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LEGISLATIVE ACTION

Senate

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House

The Committee on Banking and Insurance (Bogdanoff) recommended the following:

Senate Amendment (with title amendment)

Delete lines 64 - 197
and insert:

(h) Other than an entity to which s. 768.28 applies, any eligible lead community-based provider, ~~as defined in paragraph (e),~~ or its employees or officers, except as otherwise provided in paragraph (i), must, as a part of its contract, obtain general liability coverage for a minimum of \$1 million per occurrence or claim with a policy limit aggregate of/ \$2 \$3 million ~~per incident~~ in general liability insurance coverage.

1. The eligible lead community-based provider must also



466760

13 require that staff who transport client children and families in
14 their personal automobiles in order to carry out their job
15 responsibilities obtain minimum bodily injury liability
16 insurance in the amount of \$100,000 per person ~~claim~~, \$300,000
17 per accident ~~incident~~, on their personal automobiles. In lieu of
18 personal motor vehicle insurance, the lead community-based
19 provider's casualty, liability, or motor vehicle insurance
20 carrier may provide nonowned automobile liability coverage. This
21 insurance provides liability insurance for automobiles that the
22 provider uses in connection with the provider's business but
23 does not own, lease, rent, or borrow. This coverage includes
24 automobiles owned by the employees of the provider or a member
25 of the employee's household ~~but only~~ while the automobiles are
26 used in connection with the provider's business. The nonowned
27 automobile coverage for the provider applies as excess coverage
28 over any other collectible insurance. The personal automobile
29 policy for the employee of the provider shall be primary
30 insurance, and the nonowned automobile coverage of the provider
31 acts as excess insurance to the primary insurance. The provider
32 shall provide a minimum limit of \$1 million per occurrence and
33 \$2 million in the aggregate for ~~in~~ nonowned automobile coverage.

34 2. In any tort action brought against ~~such~~ an eligible lead
35 community-based provider or employee, net economic damages are
36 ~~shall be~~ limited to \$1 million per occurrence, \$2 million in the
37 aggregate, liability claim and \$100,000 per automobile claim,
38 including, but not limited to, past and future medical expenses,
39 wage loss, and loss of earning capacity, offset by any
40 collateral source payment paid or payable. In any tort action
41 brought against such an eligible lead community-based provider,



466760

42 noneconomic damages are ~~shall be~~ limited to \$200,000 per
43 occurrence and \$400,000 in the aggregate ~~claim~~.

44 3. A claims bill may be brought on behalf of a claimant
45 pursuant to s. 768.28 for any amount exceeding the limits
46 specified in this paragraph. Any offset of collateral source
47 payments made as of the date of the settlement or judgment shall
48 be in accordance with s. 768.76. The lead community-based
49 provider is ~~shall~~ not be liable in tort for the acts or
50 omissions of its subcontractors or the officers, agents, or
51 employees of its subcontractors.

52 (j) Any subcontractor of an eligible lead community-based
53 provider, ~~as defined in paragraph (e),~~ which is a direct
54 provider of foster care and related services to children and
55 families, and its employees or officers, except as otherwise
56 provided in paragraph (i), must, as a part of its contract,
57 obtain general liability insurance coverage for a minimum of \$1
58 million per occurrence or claim with a policy limit aggregate
59 of/ \$2 \$3 million per incident in general liability insurance
60 coverage.

61 1. The subcontractor of an eligible lead community-based
62 provider must also require that staff who transport client
63 children and families in their personal automobiles in order to
64 carry out their job responsibilities obtain minimum bodily
65 injury liability insurance in the amount of \$100,000 per person
66 ~~claim~~, \$300,000 per accident ~~incident~~, on their personal
67 automobiles. In lieu of personal motor vehicle insurance, the
68 subcontractor's casualty, liability, or motor vehicle insurance
69 carrier may provide nonowned automobile liability coverage. This
70 insurance provides liability insurance for automobiles that the



466760

71 subcontractor uses in connection with the subcontractor's
72 business but does not own, lease, rent, or borrow. This coverage
73 includes automobiles owned by the employees of the subcontractor
74 or a member of the employee's household but only while the
75 automobiles are used in connection with the subcontractor's
76 business. The nonowned automobile coverage for the subcontractor
77 applies as excess coverage over any other collectible insurance.
78 The personal automobile policy for the employee of the
79 subcontractor is ~~shall be~~ primary insurance, and the nonowned
80 automobile coverage of the subcontractor acts as excess
81 insurance to the primary insurance. The subcontractor shall
82 provide a minimum limit of \$1 million per occurrence and \$2
83 million in the aggregate in nonowned automobile coverage.

84 2. In any tort action brought against such subcontractor or
85 employee, net economic damages are ~~shall be~~ limited to \$1
86 million per occurrence, \$2 million in the aggregate, liability
87 ~~claim~~ and \$100,000 per automobile claim, including, but not
88 limited to, past and future medical expenses, wage loss, and
89 loss of earning capacity, offset by any collateral source
90 payment paid or payable. In any tort action brought against such
91 subcontractor, noneconomic damages shall be limited to \$200,000
92 per claim and \$400,000 in the aggregate.

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

98 ~~(1) The Legislature is cognizant of the increasing costs of~~
99 ~~goods and services each year and recognizes that fixing a set~~



466760

100 ~~amount of compensation actually has the effect of a reduction in~~
101 ~~compensation each year. Accordingly, the conditional limitations~~
102 ~~on damages in this section shall be increased at the rate of 5~~
103 ~~percent each year, prorated from the effective date of this~~
104 ~~paragraph to the date at which damages subject to such~~
105 ~~limitations are awarded by final judgment or settlement.~~

106 (2) (a) The Department of Children and Family Services may
107 contract for the delivery, administration, or management of
108 protective services, the services specified in subsection (1)
109 relating to foster care, and other related services or programs,
110 as appropriate. The department shall use diligent efforts to
111 ensure that ~~retain responsibility for the quality of~~ contracted
112 services and programs ~~and shall ensure that services are of high~~
113 quality and delivered in accordance with applicable federal and
114 state statutes and regulations. However, the department is not
115 liable in tort for the acts or omissions of an eligible lead
116 community-based provider or the officers, agents, or employees
117 of the provider, nor is the department liable in tort for the
118 acts or omissions of the subcontractors of eligible lead
119 community-based providers or the officers, agents, or employees
120 of its subcontractors. The department may not require an
121 eligible lead community-based provider or its subcontractors to
122 indemnify the department for the department's own acts or
123 omissions, nor may the department require an eligible lead
124 community-based provider or its subcontractors to include the
125 department as an additional insured on any insurance policy. A
126 lead community-based provider may not require its subcontractors
127 to add the lead community-based provider as an additional
128 insured on a liability policy. The department shall ~~must~~ adopt



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

And the title is amended as follows:

Delete lines 2 - 9

and insert:

An act relating to community-based care providers;
amending s. 409.1671, F.S.; decreasing the aggregate
amount of insurance coverage required for lead
community-based providers and their subcontractors;
providing immunity from liability for the department
for acts or omissions of a community-based provider or
subcontractor, or the officers, agents, or employees
thereof; prohibiting the department from requiring the
lead agency to indemnify the department or a
subcontractor from requiring its subcontractors to add
the lead agency as an additional insured; providing an
effective date.