

# 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.)

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Prepared By: Banking and Insurance Committee

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BILL: CS/SB 2486

SPONSOR: Banking and Insurance Committee and Senator Lynn

SUBJECT: Community Mental Health or Substance Abuse Providers (Self-Insurance Fund)

DATE: April 13, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
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## I. Summary:

Under s. 624.462, F.S., the Office of Insurance Regulation (OIR) may approve specified trade, industry or professional associations, medical malpractice entities, health care provider groups, and condominium associations to form *commercial self-insurance funds* (SIFs) for the purpose of pooling and spreading liabilities of its group members in any commercial property or casualty risk or surety insurance.<sup>1</sup> The entities forming commercial SIFs must meet specified financial, solvency, rate and form requirements.

Committee Substitute for Senate Bill 2486 authorizes any 2 or more nonprofit community mental health or substance abuse providers to form a commercial self-insurance fund under the authority of OIR. The bill specifies that the mental health or substance abuse providers be members in good standing of nonprofit statewide associations that have been in existence for at least 10 years and are comprised of at least 50 community-based mental health and substance abuse agencies that are primarily publicly funded and located in Florida. The legislation further provides that this SIF be operated pursuant to a trust agreement by a board of trustees or as a corporation by a board of directors.

This bill amends the following section of the Florida Statutes: 624.462.

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<sup>1</sup> Section 624.462, F.S. Entities that self-insure do not transfer their risks to an insurance company, but pay for all losses with their own funds. Such entities must have the financial, administrative, and claims management expertise to protect themselves against large losses.

## II. Present Situation:

### Commercial Self-Insurance Funds

Commercial self-insurance funds may be authorized by the Office of Insurance Regulation (OIR), pursuant to ss. 624.460-624.488, F.S. Such funds may be formed only by: (1) a not-for-profit trade association, industry association, or professional association of employers or professionals which has a constitution or bylaws, which is incorporated in Florida, and which has been organized for purposes other than that of obtaining or providing insurance and operated in good faith for a continuous period of 1 year; (2) a (medical malpractice) self-insurance trust fund organized pursuant to s. 627.357, F.S., and maintained in good faith for a continuous period of 1 year for purposes other than that of obtaining or providing insurance pursuant to this section; (3) a group of 10 or more health care providers for purposes of providing medical malpractice coverage; or (4) a not-for-profit group comprised of no less than 10 condominium associations meeting certain requirements.

A commercial self-insurance fund must be operated by a board of trustees. If formed pursuant to (1) and (3), above, the board of trustees must be responsible for appointing independent certified public accountants, legal counsel, actuaries, and investment advisers as needed; approving payment of dividends to members; and contracting with an administrator authorized under s. 626.88, F.S., to administer the affairs of the fund. A majority of the trustees or directors must be owners, partners, officers, directors, or employees of one or more members of the fund.

Requirements for commercial self-insurance funds also include: (1) a certificate of authority from the OIR; (2) an indemnity agreement binding each fund member to individual, several, and proportionate liability; (3) a plan of risk management which has established measures to minimize the frequency and severity of losses; (4) proof of competent and trustworthy persons to administer or service the fund; (5) an aggregate net worth of all members of at least \$500,000; (6) a combined ratio of current assets to current liabilities of more than 1 to 1; (7) a deposit of cash or securities, or a surety bond, of \$100,000; (8) specific and aggregate excess insurance with limits and retention levels satisfactory to the department (office); (9) a fidelity bond or insurance providing coverage of at least 10 percent of the funds handled annually by the fund; (10) a plan of operation designed to provide sufficient revenues to pay current and future liabilities, as determined in accordance with sound actuarial principles, and a statement by an actuary to that effect; (11) participation in the Florida Self-Insurance Fund Guaranty Association and (12) such additional information as the Financial Services Commission or the OIR reasonably requires.<sup>2</sup> After certification, additional requirements are imposed related to restrictions on premiums that may be written, annual reports, dividends, assessments, and approval of forms and rates.

Rates for commercial self-insurance funds may not be excessive, inadequate, or unfairly discriminatory and must be filed with the OIR for approval. But, the standard for excessiveness is limited to a determination of whether the expense factors are not justified or are not reasonable for the benefits and services provided. A fund has the burden of proving that a rate filed is

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<sup>2</sup> Section 624.466, F.S. Participation in the Guaranty Association is mandated under s. 624.462, F.S.

adequate if, during the first 5 years of issuing policies, the fund files a rate that is below the rate for loss and loss adjustment expenses for the same type and classification of insurance that has been filed by the Insurance Services Office and approved by the OIR.<sup>3</sup>

### **Group Self-Insurance Funds**

Under s. 624.4621, F.S., two or more employers are allowed to pool their workers' compensation liabilities and form a self insurance fund for workers' compensation purposes. Such a fund must comply with administrative rules adopted by the Financial Services Commission relating to reserve requirements, organization, and operation. The rules relating to reserve requirements are designed to insure the self-insurance fund can maintain financial solvency. Current law also requires workers' compensation self insurance funds to carry reinsurance, unless the fund is comprised of state or local government employers.

### **Local Government Self-Insurance Funds and Independent Educational Institution Self-Insurance Funds**

Pursuant to s. 624.4622, F.S., any two local governments may enter into interlocal agreements to create a self-insurance fund for the purpose of securing the payment of benefits under the workers' compensation law. Under s. 624.4623, F.S., any two or more independent nonprofit colleges or universities may form a self-insurance fund for the purpose of pooling and spreading liabilities of its group members in any property or casualty risk or surety insurance or securing the payment of benefits under the workers' compensation law. Both the local government and education self-insurance funds have similar requirements which include having annual premiums in excess of \$5 million; maintaining excess insurance coverage and reserve to protect the financial stability of the fund; submitting annual audited fiscal year end-financial statements by an independent certified public accountant to the OIR; and having a governing body comprised entirely of local elected officials (in local government self-insurance funds) and independent educational institution officials (in educational self-insurance funds).

### **Florida Council for Community Mental Health and the Florida Council for Behavioral Healthcare**

The Florida Council for Community Mental Health (FCCMH or Council), a 501(c)(3) corporation, and its sister organization, the Florida Council for Behavioral Healthcare (FCBH) – a 501(c)(6) corporation established for political action purposes, are statewide associations of 70 community-based mental health and substance abuse agencies. The FCCMH was formed in 1958 as an association of mental health clinic directors. Its role broadened in the 1960s and 1970s, as the focus of treatment shifted from state hospitals to communities. The association's membership expanded to include a number of agencies that specialize in substance abuse services and children's services.

The Council is the sole community mental health provider association and the largest behavioral health association representing local mental health interests in Florida. Council members serve predominately low-income individuals and families and the majority of the adults and children receiving publicly-funded mental health and substance abuse services in Florida. Most clients served by member agencies are adults with serious and persistent mental illness, children with severe emotional disturbance, adults with long-term addictions, and children who are drug users

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<sup>3</sup> Section 624.482, F.S.

or at risk of abusing drugs. Member agencies provide a range of services, including emergency services, residential treatment, crisis stabilization, outpatient services and rehabilitation and support services.

Member agencies provide behavioral health care for Medicaid, Medicare, Department of Children and Families and commercially insured populations. According to the Council they serve as the state's public behavioral health safety net.

### **Access to Insurance**

According to representatives with the FCCMH, the availability of property, liability, automobile and workers' compensation insurance is limited for its members and members of its sister organization, the Florida Council for Behavioral Healthcare (FCBH). The FCCMH maintains that its 70 member treatment organizations are a critical part of the state's safety net, providing publicly funded mental health and substance abuse services to Floridians who cannot afford the cost of their care. They report that they have difficulty obtaining insurance coverage that recognizes the type of services they provide and the risks to which they are exposed.

Proponents suggest that a self-insurance pool or fund, specifically designed for the homogeneous group that comprises the Councils' membership, will enhance the availability of insurance for its members. The following types of insurance would be included in a fund:

- *Property Insurance* — Florida presents unique problems in obtaining property insurance due to coastal wind and flooding exposure.
- *Automobile Insurance* — Some insurance programs for behavioral health care agencies do not include automobile coverage, requiring FCCMH/FCBH members to obtain separate automobile insurance.
- *General Liability and Professional Liability* — There are only four insurance companies that write liability policies for mental health and substance abuse agencies. Because of the size of the market, underwriting is very stringent and one loss can result in the escalation of premiums.
- *Workers' Compensation* — Florida is not considered an attractive state to write workers' compensation policies, according to representatives with the Council. This has led to the lack of carriers willing to consider coverage for behavioral health agencies. An adverse loss history can lead to surcharges and higher premiums.

According to the FCCMH, 30-50 members are expected to participate in the self-insurance fund proposed under the bill. The Council states that along with other health care providers in Florida, mental health and substance abuse providers have seen rapid and sizable increases in their liability insurance premiums. This is especially true for agencies that operate inpatient emergency behavioral health care facilities such as crisis stabilization units. The average cost of liability insurance for a community mental provider was \$238,847 in FY 2002–2003. The average cost in FY 2003-2004 was \$355,715, an increase of 49 percent. But, for some providers, the increase in premiums was 150 percent or more, according to Council officials.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 624.462, F.S., relating to SIFs. The bill provides that any 2 or more nonprofit community mental health or substance abuse providers may form a commercial SIF. These mental health and substance abuse providers must be members in good standing of nonprofit statewide associations that have been in existence for at least 10 years and are comprised of at least 50 community-based mental health and substance abuse agencies that are primarily publicly funded and located in Florida. It further provides that the SIF be operated pursuant to a trust agreement by a board of trustees or as a corporation by a board of directors.

**Section 2.** The bill will take effect July 1, 2005.

This proposal would allow mental health or substance abuse providers to form a commercial SIF subject to OIR approval. It would have to obtain a certificate of authority and meet specified financial, solvency, rate and form requirements.

### 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 bill will benefit mental health or substance abuse providers by allowing such providers to form a commercial SIF, subject to OIR approval, in order to pool and spread liabilities among its group members.

The current law provides solvency standards for such funds, but member assessments remain the ultimate solvency requirement, rather than a surplus requirement. With regard to rates for coverage, the absence of a profit factor (usually about 5 percent of premium) and, possibly, lower expenses, could result in lower rates as compared to authorized insurers. But, the portion of the rate that covers expected claims (discounted for expected investment income) should be approximately the same as amounts charged by an authorized insurer, subject to the actual claims experience of the insurer or fund. If rates

turn out to be inadequate and a deficit exists, member insureds of a self-insurance fund must be assessed.

C. Government Sector Impact:

The bill would not have a fiscal impact for the OIR.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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