

1 A bill to be entitled

2 An act relating to community behavioral health agencies;  
3 creating s. 624.4624, F.S.; authorizing certain nonprofit  
4 community mental health or substance abuse providers to  
5 form a self-insurance fund for certain purposes; providing  
6 operating requirements of the self-insurance fund;  
7 providing certain application exceptions for such fund;  
8 requiring certain funds to initially be organized and  
9 operate as a commercial self-insurance fund for a time  
10 certain; requiring certain self-insurance funds to comply  
11 with certain annual financial statement requirements for a  
12 time certain; proscribing certain self-insurance funds  
13 from being considered insurers for certain purposes;  
14 creating s. 394.9085, F.S.; limiting net economic damages  
15 per claim in certain tort actions brought against certain  
16 programs or facilities; providing criteria for such  
17 claims; requiring that damages be offset by certain  
18 collateral source payments; requiring that costs to defend  
19 actions be assumed by the provider or its insurer;  
20 providing for exclusivity of such liability; providing for  
21 extension of certain immunities to employees of such  
22 programs or facilities; providing an exception; requiring  
23 eligible providers to obtain and maintain certain general  
24 liability coverage; specifying that persons providing  
25 contractual services to the state are not considered  
26 agents or employees for certain purposes; providing for an  
27 annual increase in the conditional limitations on damages;  
28 providing an effective date.

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

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

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

(1) Notwithstanding any other provisions of law, any two or more nonprofit community mental health or substance abuse providers, which are members in good standing of a nonprofit statewide association which has been in existence for at least 10 years and is comprised of at least 50 community-based mental health and substance abuse agencies which are primarily publicly funded and located in this state, 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 chapter 440, provided the nonprofit community mental health and substance abuse provider self-insurance fund created must:

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

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

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

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

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

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

75 (b)1. A nonprofit community mental health and substance  
76 abuse provider self-insurance fund formed after January 1, 2006,  
77 shall, for its first 5 fiscal years, file with the office full  
78 and true statements of its financial condition, transactions,  
79 and affairs. An annual statement covering the preceding fiscal  
80 year shall be filed within 60 days after the end of the fund's  
81 fiscal year and quarterly statements shall be filed within 45  
82 days after each such date. The office may, for good cause, grant  
83 an extension of time for filing an annual or quarterly

84 statement. The statements shall contain information generally  
85 included in insurers' financial statements prepared in  
86 accordance with generally accepted insurance accounting  
87 principles and practices and in a form generally used by  
88 insurers for financial statements, sworn to by at least two  
89 executive officers of the self-insurance fund. The form for  
90 financial statements shall be the form currently approved by the  
91 National Association of Insurance Commissioners for use by  
92 property and casualty insurers.

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

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

101 Section 3. Section 394.9085, Florida Statutes, is created  
102 to read:

103 394.9085 Behavioral provider liability.--

104 (1) In any tort action based on services provided for  
105 crisis stabilization brought against a detoxification program as  
106 defined in s. 397.311(18)(b), an addictions receiving facility  
107 as defined in s. 397.311(18)(a), or a designated public  
108 receiving facility as defined in s. 394.455(26), net economic  
109 damages shall be limited to \$1 million per liability claim,  
110 including, but not limited to, past and future medical expenses,  
111 wage loss, and loss of earning capacity, offset by any

112 collateral source payment paid in accordance with s. 768.76. In  
113 any tort action based on services provided for crisis  
114 stabilization brought against any detoxification program as  
115 defined in s. 397.311(18)(b), an addictions receiving facility  
116 as defined in s. 397.311(18)(a), or a designated public  
117 receiving facility as defined in s. 394.455(26), noneconomic  
118 damages shall be limited to \$200,000 per claim. Any claim may be  
119 settled up to policy limits without further act of the  
120 Legislature. A claims bill may be brought on behalf of a  
121 claimant pursuant to s. 768.28 for any amount exceeding the  
122 limits specified in this subsection. Any costs in defending  
123 actions brought under this section shall be assumed by the  
124 provider or its insurer.

125 (2) The liability of a detoxification program as defined  
126 in s. 397.311(18)(b), an addictions receiving facility as  
127 defined in s. 397.311(18)(a), or any designated public receiving  
128 facility as defined in s. 394.455(26) shall be exclusive and in  
129 place of all other liability of such provider. The same  
130 immunities from liability enjoyed by such providers shall extend  
131 to each employee of the provider when such employee is acting in  
132 furtherance of the provider's responsibilities under its  
133 contract with the department. Such immunities shall not be  
134 applicable to a provider or employee who acts in a culpably  
135 negligent manner or with willful and wanton disregard or  
136 unprovoked physical aggression when such acts result in injury  
137 or death.

138       (3) The eligible provider under this section must, as part  
139 of its contract, obtain and maintain a minimum of \$1 million per  
140 claim and \$3 million per incident in general liability coverage.

141       (4) This section does not designate a person who provides  
142 contracted services to the Department of Children and Family  
143 Services as an employee or agent of the state for purposes of  
144 chapter 440.

145       (5) The Legislature is cognizant of the increasing costs  
146 of goods and services each year and recognizes that fixing a set  
147 amount of compensation actually has the effect of a reduction in  
148 compensation each year. Accordingly, the conditional limitations  
149 on damages in this section shall be increased at the rate of 5  
150 percent each year, prorated from the July 1, 2005, to the date  
151 at which damages subject to such limitations are awarded by  
152 final judgment or settlement.

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