

CHAMBER ACTION

1 The Insurance Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to community behavioral health agencies;
7 creating s. 624.4624, F.S.; authorizing certain nonprofit
8 community mental health or substance abuse providers to
9 form a self-insurance fund for certain purposes; providing
10 operating requirements of the self-insurance fund;
11 providing certain application exceptions for such fund;
12 requiring certain funds to initially be organized and
13 operate as a commercial self-insurance fund for a time
14 certain; requiring certain self-insurance funds to comply
15 with certain annual financial statement requirements for a
16 time certain; amending s. 768.28, F.S.; providing that
17 certain providers or vendors acting contractually on
18 behalf of the Department of Children and Family Services,
19 and their employees and agents, are agents of the state
20 for purposes of waiver of sovereign immunity in tort
21 actions under certain circumstances; requiring contracts
22 to provide for indemnification of the state by such agents
23 for certain liabilities up to certain limits; providing

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24 | that such persons are not employees or agents for purposes
25 | of workers' compensation; restricting application;
26 | providing an effective date.

27 |
28 | Be It Enacted by the Legislature of the State of Florida:

29 |
30 | Section 1. Section 624.4624, Florida Statutes, is created
31 | to read:

32 | 624.4624 Nonprofit community mental health and substance
33 | abuse provider self-insurance fund.--

34 | (1) Notwithstanding any other provisions of law, any two
35 | or more nonprofit community mental health or substance abuse
36 | providers, which are members in good standing of a nonprofit
37 | statewide association which has been in existence for at least
38 | 10 years and is comprised of at least 50 community-based mental
39 | health and substance abuse agencies which are primarily publicly
40 | funded and located in this state, may form a self-insurance fund
41 | for the purpose of pooling and spreading liabilities of its
42 | group members in any property or casualty risk or surety
43 | insurance or securing the payment of benefits under chapter 440,
44 | provided the nonprofit community mental health and substance
45 | abuse provider self-insurance fund created must:

46 | (a) Have annual normal premiums in excess of \$5 million.

47 | (b) Maintain a continuing program of excess insurance
48 | coverage and reserve evaluation to protect the financial
49 | stability of the fund in an amount and manner determined by a
50 | qualified and independent actuary.

51 (c) Submit to the office annually an audited fiscal year-
 52 end financial statement by an independent certified public
 53 accountant within 6 months after the end of the fiscal year.

54 (d) Have a governing body which is comprised entirely of
 55 community mental health and substance abuse provider officials.

56 (2) A nonprofit community mental health and substance
 57 abuse provider self-insurance fund that meets the requirements
 58 of this section is not subject to s. 624.4621 and is not
 59 required to file any report with the department under s.
 60 440.38(2)(b) required of group self-insurer funds qualified
 61 under s. 624.4621. If any of the requirements of this section
 62 are not met, the nonprofit mental health and substance abuse
 63 provider self-insurance fund is subject to the requirements of
 64 s. 624.4621.

65 (3)(a) Notwithstanding subsection (2), a nonprofit
 66 community mental health and substance abuse provider self-
 67 insurance fund created under this section after October 1, 2005,
 68 shall initially be subject to the requirements of a commercial
 69 fund under s. 624.4621 and, for the first 5 years of its
 70 existence, shall be subject to all the requirements applied to
 71 commercial self-insurance funds or to group self-insurance
 72 funds, respectively.

73 (b)1. A nonprofit community mental health and substance
 74 abuse provider self-insurance fund formed after January 1, 2006,
 75 shall, for its first 5 fiscal years, file with the office full
 76 and true statements of its financial condition, transactions,
 77 and affairs. An annual statement covering the preceding fiscal
 78 year shall be filed within 60 days after the end of the fund's

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79 fiscal year and quarterly statements shall be filed within 45
 80 days after each such date. The office may, for good cause, grant
 81 an extension of time for filing an annual or quarterly
 82 statement. The statements shall contain information generally
 83 included in insurers' financial statements prepared in
 84 accordance with generally accepted insurance accounting
 85 principles and practices and in a form generally used by
 86 insurers for financial statements, sworn to by at least two
 87 executive officers of the self-insurance fund. The form for
 88 financial statements shall be the form currently approved by the
 89 National Association of Insurance Commissioners for use by
 90 property and casualty insurers.

91 2. Each annual statement shall contain a statement of
 92 opinion on loss and loss adjustment expense reserves made by a
 93 member of the American Academy of Actuaries. Workpapers in
 94 support of the statement of opinion must be provided to the
 95 office upon request.

96 Section 2. Subsection (21) is added to section 768.28,
 97 Florida Statutes, to read:

98 768.28 Waiver of sovereign immunity in tort actions;
 99 recovery limits; limitation on attorney fees; statute of
 100 limitations; exclusions; indemnification; risk management
 101 programs.--

102 (21)(a) Solely with respect to services to individuals in
 103 need of detoxification and services through an addictions
 104 receiving facility under chapter 397 or mental health services
 105 under chapter 394, providers or vendors, or any of their
 106 employees or agents, that have contractually agreed to act on

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107 behalf of the state as agents of the Department of Children and
 108 Family Services to provide such services are agents of the state
 109 for purposes of this section while acting within the scope of
 110 and pursuant to guidelines established in the contract or by
 111 rule. A contract must provide for the indemnification of the
 112 state by the agent for any liabilities incurred up to the limits
 113 set out in this chapter.

114 (b) This subsection does not designate a person who
 115 provides contracted services to the Department of Children and
 116 Family Services as an employee or agent of the state for
 117 purposes of chapter 440.

118 (c) This subsection does not provide any immunity to, or
 119 limitation on liability for, any person or entity which provides
 120 services to an individual who is paying or being reimbursed for
 121 that service in any amount or who is insured for that service.

122 Section 3. This act shall take effect July 1, 2005.