

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Children and Families Committee

BILL: CS/SB 182

SPONSOR: Children and Families Committee and Senator Lynn

SUBJECT: Sovereign Immunity

DATE: April 18, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Collins</u>	<u>Whiddon</u>	<u>CF</u>	Fav/CS
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	<u>HA</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute for Senate Bill 182 creates s. 394.90085, F.S., to provide that certain facilities or programs [a detoxification program defined in s. 397.311(18) (b), F.S., an addictions receiving facility defined in s. 397.311 (18) (a), F.S., or a designated public receiving facility defined in s. 394.455 (26), F.S.] shall have liability limits in tort actions based on services for crisis stabilization. The bill specifies that damages be offset by any collateral source payment that is paid in accordance with s. 768.76, F.S., and allows for claims exceeding the amount specified by this bill to be brought to the Legislature. The provider or its insurer must assume any costs for defending action brought under this section.

This bill specifies that the immunities enjoyed by a provider extend to an employee of the provider under certain conditions. However, the provisions of this bill do not designate a person who provides contractual services to the Department of Children and Family Services as an employee or agent of the state for the purposes of ch. 440, F.S., relating to Worker's Compensation. The provider is required, as a part of its contract, to obtain and maintain general liability coverage.

This bill additionally specifies that the conditional limitations on damages specified by this act shall be increased at the rate of five percent each year, to be prorated from its effective date to the date at which damages subject to such limitations are awarded by final judgment or settlement.

Upon approval, this bill takes effect on July 1, 2005.

This bill creates section 394.90085 of the Florida Statutes.

II. Present Situation:

The Department of Children and Family Services (DCF or the department) contracts with community-based substance abuse and mental health treatment providers who deliver services on behalf of the state to individuals with a substance abuse disorder or mental illness. These providers deliver a wide range of substance abuse or mental health services to children and adults that includes crisis stabilization, detoxification, and treatment services. As of Fiscal Year 2004-2005, the department maintains contracts with 159 substance abuse providers and 249 community mental health provider agencies.

Of these substance abuse providers, 32 provide substance abuse detoxification services and 10 are licensed as addictions receiving facilities (ARFs).¹ All persons admitted to ARFs are considered to be clients of the department and their admission cannot be denied except under circumstances provided under s. 397.6751, F.S. Detoxification services may be provided on a residential or outpatient basis to assist an individual with the physiological and psychological withdrawal from the effects of substance abuse. While most of these programs are funded by the department, some of them are private, for-profit organizations that receive no funding from the department. Both detoxification programs and ARFs are licensed by the department's substance abuse program.

Of the 249 mental health agencies, 55 provide mental health crisis services. Under s. 394.455(26), F.S., a receiving facility is defined as any public or private facility designated by the department to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment. Some crisis stabilization units (CSUs) are designated as public receiving facilities but not all of them. Short-term residential treatment (SRT) facilities are designated as public receiving facilities, but individuals must be referred by a CSU or inpatient unit before admission to an SRT. Under s. 394.459(2), F.S., receiving facilities are required to examine and provide treatment to everyone, regardless of their diagnosis or ability to pay. The Florida Council for Community Mental Health (FCCMH)² reports that virtually all funding for receiving facilities comes from local, state and federal sources.

During the first half of fiscal year 2004-2005, agencies provided contractually funded mental health or substance abuse crisis services as well a detoxification services to more that 35,000 individuals. Currently, contract language specifies that a provider is an independent contractor and not an agent of the state.³

Concerns have been expressed regarding the impact of rising insurance costs on the community-based substance abuse and mental health service system. The cost of medical malpractice

¹ Section 397.311(18)(a), F.S., specifies that an addictions receiving facility must be state-owned, state-operated, or state-contracted and licensed pursuant to rules adopted by the department's Substance Abuse Program Offices which includes specific authorization for the provision of levels of care and a requirement of separate accommodations for adults and minors.

² FCCMH is a statewide association consisting of 70 community-based mental health and substance abuse agencies.

³ Staff Analysis provided by DCF for HB 881, March 16, 2005.

insurance rates for community mental health and substance abuse agencies is reported to have increased 105 percent over the past three years, approximately 35 percent per year. The average cost of liability insurance increased from \$238,847 in FY 2002-2003 to \$355,715 in FY 2003-2004, a 49 percent increase. In some cases, five percent or more of a facility's operating budget is being used to pay for liability insurance. The Florida Council for Behavioral Health Care reports that the cost of medical malpractice liability insurance is limiting the ability of publicly supported community substance abuse and mental health agencies to provide critical treatment services.⁴

III. Effect of Proposed Changes:

The committee substitute for Senate Bill 182 creates s. 394.90085, F.S., to provide that certain facilities or programs [a detoxification program defined in s. 397.311(18) (b), F.S., an addictions receiving facility defined in s. 397.311 (18) (a), F.S., or a designated public receiving facility defined in s. 394.455 (26), F.S.] shall have liability limits in tort actions based on services for crisis stabilization. The bill requires that net economic damages 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. The bill also specifies that damages be offset by any collateral source payment that is paid in accordance with s. 768.76, F.S. Additionally any non-economic damages specified against the entities specified by this bill are limited to \$200,000 per claim. The bill allows for any claim to be settled up to the policy limits without action by the Legislature. However, claims for any amount exceeding limits specified by this bill may be brought to the Legislature in accordance with s. 768.28, F.S. The provider or its insurer must assume any costs for defending action brought under this section.

This committee substitute specifies that the immunities enjoyed by a provider under the provisions of this act extend to an employee of the provider when the employee is acting in furtherance of the provider's responsibilities under its contract with the department. However, these immunities are not applicable to a provider or employee who acts in a culpably negligent manner or with willful and wanton disregard or unprovoked physical aggression when such acts result in injury or death.

The provisions of this committee substitute specify that a person who provides contractual services to the Department of Children and Family Services is not an employee or agent of the state for the purposes of ch. 440, F.S., Worker's Compensation. The provider is required, as a part of its contract, to obtain and maintain general liability coverage in the amount of \$1 million per claim and \$3 million per incident.

This bill additionally specifies that the conditional limitations on damages specified by this act shall be increased at the rate of five percent each year, to be prorated from its effective date to the date at which damages subject to such limitations are awarded by final judgment or settlement.

⁴ Liability Limits for Publicly Funded Behavioral Health Organizations, A Proposal of the Florida Council for Behavioral Healthcare.

It is reported that the implementation of this legislation will likely result in lowered insurance premiums for those substance abuse and mental health providers that are specified by this bill.

Upon approval, this act shall take effect July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The provisions of this bill limit the economic damages recoverable by certain individuals who have been damaged in tort.

The implementation of this bill will require that certain substance abuse and mental health providers purchase general liability coverage.

The Department of Children and Family Services reports that limiting the damages awarded to an individual may have a direct positive impact on certain mental health and substance abuse providers by reducing their insurance premiums.

To the extent that providers reduce their costs for insurance and legal fees, there may be an increased offering of services to families. Conversely, to the extent that injured persons are not able to recover fully for their injuries then more families may be dependent on government assistance programs.

C. Government Sector Impact:

The Department of Children and Families indicated that the savings to the specified facilities due to reduced exposure to litigation may be passed on to the department in reduced contracting costs.

The implementation of this legislation may result in the introduction of claims bills that seek the state to pay for judgments entered against certain providers that are in excess of the cap specified by this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is uncertain whether or not the Legislature could legally require payment on a claims bill from a private provider.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
