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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.

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

- 1 (a) Recovery of such benefits shall be collected
2 directly from:
- 3 1. Any third party;
 - 4 2. The recipient or legal representative, if he or she
5 has received third-party benefits;
 - 6 3. The provider of a recipient's medical services if
7 third-party benefits have been recovered by the provider;
8 notwithstanding any provision of this section, to the
9 contrary, however, no provider shall be required to refund or
10 pay to the department any amount in excess of the actual
11 third-party benefits received by the provider from a
12 third-party payor for medical services provided to the
13 recipient; or
 - 14 4. Any person who has received the third-party
15 benefits.
- 16 (b) Upon receipt of any recovery or other collection
17 pursuant to this section, the department shall distribute the
18 amount collected as follows:
- 19 1. To itself, an amount equal to the state Medicaid
20 expenditures for the recipient plus any incentive payment made
21 in accordance with paragraph (14)(a).
 - 22 2. To the Federal Government, the federal share of the
23 state Medicaid expenditures minus any incentive payment made
24 in accordance with paragraph (14)(a) and federal law, and
25 minus any other amount permitted by federal law to be
26 deducted.
 - 27 3. To the recipient, after deducting any known amounts
28 owed to the department for any related medical assistance or
29 to health care providers, any remaining amount. This amount
30 shall be treated as income or resources in determining
31 eligibility for Medicaid.

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

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

21 Section 3. This act shall take effect upon becoming a
22 law.

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