

By Senator Latvala

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A bill to be entitled  
An act relating to foster care providers; amending s. 409.1671, F.S.; decreasing the limits of liability and requisite insurance coverage for lead community-based providers and subcontractors; providing immunity from liability for the Department of Children and Family Services for acts or omissions of a community-based provider or subcontractor, or the officers, agents, or employees thereof; providing an effective date.

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

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

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

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

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

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30 Be It Enacted by the Legislature of the State of Florida:

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

35 409.1671 Foster care and related services; outsourcing.—

36 (1)

37 (f)1. The Legislature finds that the state has  
38 traditionally provided foster care services to children who have  
39 been the responsibility of the state. As such, foster children  
40 have not had the right to recover for injuries beyond the  
41 limitations specified in s. 768.28. The Legislature has  
42 determined that foster care and related services need to be  
43 outsourced pursuant to this section and that the provision of  
44 such services is of paramount importance to the state. The  
45 purpose for such outsourcing is to increase the level of safety,  
46 security, and stability of children who are or become the  
47 responsibility of the state. One of the components necessary to  
48 secure a safe and stable environment for such children is that  
49 private providers maintain liability insurance. As such,  
50 insurance needs to be available and remain available to  
51 nongovernmental foster care and related services providers  
52 without the resources of such providers being significantly  
53 reduced by the cost of maintaining such insurance. To ensure  
54 that these resources are not significantly reduced, specified  
55 limits of liability are necessary for eligible lead community-  
56 based providers and subcontractors engaged in the provision of  
57 services previously performed by the Department of Children and  
58 Family Services.

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59           2. The Legislature further finds that, by requiring the  
60 following minimum levels of insurance, children in outsourced  
61 foster care and related services will gain increased protection  
62 ~~and rights of recovery in the event of injury than provided for~~  
63 ~~in s. 768.28.~~

64           (h) Other than an entity to which s. 768.28 applies, any  
65 eligible lead community-based provider, as defined in paragraph  
66 (e), or its employees or officers, except as otherwise provided  
67 in paragraph (i), must, as a part of its contract, obtain  
68 general liability coverage for a minimum of \$500,000 ~~\$1 million~~  
69 per claim with a policy limit aggregate of/ \$1.5 ~~\$3 million per~~  
70 ~~incident~~ in general liability insurance coverage. The eligible  
71 lead community-based provider must also require that staff who  
72 transport client children and families in their personal  
73 automobiles in order to carry out their job responsibilities  
74 obtain minimum bodily injury liability insurance in the amount  
75 of \$100,000 per claim, \$300,000 per incident, on their personal  
76 automobiles. In lieu of personal motor vehicle insurance, the  
77 lead community-based provider's casualty, liability, or motor  
78 vehicle insurance carrier may provide nonowned automobile  
79 liability coverage. This insurance provides liability insurance  
80 for automobiles that the provider uses in connection with the  
81 provider's business but does not own, lease, rent, or borrow.  
82 This coverage includes automobiles owned by the employees of the  
83 provider or a member of the employee's household but only while  
84 the automobiles are used in connection with the provider's  
85 business. The nonowned automobile coverage for the provider  
86 applies as excess coverage over any other collectible insurance.  
87 The personal automobile policy for the employee of the provider

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88 shall be primary insurance, and the nonowned automobile coverage  
89 of the provider acts as excess insurance to the primary  
90 insurance. The provider shall provide a minimum limit of \$1  
91 million in nonowned automobile coverage. In any tort action  
92 brought against such an eligible lead community-based provider  
93 or employee, net economic damages shall be limited to \$500,000  
94 ~~\$1 million~~ per liability claim, \$1.5 million per liability  
95 incident, and \$100,000 per automobile claim, including, but not  
96 limited to, past and future medical expenses, wage loss, and  
97 loss of earning capacity, offset by any collateral source  
98 payment paid or payable. In any tort action brought against an  
99 eligible lead community-based provider, the total economic  
100 damages recoverable by all claimants shall be limited to no more  
101 than \$2 million against all lead agencies and subcontractors  
102 involved in the same incident or occurrence, when totaled  
103 together. In any tort action brought against such an eligible  
104 lead community-based provider, noneconomic damages shall be  
105 limited to \$200,000 per claim and \$500,000 per incident. In any  
106 tort action brought against an eligible lead community-based  
107 provider, the total noneconomic damages recoverable by all  
108 claimants shall be limited to no more than \$1 million against  
109 all subcontractors and lead agencies involved in the same  
110 incident or occurrence, when totaled together. A claims bill may  
111 be brought on behalf of a claimant pursuant to s. 768.28 for any  
112 amount exceeding the limits specified in this paragraph. Any  
113 offset of collateral source payments made as of the date of the  
114 settlement or judgment shall be in accordance with s. 768.76.  
115 The lead community-based provider is ~~shall~~ not be liable in tort  
116 for the acts or omissions of its subcontractors or the officers,

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117 agents, or employees of its subcontractors.

118 (j) Any subcontractor of an eligible lead community-based  
119 provider, as defined in paragraph (e), which is a direct  
120 provider of foster care and related services to children and  
121 families, and its employees or officers, except as otherwise  
122 provided in paragraph (i), must, as a part of its contract,  
123 obtain general liability insurance coverage for a minimum of  
124 \$500,000 ~~\$1 million~~ per claim with a policy limit aggregate of  
125 \$1.5 ~~\$3 million per incident~~ in general liability insurance  
126 coverage. The subcontractor of an eligible lead community-based  
127 provider must also require that staff who transport client  
128 children and families in their personal automobiles in order to  
129 carry out their job responsibilities obtain minimum bodily  
130 injury liability insurance in the amount of \$100,000 per claim,  
131 \$300,000 per incident, on their personal automobiles. In lieu of  
132 personal motor vehicle insurance, the subcontractor's casualty,  
133 liability, or motor vehicle insurance carrier may provide  
134 nonowned automobile liability coverage. This insurance provides  
135 liability insurance for automobiles that the subcontractor uses  
136 in connection with the subcontractor's business but does not  
137 own, lease, rent, or borrow. This coverage includes automobiles  
138 owned by the employees of the subcontractor or a member of the  
139 employee's household but only while the automobiles are used in  
140 connection with the subcontractor's business. The nonowned  
141 automobile coverage for the subcontractor applies as excess  
142 coverage over any other collectible insurance. The personal  
143 automobile policy for the employee of the subcontractor shall be  
144 primary insurance, and the nonowned automobile coverage of the  
145 subcontractor acts as excess insurance to the primary insurance.

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146 The subcontractor shall provide a minimum limit of \$1 million in  
147 nonowned automobile coverage. In any tort action brought against  
148 such subcontractor or employee, net economic damages shall be  
149 limited to \$500,000 ~~\$1 million~~ per liability claim, \$1.5 million  
150 per liability incident, and \$100,000 per automobile claim,  
151 including, but not limited to, past and future medical expenses,  
152 wage loss, and loss of earning capacity, offset by any  
153 collateral source payment paid or payable. In any tort action  
154 brought against such subcontractor or employee, the total  
155 economic damages recoverable by all claimants shall be limited  
156 to no more than \$2 million against all subcontractors and lead  
157 agencies involved in the same incident or occurrence, when  
158 totaled together. In any tort action brought against such  
159 subcontractor, noneconomic damages shall be limited to \$200,000  
160 per claim and \$500,000 per incident. In any tort action brought  
161 against such subcontractor or employee, the total noneconomic  
162 damages recoverable by all claimants shall be limited to no more  
163 than \$1 million against all subcontractors and lead agencies  
164 involved in the same incident or occurrence, when totaled  
165 together. A claims bill may be brought on behalf of a claimant  
166 pursuant to s. 768.28 for any amount exceeding the limits  
167 specified in this paragraph. Any offset of collateral source  
168 payments made as of the date of the settlement or judgment shall  
169 be in accordance with s. 768.76.

170 ~~(1) The Legislature is cognizant of the increasing costs of~~  
171 ~~goods and services each year and recognizes that fixing a set~~  
172 ~~amount of compensation actually has the effect of a reduction in~~  
173 ~~compensation each year. Accordingly, the conditional limitations~~  
174 ~~on damages in this section shall be increased at the rate of 5~~

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175 ~~percent each year, prorated from the effective date of this~~  
176 ~~paragraph to the date at which damages subject to such~~  
177 ~~limitations are awarded by final judgment or settlement.~~

178 (2) (a) The department may contract for the delivery,  
179 administration, or management of protective services, the  
180 services specified in subsection (1) relating to foster care,  
181 and other related services or programs, as appropriate. The  
182 department shall use diligent efforts to ensure that ~~retain~~  
183 ~~responsibility for the quality of~~ contracted services and  
184 programs and ~~shall ensure that services~~ are of high quality and  
185 delivered in accordance with applicable federal and state  
186 statutes and regulations. However, the department is not liable  
187 in tort for the acts or omissions of an eligible lead community-  
188 based provider or the officers, agents, or employees of the  
189 provider, nor is the department liable in tort for the acts or  
190 omissions of the subcontractors of eligible lead community-based  
191 providers or the officers, agents, or employees of its  
192 subcontractors. The department may not require an eligible lead  
193 community-based provider or its subcontractors to indemnify the  
194 department for the department's own acts or omissions, nor may  
195 the department require an eligible lead community-based provider  
196 or its subcontractors to include the department as an additional  
197 insured on any insurance policy. The department must adopt  
198 written policies and procedures for monitoring the contract for  
199 delivery of services by lead community-based providers. These  
200 policies and procedures must, at a minimum, address the  
201 evaluation of fiscal accountability and program operations,  
202 including provider achievement of performance standards,  
203 provider monitoring of subcontractors, and timely followup of

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204 corrective actions for significant monitoring findings related  
205 to providers and subcontractors. These policies and procedures  
206 must also include provisions for reducing the duplication of the  
207 department's program monitoring activities both internally and  
208 with other agencies, to the extent possible. The department's  
209 written procedures must ensure that the written findings,  
210 conclusions, and recommendations from monitoring the contract  
211 for services of lead community-based providers are communicated  
212 to the director of the provider agency as expeditiously as  
213 possible.

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