



## AB-2496 Liability claims: foster family agencies and noncustodial adoption agencies. (2023-2024)

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CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

### ASSEMBLY BILL

**NO. 2496**

Introduced by Assembly Member ~~Low~~ **Pellerin**

February 13, 2024

An act to ~~amend Section 1647.20 of the Business and Professions Code, relating to healing arts.~~ *add Chapter 11 (commencing with Section 1062.30) to Title 14 of Part 2 of the Code of Civil Procedure, relating to civil claims.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 2496, as amended, ~~Low~~ **Pellerin**. ~~Dentistry: oral conscious sedation.~~ *Liability claims: foster family agencies and noncustodial adoption agencies.*

*Existing law, the California Community Care Facilities Act, among other things, provides for the licensure and regulation of foster family agencies, which are organizations engaged in the recruiting, certifying, approving, and training of, and providing professional support to, foster parents and resource families, or in finding homes for foster children in need of care. Existing law also regulates noncustodial adoption agencies, which are licensed entities engaged in the business of providing adoption services.*

*Existing law provides for liability insurance to protect against loss resulting from liability for an injury suffered by a person or for damage to property. Existing case law establishes obligations liability insurers have to the insured, including the duty to indemnify and the duty to defend. Existing law provides a framework for parties to settle a liability claim using a "time-limited" demand, as specified. Existing law defines a "time-limited" demand as an offer to a tortfeasor to settle a cause of action or claim for personal or bodily injury, property damage, or wrongful death within the tortfeasor's liability insurance policy limits prior to the filing of a complaint or demand for arbitration.*

*This bill would make a foster family agency or noncustodial adoption agency, also known as FFA, directly or vicariously liable to the recipient of the FFA's services and other related persons only if the plaintiff shows that the FFA failed to substantially comply with required legal or regulatory standards, the law or regulation that the FFA failed to substantially comply with was designed to prevent the specific type of harm that occurred, and the failure was a proximate cause of the actual harm. The bill would also authorize an FFA to be held liable for injury or damage caused by that FFA's negligence but not for the injury or damage caused by the public entity. The bill would*

require the FFA and the public entity to each bear the cost of insuring against their respective acts and omissions and defending against claims arising from those risks. The bill would prohibit the above provisions from being waived or suspended by a court, and would specify that certain contract provisions with indemnification provisions would be void as against public policy and unenforceable.

This bill would require a time-limited demand to settle a claim against an FFA brought on or behalf of a recipient of the FFA's service to be in writing, labeled or referenced as a time-limited demand, and contain specified material terms. The bill would establish procedural requirements related to a time-limited demand, including a meet and confer requirement if an insurer does not accept a time-limited demand.

This bill would also provide that in a lawsuit alleging or seeking extracontractual damages against the tortfeasor's liability insurer, a time-limited demand that does not comply with the bill's provisions will not be considered a reasonable offer to settle the claims against the tortfeasor for an amount within the insurance policy limits. Among other provisions, the bill would require a trial court, in a lawsuit against an FFA, to undertake a 2-step analysis to determine the applicable duty of care, including if a special relationship exists between the FFA and the plaintiff or perpetrators of the harm to the plaintiff. The bill would require the court, if it finds a special relationship exists, to analyze specified factors expressed in specified case law. The bill would require a court, to impose a duty upon an FFA, to find, as a matter of law, that the plaintiff's particular injury was reasonably foreseeable in light of the FFA's conduct. The bill would include related definitions and policy statements.

~~Existing law, the Dental Practice Act, establishes the Dental Board of California for the licensure and regulation of dentists and dental assistants. Existing law provides that a dentist who desires to administer, or order the administration of, oral conscious sedation for adult patients, who does not hold a general anesthesia permit and a conscious sedation permit, and has not been certified by the board to administer oral conscious sedation to minor patients, as specified, is required to register with the board, as specified. In this regard, existing law requires the dentist to, among other things, submit evidence showing that they satisfy one of specified educational or experience criteria, including satisfactory completion of a periodontics or general practice residency or other advanced education in a general dentistry program approved by the board.~~

~~This bill would authorize a dentist to satisfy that requirement by submitting evidence showing satisfactory completion of a pediatric dental residency program approved by the board.~~

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Chapter 11 (commencing with Section 1062.30) is added to Title 14 of Part 2 of the Code of Civil Procedure, to read:

### **CHAPTER 11. Foster Family Agency Accountability**

**1062.30.** This chapter applies to any claim or lawsuit against a foster family agency or a noncustodial adoption agency for the acts of their employees, contractors, or volunteers brought by a recipient of those services or on the recipient's behalf.

**1062.31.** It is the public policy of the State of California that foster family agencies or noncustodial adoption agencies, also known as FFAs, provide necessary services to vulnerable youth throughout the state and are integral to the foster care system. Consequently, FFAs are afforded the rights set forth in this chapter.

**1062.32.** For the purposes of this chapter, the following definitions apply:

(a) "Extracontractual damages" means any amount of damage that exceeds the total available limit of liability insurance for all of a liability insurer's liability insurance policies applicable to a claim for property damage, personal injury, bodily injury, or wrongful death.

(b) "FFA" means a foster family agency or a noncustodial adoption agency, as these terms are defined in Section 1502 of the Health and Safety Code.

(c) "Public entity" has the same meaning as defined in Section 811.2 of the Government Code.

(d) "Substantial compliance" means a level of compliance with the statutory and regulatory requirements imposed on a foster family agency or noncustodial adoption agency (FFA), such that any identified deficiencies pose no greater risk to the recipient of their services beyond the potential for causing minimal harm than if the FFA had fully complied with those statutory requirements.

(e) "Time-limited demand" means an offer, whenever made, to settle any cause of action or a claim for personal injury, property damage, bodily injury, or wrongful death made by or on behalf of a claimant to a tortfeasor with a liability insurance policy for purposes of settling the claim against the tortfeasor within the insurer's limit of liability insurance, which by its terms must be accepted within a specified period of time.

**1062.33.** (a) An FFA shall only be held directly or vicariously liable to the recipient of the FFA's services, to anyone on the recipient's behalf, or to anyone whose neglect or abuse caused the recipient to require or qualify for those services, for acts of their employees, contractors, or volunteers, if the plaintiff shows both of the following:

(1) The FFA failed to substantially comply with the required legal or regulatory standards related to the provision of the services. The determination of which legal or regulatory standards are required to be followed and what level of duty is imposed by those legal and regulatory standards on the FFA is a question of law for the court.

(2) The law or regulation that the FFA failed to substantially comply with was designed to prevent the specific type of harm that occurred, and the failure was a proximate cause of the actual harm.

(b) Subdivision (a) does not limit or affect the immunity provided by any other law or defense that would otherwise be available.

**1062.34.** (a) An FFA may be held liable for injury or damage caused by the negligence of the FFA but not for the injury or damage caused by the public entity, including its officers, employees, or volunteers, acting in its capacity. The FFA and the public entity shall each bear the cost of insuring against their respective acts and omissions and shall each bear the costs of defending itself against claims arising from those risks.

(b) (1) Notwithstanding any other law, subdivision (a) shall not be waived or suspended by any court. Any provision in a nongovernmental organization contract for child, youth, and family services in which a public entity is indemnified, held harmless, or insured for damages, claims, losses, or expenses arising from injury or damage, including, but not limited to, bodily injury, mental anguish, property damage, or economic or noneconomic damages or loss, caused by or resulting from a public entity's negligence or intentional conduct, in whole or in part, shall be void as against public policy and unenforceable.

(2) Subdivision (a) does not limit or affect the immunity provided by any other law that would otherwise be an available defense to either party.

**1062.35.** (a) This section shall apply to both of the following:

(1) Any time-limited demand to settle a claim or lawsuit against an FFA for the acts of their employees, contractors, or volunteers brought by a recipient of the FFA's services or on the recipient's behalf.

(2) Any time-limited demand to settle, notwithstanding Section 998.

(b) A time-limited demand to settle any claim shall be in writing, be labeled as a time-limited demand or reference this section, and contain material terms, which shall include all of the following:

(1) The time period within which the demand must be accepted shall be not fewer than 60 days from date of transmission of the demand, if transmission is by email, facsimile, or certified mail, or not fewer than 63 days, if transmission is by mail.

(2) A clear and unequivocal offer to settle all claims within policy limits, including the satisfaction of all liens.

(3) An offer for a complete release from the claimant for the liability insurer's insureds from all present and future liability for the occurrence.

(4) The date and location of the loss.

(5) The claim number, if known.

(6) A description of all known injuries sustained by the claimant.

(7) Sufficient evidence, which may include, if applicable, medical records or bills, sufficient to support the claim.

**1062.36.** (a) A claimant shall send their time-limited demand to either of the following:

(1) Counsel entered for the party to whom the demand is made.

(2) If the party to whom the demand is made is not represented by counsel, the insurance representative assigned to handle the claim.

(b) If the identity of counsel and the insurance representative for the party to whom the demand is made are unknown, the demand shall be sent to the party to whom the demand is made by certified mail, return receipt requested.

**1062.37.** (a) The recipients of a time-limited demand may accept the demand by providing written acceptance of the material terms described in Section 1062.35 in their entirety.

(b) Upon receipt of a time-limited demand, an attempt to seek clarification or additional information or a request for an extension due to the need for further information or investigation, made during the time within which to accept a time-limited demand, shall not, in and of itself, be deemed a counteroffer or rejection of the demand.

(c) If, for any reason, an insurer does not accept a time-limited demand, the insurer shall notify the claimant, in writing, of its decision and the basis for its decision. This notification shall be sent before the expiration of the time-limited demand, including any extension agreed to by the parties, and shall be relevant in any lawsuit alleging extracontractual damages against the tortfeasor's liability insurer.

**1062.38.** If, for any reason, an insurer does not accept a time-limited demand, all parties to the lawsuit or claim shall do all of the following:

(a) Meet and confer to discuss the relevant facts related to the time-limited demand, the reasonableness of the demand, and the reasonableness of the denial of the demand. This meeting shall take place no later than 14 days after the insurer issues written notification denying the demand or 7 days before the commencement of trial, whichever is sooner.

(b) Issue a joint statement regarding the reasonableness of the demand and the denial of the demand. This joint statement will include an identification of where the parties agree and disagree. This joint statement shall be signed by all parties or their legal counsel, no later than seven days after the meet and confer session.

(c) After the meet and confer session but before finalizing the joint statement, the insurer may accept the time-limited demand in accordance with Section 1062.35.

**1062.39.** In any lawsuit alleging or seeking extracontractual damages against the tortfeasor's liability insurer, all of the following shall apply:

(a) A time-limited demand that does not comply with the terms of this chapter shall not be considered to be a reasonable offer to settle the claims against the tortfeasor for an amount within the insurance policy limits.

(b) The demand, denial, and joint statement regarding the reasonableness of the demand and the denial of the demand may be admissible as evidence.

(c) The reasonableness of the insurer's denial shall be based on the facts and circumstances known to the insurer, or its legal representative, and the applicable law at the time of the denial.

**1062.40.** (a) In any lawsuit against an FFA for the acts of their employees, contractors, or volunteers brought by recipient of such services or on the recipient's behalf, the trial court shall undertake a two-step analysis, as described in subdivision (b) to determine the applicable duty of care of the FFA to prevent or protect against harm caused by a third-party perpetrator.

(b) (1) First, the court shall determine if a special relationship exists between the FFA and the plaintiff or the perpetrators of the harm to the plaintiff.

(2) If, and only if, the court finds a special relationship exists between the FFA and the plaintiff or the perpetrators of the harm to the plaintiff, the court shall then analyze all of the following factors, expressed in *Rowland v Christian* (1968) 69 Cal. 2d. 108, to determine if the duty should be limited:

(A) The foreseeability of harm to the plaintiff.

(B) The degree of certainty that the plaintiff suffered injury.

(C) The closeness of the connection between the FFA's conduct and the injury suffered.

(D) The moral blame attached to the FFA's conduct.

*(E) The policy of preventing future harm.*

*(F) The extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach.*

*(G) The availability, cost, and prevalence of insurance for the risk involved.*

*(c) To impose a duty upon a defendant FFA, the trial court shall, as a matter of law, find that the plaintiff's particular injury was reasonably foreseeable in light of the particular FFA's conduct.*

**1062.41.** *(a) Except as provided in this chapter, nothing shall alter existing law, including law relating to claims, damages, and defenses, that may be asserted in litigation seeking extracontractual damages.*

*(b) This chapter shall apply to time-limited demands transmitted on or after the date this chapter becomes operative.*

~~SECTION 1. Section 1647.20 of the Business and Professions Code is amended to read:~~

~~1647.20. A dentist who desires to administer, or order the administration of, oral conscious sedation for adult patients, who does not hold a general anesthesia permit, as provided in Sections 1646.1 and 1646.2, does not hold a conscious sedation permit, as provided in Sections 1647.2 and 1647.3, and has not been certified by the board, pursuant to Section 1647.12, to administer oral conscious sedation to minor patients, shall register their name with the board on a registration form prescribed by the board. The dentist shall submit the registration fee and evidence showing that they satisfy any of the following requirements:~~

~~(a) Satisfactory completion of a postgraduate program in oral and maxillofacial surgery approved by either the Commission on Dental Accreditation or a comparable organization approved by the board.~~

~~(b) Satisfactory completion of a pediatric dental, periodontics, or general practice residency or other advanced education in a general dentistry program approved by the board.~~

~~(c) Satisfactory completion of a board-approved educational program on oral medications and sedation.~~

~~(d) For an applicant who has been using oral conscious sedation in connection with the treatment of adult patients, submission of documentation as required by the board of 10 cases of oral conscious sedation satisfactorily performed by the applicant on adult patients in any three-year period ending no later than December 31, 2005.~~