Florida Senate - 2005

CS for SB 182

By the Committee on Children and Families; and Senator Lynn

586-2126-05

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
б	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	that immunities enjoyed by the provider extend
15	to the employee; requiring that providers
16	obtain and maintain specified liability
17	coverage; specifying that persons providing
18	contractual services to the state are not
19	considered agents or employees under ch. 490,
20	F.S.; providing for an annual increase in the
21	conditional limitations on damages; providing
22	an effective date.
23	
24	Be It Enacted by the Legislature of the State of Florida:
25	
26	Section 1. Section 394.9085, Florida Statutes, is
27	created to read:
28	<u>394.9085 Behavioral provider liability</u>
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
	1

- 1	f_{1} will be an λ_{1} fine λ_{1} in β_{1} 207 $211(10)(1)$ and λ_{2} denote the λ_{1}
1	facility as defined in s. 397.311(18)(a), or a designated
2	public receiving facility as defined in s. 394.455(26), net
3	economic damages shall be limited to \$1 million per liability
4	claim, including, but not limited to, past and future medical
5	expenses, wage loss, and loss of earning capacity, offset by
б	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
9	program as defined in s. 397.311(18)(b), an addictions
10	receiving facility as defined in s. 397.311(18)(a), or a
11	designated public receiving facility as defined in s.
12	394.455(26), noneconomic damages shall be limited to \$200,000
13	per claim. Any claim may be settled up to policy limits
14	without further act of the Leqislature. A claims bill may be
15	brought on behalf of a claimant pursuant to s. 768.28 for any
16	amount exceeding the limits specified in this subsection. Any
17	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
20	defined in s. 397.311(18)(b), an addictions receiving facility
21	as defined in s. 397.311(18)(a), or any designated public
22	receiving facility as defined in s. 394.455(26) shall be
23	exclusive and in place of all other liability of such
24	provider. The same immunities from liability enjoyed by such
25	providers shall extend as well to each employee of the
26	provider when such employee is acting in furtherance of the
27	provider's responsibilities under its contract with the
28	department. Such immunities shall not be applicable to a
29	provider or employee who acts in a culpably negligent manner
30	or with willful and wanton disregard or unprovoked physical
31	aggression when such acts result in injury or death.
	2

- 1	
1	(3) The eligible 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
б	provides contracted services to the Department of Children and
7	Family Services as an employee or agent of the state for
8	purposes of ch. 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	the July 1, 2005, 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, 2005.
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
	3

CS for SB 182

1 2	STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR Senate Bill 182
3	
4	Removes the provisions amending s. 768.28, F.S., and instead creates s. 394.90085, F.S.
5 6	Removes the provision designating certain substance abuse treatment providers as agents of the state for the purposes of sovereign immunity.
7 8	Takes out the provision granting substance abuse provider immunity for publicly funded services.
9 10	Eliminates the requirement that contracts provide for the indemnification of the state by the agent for liabilities incurred up to the limits set out in law.
11 12	Provides that facilities or programs defined in s. 397.311(18)(b), s.397.311(18)(a), and s. 394.455(26), F.S., shall have specified liability limits in tort actions that are based on services for crisis stabilization.
13 14	Specifies that damages awarded must be offset by any collateral source payment paid in accordance with s. 768.76, F.S.
15 16	Requires that the costs of defending actions brought under this section must be assumed by the provider or its insurer.
17 18	Specifies that immunities enjoyed by the provider extend to employees under certain conditions.
19	Provides that, as a part of the contract, providers must obtain and maintain a specified amount of general liability coverage.
20 21	Specifies that limitations on damages specified by this act shall be increased at the rate of five percent each year.
22	
23	
24	
25	
26	
27 28	
20 29	
30	
31	