

CHAPTER 99-231

Senate Bill No. 562

An act relating to Medicaid fraud; amending s. 409.910, F.S., relating to Medicaid third-party liability; 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. (1) Subsection (7) of section 409.910, Florida Statutes, 1998 Supplement, is amended to read:

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

(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.

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

1. Any third party;
2. The recipient or legal representative, if he or she has received third-party benefits;
3. The provider of a recipient's medical services if third-party benefits have been recovered by the provider; notwithstanding any provision of this section, to the contrary, however, no provider shall be required to refund or pay to the department any amount in excess of the actual third-party benefits received by the provider from a third-party payor for medical services provided to the recipient; or
4. Any person who has received the third-party benefits.

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

1. To itself, an amount equal to the state Medicaid expenditures for the recipient plus any incentive payment made in accordance with paragraph (14)(a).
2. To the Federal Government, the federal share of the state Medicaid expenditures minus any incentive payment made in accordance with paragraph (14)(a) and federal law, and minus any other amount permitted by federal law to be deducted.
3. To the recipient, after deducting any known amounts owed to the department for any related medical assistance or to health care providers,

any remaining amount. This amount shall be treated as income or resources in determining eligibility for Medicaid.

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

(2) The amendments to section 409.910, Florida Statutes, 1998 Supplement, provided herein are intended to clarify existing law and are remedial in nature. As such, they are specifically made retroactive to October 1, 1990, and shall apply to all causes of action arising on or after October 1, 1990.

Approved by the Governor June 4, 1999.

Filed in Office Secretary of State June 4, 1999.