By Senator Fasano

11-401-06

1	A bill to be entitled
2	An act relating to community behavioral health
3	agencies; creating s. 394.9085, F.S.; providing
4	that certain facilities or programs defined in
5	chs. 394 and 397, F.S., have liability limits
6	in tort actions under certain circumstances;
7	limiting net economic damages allowed per
8	claim; requiring that damages be offset by
9	collateral-source payment in accordance with s.
10	768.76, F.S.; providing for claims bills to be
11	filed with the Legislature; requiring that
12	costs to defend actions be assumed by the
13	provider or its insurer; specifying occasions
14	upon which immunities enjoyed by the provider
15	extend to the employee; requiring that
16	providers obtain and maintain specified
17	liability coverage; specifying that persons
18	providing contractual services to the state are
19	not considered agents or employees under ch.
20	440, F.S.; providing for an annual increase in
21	the conditional limitations on damages;
22	providing an effective date.
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24	Be It Enacted by the Legislature of the State of Florida:
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26	Section 1. Section 394.9085, Florida Statutes, is
27	created to read:
28	394.9085 Behavioral provider liability
29	(1) In any tort action based on services provided for
30	crisis stabilization brought against a detoxification program
31	as defined in s. 397.311(18)(b), an addictions receiving

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facility as defined in s. 397.311(18)(a), or a designated 2 public receiving facility as defined in s. 394.455(26), net economic damages shall be limited to \$1 million per liability 3 4 claim, including, but not limited to, past and future medical expenses, wage loss, and loss of earning capacity, offset by 5 6 any collateral source payment paid in accordance with s. 7 768.76. In any tort action based on services provided for 8 crisis stabilization brought against any detoxification program as defined in s. 397.311(18)(b), an addictions 9 10 receiving facility as defined in s. 397.311(18)(a), or a designated public receiving facility as defined in s. 11 12 394.455(26), noneconomic damages shall be limited to \$200,000 13 per claim. Any claim may be settled up to policy limits without further act of the Legislature. A claims bill may be 14 brought on behalf of a claimant pursuant to s. 768.28 for any 15 amount exceeding the limits specified in this subsection. Any 16 costs in defending actions brought under this section shall be 18 assumed by the provider or its insurer. 19 (2) The liability of a detoxification program as 2.0 defined in s. 397.311(18)(b), an addictions receiving facility 21 as defined in s. 397.311(18)(a), or any designated public 2.2 receiving facility as defined in s. 394.455(26) shall be 23 exclusive and in place of all other liability of such provider. The same immunities from liability enjoyed by such 2.4 providers extend as well to each employee of the provider when 2.5 the employee is acting in furtherance of the provider's 26 2.7 responsibilities under its contract with the department. Such 2.8 immunities do not apply to a provider or employee who acts in a culpably negligent manner or with willful and wanton 29

disregard or unprovoked physical aggression if such acts

result in injury or death.

1	(3) The eliqible provider under this section must, as
2	part of its contract, obtain and maintain a minimum of \$1
3	million per claim and \$3 million per incident in general
4	liability coverage.
5	(4) This section does not designate a person who
6	provides contracted services to the Department of Children and
7	Family Services as an employee or agent of the state for
8	purposes of chapter 440.
9	(5) The Legislature is cognizant of the increasing
10	costs of goods and services each year and recognizes that
11	fixing a set amount of compensation actually has the effect of
12	a reduction in compensation each year. Accordingly, the
13	conditional limitations on damages in this section shall be
14	increased at the rate of 5 percent each year, prorated from
15	July 1, 2006, to the date at which damages subject to such
16	limitations are awarded by final judgment or settlement.
17	Section 2. This act shall take effect July 1, 2006.
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20	SENATE SUMMARY
21	Limits the liability of a detoxification program, an addictions receiving facility, or a designated public
22 receiving facility to \$1 million per claim. Requires	receiving facility to \$1 million per claim. Requires that providers maintain a minimum amount of liability coverage
23	of \$1 million per claim and \$3 million per incident. (See bill for details.)
24	pili for details.)
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