

CHAMBER ACTION

1 The Health Care Appropriations Committee recommends the
2 following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

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

24 | certain circumstances; requiring contracts to provide for
 25 | indemnification of the state by such agents for certain
 26 | liabilities up to certain limits; providing that such
 27 | persons are not employees or agents for purposes of
 28 | workers' compensation; restricting application; requiring
 29 | certain providers designated as agents of the state to
 30 | reimburse the state for certain costs; providing penalties
 31 | for noncompliance; providing for continuing liability for
 32 | certain amounts under certain circumstances; providing an
 33 | effective date.

34 |

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

36 |

37 | Section 1. Section 624.4624, Florida Statutes, is created
 38 | to read:

39 | 624.4624 Nonprofit community mental health and substance
 40 | abuse provider self-insurance fund.--

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

51 provided the nonprofit community mental health and substance
 52 abuse provider self-insurance fund created must:

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

54 (b) Maintain a continuing program of excess insurance
 55 coverage and reserve evaluation to protect the financial
 56 stability of the fund in an amount and manner determined by a
 57 qualified and independent actuary.

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

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

63 (2) A nonprofit community mental health and substance
 64 abuse provider self-insurance fund that meets the requirements
 65 of this section is not subject to s. 624.4621 and is not
 66 required to file any report with the department under s.
 67 440.38(2)(b) required of group self-insurer funds qualified
 68 under s. 624.4621. If any of the requirements of this section
 69 are not met, the nonprofit mental health and substance abuse
 70 provider self-insurance fund is subject to the requirements of
 71 s. 624.4621.

72 (3)(a) Notwithstanding subsection (2), a nonprofit
 73 community mental health and substance abuse provider self-
 74 insurance fund created under this section after October 1, 2005,
 75 shall initially be subject to the requirements of a commercial
 76 fund under s. 624.4621 and, for the first 5 years of its
 77 existence, shall be subject to all the requirements applied to

78 commercial self-insurance funds or to group self-insurance
 79 funds, respectively.

80 (b)1. A nonprofit community mental health and substance
 81 abuse provider self-insurance fund formed after January 1, 2006,
 82 shall, for its first 5 fiscal years, file with the office full
 83 and true statements of its financial condition, transactions,
 84 and affairs. An annual statement covering the preceding fiscal
 85 year shall be filed within 60 days after the end of the fund's
 86 fiscal year and quarterly statements shall be filed within 45
 87 days after each such date. The office may, for good cause, grant
 88 an extension of time for filing an annual or quarterly
 89 statement. The statements shall contain information generally
 90 included in insurers' financial statements prepared in
 91 accordance with generally accepted insurance accounting
 92 principles and practices and in a form generally used by
 93 insurers for financial statements, sworn to by at least two
 94 executive officers of the self-insurance fund. The form for
 95 financial statements shall be the form currently approved by the
 96 National Association of Insurance Commissioners for use by
 97 property and casualty insurers.

98 2. Each annual statement shall contain a statement of
 99 opinion on loss and loss adjustment expense reserves made by a
 100 member of the American Academy of Actuaries. Workpapers in
 101 support of the statement of opinion must be provided to the
 102 office upon request.

103 Section 2. No self-insurance fund created under this act
 104 shall be deemed to be or considered to be an insurer for any
 105 purpose under chapter 631, Florida Statutes.

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106 Section 3. Subsection (21) is added to section 768.28,
107 Florida Statutes, to read:

108 768.28 Waiver of sovereign immunity in tort actions;
109 recovery limits; limitation on attorney fees; statute of
110 limitations; exclusions; indemnification; risk management
111 programs.--

112 (21)(a) Solely with respect to services to individuals in
113 need of detoxification and services through an addictions
114 receiving facility under chapter 397 or mental health services
115 under chapter 394, providers or vendors, or any of their
116 employees or agents, that have contractually agreed to act on
117 behalf of the state as agents of the Department of Children and
118 Family Services to provide such services are agents of the state
119 for purposes of this section while acting within the scope of
120 and pursuant to guidelines established in the contract or by
121 rule. A contract must provide for the indemnification of the
122 state by the agent for any liabilities incurred up to the limits
123 set out in this chapter.

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

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

132 (d) Any person or entity designated as an agent of the
133 state pursuant to this subsection shall reimburse the state for

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134 the actual costs of defending any claim and for any amounts paid
135 by the state in payment of a settlement or judgment arising out
136 of the claim up to the limits of liability set forth in this
137 section. Any person or entity who fails to reimburse the state
138 as required shall be subject to license revocation and shall be
139 responsible for all subsequent payments by the state in
140 resolving the underlying cause of action, including any amounts
141 paid pursuant to a claims bill, and for all costs and attorney
142 fees incurred by the state in recovering the original
143 reimbursement amount due and the subsequent payments owed.

144 Section 4. This act shall take effect July 1, 2005.