

House Bill No. 595

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

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

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

394.9085 Behavioral provider liability.—

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

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

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

(2) The limitations on liability of a detoxification program, an addictions receiving facility, or any designated public receiving facility as described in subsection (1) shall be exclusive. Such limitations apply to each employee of the provider when the employee is acting in furtherance of the provider's responsibilities under its contract with the department. Such limitations do not apply to a provider or employee who acts in a culpably negligent manner or with willful and wanton disregard or unprovoked physical aggression if such acts result in injury or death.

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

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

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

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

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

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

Approved by the Governor June 13, 2006.

Filed in Office Secretary of State June 13, 2006.