

By Senator Aronberg

27-01061-09

20092588

1 A bill to be entitled
2 An act relating to Medicaid; amending s. 409.901,
3 F.S.; redefining the term "third party" for purposes
4 of the Medicaid program to include additional
5 entities; amending s. 409.910, F.S.; revising the
6 requirements for distributing recovered Medicaid
7 assistance with respect to third parties; providing
8 that certain settlements are void under certain
9 circumstances under the Medicaid Third-Party Liability
10 Act; revising the manner in which an amount recovered
11 from an action in tort against a third party is
12 distributed; requiring the Agency for Health Care
13 Administration to request information, including the
14 social security number, to determine whether health
15 insurance or health services could be, should be, or
16 have been claimed; providing requirements for making
17 agency requests; requiring certain pharmacy benefits
18 managers to accept Medicaid billings that are prepared
19 using the current Medicare standard billing format;
20 prohibiting an entity, insurer, or third party from
21 excluding the processing of Medicaid subrogation
22 claims; amending s. 733.701, F.S.; requiring the
23 clerks of court to submit a report that notifies the
24 agency of probate openings; providing requirements for
25 the report; amending s. 735.206, F.S.; providing that
26 the Agency for Health Care Administration is a
27 creditor for any person who is 55 years of age or
28 older at the time of death with regard to probate
29 proceedings; requiring a petitioner to serve a copy of

27-01061-09

20092588

30 the petition for summary administration and the death
31 certificate upon the agency; providing a timeframe in
32 which the court may enter an order of summary
33 administration allowing distribution of assets to
34 persons or creditors; authorizing a creditor who did
35 not receive notice and for whom provision for payment
36 was not made to enforce a claim; requiring the court
37 to provide the creditor with a copy of the petition
38 and order of summary administration; providing an
39 effective date.

40
41 Be It Enacted by the Legislature of the State of Florida:

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43 Section 1. Subsection (27) of section 409.901, Florida
44 Statutes, is amended to read:

45 409.901 Definitions; ss. 409.901-409.920.—As used in ss.
46 409.901-409.920, except as otherwise specifically provided, the
47 term:

48 (27) "Third party" means an individual, entity, or program,
49 excluding Medicaid, that is, may be, could be, should be, or has
50 been liable for all or part of the cost of medical services
51 related to any medical assistance covered by Medicaid. A third
52 party includes a third-party administrator, ~~or~~ a pharmacy
53 benefits manager, a self-insured plan, a group health plan as
54 defined in s. 607(1) of the Employee Retirement Income Security
55 Act of 1974, or a managed care organization or other party that
56 is, by state contract or agreement, legally responsible for
57 payment of a claim for a health care item or service.

58 Section 2. Subsection (7), paragraphs (d) and (f) of

27-01061-09

20092588

59 subsection (11), and subsections (20) and (21) of section
60 409.910, Florida Statutes, are amended to read:

61 409.910 Responsibility for payments on behalf of Medicaid-
62 eligible persons when other parties are liable.-

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

66 (a) Recovery of such benefits shall be collected directly
67 from:

68 1. Any third party;

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

71 3. The provider of a recipient's medical services if third-
72 party benefits have been recovered by the provider;
73 notwithstanding any provision of this section, to the contrary,
74 however, no provider shall be required to refund or pay to the
75 agency any amount in excess of the actual third-party benefits
76 received by the provider from a third-party payor for medical
77 services provided to the recipient; or

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

79 (b) Upon receipt of any recovery or other collection
80 pursuant to this section, the agency shall distribute the amount
81 collected as follows:

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

85 2. To the Federal Government, the federal share of the
86 state Medicaid expenditures minus any incentive payment made in
87 accordance with paragraph (14) (a) and federal law, and minus any

27-01061-09

20092588

88 other amount permitted by federal law to be deducted.

89 3. To the recipient, after deducting any known amounts owed
90 to the agency for any related medical assistance or to health
91 care providers, any remaining amount. This amount shall be
92 treated as income or resources in determining eligibility for
93 Medicaid.

94 (c) In determining third-party benefits for which the third
95 party is liable, the third party shall abide by the same
96 treatment authorization or precertification required of the
97 provider by Medicaid, and as provided by Medicaid, through which
98 treatment authorization or precertification the agency paid for
99 the medical assistance.

100

101 The provisions of this subsection do not apply to any proceeds
102 received by the state, or any agency thereof, pursuant to a
103 final order, judgment, or settlement agreement, in any matter in
104 which the state asserts claims brought on its own behalf, and
105 not as a subrogee of a recipient, or under other theories of
106 liability. The provisions of this subsection do not apply to any
107 proceeds received by the state, or an agency thereof, pursuant
108 to a final order, judgment, or settlement agreement, in any
109 matter in which the state asserted both claims as a subrogee and
110 additional claims, except as to those sums specifically
111 identified in the final order, judgment, or settlement agreement
112 as reimbursements to the recipient as expenditures for the named
113 recipient on the subrogation claim.

114 (11) The agency may, as a matter of right, in order to
115 enforce its rights under this section, institute, intervene in,
116 or join any legal or administrative proceeding in its own name

27-01061-09

20092588

117 in one or more of the following capacities: individually, as
118 subrogee of the recipient, as assignee of the recipient, or as
119 lienholder of the collateral.

120 (d) A ~~No~~ judgment, award, or settlement in any action by a
121 recipient or his or her legal representative to recover damages
122 for injuries or other third-party benefits, when the agency has
123 an interest, may not ~~shall~~ be satisfied without first giving the
124 agency notice and a reasonable opportunity to file and satisfy
125 its lien, and satisfy its assignment and subrogation rights or
126 proceed with any action as permitted in this section. If the
127 agency is not notified of a settlement and given an opportunity
128 to present its recovery lien for medical assistance paid, that
129 settlement shall be rendered voidable.

130 (f) Notwithstanding any provision in this section to the
131 contrary, if ~~in the event of~~ an action in tort against a third
132 party in which the recipient or his or her legal representative
133 is a party which results in a judgment, award, or settlement
134 from a third party, the amount recovered shall be distributed as
135 follows:

136 1. After attorney's fees and taxable costs as defined by
137 the Florida Rules of Civil Procedure have been subtracted from
138 the gross settlement amount, one-half of the remaining recovery
139 shall be paid to the agency up to the total amount of medical
140 assistance provided by Medicaid.

141 2. The remaining amount of the recovery shall be paid to
142 the recipient.

143 3. For purposes of calculating the agency's recovery of
144 medical assistance benefits paid, the fee for services of an
145 attorney retained by the recipient or his or her legal

27-01061-09

20092588

146 representative shall be calculated at 25 percent of the
147 judgment, award, or settlement.

148 4. Notwithstanding any provision of this section to the
149 contrary, the agency shall be entitled to all medical coverage
150 benefits up to the total amount of medical assistance provided
151 by Medicaid. For purposes of this paragraph, "medical coverage"
152 means any benefits under health insurance, a health maintenance
153 organization, a preferred provider arrangement, or a prepaid
154 health clinic, and the portion of benefits designated for
155 medical payments under coverage for workers' compensation,
156 personal injury protection, and casualty.

157 5. The formula reduction shall be applied only to the
158 entire settlement amount and may not be applied to an
159 apportionment of the settlement amount.

160 (20) Entities providing health insurance as defined in s.
161 624.603, health maintenance organizations and prepaid health
162 clinics as defined in chapter 641, and, on behalf of their
163 clients, third-party administrators and pharmacy benefits
164 managers as defined in s. 409.901(27) shall provide such records
165 and information as are necessary to accomplish the purpose of
166 this section, unless such requirement results in an unreasonable
167 burden.

168 (a) The director of the agency and the Director of the
169 Office of Insurance Regulation of the Financial Services
170 Commission shall enter into a cooperative agreement for
171 requesting and obtaining information necessary to effect the
172 purpose and objective of this section.

173 1. The agency shall request only that information
174 necessary, including the social security number, to determine

27-01061-09

20092588

175 whether health insurance as defined pursuant to s. 624.603, or
176 those health services provided pursuant to chapter 641, could
177 be, should be, or have been claimed and paid with respect to
178 items of medical care and services furnished to any person
179 eligible for services under this section. Requests may be
180 performed on a case-by-case basis in the form of online or
181 electronic verification, as available by the third party and
182 consistent with federal guidelines for payment operation.

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

185 3. The cooperative agreement or rules adopted under this
186 subsection may include financial arrangements to reimburse the
187 reporting entities for reasonable costs or a portion thereof
188 incurred in furnishing the requested information. Neither the
189 cooperative agreement nor the rules shall require the automation
190 of manual processes to provide the requested information.

191 (b) The agency and the Financial Services Commission
192 jointly shall adopt rules for the development and administration
193 of the cooperative agreement. The rules shall include the
194 following:

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

197 2. A method for furnishing requested information.

198 3. Procedures for requesting exemption from the cooperative
199 agreement based on an unreasonable burden to the reporting
200 entity.

201 (21) Entities providing or administering health insurance
202 as defined in s. 624.603, ~~and~~ health maintenance organizations
203 as defined in chapter 641, and pharmacy benefits managers

27-01061-09

20092588

204 processing pharmacy claims for any third party as defined in s.
205 409.901 requiring tape or electronic billing formats from the
206 agency shall accept Medicaid billings that are prepared using
207 the current Medicare standard billing format. If the insurance
208 entity or health maintenance organization is unable to use the
209 agency format, the entity shall accept paper claims from the
210 agency in lieu of tape or electronic billing, if provided that
211 these claims are prepared using current Medicare standard
212 billing formats. An entity, insurer, or third party as defined
213 in s. 409.901 may not exclude the processing of Medicaid
214 subrogation claims.

215 Section 3. Section 733.701, Florida Statutes, is amended to
216 read:

217 733.701 Notifying creditors.—

218 (1) Unless creditors' claims are otherwise barred by s.
219 733.710, every personal representative shall cause notice to
220 creditors to be published and served under s. 733.2121.

221 (2) Each clerk of the circuit court in this state shall, on
222 or before the 10th day of each month, submit a report that
223 notifies the Medicaid program within the Agency for Health Care
224 Administration of all probate openings during the preceding
225 month. This report shall be provided at no charge to the agency.
226 The report must include information identifying the decedent at
227 a minimum by name, social security number, unless it is
228 unavailable, and date of death. The report must also include the
229 probate case number; the names and addresses of the respective
230 personal representatives, administrators, or curators appointed;
231 the probate attorneys; and the probable value of the estates.

232 (3) The clerk of the circuit court shall also furnish, at

27-01061-09

20092588

233 no charge to the agency, such additional information from the
234 records and files of the circuit court in regard to such estates
235 as the agency may require.

236 Section 4. Subsections (2), (3), and (4) of section
237 735.206, Florida Statutes, are amended to read:

238 735.206 Summary administration distribution.—

239 (2) Prior to entry of the order of summary administration,
240 the petitioner shall make a diligent search and reasonable
241 inquiry for any known or reasonably ascertainable creditors,
242 serve a copy of the petition on those creditors, and make
243 provision for payment for those creditors to the extent that
244 assets are available. If a decedent at the time of death is 55
245 years of age or older, the Agency for Health Care Administration
246 shall be considered a reasonable ascertainable creditor. The
247 petitioner shall promptly serve a copy of the petition for
248 summary administration and a copy of the death certificate on
249 the agency at the time the petition is filed with the court,
250 unless the agency has already filed a statement of claim in the
251 estate proceedings.

252 (3) After 60 days following the date of filing the
253 petition, the court may enter an order of summary administration
254 allowing immediate distribution of the assets to the persons or
255 creditors entitled to them.

256 (4) The order of summary administration and distribution so
257 entered shall have the following effect:

258 (a) Those to whom specified parts of the decedent's estate,
259 including exempt property, are assigned by the order shall be
260 entitled to receive and collect the parts and to have the parts
261 transferred to them. They may maintain actions to enforce the

27-01061-09

20092588

262 right.

263 (b) Debtors of the decedent, those holding property of the
264 decedent, and those with whom securities or other property of
265 the decedent are registered are authorized and empowered to
266 comply with the order by paying, delivering, or transferring to
267 those specified in the order the parts of the decedent's estate
268 assigned to them by the order, and the persons so paying,
269 delivering, or transferring shall not be accountable to anyone
270 else for the property.

271 (c) After the entry of the order, bona fide purchasers for
272 value from those to whom property of the decedent may be
273 assigned by the order shall take the property free of all claims
274 of creditors of the decedent and all rights of the surviving
275 spouse and all other beneficiaries.

276 (d) Property of the decedent that is not exempt from claims
277 of creditors and that remains in the hands of those to whom it
278 may be assigned by the order shall continue to be liable for
279 claims against the decedent until barred as provided in the
280 code. Any known or reasonably ascertainable creditor who did not
281 receive notice and for whom provision for payment was not made
282 may enforce the claim and, if the creditor prevails, shall be
283 awarded reasonable attorney's fees as an element of costs
284 against those who joined in the petition. In order to enforce
285 its claim, such creditor may file its claim after the order has
286 been signed or probate closed. The court shall provide the
287 claimant with a copy of the petition and the order and, if not
288 found on the petition or order, the name and addresses of all
289 heirs or beneficiaries who may have received property that was
290 not exempt from claims of creditors as may otherwise be

27-01061-09

20092588

291 available in the probate records.

292 (e) The recipients of the decedent's property under the
293 order of summary administration shall be personally liable for a
294 pro rata share of all lawful claims against the estate of the
295 decedent, but only to the extent of the value of the estate of
296 the decedent actually received by each recipient, exclusive of
297 the property exempt from claims of creditors under the
298 constitution and statutes of Florida.

299 (f) After 2 years from the death of the decedent, neither
300 the decedent's estate nor those to whom it may be assigned shall
301 be liable for any claim against the decedent, unless proceedings
302 have been taken for the enforcement of the claim.

303 (g) Any heir or devisee of the decedent who was lawfully
304 entitled to share in the estate but who was not included in the
305 order of summary administration and distribution may enforce all
306 rights in appropriate proceedings against those who procured the
307 order and, if successful, shall be awarded reasonable attorney's
308 fees as an element of costs.

309 Section 5. This act shall take effect upon becoming a law.