or entity. Medicaid is to be repaid in full from, and  
28 to the extent of, any third-party benefits, regardless of  
29 whether a recipient is made whole or other creditors paid.  
30 Principles of common law and equity as to assignment, lien,  
31 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           ~~(g) 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. For the purposes of this  
24 paragraph, an attorney's fee paid, payable, or negotiated, may  
25 not exceed an amount calculated in accordance with the  
26 lodestar process approved by the Florida Supreme Court, which  
27 attorney's fee shall be set by the determination of the number  
28 of hours reasonably expended on the matter and the reasonable  
29 hourly rate for the services provided by the private attorney.  
30 In contingent fee matters, the lodestar figure calculated may  
31 include a contingency risk multiplier not greater than 2.

1 (c) An agreement pursuant to this subsection may  
2 permit reasonable litigation costs or expenses to be paid from  
3 the department's recovery to a person under contract with the  
4 department.

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

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

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

29 (17)~~(18)~~ A recipient or his or her legal  
30 representative or any person representing, or acting as agent  
31 for, a recipient or the recipient's legal representative, who

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

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

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

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

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

22           1. Until such time as the department takes final  
23 agency action;

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

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

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

30           ~~(19) In cases of suspected criminal violations or~~  
31 ~~fraudulent activity, on the part of any person including a~~

1 ~~liable third party, the department is authorized to take any~~  
 2 ~~civil action permitted at law or equity to recover the~~  
 3 ~~greatest possible amount, including without limitation, treble~~  
 4 ~~damages under s. 772.73. In any action in which the recipient~~  
 5 ~~has no right to intervene, or does not exercise his or her~~  
 6 ~~right to intervene, any amounts recovered under this~~  
 7 ~~subsection shall be the property of the agency, and the~~  
 8 ~~recipient shall have no right or interest in such recovery.~~

9 (18)~~(20)~~ In recovering any payments in accordance with  
 10 this section, the department is authorized to make appropriate  
 11 settlements.

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

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

24 (a) The secretary of the department and the Insurance  
 25 Commissioner shall enter into a cooperative agreement for  
 26 requesting and obtaining information necessary to effect the  
 27 purpose and objective of this section.

28 1. The department shall request only that information  
 29 necessary to determine whether health insurance as defined  
 30 pursuant to s. 624.603, or those health services provided  
 31 pursuant to chapter 641, could be, should be, or have been

1 claimed and paid with respect to items of medical care and  
2 services furnished to any person eligible for services under  
3 this section.

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

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

13         (b) The department and the Department of Insurance  
14 jointly shall adopt rules for the development and  
15 administration of the cooperative agreement. The rules shall  
16 include the following:

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

19             2. A method for furnishing requested information.

20             3. Procedures for requesting exemption from the  
21 cooperative agreement based on an unreasonable burden to the  
22 reporting entity.

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

26         Section 2. Paragraph (a) of subsection (9) of section  
27 624.424, Florida Statutes, is amended to read:

28             624.424 Annual statement and other information.--

29             (9)(a) Each authorized insurer shall, pursuant to s.  
30 409.910(20)~~s. 409.910(22)~~, provide records and information to  
31 the Department of Health ~~and Rehabilitative Services~~ to

1 identify potential insurance coverage for claims filed with  
 2 that department and its fiscal agents for payment of medical  
 3 services under the Medicaid program.

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

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