

By the Committee on Fiscal Policy and Senator Casas

309-2215-99

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A bill to be entitled
An act relating to Medicaid third-party
liability; amending s. 409.910, F.S.;
clarifying that the state may recover and
retain damages in excess of Medicaid payments
made under certain circumstances; providing for
retroactive application; providing an effective
date.

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

Section 1. Subsections (4) and (7) of section 409.910,
Florida Statutes, 1998 Supplement, are amended to read:

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

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

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

(b) Situations in which the department learns of the
existence of a liable third party or in which third-party
benefits are discovered or become available after medical
assistance has been provided by Medicaid. Nothing in this
subsection shall limit the authority of the state or any
agency thereof to bring or maintain actions seeking recoveries
in excess of the amount paid as Medicaid benefits under

1 alternative theories of liability in conjunction with an
2 action filed pursuant to this section.

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

6 (a) Recovery of such benefits shall be collected
7 directly from:

8 1. Any third party;

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

11 3. The provider of a recipient's medical services if
12 third-party benefits have been recovered by the provider;
13 notwithstanding any provision of this section, to the
14 contrary, however, no provider shall be required to refund or
15 pay to the department any amount in excess of the actual
16 third-party benefits received by the provider from a
17 third-party payor for medical services provided to the
18 recipient; or

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

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

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

27 2. To the Federal Government, the federal share of the
28 state Medicaid expenditures minus any incentive payment made
29 in accordance with paragraph (14)(a) and federal law, and
30 minus any other amount permitted by federal law to be
31 deducted.

1 3. To the recipient, after deducting any known amounts
2 owed to the department for any related medical assistance or
3 to health care providers, any remaining amount. This amount
4 shall be treated as income or resources in determining
5 eligibility for Medicaid.

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7 The provisions of this subsection do not apply to any proceeds
8 received by the state, or any agency thereof, pursuant to a
9 final order, judgment, or settlement agreement, in any matter
10 in which the state asserts claims brought on its own behalf,
11 and not as a subrogee of a recipient, or under other theories
12 of liability. The provisions of this subsection do not apply
13 to any proceeds received by the state, or an agency thereof,
14 pursuant to a final order, judgment, or settlement agreement,
15 in any matter in which the state asserted both claims as a
16 subrogee and additional claims, except as to those sums
17 specifically identified in the final order, judgment, or
18 settlement agreement as reimbursements to the recipient as
19 expenditures for the named recipient on the subrogation claim.

20 Section 2. The amendments to section 409.910, Florida
21 Statutes, 1998 Supplement, made by this act are intended to
22 clarify existing law and are remedial in nature. As such,
23 they are specifically made retroactive to October 1, 1990, and
24 shall apply to all causes of action arising on or after
25 October 1, 1990.

26 Section 3. This act shall take effect upon becoming a
27 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 1948

Clarifies legislative intent underlying the enactment of the 1994 amendments to s.409.910, F.S., that authorized an independent cause of action to recover from liable third parties Medicaid benefits paid on behalf of unidentified recipients.

Clarifies that distribution of the recovery in the independent cause of action is not to a recipient unless the recipient is named in the judgment, order, or settlement agreement in which the department prevailed and obtained a recovery.

Deletes proposed revisions to the guidelines to be applied by the Legislature in the expenditure of funds paid to the State of Florida as a result of the settlement of the lawsuit against the tobacco industry.