

1 A bill to be entitled
 2 An act relating to community behavioral health agencies;
 3 creating s. 394.9085, F.S.; providing that certain
 4 facilities or programs have liability limits in negligence
 5 actions under certain circumstances; limiting net economic
 6 damages allowed per claim; requiring that damages be
 7 offset by collateral source payment in accordance with s.
 8 768.76, F.S.; requiring that costs to defend actions be
 9 assumed by the provider or its insurer; specifying
 10 occasions upon which the limitations on liability enjoyed
 11 by the provider extend to the employee; requiring that
 12 providers obtain and maintain specified liability
 13 coverage; specifying that persons providing contractual
 14 services to the state are not considered agents or
 15 employees under ch. 440, F.S.; providing for an annual
 16 increase in the conditional limitations on damages;
 17 providing definitions; providing construction; preserving
 18 sovereign immunity for governmental units and entities
 19 protected by sovereign immunity; providing an effective
 20 date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 394.9085, Florida Statutes, is created
 25 to read:

26 394.9085 Behavioral provider liability.--

27 (1) (a) In any negligence action for damages for personal
28 injury or wrongful death arising out of the provision of
29 services for crisis stabilization brought against a
30 detoxification program, an addictions receiving facility, or a
31 designated public receiving facility, net economic damages shall
32 be limited to \$1 million per liability claim, including, but not
33 limited to, past and future medical expenses, wage loss, and
34 loss of earning capacity. In computing net economic damages,
35 such damages shall be offset by any collateral source payment
36 paid in accordance with s. 768.76.

37 (b) In any negligence action for damages for personal
38 injury or wrongful death arising out of the provision of
39 services for crisis stabilization brought against any
40 detoxification program, an addictions receiving facility, or a
41 designated public receiving facility, noneconomic damages shall
42 be limited to \$200,000 per claim.

43 (c) Any costs in defending actions brought under this
44 section shall be assumed by the provider or its insurer.

45 (2) The limitations on liability of a detoxification
46 program, an addictions receiving facility, or any designated
47 public receiving facility as described in subsection (1) shall
48 be exclusive. Such limitations apply to each employee of the
49 provider when the employee is acting in furtherance of the
50 provider's responsibilities under its contract with the
51 department. Such limitations do not apply to a provider or
52 employee who acts in a culpably negligent manner or with willful

53 and wanton disregard or unprovoked physical aggression if such
54 acts result in injury or death.

55 (3) The eligible provider under this section must, as part
56 of its contract, obtain and maintain an insurance policy
57 providing a minimum of \$1 million per claim and \$3 million per
58 incident in coverage for claims described in subsection (1).

59 (4) This section does not designate a person who provides
60 contracted services to the department as an employee or agent of
61 the state for purposes of chapter 440.

62 (5) The Legislature is cognizant of the increasing costs
63 of goods and services each year and recognizes that fixing a set
64 amount of compensation actually has the effect of a reduction in
65 compensation each year. Accordingly, the conditional limitations
66 on damages in this section shall be increased at the rate of 5
67 percent each year, prorated from July 1, 2006, to the date at
68 which damages subject to such limitations are awarded by final
69 judgment or settlement.

70 (6) For purposes of this section, the terms
71 "detoxification program," "addictions receiving facility," and
72 "receiving facility" have the same meanings as those provided in
73 ss. 397.311(18)(b), 397.311(18)(a), and 394.455(26),
74 respectively.

75 (7) This section shall not be construed to waive sovereign
76 immunity for any governmental unit or other entity protected by
77 sovereign immunity. Section 768.28 shall continue to apply to
78 all governmental units and such entities.

79 Section 2. This act shall take effect July 1, 2006.