

By Senator Fasano

11-324-06

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

1 the conditional limitations on damages;  
2 providing an effective date.

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

5  
6 Section 1. Section 624.4624, Florida Statutes, is  
7 created to read:

8 624.4624 Nonprofit community mental health and  
9 substance abuse provider self-insurance fund.--

10 (1) Notwithstanding any other provision of law, any  
11 two or more nonprofit community mental health or substance  
12 abuse providers, which are members in good standing of a  
13 nonprofit statewide association that has been in existence for  
14 at least 10 years and is comprised of at least 50  
15 community-based mental health and substance abuse agencies  
16 that are primarily publicly funded and located in this state,  
17 may form a self-insurance fund for the purpose of pooling and  
18 spreading liabilities of its group members in any property or  
19 casualty risk or surety insurance or securing the payment of  
20 benefits under chapter 440, if the nonprofit community mental  
21 health and substance abuse provider self-insurance fund:

22 (a) Has annual normal premiums in excess of \$5  
23 million;

24 (b) Maintains a continuing program of excess insurance  
25 coverage and reserve evaluation to protect the financial  
26 stability of the fund in an amount and manner determined by a  
27 qualified and independent actuary;

28 (c) Submits to the office annually an audited fiscal  
29 year-end financial statement by an independent certified  
30 public accountant within 6 months after the end of the fiscal  
31 year; and

1       (d) Has a governing body that is comprised entirely of  
2 community mental health and substance abuse provider  
3 officials.

4       (2) A nonprofit community mental health and substance  
5 abuse provider self-insurance fund that meets the requirements  
6 of this section is not subject to s. 624.4621 and is not  
7 required to file any report with the department under s.  
8 440.38(2)(b) required of group self-insurer funds qualified  
9 under s. 624.4621. If any of the requirements of this section  
10 are not met, the nonprofit mental health and substance abuse  
11 provider self-insurance fund is subject to the requirements of  
12 s. 624.4621.

13       (3)(a) Notwithstanding subsection (2), a nonprofit  
14 community mental health and substance abuse provider  
15 self-insurance fund created under this section after October  
16 1, 2006, shall initially be subject to the requirements of a  
17 commercial fund under s. 624.4621 and, for the first 5 years  
18 of its existence, shall be subject to all the requirements  
19 applied to commercial self-insurance funds or to group  
20 self-insurance funds, respectively.

21       (b)1. A nonprofit community mental health and  
22 substance abuse provider self-insurance fund formed after  
23 January 1, 2007, shall, for its first 5 fiscal years, file  
24 with the office full and true statements of its financial  
25 condition, transactions, and affairs. An annual statement  
26 covering the preceding fiscal year shall be filed within 60  
27 days after the end of the fund's fiscal year and quarterly  
28 statements shall be filed within 45 days after each such date.  
29 The office may, for good cause, grant an extension of time for  
30 filing an annual or quarterly statement. The statements must  
31 contain information generally included in insurers' financial

1 statements prepared in accordance with generally accepted  
2 insurance accounting principles and practices and in a form  
3 generally used by insurers for financial statements, sworn to  
4 by at least two executive officers of the self-insurance fund.  
5 The form for financial statements shall be the form currently  
6 approved by the National Association of Insurance  
7 Commissioners for use by property and casualty insurers.

8 2. Each annual statement must contain a statement of  
9 opinion on loss and loss adjustment expense reserves made by a  
10 member of the American Academy of Actuaries. Workpapers in  
11 support of the statement of opinion must be provided to the  
12 office upon request.

13 Section 2. A self-insurance fund created under this  
14 act is not an insurer for any purpose under chapter 631,  
15 Florida Statutes.

16 Section 3. Section 394.9085, Florida Statutes, is  
17 created to read:

18 394.9085 Behavioral provider liability.--

19 (1) In any tort action based on services provided for  
20 crisis stabilization brought against a detoxification program  
21 as defined in s. 397.311(18)(b), an addictions receiving  
22 facility as defined in s. 397.311(18)(a), or a designated  
23 public receiving facility as defined in s. 394.455(26), net  
24 economic damages shall be limited to \$1 million per liability  
25 claim, including, but not limited to, past and future medical  
26 expenses, wage loss, and loss of earning capacity, offset by  
27 any collateral source payment paid in accordance with s.  
28 768.76. In any tort action based on services provided for  
29 crisis stabilization brought against any detoxification  
30 program as defined in s. 397.311(18)(b), an addictions  
31 receiving facility as defined in s. 397.311(18)(a), or a

1 designated public receiving facility as defined in s.  
2 394.455(26), noneconomic damages shall be limited to \$200,000  
3 per claim. Any claim may be settled up to policy limits  
4 without further act of the Legislature. A claims bill may be  
5 brought on behalf of a claimant pursuant to s. 768.28 for any  
6 amount exceeding the limits specified in this subsection. Any  
7 costs in defending actions brought under this section shall be  
8 assumed by the provider or its insurer.

9       (2) The liability of a detoxification program as  
10 defined in s. 397.311(18)(b), an addictions receiving facility  
11 as defined in s. 397.311(18)(a), or any designated public  
12 receiving facility as defined in s. 394.455(26) shall be  
13 exclusive and in place of all other liability of such  
14 provider. The same immunities from liability enjoyed by such  
15 providers shall extend to each employee of the provider when  
16 such employee is acting in furtherance of the provider's  
17 responsibilities under its contract with the department. Such  
18 immunities do not apply to a provider or employee who acts in  
19 a culpably negligent manner or with willful and wanton  
20 disregard or unprovoked physical aggression when such acts  
21 result in injury or death.

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

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

30       (5) The Legislature is cognizant of the increasing  
31 costs of goods and services each year and recognizes that

1 fixing a set amount of compensation actually has the effect of  
2 a reduction in compensation each year. Accordingly, the  
3 conditional limitations on damages in this section shall be  
4 increased at the rate of 5 percent each year, prorated from  
5 the July 1, 2006, to the date at which damages subject to such  
6 limitations are awarded by final judgment or settlement.

7           Section 4. This act shall take effect July 1, 2006.  
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