



244096

LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: WD | . | |
| 04/13/2011 | . | |
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The Committee on Banking and Insurance (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (f), (h), (j), and (l) of subsection (1) and paragraph (a) of subsection (2) of section 409.1671, Florida Statutes, are amended to read:

409.1671 Foster care and related services; outsourcing.—
(1)

(f) ~~1.~~ The Legislature finds that the state has traditionally provided foster care services to children who are ~~have been~~ the responsibility of the state. As such, foster



13 children have not had the right to recover for injuries beyond
14 the limitations specified in s. 768.28. The Legislature has also
15 determined that foster care and related services need to be
16 outsourced ~~pursuant to this section~~ and that the provision of
17 such services is of paramount importance to the state. The
18 purpose for such outsourcing is to increase the level of safety,
19 security, and stability of children who are or become the
20 responsibility of the state.

21 1. One of the components necessary to secure a safe and
22 stable environment for such children is for ~~that~~ private
23 providers to maintain liability insurance. ~~As~~ Such, insurance
24 needs to be available and remain available to nongovernmental
25 foster care and related services providers without the resources
26 of such providers being significantly reduced by the cost of
27 maintaining such insurance. To ensure that these resources are
28 not significantly reduced, specified limits of liability are
29 necessary for eligible lead community-based providers and
30 subcontractors engaged in the provision of services previously
31 performed by the Department of Children and Family Services.

32 2. The Legislature further finds that, by requiring the
33 following minimum levels of insurance, children in outsourced
34 foster care and related services will gain increased protection
35 ~~and rights of recovery in the event of injury than provided for~~
36 ~~in s. 768.28.~~

37 (h) Other than an entity to which s. 768.28 applies, any
38 eligible lead community-based provider, ~~as defined in paragraph~~
39 ~~(e),~~ or its employees or officers, except as otherwise provided
40 in paragraph (i), must, as a part of its contract, obtain
41 general liability coverage for a minimum of \$500,000 ~~\$1 million~~



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42 per occurrence or claim with a policy limit aggregate of ~~\$2~~ \$3
43 million ~~per incident~~ in general liability insurance coverage.

44 1. The eligible lead community-based provider must also
45 require that staff who transport client children and families in
46 their personal automobiles in order to carry out their job
47 responsibilities to obtain minimum bodily injury liability
48 insurance in the amount of \$100,000 per person claim, \$300,000
49 per accident incident, on their personal automobiles. In lieu of
50 personal motor vehicle insurance, the lead community-based
51 provider's casualty, liability, or motor vehicle insurance
52 carrier may provide nonowned automobile liability coverage. This
53 insurance provides liability insurance for automobiles that the
54 provider uses in connection with the provider's business but
55 does not own, lease, rent, or borrow. This coverage includes
56 automobiles owned by the employees of the provider or a member
57 of the employee's household ~~but only~~ while the automobiles are
58 used in connection with the provider's business. The nonowned
59 automobile coverage for the provider applies as excess coverage
60 over any other collectible insurance. The personal automobile
61 policy for the employee of the provider shall be primary
62 insurance, and the nonowned automobile coverage of the provider
63 acts as excess insurance to the primary insurance. The provider
64 shall provide a minimum limit of \$1 million per occurrence and
65 \$2 million in the aggregate for ~~in~~ nonowned automobile coverage.

66 2. In any tort action brought against ~~such~~ an eligible lead
67 community-based provider or employee, net economic damages are
68 ~~shall be~~ limited to \$500,000 ~~\$1 million~~ per occurrence, \$1
69 million in the aggregate, ~~liability claim~~ and \$100,000 per
70 automobile claim, including, but not limited to, past and future



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71 medical expenses, wage loss, and loss of earning capacity,
72 offset by any collateral source payment paid or payable. In any
73 tort action for economic damages, the total amount recoverable
74 by all claimants is limited to no more than \$1 million against
75 the Department of Children and Family Services, lead agencies,
76 and all subcontractors involved in the same incident or
77 occurrence, when totaled together. In any tort action brought
78 against such an eligible lead community-based provider,
79 noneconomic damages are ~~shall be~~ limited to \$200,000 per
80 occurrence and \$500,000 in the aggregate. In any tort action for
81 noneconomic damages, the total amount recoverable by all
82 claimants is limited to no more than \$1 million against the
83 department, lead agencies, and all subcontractors involved in
84 the same incident or occurrence, when totaled together ~~claim.~~

85 3. A claims bill may be brought on behalf of a claimant
86 pursuant to s. 768.28 for any amount exceeding the limits
87 specified in this paragraph. Any offset of collateral source
88 payments made as of the date of the settlement or judgment shall
89 be in accordance with s. 768.76. The lead community-based
90 provider is ~~shall~~ not be liable in tort for the acts or
91 omissions of its subcontractors or the officers, agents, or
92 employees of its subcontractors.

93 (j) Any subcontractor of an eligible lead community-based
94 provider, ~~as defined in paragraph (e),~~ which is a direct
95 provider of foster care and related services to children and
96 families, and its employees or officers, except as otherwise
97 provided in paragraph (i), must, as a part of its contract,
98 obtain general liability insurance coverage for a minimum of
99 \$500,000 ~~\$1 million~~ per occurrence or claim with a policy limit



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100 aggregate of/ \$2 \$3 million per incident in general liability
101 insurance coverage.

102 1. The subcontractor of an eligible lead community-based
103 provider must also require that staff who transport client
104 children and families in their personal automobiles in order to
105 carry out their job responsibilities obtain minimum bodily
106 injury liability insurance in the amount of \$100,000 per person
107 ~~claim~~, \$300,000 per accident incident, on their personal
108 automobiles. In lieu of personal motor vehicle insurance, the
109 subcontractor's casualty, liability, or motor vehicle insurance
110 carrier may provide nonowned automobile liability coverage. This
111 insurance provides liability insurance for automobiles that the
112 subcontractor uses in connection with the subcontractor's
113 business but does not own, lease, rent, or borrow. This coverage
114 includes automobiles owned by the employees of the subcontractor
115 or a member of the employee's household but only while the
116 automobiles are used in connection with the subcontractor's
117 business. The nonowned automobile coverage for the subcontractor
118 applies as excess coverage over any other collectible insurance.
119 The personal automobile policy for the employee of the
120 subcontractor is ~~shall be~~ primary insurance, and the nonowned
121 automobile coverage of the subcontractor acts as excess
122 insurance to the primary insurance. The subcontractor shall
123 provide a minimum limit of \$1 million per occurrence and \$2
124 million in the aggregate in nonowned automobile coverage.

125 2. In any tort action brought against such subcontractor or
126 employee, net economic damages are ~~shall be~~ limited to \$500,000
127 ~~\$1 million~~ per occurrence, \$1 million in the aggregate,
128 ~~liability claim~~ and \$100,000 per automobile claim, including,



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129 but not limited to, past and future medical expenses, wage loss,
130 and loss of earning capacity, offset by any collateral source
131 payment paid or payable. In any tort action for economic
132 damages, the total amount recoverable by all claimants is
133 limited to no more than \$2 million against the Department of
134 Children and Family Services, lead agencies, and all
135 subcontractors involved in the same incident or occurrence, when
136 totaled together. In any tort action brought against such
137 subcontractor, noneconomic damages shall be limited to \$200,000
138 per claim and \$500,000 per incident. In any tort action for
139 noneconomic damages, the total amount recoverable by all
140 claimants is limited to no more than \$1 million against the
141 department, lead agencies, and all subcontractors involved in
142 the same incident or occurrence, when totaled together.

143 3. A claims bill may be brought on behalf of a claimant
144 pursuant to s. 768.28 for any amount exceeding the limits
145 specified in this paragraph. Any offset of collateral source
146 payments made as of the date of the settlement or judgment shall
147 be in accordance with s. 768.76.

148 ~~(1) The Legislature is cognizant of the increasing costs of~~
149 ~~goods and services each year and recognizes that fixing a set~~
150 ~~amount of compensation actually has the effect of a reduction in~~
151 ~~compensation each year. Accordingly, the conditional limitations~~
152 ~~on damages in this section shall be increased at the rate of 5~~
153 ~~percent each year, prorated from the effective date of this~~
154 ~~paragraph to the date at which damages subject to such~~
155 ~~limitations are awarded by final judgment or settlement.~~

156 (2) (a) The Department of Children and Family Services may
157 contract for the delivery, administration, or management of



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158 protective services, the services specified in subsection (1)
159 relating to foster care, and other related services or programs,
160 as appropriate. The department shall use diligent efforts to
161 ensure that ~~retain responsibility for the quality of~~ contracted
162 services and programs ~~and shall ensure that services are of high~~
163 quality and delivered in accordance with applicable federal and
164 state statutes and regulations. However, the department is not
165 liable in tort for the acts or omissions of an eligible lead
166 community-based provider or the officers, agents, or employees
167 of the provider, nor is the department liable in tort for the
168 acts or omissions of the subcontractors of eligible lead
169 community-based providers or the officers, agents, or employees
170 of its subcontractors. The department may not require an
171 eligible lead community-based provider or its subcontractors to
172 indemnify the department for the department's own acts or
173 omissions, nor may the department require an eligible lead
174 community-based provider or its subcontractors to include the
175 department as an additional insured on any insurance policy. A
176 lead community-based provider may not require its subcontractors
177 to add the lead community-based provider as an additional
178 insured on a liability policy. The department shall ~~must~~ adopt
179 written policies and procedures for monitoring the contract for
180 the delivery of services by lead community-based providers. The
181 ~~These~~ policies and procedures must, at a minimum, address the
182 evaluation of fiscal accountability and program operations,
183 including provider achievement of performance standards,
184 provider monitoring of subcontractors, and timely followup of
185 corrective actions for significant monitoring findings related
186 to providers and subcontractors. These policies and procedures



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187 must also include provisions for reducing the duplication of the
188 department's program monitoring activities both internally and
189 with other agencies, to the extent possible. The department's
190 written procedures must ensure that the written findings,
191 conclusions, and recommendations from monitoring the contract
192 ~~for services of lead community-based providers~~ are communicated
193 to the director of the provider agency as expeditiously as
194 possible.

195 Section 2. This act shall take effect July 1, 2011.

196
197 ===== T I T L E A M E N D M E N T =====

198 And the title is amended as follows:

199 Delete everything before the enacting clause
200 and insert:

201 A bill to be entitled
202 An act relating to community-based care providers;
203 amending s. 409.1671, F.S.; decreasing the requisite
204 amount of insurance coverage for lead community-based
205 providers and their subcontractors; decreasing the
206 total amount of economic and noneconomic damages
207 recoverable from the Department of Children and Family
208 Services, the lead agencies, and all subcontractors;
209 providing immunity from liability for the department
210 for acts or omissions of a community-based provider or
211 subcontractor, or the officers, agents, or employees
212 thereof; prohibiting the department from requiring the
213 lead agency to indemnify the department or for a
214 subcontractor from requiring its subcontractors to add
215 the lead agency as an additional insured; providing an



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216 effective date.

217

218 WHEREAS, lead community-based providers were established to
219 provide foster care and related services, and

220 WHEREAS, the goal of establishing these providers was to
221 strengthen the support and commitment of communities to the
222 reunification of families and the care of children and families
223 and to increase the efficiency and accountability of providers,
224 and

225 WHEREAS, lead community-based providers provide services
226 identical to those previously provided by the Department of
227 Children and Family Services, which was protected when
228 delivering those services by the state's sovereign immunity
229 limits, and

230 WHEREAS, the costs of litigation and attorney's fees
231 diminishes the resources available to the children and families
232 served by lead community-based providers, and

233 WHEREAS, the Legislature finds that the limits of liability
234 for lead community-based providers should be reviewed, NOW,
235 THEREFORE,