

By Senator Latvala

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1 A bill to be entitled

2 An act relating to foster care providers; amending s.
3 409.1671, F.S.; decreasing the limits of liability and
4 requisite insurance coverage for lead community-based
5 providers and subcontractors; providing immunity from
6 liability for the Department of Children and Family
7 Services for acts or omissions of a community-based
8 provider or subcontractor, or the officers, agents, or
9 employees thereof; providing an effective date.

10
11 WHEREAS, lead community-based providers were established to
12 provide foster care and related services, and

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

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

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

26 WHEREAS, the Legislature finds that the limits of liability
27 for lead community-based providers should be reviewed, NOW,
28 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.