

By the Committees on Health Care Standards & Regulatory Reform, Health & Human Services Appropriations, Health Care Standards & Regulatory Reform and Representatives Sanderson, Saunders and Murman

1                                   A bill to be entitled  
2           An act relating to the regulation of health  
3           care facilities; amending s. 20.42, F.S.;  
4           deleting the responsibility of the Division of  
5           Health Policy and Cost Control within the  
6           Agency for Health Care Administration for  
7           reviewing hospital budgets; abolishing the  
8           Health Care Board; amending ss. 154.304,  
9           154.306, and 154.312, F.S., relating to health  
10          care for indigent persons; revising  
11          definitions; conforming references to changes  
12          made by the act; amending s. 394.4788, F.S.,  
13          relating to mental health services; updating  
14          provisions relating to duties of the agency  
15          formerly performed by the Health Care Cost  
16          Containment Board; amending s. 395.0163, F.S.;  
17          providing exemptions from construction  
18          inspections and investigations by the Agency  
19          for Health Care Administration for certain  
20          outpatient facilities; providing exceptions;  
21          amending s. 395.1055, F.S.; requiring the  
22          Agency for Health Care Administration to adopt  
23          rules to assure that, following a disaster,  
24          licensed facilities are capable of serving as  
25          shelters only for patients, staff, and the  
26          families of patients and staff; providing for  
27          applicability; providing for a report by the  
28          agency to the Governor and Legislature;  
29          amending s. 395.401, F.S.; providing for  
30          certain reports formerly made to the Health  
31          Care Board to be made to the agency; amending

1 s. 395.701, F.S., relating to the Public  
2 Medical Assistance Trust Fund; revising  
3 definitions; amending ss. 395.403, 395.605,  
4 395.7015, and 395.806, F.S.; conforming  
5 references; amending ss. 408.05, 408.061,  
6 408.062, and 408.063, F.S., relating to the  
7 State Center for Health Statistics and the  
8 collection and dissemination of health care  
9 information; updating provisions to reflect the  
10 assumption by the Agency for Health Care  
11 Administration of duties formerly performed by  
12 the Health Care Board and the former Department  
13 of Health and Rehabilitative Services;  
14 authorizing the agency to conduct data-based  
15 studies and make recommendations; deleting  
16 obsolete provisions; amending s. 408.07, F.S.;  
17 deleting definitions made obsolete by the  
18 repeal of requirements with respect to hospital  
19 budget reviews; amending s. 408.08, F.S.;  
20 deleting provisions requiring the Health Care  
21 Board to review the budgets of certain  
22 hospitals; deleting requirements that a  
23 hospital file budget letters; deleting certain  
24 administrative penalties; amending s. 408.40,  
25 F.S.; removing a reference to the duties of the  
26 Public Counsel with respect to hospital budget  
27 review proceedings; amending s. 408.50, F.S.;  
28 conforming a reference; amending ss. 409.2673  
29 and 409.9113, F.S., relating to health care  
30 programs for low-income persons and the  
31 disproportionate share program for teaching

1 hospitals; updating provisions to reflect the  
2 abolishment of the Health Care Cost Containment  
3 Board and the assumption of its duties by the  
4 agency; repealing ss. 395.403(9), 407.61,  
5 408.003, 408.072, and 408.085, F.S., relating  
6 to reimbursement of state-sponsored trauma  
7 centers, studies by the Health Care Board,  
8 appointment of members to the Health Care  
9 Board, review of hospital budgets, and budget  
10 reviews of comprehensive inpatient  
11 rehabilitation hospitals; providing for  
12 retroactive application of provisions of the  
13 act relating to repeal of review of hospital  
14 budgets; amending ss. 381.026 and 381.0261,  
15 F.S.; requiring distribution of the Florida  
16 Patient's Bill of Rights and Responsibilities;  
17 providing penalties; repealing s. 395.002(2)  
18 and (15), F.S.; deleting definitions of  
19 "adverse or untoward incident" and "injury";  
20 amending s. 395.0193, F.S.; revising provisions  
21 relating to facility peer review disciplinary  
22 actions against practitioners; requiring a  
23 report to the Agency for Health Care  
24 Administration; providing penalties; amending  
25 s. 395.0197, F.S.; revising provisions relating  
26 to internal risk management; defining the term  
27 "adverse incident"; requiring certain reports  
28 to the agency; including minors in provisions  
29 relating to notification of sexual misconduct  
30 or abuse; requiring facility corrective action  
31 plans; providing penalties; renumbering s.

1           626.941, F.S., relating to the purpose of the  
2           health care risk manager licensure program;  
3           renumbering and amending s. 626.942, F.S.,  
4           relating to the Health Care Risk Manager  
5           Advisory Council; renumbering and amending s.  
6           626.943, F.S.; providing powers and duties of  
7           the agency; renumbering and amending s.  
8           626.944, F.S., relating to qualifications for  
9           health care risk managers; providing for fees;  
10          providing for issuance, cancellation, and  
11          renewal of licenses; renumbering and amending  
12          s. 626.945, F.S., relating to grounds for  
13          denial, suspension, or revocation of licenses;  
14          amending ss. 394.4787, 395.602, 400.051,  
15          409.905, 440.13, 458.331, 459.015, 468.505,  
16          641.55, and 766.1115, F.S.; conforming  
17          references and correcting cross references;  
18          transferring the internal risk manager  
19          licensure program from the Department of  
20          Insurance to the Agency for Health Care  
21          Administration; providing an appropriation;  
22          providing effective dates.

23  
24          Be It Enacted by the Legislature of the State of Florida:

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26                 Section 1. Paragraphs (b), (d), and (e) of subsection  
27                 (2) and subsections (6) and (7) of section 20.42, Florida  
28                 Statutes, are amended to read:

29                 20.42 Agency for Health Care Administration.--There is  
30                 created the Agency for Health Care Administration within the  
31                 Department of Business and Professional Regulation. The agency

1 shall be a separate budget entity, and the director of the  
2 agency shall be the agency head for all purposes. The agency  
3 shall not be subject to control, supervision, or direction by  
4 the Department of Business and Professional Regulation in any  
5 manner, including, but not limited to, personnel, purchasing,  
6 transactions involving real or personal property, and  
7 budgetary matters.

8 (2) ORGANIZATION OF THE AGENCY.--The agency shall be  
9 organized as follows:

10 (b) The Division of Health Policy and Cost Control,  
11 which shall be responsible for health policy, the State Center  
12 for Health Statistics, the development of The Florida Health  
13 Plan, certificate of need, ~~hospital budget review~~, state and  
14 local health planning under s. 408.033, and research and  
15 analysis.

16 ~~(d) The Health Care Board, which shall be responsible~~  
17 ~~for hospital budget review, nursing home financial analysis,~~  
18 ~~and special studies as assigned by the secretary or the~~  
19 ~~Legislature.~~

20 (d)(e) The Division of Administrative Services, which  
21 shall be responsible for revenue management, budget,  
22 personnel, and general services.

23 ~~(6) HEALTH CARE BOARD.--The Health Care Board shall be~~  
24 ~~composed of 11 members appointed by the Governor, subject to~~  
25 ~~confirmation by the Senate. The members of the board shall~~  
26 ~~biennially elect a chairperson and a vice chairperson from its~~  
27 ~~membership. The board shall be responsible for hospital budget~~  
28 ~~review, nursing home financial review and analysis, and~~  
29 ~~special studies requested by the Governor, the Legislature, or~~  
30 ~~the director.~~

31

1           (6)~~(7)~~ DEPUTY DIRECTOR OF ADMINISTRATIVE  
2 SERVICES.--The director shall appoint a Deputy Director of  
3 Administrative Services who shall serve at the pleasure of,  
4 and be directly responsible to, the director. The deputy  
5 director shall be responsible for the Division of  
6 Administrative Services.

7           Section 2. Subsections (1) and (8) of section 154.304,  
8 Florida Statutes, are amended to read:

9           154.304 Definitions.--For the purpose of this act:

10           (1) "Agency" means the Agency for Health Care  
11 Administration.~~"Board" means the Health Care Board as~~  
12 ~~established in chapter 408.~~

13           (8) "Participating hospital" means a hospital which is  
14 eligible to receive reimbursement under the provisions of this  
15 act because it has been certified by the agency board as  
16 having met its charity care obligation and has either:

17           (a) A formal signed agreement with a county or  
18 counties to treat such county's indigent patients; or

19           (b) Demonstrated to the agency board that at least 2.5  
20 percent of its uncompensated charity care, as reported to the  
21 agency board, is generated by out-of-county residents.

22           Section 3. Subsection (4) of section 154.306, Florida  
23 Statutes, is amended to read:

24           154.306 Financial responsibility for certified  
25 residents who are qualified indigent patients treated at an  
26 out-of-county participating hospital or regional referral  
27 hospital.--Ultimate financial responsibility for treatment  
28 received at a participating hospital or a regional referral  
29 hospital by a qualified indigent patient who is a certified  
30 resident of a county in the State of Florida, but is not a  
31 resident of the county in which the participating hospital or

1 regional referral hospital is located, shall be the obligation  
2 of the county of which the qualified indigent patient is a  
3 resident. Each county is directed to reimburse participating  
4 hospitals or regional referral hospitals as provided for in  
5 this act, and shall provide or arrange for indigent  
6 eligibility determination procedures and resident  
7 certification determination procedures as provided for in  
8 rules developed to implement this act. The department, or any  
9 county determining eligibility of a qualified indigent, shall  
10 provide to the county of residence, upon request, a copy of  
11 any documents, forms, or other information, as determined by  
12 rule, which may be used in making an eligibility  
13 determination.

14 (4) No county shall be liable for payment for  
15 treatment of a qualified indigent who is a certified resident  
16 and has received services at an out-of-county participating  
17 hospital or regional referral hospital, until such time as  
18 that hospital has documented to the agency board and the  
19 agency board has determined that it has met its charity care  
20 obligation based on the most recent audited actual experience.

21 Section 4. Section 154.312, Florida Statutes, is  
22 amended to read:

23 154.312 Procedure for settlement of disputes.--All  
24 disputes among counties, the agency board, the department, a  
25 participating hospital, or a regional referral hospital shall  
26 be resolved by order as provided in chapter 120. Hearings held  
27 under this provision shall be conducted in the same manner as  
28 provided in ss. 120.569 and 120.57, except that the presiding  
29 officer's order shall be final agency action. Cases filed  
30 under chapter 120 may combine all disputes between parties.  
31 Notwithstanding any other provisions of this part, when a

1 county alleges that a residency determination or eligibility  
2 determination made by the department is incorrect, the burden  
3 of proof shall be on the county to demonstrate that such  
4 determination is, in light of the total record, not supported  
5 by the evidence.

6 Section 5. Subsections (2) and (3) of section  
7 394.4788, Florida Statutes, are amended to read:

8 394.4788 Use of certain PMATF funds for the purchase  
9 of acute care mental health services.--

10 (2) ~~By October 1, 1989, and annually thereafter,~~The  
11 agency shall annually calculate a per diem reimbursement rate  
12 for each specialty psychiatric hospital to be paid to the  
13 specialty psychiatric hospitals for the provision of acute  
14 mental health services provided to indigent mentally ill  
15 patients who meet the criteria in subsection (1). After the  
16 first rate period, providers shall be notified of new  
17 reimbursement rates for each new state fiscal year by June 1.  
18 The new reimbursement rates shall commence July 1.

19 (3) Reimbursement rates shall be calculated using the  
20 most recent audited actual costs received by the agency. Cost  
21 data received ~~as of August 15, 1989, and~~ each April 15  
22 ~~thereafter~~ shall be used in the calculation of the rates.  
23 Historic costs shall be inflated from the midpoint of a  
24 hospital's fiscal year to the midpoint of the state fiscal  
25 year. The inflation adjustment shall be made utilizing the  
26 latest available projections as of March 31 for the Data  
27 Resources Incorporated National and Regional Hospital Input  
28 Price Indices as calculated by the Medicaid program office.

29 Section 6. Subsection (1) of section 395.0163, Florida  
30 Statutes, is amended to read:

31



1           395.0163 Construction inspections; plan submission and  
2 approval; fees.--

3           (1)(a) The agency shall make, or cause to be made,  
4 such construction inspections and investigations as it deems  
5 necessary. The agency may prescribe by rule that any licensee  
6 or applicant desiring to make specified types of alterations  
7 or additions to its facilities or to construct new facilities  
8 shall, before commencing such alteration, addition, or new  
9 construction, submit plans and specifications therefor to the  
10 agency for preliminary inspection and approval or  
11 recommendation with respect to compliance with agency rules  
12 and standards. The agency shall approve or disapprove the  
13 plans and specifications within 60 days after receipt of the  
14 fee for review of plans as required in subsection (2). The  
15 agency may be granted one 15-day extension for the review  
16 period if the director of the agency approves the extension.  
17 If the agency fails to act within the specified time, it shall  
18 be deemed to have approved the plans and specifications. When  
19 the agency disapproves plans and specifications, it shall set  
20 forth in writing the reasons for its disapproval. Conferences  
21 and consultations may be provided as necessary.

22           (b) All outpatient facilities that provide surgical  
23 treatments requiring general anesthesia or intravenous  
24 conscious sedation, that provide cardiac catheterization  
25 services, or that are to be licensed as ambulatory surgical  
26 centers shall submit plans and specifications to the agency  
27 for review under this section. All other outpatient facilities  
28 must be reviewed under this section, except that those that  
29 are physically detached from, and have no utility connections  
30 with, the hospital and that do not block emergency egress from  
31 or create a fire hazard to the hospital are exempt from review

1 under this section. This section applies to applications for  
2 which review is pending on or after July 1, 1998.

3 Section 7. Paragraph (d) of subsection (1) of section  
4 395.1055, Florida Statutes, is amended to read:

5 395.1055 Rules and enforcement.--

6 (1) The agency shall adopt, amend, promulgate, and  
7 enforce rules to implement the provisions of this part, which  
8 shall include reasonable and fair minimum standards for  
9 ensuring that:

10 (d) New facilities and a new wing or floor added to an  
11 existing facility after July 1, 1999, are structurally capable  
12 of serving as shelters only for patients, staff, and families  
13 of patients and staff, and equipped to be self-supporting  
14 during and immediately following disasters.

15 Section 8. The Agency for Health Care Administration  
16 shall work with persons affected by s. 395.1055(1)(d), Florida  
17 Statutes, as amended by this act, and report to the Governor  
18 and Legislature by March 1, 1999, its recommendations for  
19 cost-effective renovation standards to be applied to existing  
20 facilities.

21 Section 9. Paragraphs (a) and (b) of subsection (1) of  
22 section 395.401, Florida Statutes, are amended to read:

23 395.401 Trauma services system plans; verification of  
24 trauma centers and pediatric trauma referral centers;  
25 procedures; renewal.--

26 (1) As used in this part, the term:

27 (a) "Agency" means the Agency for Health Care  
28 Administration. ~~"Board" means the Health Care Board.~~

29 (b) "Charity care" or "uncompensated charity care"  
30 means that portion of hospital charges reported to the agency  
31 ~~board~~ for which there is no compensation for care provided to

1 a patient whose family income for the 12 months preceding the  
2 determination is less than or equal to 150 percent of the  
3 federal poverty level, unless the amount of hospital charges  
4 due from the patient exceeds 25 percent of the annual family  
5 income. However, in no case shall the hospital charges for a  
6 patient whose family income exceeds 4 times the federal  
7 poverty level for a family of four be considered charity.

8 Section 10. Paragraph (b) of subsection (6) of section  
9 395.403, Florida Statutes, is amended to read:

10 395.403 Reimbursement of state-sponsored trauma  
11 centers.--

12 (6)

13 (b) The database to be used for this calculation shall  
14 be the detailed patient discharge data of the most recently  
15 completed calendar year for which the agency board possesses  
16 data. Out-of-state days that are included in the database  
17 shall be allocated to the service area where the treating  
18 hospital is located.

19 Section 11. Subsection (6) of section 395.605, Florida  
20 Statutes, is amended to read:

21 395.605 Emergency care hospitals.--

22 (6) The agency board shall treat emergency care  
23 hospitals in the same manner as hospitals defined in s.  
24 408.07.

25 Section 12. Subsections (1), (2), (3), and (4) of  
26 section 395.701, Florida Statutes, are amended to read:

27 395.701 Annual assessments on net operating revenues  
28 to fund public medical assistance; administrative fines for  
29 failure to pay assessments when due.--

30 (1) For the purposes of this section, the term:

31

1           (a) "Agency" means the Agency for Health Care  
2 Administration.

3           **(b)**~~(a)~~ "Gross operating revenue" or "gross revenue"  
4 means the sum of daily hospital service charges, ambulatory  
5 service charges, ancillary service charges, and other  
6 operating revenue.

7           ~~(b) "Health Care Board" or "board" means the Health~~  
8 ~~Care Board created by s. 20.42.~~

9           (c) "Hospital" means a health care institution as  
10 defined in s. 395.002(11)~~s. 395.002(12)~~, but does not include  
11 any hospital operated by the agency or the Department of  
12 Corrections.

13           (d) "Net operating revenue" or "net revenue" means  
14 gross revenue less deductions from revenue.

15           (e) "Total deductions from gross revenue" or  
16 "deductions from revenue" means reductions from gross revenue  
17 resulting from inability to collect payment of charges. Such  
18 reductions include bad debts; contractual adjustments;  
19 uncompensated care; administrative, courtesy, and policy  
20 discounts and adjustments; and other such revenue deductions,  
21 but also includes the offset of restricted donations and  
22 grants for indigent care.

23           (2) There is ~~hereby~~ imposed upon each hospital an  
24 assessment in an amount equal to 1.5 percent of the annual net  
25 operating revenue for each hospital, such revenue to be  
26 determined by the agency department, based on the actual  
27 experience of the hospital as reported to the agency  
28 ~~department~~. Within 6 months after the end of each hospital  
29 fiscal year, the agency department shall certify the amount of  
30 the assessment for each hospital. The assessment shall be  
31 payable to and collected by the agency department in equal

1 quarterly amounts, on or before the first day of each calendar  
2 quarter, beginning with the first full calendar quarter that  
3 occurs after the agency ~~department~~ certifies the amount of the  
4 assessment for each hospital. All moneys collected pursuant to  
5 this subsection shall be deposited into the Public Medical  
6 Assistance Trust Fund.

7 (3) The agency ~~department~~ shall impose an  
8 administrative fine, not to exceed \$500 per day, for failure  
9 of any hospital to pay its assessment by the first day of the  
10 calendar quarter on which it is due. The failure of a  
11 hospital to pay its assessment within 30 days after the  
12 assessment is due is ground for the agency ~~department~~ to  
13 impose an administrative fine not to exceed \$5,000 per day.

14 (4) The purchaser, successor, or assignee of a  
15 facility subject to the agency's ~~board's~~ jurisdiction shall  
16 assume full liability for any assessments, fines, or penalties  
17 of the facility or its employees, regardless of when  
18 identified. Such assessments, fines, or penalties shall be  
19 paid by the employee, owner, or licensee who incurred them,  
20 within 15 days of the sale, transfer, or assignment. However,  
21 the purchaser, successor, or assignee of the facility may  
22 withhold such assessments, fines, or penalties from purchase  
23 moneys or payment due to the seller, transferor, or employee,  
24 and shall make such payment on behalf of the seller,  
25 transferor, or employee. Any employer, purchaser, successor,  
26 or assignee who fails to withhold sufficient funds to pay  
27 assessments, fines, or penalties arising under the provisions  
28 of chapter 408 shall make such payments within 15 days of the  
29 date of the transfer, purchase, or assignment. Failure by the  
30 transferee to make payments as provided in this subsection  
31 shall subject such transferee to the penalties and assessments

1 provided in chapter 408. Further, in the event of sale,  
2 transfer, or assignment of any facility under the agency's  
3 ~~board's~~ jurisdiction, future assessments shall be based upon  
4 the most recently available prior year report or audited  
5 actual experience for the facility. It shall be the  
6 responsibility of the new owner or licensee to require the  
7 production of the audited financial data for the period of  
8 operation of the prior owner. If the transferee fails to  
9 obtain current audited financial data from the previous owner  
10 or licensee, the new owner shall be assessed based upon the  
11 most recent year of operation for which 12 months of audited  
12 actual experience are available or upon a reasonable estimate  
13 of 12 months of full operation as calculated by the agency  
14 ~~board~~.

15 Section 13. Paragraph (a) of subsection (3) of section  
16 395.7015, Florida Statutes, is amended to read:

17 395.7015 Annual assessment on health care entities.--

18 (3)(a) Beginning July 1, 1993, the assessment shall be  
19 on the actual experience of the entity as reported to the  
20 agency within 120 days after the end of its fiscal year in the  
21 preceding calendar year based upon reports developed by the  
22 agency board in a rule after consultation with appropriate  
23 professional and governmental advisory bodies.

24 Section 14. Subsection (3) of section 395.806, Florida  
25 Statutes, is amended to read:

26 395.806 Designation of family practice teaching  
27 hospitals.--

28 (3) The agency shall create a separate review category  
29 for family practice teaching hospitals ~~for the purpose of~~  
30 ~~review by the Health Care Board~~.

31

1           Section 15. Subsection (1), paragraphs (e) and (f) of  
2 subsection (3), subsection (6), and paragraphs (c) and (d) of  
3 subsection (7) of section 408.05, Florida Statutes, are  
4 amended to read:

5           408.05 State Center for Health Statistics.--

6           (1) ESTABLISHMENT.--The agency ~~department~~ shall  
7 establish a State Center for Health Statistics. The center  
8 shall establish a comprehensive health information system to  
9 provide for the collection, compilation, coordination,  
10 analysis, indexing, dissemination, and utilization of both  
11 purposefully collected and extant health-related data and  
12 statistics. The center shall be staffed with public health  
13 experts, biostatisticians, information system analysts, health  
14 policy experts, economists, and other staff necessary to carry  
15 out its functions.

16           (3) COMPREHENSIVE HEALTH INFORMATION SYSTEM.--In order  
17 to produce comparable and uniform health information and  
18 statistics, the agency shall perform the following functions:

19           (e) The agency ~~department~~ shall establish by rule the  
20 types of data collected, compiled, processed, used, or shared.  
21 Decisions regarding center data sets should be made based on  
22 consultation with the Comprehensive Health Information System  
23 Advisory Council and other public and private users regarding  
24 the types of data which should be collected and their uses.

25           (f) The center shall establish standardized means for  
26 collecting health information and statistics under laws and  
27 rules administered by the agency ~~department~~.

28           (6) PROVIDER DATA REPORTING.--This section does not  
29 confer on the agency ~~department~~ the power to demand or require  
30 that a health care provider or professional furnish  
31 information, records of interviews, written reports,

1 statements, notes, memoranda, or data other than as expressly  
2 required by law.

3 (7) BUDGET; FEES; TRUST FUND.--

4 (c) The center may charge such reasonable fees for  
5 services as the agency ~~department~~ prescribes by rule. The  
6 established fees may ~~shall~~ not exceed the reasonable cost for  
7 such services. Fees collected may not be used to offset  
8 annual appropriations from the General Revenue Fund.

9 (d) The agency ~~department~~ shall establish a  
10 Comprehensive Health Information System Trust Fund as the  
11 repository of all funds appropriated to, and fees and grants  
12 collected for, services of the State Center for Health  
13 Statistics. Any funds, other than funds appropriated to the  
14 center from the General Revenue Fund, which are raised or  
15 collected by the agency ~~department~~ for the operation of the  
16 center and which are not needed to meet the expenses of the  
17 center for its current fiscal year shall be available to the  
18 agency ~~board~~ in succeeding years.

19 Section 16. Subsections (10) and (11) of section  
20 408.061, Florida Statutes, are amended to read:

21 408.061 Data collection; uniform systems of financial  
22 reporting; information relating to physician charges;  
23 confidentiality of patient records; immunity.--

24 (10) No health care facility, health care provider,  
25 health insurer, or other reporting entity or its employees or  
26 agents shall be held liable for civil damages or subject to  
27 criminal penalties either for the reporting of patient data to  
28 the agency ~~board~~ or for the release of such data by the agency  
29 ~~board~~ as authorized by this chapter.

30 (11) The agency shall be the primary source for  
31 collection and dissemination of health care data. No other



1 agency of state government may gather data from a health care  
2 provider licensed or regulated under this chapter without  
3 first determining if the data is currently being collected by  
4 the agency and affirmatively demonstrating that it would be  
5 more cost-effective for an agency of state government other  
6 than the agency to gather the health care data. The director  
7 ~~secretary~~ shall ensure that health care data collected by the  
8 divisions within the agency is coordinated. It is the express  
9 intent of the Legislature that all health care data be  
10 collected by a single source within the agency and that other  
11 divisions within the agency, and all other agencies of state  
12 government, obtain data for analysis, regulation, and public  
13 dissemination purposes from that single source. Confidential  
14 information may be released to other governmental entities or  
15 to parties contracting with the agency to perform agency  
16 duties or functions as needed in connection with the  
17 performance of the duties of the receiving entity. The  
18 receiving entity or party shall retain the confidentiality of  
19 such information as provided for herein.

20 Section 17. Subsections (2) and (5) of section  
21 408.062, Florida Statutes, are amended to read:

22 408.062 Research, analyses, studies, and reports.--

23 (2) The agency ~~board~~ shall evaluate data from nursing  
24 home financial reports and shall document and monitor:

25 (a) Total revenues, annual change in revenues, and  
26 revenues by source and classification, including contributions  
27 for a resident's care from the resident's resources and from  
28 the family and contributions not directed toward any specific  
29 resident's care.

30 (b) Average resident charges by geographic region,  
31 payor, and type of facility ownership.

1 (c) Profit margins by geographic region and type of  
2 facility ownership.

3 (d) Amount of charity care provided by geographic  
4 region and type of facility ownership.

5 (e) Resident days by payor category.

6 (f) Experience related to Medicaid conversion as  
7 reported under s. 408.061.

8 (g) Other information pertaining to nursing home  
9 revenues and expenditures.

10

11 The findings of the agency board shall be included in an  
12 annual report to the Governor and Legislature by January 1  
13 each year.

14 (5)(a) The agency may conduct data-based studies and  
15 evaluations and make recommendations to the Legislature and  
16 the Governor concerning exemptions, the effectiveness of  
17 limitations of referrals, restrictions on investment interests  
18 and compensation arrangements, and the effectiveness of public  
19 disclosure. Such analysis may include, but need not be  
20 limited to, utilization of services, cost of care, quality of  
21 care, and access to care. The agency may require the  
22 submission of data necessary to carry out this duty, which may  
23 include, but need not be limited to, data concerning  
24 ownership, Medicare and Medicaid, charity care, types of  
25 services offered to patients, revenues and expenses,  
26 patient-encounter data, and other data reasonably necessary to  
27 study utilization patterns and the impact of health care  
28 provider ownership interests in health-care-related entities  
29 on the cost, quality, and accessibility of health care.

30 (b) The agency may collect such data from any health  
31 facility as a special study.~~The board is directed to research~~

1 ~~hospital financial and nonfinancial data in order to determine~~  
2 ~~the need for establishing a category of inpatient hospital~~  
3 ~~patients defined as medically indigent. For purposes of this~~  
4 ~~section, a medically indigent patient is an individual who is~~  
5 ~~admitted as an inpatient to a hospital, who is not classified~~  
6 ~~as a Medicare beneficiary, a Medicaid recipient, or a charity~~  
7 ~~care patient, but who has insufficient financial resources to~~  
8 ~~pay for needed medical care. In its determination of the need~~  
9 ~~for establishing a category of medically indigent patients,~~  
10 ~~the board shall consider the creation of income and asset~~  
11 ~~levels that would establish a person as medically indigent.~~  
12 ~~The board shall submit a report and recommendations to the~~  
13 ~~Governor and the Legislature on the establishment of a~~  
14 ~~category of medically indigent inpatient hospital patients on~~  
15 ~~or before January 1, 1994. If the board recommends the~~  
16 ~~establishment of a category of medically indigent patients, it~~  
17 ~~shall provide a specific recommendation for the eligibility~~  
18 ~~determination process to be used in classifying a patient as~~  
19 ~~medically indigent.~~

20 Section 18. Subsection (1) of section 408.063, Florida  
21 Statutes, is amended to read:

22 408.063 Dissemination of health care information.--

23 (1) The agency, relying on data collected pursuant to  
24 this chapter, shall establish a reliable, timely, and  
25 consistent information system that ~~which~~ distributes  
26 information and serves as the basis for the agency's board's  
27 public education programs. The agency shall seek advice from  
28 consumers, health care purchasers, health care providers,  
29 health care facilities, health insurers, and local health  
30 councils in the development and implementation of its  
31 information system. Whenever appropriate, the agency shall use

1 the local health councils for the dissemination of information  
2 and education of the public.

3 Section 19. Section 408.07, Florida Statutes, is  
4 amended to read:

5 408.07 Definitions.--As used in this chapter, with the  
6 exception of ss. 408.031-408.045, the term:

7 (1) "Accepted" means that the agency board has found  
8 that a report or data submitted by a health care facility or a  
9 health care provider contains all schedules and data required  
10 by the agency board and has been prepared in the format  
11 specified by the agency board, and otherwise conforms to  
12 applicable rule or Florida Hospital Uniform Reporting System  
13 manual requirements regarding reports in effect at the time  
14 such report was submitted, and the data are mathematically  
15 reasonable and accurate.

16 (2) "Adjusted admission" means the sum of acute and  
17 intensive care admissions divided by the ratio of inpatient  
18 revenues generated from acute, intensive, ambulatory, and  
19 ancillary patient services to gross revenues. If a hospital  
20 reports only subacute admissions, then "adjusted admission"  
21 means the sum of subacute admissions divided by the ratio of  
22 total inpatient revenues to gross revenues.

23 (3) "Agency" means the Agency for Health Care  
24 Administration.

25 (4) "Alcohol or chemical dependency treatment center"  
26 means an organization licensed under chapter 397.

27 (5) "Ambulatory care center" means an organization  
28 which employs or contracts with licensed health care  
29 professionals to provide diagnosis or treatment services  
30 predominantly on a walk-in basis and the organization holds  
31 itself out as providing care on a walk-in basis. Such an

1 organization is not an ambulatory care center if it is wholly  
2 owned and operated by five or fewer health care providers.

3 (6) "Ambulatory surgical center" means a facility  
4 licensed as an ambulatory surgical center under chapter 395.

5 ~~(7) "Applicable rate of increase" means the maximum~~  
6 ~~allowable rate of increase (MARI) when applied to gross~~  
7 ~~revenue per adjusted admission, unless the board has approved~~  
8 ~~a different rate of increase, in which case the board-approved~~  
9 ~~rate of increase shall apply.~~

10 (7)~~(8)~~ "Audited actual data" means information  
11 contained within financial statements examined by an  
12 independent, Florida-licensed, certified public accountant in  
13 accordance with generally accepted auditing standards, but  
14 does not include data within a financial statement about which  
15 the certified public accountant does not express an opinion or  
16 issues a disclaimer.

17 ~~(9) "Banked points" means the percentage points earned~~  
18 ~~by a hospital when the actual rate of increase in gross~~  
19 ~~revenue per adjusted admission (GRAA) is less than the maximum~~  
20 ~~allowable rate of increase (MARI) or the actual rate of~~  
21 ~~increase in the net revenue per adjusted admission (NRAA) is~~  
22 ~~less than the market basket index.~~

23 (8)~~(10)~~ "Birth center" means an organization licensed  
24 under s. 383.305.

25 ~~(11) "Board" means the Health Care Board established~~  
26 ~~under s. 408.003.~~

27 ~~(12) "Budget" means the projections by the hospital,~~  
28 ~~for a specified future time period, of expenditures and~~  
29 ~~revenues, with supporting statistical indicators, or a budget~~  
30 ~~letter verified by the board pursuant to s. 408.072(3)(a).~~

31

1           (9)~~(13)~~ "Cardiac catheterization laboratory" means a  
2 freestanding facility that ~~which~~ employs or contracts with  
3 licensed health care professionals to provide diagnostic or  
4 therapeutic services for cardiac conditions such as cardiac  
5 catheterization or balloon angioplasty.

6           (10)~~(14)~~ "Case mix" means a calculated index for each  
7 health care facility or health care provider, based on patient  
8 data, reflecting the relative costliness of the mix of cases  
9 to that facility or provider compared to a state or national  
10 mix of cases.

11           (11)~~(15)~~ "Clinical laboratory" means a facility  
12 licensed under s. 483.091, excluding: any hospital laboratory  
13 defined under s. 483.041(5); any clinical laboratory operated  
14 by the state or a political subdivision of the state; any  
15 blood or tissue bank where the majority of revenues are  
16 received from the sale of blood or tissue and where blood,  
17 plasma, or tissue is procured from volunteer donors and  
18 donated, processed, stored, or distributed on a nonprofit  
19 basis; and any clinical laboratory which is wholly owned and  
20 operated by physicians who are licensed pursuant to chapter  
21 458 or chapter 459 and who practice in the same group  
22 practice, and at which no clinical laboratory work is  
23 performed for patients referred by any health care provider  
24 who is not a member of that same group practice.

25           (12)~~(16)~~ "Comprehensive rehabilitative hospital" or  
26 "rehabilitative hospital" means a hospital licensed by the  
27 agency ~~for Health Care Administration~~ as a specialty hospital  
28 as defined in s. 395.002; provided that the hospital provides  
29 a program of comprehensive medical rehabilitative services and  
30 is designed, equipped, organized, and operated solely to  
31 deliver comprehensive medical rehabilitative services, and

1 further provided that all licensed beds in the hospital are  
2 classified as "comprehensive rehabilitative beds" pursuant to  
3 s. 395.003(4), and are not classified as "general beds."

4 (13)~~(17)~~ "Consumer" means any person other than a  
5 person who administers health activities, is a member of the  
6 governing body of a health care facility, provides health  
7 services, has a fiduciary interest in a health facility or  
8 other health agency or its affiliated entities, or has a  
9 material financial interest in the rendering of health  
10 services.

11 (14)~~(18)~~ "Continuing care facility" means a facility  
12 licensed under chapter 651.

13 (15)~~(19)~~ "Cross-subsidization" means that the revenues  
14 from one type of hospital service are sufficiently higher than  
15 the costs of providing such service as to offset some of the  
16 costs of providing another type of service in the hospital.  
17 Cross-subsidization results from the lack of a direct  
18 relationship between charges and the costs of providing a  
19 particular hospital service or type of service.

20 (16)~~(20)~~ "Deductions from gross revenue" or  
21 "deductions from revenue" means reductions from gross revenue  
22 resulting from inability to collect payment of charges. For  
23 hospitals, such reductions include contractual adjustments;  
24 uncompensated care; administrative, courtesy, and policy  
25 discounts and adjustments; and other such revenue deductions,  
26 but also includes the offset of restricted donations and  
27 grants for indigent care.

28 (17)~~(21)~~ "Diagnostic-imaging center" means a  
29 freestanding outpatient facility that provides specialized  
30 services for the diagnosis of a disease by examination and  
31 also provides radiological services. Such a facility is not a

1 diagnostic-imaging center if it is wholly owned and operated  
2 by physicians who are licensed pursuant to chapter 458 or  
3 chapter 459 and who practice in the same group practice and no  
4 diagnostic-imaging work is performed at such facility for  
5 patients referred by any health care provider who is not a  
6 member of that same group practice.

7 (18)~~(22)~~ "FHURS" means the Florida Hospital Uniform  
8 Reporting System developed by the agency board.

9 (19)~~(23)~~ "Freestanding" means that a health facility  
10 bills and receives revenue which is not directly subject to  
11 the hospital assessment for the Public Medical Assistance  
12 Trust Fund as described in s. 395.701.

13 (20)~~(24)~~ "Freestanding radiation therapy center" means  
14 a facility where treatment is provided through the use of  
15 radiation therapy machines that are registered under s. 404.22  
16 and the provisions of the Florida Administrative Code  
17 implementing s. 404.22. Such a facility is not a freestanding  
18 radiation therapy center if it is wholly owned and operated by  
19 physicians licensed pursuant to chapter 458 or chapter 459 who  
20 practice within the specialty of diagnostic or therapeutic  
21 radiology.

22 (21)~~(25)~~ "GRAA" means gross revenue per adjusted  
23 admission.

24 (22)~~(26)~~ "Gross revenue" means the sum of daily  
25 hospital service charges, ambulatory service charges,  
26 ancillary service charges, and other operating revenue. Gross  
27 revenues do not include contributions, donations, legacies, or  
28 bequests made to a hospital without restriction by the donors.

29 (23)~~(27)~~ "Health care facility" means an ambulatory  
30 surgical center, a hospice, a nursing home, a hospital, a  
31 diagnostic-imaging center, a freestanding or hospital-based



1 therapy center, a clinical laboratory, a home health agency, a  
2 cardiac catheterization laboratory, a medical equipment  
3 supplier, an alcohol or chemical dependency treatment center,  
4 a physical rehabilitation center, a lithotripsy center, an  
5 ambulatory care center, a birth center, or a nursing home  
6 component licensed under chapter 400 within a continuing care  
7 facility licensed under chapter 651.

8 (24)~~(28)~~ "Health care provider" means a health care  
9 professional licensed under chapter 458, chapter 459, chapter  
10 460, chapter 461, chapter 463, chapter 464, chapter 465,  
11 chapter 466, part I, part III, part IV, part V, or part X of  
12 chapter 468, chapter 483, chapter 484, chapter 486, chapter  
13 490, or chapter 491.

14 (25)~~(29)~~ "Health care purchaser" means an employer in  
15 the state, other than a health care facility, health insurer,  
16 or health care provider, who provides health care coverage for  
17 her or his employees.

18 (26)~~(30)~~ "Health insurer" means any insurance company  
19 authorized to transact health insurance in the state, any  
20 insurance company authorized to transact health insurance or  
21 casualty insurance in the state that is offering a minimum  
22 premium plan or stop-loss coverage for any person or entity  
23 providing health care benefits, any self-insurance plan as  
24 defined in s. 624.031, any health maintenance organization  
25 authorized to transact business in the state pursuant to part  
26 I of chapter 641, any prepaid health clinic authorized to  
27 transact business in the state pursuant to part II of chapter  
28 641, any multiple-employer welfare arrangement authorized to  
29 transact business in the state pursuant to ss. 624.436-624.45,  
30 or any fraternal benefit society providing health benefits to  
31 its members as authorized pursuant to chapter 632.

1        (27)~~(31)~~ "Home health agency" means an organization  
2 licensed under part IV of chapter 400.

3        (28)~~(32)~~ "Hospice" means an organization licensed  
4 under part VI of chapter 400.

5        (29)~~(33)~~ "Hospital" means a health care institution  
6 licensed by the Agency for Health Care Administration as a  
7 hospital under chapter 395.

8        (30)~~(34)~~ "Lithotripsy center" means a freestanding  
9 facility that ~~which~~ employs or contracts with licensed health  
10 care professionals to provide diagnosis or treatment services  
11 using electro-hydraulic shock waves.

12        (31)~~(35)~~ "Local health council" means the agency  
13 defined in s. 408.033.

14        (32)~~(36)~~ "Market basket index" means the Florida  
15 hospital input price index (FHIPI), which is a statewide  
16 market basket index used to measure inflation in hospital  
17 input prices weighted for the Florida-specific experience  
18 which uses multistate regional and state-specific price  
19 measures, when available. The index shall be constructed in  
20 the same manner as the index employed by the Secretary of the  
21 United States Department of Health and Human Services for  
22 determining the inflation in hospital input prices for  
23 purposes of Medicare reimbursement.

24        ~~(37) "Maximum allowable rate of increase" or "MARI"~~  
25 ~~means the maximum rate at which a hospital is normally~~  
26 ~~expected to increase its average gross revenues per adjusted~~  
27 ~~admission for a given period. The board, using the most~~  
28 ~~recent audited actual data for each hospital, shall calculate~~  
29 ~~the MARI for each hospital as follows: The projected rate of~~  
30 ~~increase in the market basket index shall be divided by a~~  
31 ~~number which is determined by subtracting the sum of one-half~~

1 of the proportion of Medicare days plus one-half of the  
2 proportion of CHAMPUS days plus the proportion of Medicaid  
3 days plus 1.5 times the proportion of charity care days from  
4 the number one. The formula to be employed by the board to  
5 calculate the MARI shall take the following form:

6  
7 FHIPI

8 
$$MARI = \frac{FHIPI}{1 - [(Me \times 0.5) + (Cp \times 0.5) + Md + (Cc \times 1.5)]}$$

9  
10  
11 where:

12 MARI - maximum allowable rate of increase applied to  
13 gross revenue.

14 FHIPI - Florida hospital input price index, which shall  
15 be the projected rate of change in the market basket index.

16 Me - proportion of Medicare days, including when  
17 available and reported to the board Medicare HMO days, to  
18 total days.

19 Cp - proportion of Civilian Health and Medical Program  
20 of the Uniformed Services (CHAMPUS) days to total days.

21 Md - proportion of Medicaid days, including when  
22 available and reported to the board Medicaid HMO days, to  
23 total days.

24 Cc - proportion of charity care days to total days with  
25 a 50-percent offset for restricted grants for charity care and  
26 unrestricted grants from local governments.

27 (33)~~(38)~~ "Medical equipment supplier" means an  
28 organization that ~~which~~ provides medical equipment and  
29 supplies used by health care providers and health care  
30 facilities in the diagnosis or treatment of disease.

31

1           (34)~~(39)~~ "Net revenue" means gross revenue minus  
2 deductions from revenue.

3           (35)~~(40)~~ "New hospital" means a hospital in its  
4 initial year of operation as a licensed hospital and does not  
5 include any facility which has been in existence as a licensed  
6 hospital, regardless of changes in ownership, for over 1  
7 calendar year.

8           (36)~~(41)~~ "Nursing home" means a facility licensed  
9 under s. 400.062 or, for resident level and financial data  
10 collection purposes only, any institution licensed under  
11 chapter 395 and which has a Medicare or Medicaid certified  
12 distinct part used for skilled nursing home care, but does not  
13 include a facility licensed under chapter 651.

14           (37)~~(42)~~ "Operating expenses" means total expenses  
15 excluding income taxes.

16           (38)~~(43)~~ "Other operating revenue" means all revenue  
17 generated from hospital operations other than revenue directly  
18 associated with patient care.

19           (39)~~(44)~~ "Physical rehabilitation center" means an  
20 organization that ~~which~~ employs or contracts with health care  
21 professionals licensed under part I or part III of chapter 468  
22 or chapter 486 to provide speech, occupational, or physical  
23 therapy services on an outpatient or ambulatory basis.

24           (40)~~(45)~~ "Prospective payment arrangement" means a  
25 financial agreement negotiated between a hospital and an  
26 insurer, health maintenance organization, preferred provider  
27 organization, or other third-party payor which contains, at a  
28 minimum, the elements provided for in s. 408.50.

29           (41)~~(46)~~ "Rate of return" means the financial  
30 indicators used to determine or demonstrate reasonableness of  
31 the financial requirements of a hospital. Such indicators

1 shall include, but not be limited to: return on assets,  
2 return on equity, total margin, and debt service coverage.

3 (42)~~(47)~~ "Rural hospital" means an acute care hospital  
4 licensed under chapter 395, with 85 licensed beds or fewer,  
5 which has an emergency room and is located in an area defined  
6 as rural by the United States Census, and which is:

7 (a) The sole provider within a county with a  
8 population density of no greater than 100 persons per square  
9 mile;

10 (b) An acute care hospital, in a county with a  
11 population density of no greater than 100 persons per square  
12 mile, which is at least 30 minutes of travel time, on normally  
13 traveled roads under normal traffic conditions, from another  
14 acute care hospital within the same county; or

15 (c) A hospital supported by a tax district or  
16 subdistrict whose boundaries encompass a population of 100  
17 persons or less per square mile.

18 (43)~~(48)~~ "Special study" means a nonrecurring  
19 data-gathering and analysis effort designed to aid the agency  
20 ~~for Health Care Administration~~ in meeting its responsibilities  
21 pursuant to this chapter.

22 (44)~~(49)~~ "Teaching hospital" means any hospital  
23 formally affiliated with an accredited medical school which  
24 ~~that~~ exhibits activity in the area of medical education as  
25 reflected by at least seven different resident physician  
26 specialties and the presence of 100 or more resident  
27 physicians.

28 Section 20. Section 408.08, Florida Statutes, is  
29 amended to read:

30 408.08 Inspections and audits; violations; penalties;  
31 fines; enforcement.--

1           (1) The agency may inspect and audit books and records  
2 of individual or corporate ownership, including books and  
3 records of related organizations with which a health care  
4 provider or a health care facility had transactions, for  
5 compliance with this chapter. Upon presentation of a written  
6 request for inspection to a health care provider or a health  
7 care facility by the agency or its staff, the health care  
8 provider or the health care facility shall make available to  
9 the agency or its staff for inspection, copying, and review  
10 all books and records relevant to the determination of whether  
11 the health care provider or the health care facility has  
12 complied with this chapter.

13           ~~(2) The board shall annually compare the audited~~  
14 ~~actual experience of each hospital to the audited actual~~  
15 ~~experience of that hospital for the previous year.~~

16           ~~(a) For a hospital submitting a budget letter, if the~~  
17 ~~board determines that the audited actual experience of the~~  
18 ~~hospital exceeded its previous year's audited actual~~  
19 ~~experience by more than the maximum allowable rate of increase~~  
20 ~~as certified in the budget letter plus any banked points~~  
21 ~~utilized in the budget letter, the amount of such excess shall~~  
22 ~~be determined by the board and a penalty shall be levied~~  
23 ~~against such hospital pursuant to subsection (3).~~

24           ~~(b) For a hospital subject to budget review, if the~~  
25 ~~board determines that the audited actual experience of the~~  
26 ~~hospital exceeded its previous year's audited actual~~  
27 ~~experience by more than the most recent approved budget or the~~  
28 ~~most recent approved budget as amended, the amount of such~~  
29 ~~excess shall be determined by the board, and a penalty shall~~  
30 ~~be levied against such hospital pursuant to subsection (3).~~

31

1           ~~(c) For a hospital submitting a budget letter and for~~  
2 ~~a hospital subject to budget review, the board shall annually~~  
3 ~~compare each hospital's audited actual experience for net~~  
4 ~~revenues per adjusted admission to the hospital's audited~~  
5 ~~actual experience for net revenues per adjusted admission for~~  
6 ~~the previous year. If the rate of increase in net revenues~~  
7 ~~per adjusted admission between the previous year and the~~  
8 ~~current year was less than the market basket index, the~~  
9 ~~hospital may carry forward the difference and earn up to a~~  
10 ~~cumulative maximum of 3 banked net revenue percentage points.~~  
11 ~~Such banked net revenue percentage points shall be available~~  
12 ~~to the hospital to offset, in any future year, penalties for~~  
13 ~~exceeding the approved budget or the maximum allowable rate of~~  
14 ~~increase as set forth in subsection (3). Nothing in this~~  
15 ~~paragraph shall be used by a hospital to justify the approval~~  
16 ~~of a budget or a budget amendment by the board in excess of~~  
17 ~~the maximum allowable rate of increase pursuant to s. 408.072.~~

18           ~~(3) Penalties shall be assessed as follows:~~

19           ~~(a) For the first occurrence within a 5-year period,~~  
20 ~~the board shall prospectively reduce the current budget of the~~  
21 ~~hospital by the amount of the excess up to 5 percent; and, if~~  
22 ~~such excess is greater than 5 percent over the maximum~~  
23 ~~allowable rate of increase, any amount in excess of 5 percent~~  
24 ~~shall be levied by the board as a fine against such hospital~~  
25 ~~to be deposited in the Public Medical Assistance Trust Fund.~~

26           ~~(b) For the second occurrence with the 5-year period~~  
27 ~~following the first occurrence as set forth in paragraph (a),~~  
28 ~~the board shall prospectively reduce the current budget of the~~  
29 ~~hospital by the amount of the excess up to 2 percent; and, if~~  
30 ~~such excess is greater than 2 percent over the maximum~~  
31 ~~allowable rate of increase, any amount in excess of 2 percent~~

1 ~~shall be levied by the board as a fine against such hospital~~  
2 ~~to be deposited in the Public Medical Assistance Trust Fund.~~  
3 ~~(c) For the third occurrence within the 5-year period~~  
4 ~~following the first occurrence as set forth in paragraph (a),~~  
5 ~~the board shall:~~  
6 ~~1. Levy a fine against the hospital in the total~~  
7 ~~amount of the excess, to be deposited in the Public Medical~~  
8 ~~Assistance Trust Fund.~~  
9 ~~2. Notify the agency of the violation, whereupon the~~  
10 ~~agency shall not accept any application for a certificate of~~  
11 ~~need pursuant to ss. 408.031-408.045 from or on behalf of such~~  
12 ~~hospital until such time as the hospital has demonstrated to~~  
13 ~~the satisfaction of the board that, following the date the~~  
14 ~~penalty was imposed under subparagraph 1., the hospital has~~  
15 ~~stayed within its projected or amended budget or its~~  
16 ~~applicable maximum allowable rate of increase for a period of~~  
17 ~~at least 1 year. However, this provision does not apply with~~  
18 ~~respect to a certificate-of-need application filed to satisfy~~  
19 ~~a life or safety code violation.~~  
20 ~~3. Upon a determination that the hospital knowingly~~  
21 ~~and willfully generated such excess, notify the agency,~~  
22 ~~whereupon the agency shall initiate disciplinary proceedings~~  
23 ~~to deny, modify, suspend, or revoke the license of such~~  
24 ~~hospital or impose an administrative fine on such hospital not~~  
25 ~~to exceed \$20,000.~~  
26  
27 ~~The determination of the amount of any such excess shall be~~  
28 ~~based upon net revenues per adjusted admission, excluding~~  
29 ~~funds distributed to the hospital from the Public Medical~~  
30 ~~Assistance Trust Fund. However, in making such determination,~~  
31 ~~the board shall appropriately reduce the amount of the excess~~



1 ~~by the total amount of the assessment paid by such hospital~~  
2 ~~pursuant to s. 395.701 minus the amount of revenues received~~  
3 ~~by the hospital through the Public Medical Assistance Trust~~  
4 ~~Fund. It is the responsibility of the hospital to demonstrate~~  
5 ~~to the satisfaction of the board its entitlement to such~~  
6 ~~reduction. It is the intent of the Legislature that the~~  
7 ~~Health Care Board, in levying any penalty imposed against a~~  
8 ~~hospital for exceeding its maximum allowable rate of increase~~  
9 ~~or its approved budget pursuant to this subsection, consider~~  
10 ~~the effect of changes in the case mix of the hospital and in~~  
11 ~~the hospital's intensity and severity of illness as measured~~  
12 ~~by changes in the hospital's actual proportion of outlier~~  
13 ~~cases to total cases and dollar increases in outlier cases'~~  
14 ~~average charge per case. It is the responsibility of the~~  
15 ~~hospital to demonstrate to the satisfaction of the board any~~  
16 ~~change in its case mix and in its intensity and severity of~~  
17 ~~illness. For psychiatric hospitals and other hospitals not~~  
18 ~~reimbursed under a prospective payment system by the Federal~~  
19 ~~Government, until a proxy for case mix is available, the board~~  
20 ~~shall also reduce the amount of excess by the change in a~~  
21 ~~hospital's audited actual average length of stay without any~~  
22 ~~thresholds or limitations.~~

23 ~~(4) The following factors may be used by the board to~~  
24 ~~reduce the amount of excess of the hospital as determined~~  
25 ~~pursuant to this section:~~

26 ~~(a) Unforeseen and unforeseeable events which affect~~  
27 ~~the net revenue per adjusted admission and which are beyond~~  
28 ~~the control of the hospital, such as prior year Medicare cost~~  
29 ~~report settlements, retroactive changes in Medicare~~  
30 ~~reimbursement methodology, and increases in malpractice~~  
31 ~~insurance premiums, which occurred in the last 3 months of the~~

1 ~~hospital fiscal year during which the hospital generated the~~  
2 ~~excess; or~~  
3 ~~(b) Imposition of the penalty would have a severe~~  
4 ~~adverse effect which would jeopardize the continued existence~~  
5 ~~of an otherwise economically viable hospital.~~  
6 ~~(5) The board shall reduce the amount of the excess~~  
7 ~~for hospitals submitting budget letters pursuant to s.~~  
8 ~~408.072(3)(a) by the amount of any documented costs from~~  
9 ~~financial assistance provided to expand or supplement the~~  
10 ~~curriculum of a community college, university, or vocational~~  
11 ~~training school for the purpose of training nurses or other~~  
12 ~~health professionals, not including physicians. Financial~~  
13 ~~assistance would include, but not be limited to, the direct~~  
14 ~~costs for faculty salaries and expenses, books, equipment,~~  
15 ~~recruiting efforts, tuition assistance, and hospital~~  
16 ~~internships. The reduction would be based on actual~~  
17 ~~documented expenses increased by the gross revenues necessary~~  
18 ~~to generate net revenues sufficient to cover the expenses.~~  
19 ~~(6) If the board finds that any hospital chief~~  
20 ~~executive officer or any person who is in charge of hospital~~  
21 ~~administration or operations has knowingly and willfully~~  
22 ~~allowed or authorized actual operating revenues or~~  
23 ~~expenditures that are in excess of projected operating~~  
24 ~~revenues or expenditures in the hospital's approved budget,~~  
25 ~~the board shall order such officer or person to pay an~~  
26 ~~administrative fine not to exceed \$5,000.~~  
27 ~~(7) For hospitals filing budget letters, the board~~  
28 ~~shall annually compare the audited actual experience of each~~  
29 ~~hospital for the year under review to the audited actual~~  
30 ~~experience of that hospital for the previous year. For~~  
31 ~~hospitals which submitted detailed budgets or budget~~

1 ~~amendments, the board shall compare the audited actual~~  
2 ~~experience of each hospital for the year under review to its~~  
3 ~~approved gross revenue per adjusted admission for the year~~  
4 ~~under review, for purposes of levying an administrative fine.~~

5 ~~(a) For a hospital submitting a budget letter pursuant~~  
6 ~~to s. 408.072(3)(a), if the board determines that the audited~~  
7 ~~actual experience for the year under review exceeded the~~  
8 ~~hospital's previous year's audited actual experience by more~~  
9 ~~than the maximum allowable rate of increase as certified in~~  
10 ~~the budget letter plus any banked points utilized in the~~  
11 ~~budget letter, the amount of the excess shall be determined~~  
12 ~~and an administrative fine shall be levied against such~~  
13 ~~hospital pursuant to subsection (8).~~

14 ~~(b) For a hospital which submitted a budget pursuant~~  
15 ~~to s. 408.072(1), or a budget amendment pursuant to s.~~  
16 ~~408.072(6), if the board determines that the gross revenue per~~  
17 ~~adjusted admission contained in the hospital's audited actual~~  
18 ~~experience exceeded its board-approved gross revenue per~~  
19 ~~adjusted admission, the amount of the excess shall be~~  
20 ~~determined and an administrative fine shall be levied against~~  
21 ~~such hospital pursuant to subsection (8).~~

22 ~~(8) If the board determines that an excess exists~~  
23 ~~pursuant to subsection (7), the board shall multiply the~~  
24 ~~excess by the number of actual adjusted admissions contained~~  
25 ~~in the year at issue to determine the amount of the base fine.~~  
26 ~~The base fine shall be multiplied by the applicable occurrence~~  
27 ~~factor to determine the amount of the administrative fine~~  
28 ~~levied against the hospital.~~

29 ~~(a) For the first occurrence within a 5-year period,~~  
30 ~~the applicable occurrence factor shall be 0.25. For the~~  
31 ~~second occurrence within a 5-year period, the applicable~~

1 ~~occurrence factor shall be 0.55. For the third occurrence~~  
2 ~~within a 5-year period, the applicable occurrence factor shall~~  
3 ~~be 1.0.~~

4 ~~(b) In no event shall any administrative fine levied~~  
5 ~~pursuant to this subsection exceed \$365,000.~~

6 ~~(9) In levying any administrative fine against a~~  
7 ~~hospital pursuant to subsection (8), the board shall consider~~  
8 ~~the effect of any changes in the hospital's case mix, and in~~  
9 ~~the hospital's intensity and severity of illness as measured~~  
10 ~~by changes in the hospital's actual proportion of outlier~~  
11 ~~cases to total cases and dollar increases in outlier cases'~~  
12 ~~average charge per case. The board shall adjust the amount of~~  
13 ~~any excess by the changes in the hospital's case mix and in~~  
14 ~~its intensity and severity of illness, based upon certified~~  
15 ~~hospital patient discharge data provided to the board pursuant~~  
16 ~~to s. 408.061. For psychiatric hospitals and other hospitals~~  
17 ~~not reimbursed under a prospective payment system by the~~  
18 ~~Federal Government, until a proxy for case mix is available,~~  
19 ~~the board shall adjust the amount of any excess by the change~~  
20 ~~in a hospital's audited actual average length of stay without~~  
21 ~~any thresholds or limitation.~~

22 ~~(10) In levying any administrative fine against a~~  
23 ~~hospital pursuant to subsection (8), it is the intent of the~~  
24 ~~Legislature that if a hospital can demonstrate to the~~  
25 ~~satisfaction of the board that it operated within its approved~~  
26 ~~gross revenue per adjusted admission for the first 8 months of~~  
27 ~~its fiscal year and did not increase its prices, except for~~  
28 ~~exceptions determined by the board during the last 5 months of~~  
29 ~~its fiscal year, it shall not be subject to any administrative~~  
30 ~~fine levied pursuant to subsection (8).~~

31

1           ~~(11)~~ It is the further intent of the Legislature that  
2 if a hospital can demonstrate to the satisfaction of the board  
3 that it did not increase its prices on average in excess of  
4 the MARI for the prior year, it shall not be subject to any  
5 administrative fine levied pursuant to subsection (8).

6           ~~(12)~~ If the board finds that any hospital chief  
7 executive officer or any person who is in charge of hospital  
8 administration or operations has knowingly and willfully  
9 allowed or authorized gross revenue per adjusted admission,  
10 net revenue per adjusted admission, or rates of increase that  
11 are in excess of gross or net revenue per adjusted admission,  
12 or rates of increase in the hospital's approved budget, budget  
13 amendment, or budget letter, the agency shall order such  
14 officer or person to pay an administrative fine not to exceed  
15 \$5,000.

16           (2)~~(13)~~ Any health care facility that refuses to file  
17 a report, fails to timely file a report, files a false report,  
18 or files an incomplete report and upon notification fails to  
19 timely file a complete report required under ~~this section and~~  
20 s. 408.061; that violates ~~any provision of~~ this section, s.  
21 408.061, or s. 408.20, or rule adopted thereunder; or that  
22 fails to provide documents or records requested by the agency  
23 under ~~the provisions of~~ this chapter shall be punished by a  
24 fine not exceeding \$1,000 per day for each day in violation,  
25 to be imposed and collected by the agency.

26           (3)~~(14)~~ Any health care provider that refuses to file  
27 a report, fails to timely file a report, files a false report,  
28 or files an incomplete report and upon notification fails to  
29 timely file a complete report required under ~~this section and~~  
30 s. 408.061; that violates ~~any provision of~~ this section, s.  
31 408.061, or s. 408.20, or rule adopted thereunder; or that

1 fails to provide documents or records requested by the agency  
2 under ~~the provisions of~~ this chapter shall be referred to the  
3 appropriate licensing board which shall take appropriate  
4 action against the health care provider.

5 ~~(4)(15)~~ If ~~In the event that~~ a health insurer does not  
6 comply with the requirements of s. 408.061, the agency shall  
7 report a health insurer's failure to comply to the Department  
8 of Insurance, which shall take into account the failure by the  
9 health insurer to comply in conjunction with its approval  
10 authority under s. 627.410. The agency shall adopt any rules  
11 necessary to carry out its responsibilities required by this  
12 subsection.

13 ~~(5)(16)~~ Refusal to file, failure to timely file, or  
14 filing false or incomplete reports or other information  
15 required to be filed under the provisions of this chapter,  
16 failure to pay or failure to timely pay any assessment  
17 authorized to be collected by the agency, or violation of any  
18 other provision of this chapter or lawfully entered order of  
19 the agency or rule adopted under this chapter, shall be  
20 punished by a fine not exceeding \$1,000 a day for each day in  
21 violation, to be fixed, imposed, and collected by the agency.  
22 Each day in violation shall be considered a separate offense.

23 ~~(6)(17)~~ Notwithstanding any other provisions of this  
24 chapter, when a hospital alleges that a factual determination  
25 made by the agency board is incorrect, the burden of proof  
26 shall be on the hospital to demonstrate that such  
27 determination is, in light of the total record, not supported  
28 by a preponderance of the evidence. The burden of proof  
29 remains with the hospital in all cases involving  
30 administrative agency action.

31

1           Section 21. Section 408.40, Florida Statutes, is  
2 amended to read:

3           408.40 ~~Budget review proceedings; duty of~~ Public  
4 Counsel.--

5           (1) Notwithstanding any other provisions of this  
6 chapter, ~~it shall be the duty of~~ the Public Counsel shall ~~to~~  
7 represent the ~~general public of the state~~ in any proceeding  
8 before the agency or its advisory panels in any administrative  
9 hearing conducted pursuant to ~~the provisions of~~ chapter 120 or  
10 before any other state and federal agencies and courts in any  
11 issue before the agency, any court, or any agency. With  
12 respect to any such proceeding, the Public Counsel is subject  
13 to the provisions of and may use ~~utilize~~ the powers granted to  
14 him or her by ss. 350.061-350.0614.

15           (2) The Public Counsel shall:

16           (a) Recommend to the agency, by petition, the  
17 commencement of any proceeding or action or to appear, in the  
18 name of the state or its citizens, in any proceeding or action  
19 before the agency and urge therein any position that ~~which~~ he  
20 or she deems to be in the public interest, whether consistent  
21 or inconsistent with positions previously adopted by the  
22 agency, and use ~~utilize~~ therein all forms of discovery  
23 available to attorneys in civil actions generally, subject to  
24 protective orders of the agency, which shall be reviewable by  
25 summary procedure in the circuit courts of this state.

26           (b) Have access to and use of all files, records, and  
27 data of the agency available to any other attorney  
28 representing parties in a proceeding before the agency.

29           (c) In any proceeding in which he or she has  
30 participated as a party, seek review of any determination,  
31 finding, or order of the agency, or of any administrative law

1 judge, or any hearing officer or hearing examiner designated  
2 by the agency, in the name of the state or its citizens.

3 (d) Prepare and issue reports, recommendations, and  
4 proposed orders to the agency, the Governor, and the  
5 Legislature on any matter or subject within the jurisdiction  
6 of the agency, and to make such recommendations as he or she  
7 deems appropriate for legislation relative to agency  
8 procedures, rules, jurisdiction, personnel, and functions.

9 (e) Appear before other state agencies, federal  
10 agencies, and state and federal courts in connection with  
11 matters under the jurisdiction of the agency, in the name of  
12 the state or its citizens.

13 Section 22. Subsection (1) of section 408.50, Florida  
14 Statutes, is amended to read:

15 408.50 Prospective payment arrangements.--

16 (1) Hospitals as defined in s. 395.002, and health  
17 insurers regulated pursuant to parts VI and VII of chapter  
18 627, shall establish prospective payment arrangements that  
19 provide hospitals with financial incentives to contain costs.  
20 Each hospital shall enter into a rate agreement with each  
21 health insurer which represents 10 percent or more of the  
22 private-pay patients of the hospital to establish a  
23 prospective payment arrangement. Hospitals and health insurers  
24 regulated pursuant to this section shall report annually the  
25 results of each specific prospective payment arrangement  
26 adopted by each hospital and health insurer to the agency  
27 ~~board~~. The agency shall report a health insurer's failure to  
28 comply to the Department of Insurance, which shall take into  
29 account the failure by the health insurer to comply in  
30 conjunction with its approval authority under s. 627.410. The  
31



1 agency shall adopt any rules necessary to carry out its  
2 responsibilities required by this section.

3 Section 23. Paragraph (e) of subsection (10) and  
4 subsection (14) of section 409.2673, Florida Statutes, are  
5 amended to read:

6 409.2673 Shared county and state health care program  
7 for low-income persons; trust fund.--

8 (10) Under the shared county and state program,  
9 reimbursement to a hospital for services for an eligible  
10 person must:

11 (e) Be conditioned, for tax district hospitals that  
12 deliver services as part of this program, on the delivery of  
13 charity care, as defined in the rules of the Agency for Health  
14 Care Administration ~~Health Care Cost Containment Board~~, which  
15 equals a minimum of 2.5 percent of the tax district hospital's  
16 net revenues; however, those tax district hospitals which by  
17 virtue of the population within the geographic boundaries of  
18 the tax district can not feasibly provide this level of  
19 charity care shall assure an "open door" policy to those  
20 residents of the geographic boundaries of the tax district who  
21 would otherwise be considered charity cases.

22 (14) Any dispute among a county, the Agency for Health  
23 Care Administration ~~Health Care Cost Containment Board~~, the  
24 department, or a participating hospital shall be resolved by  
25 order as provided in chapter 120. Hearings held under this  
26 subsection shall be conducted in the same manner as provided  
27 in ss. 120.569 and 120.57, except that the administrative law  
28 judge's or hearing officer's order constitutes final agency  
29 action. Cases filed under chapter 120 may combine all relevant  
30 disputes between parties.

31

1           Section 24. Section 409.9113, Florida Statutes, is  
2 amended to read:

3           409.9113 Disproportionate share program for teaching  
4 hospitals.--In addition to the payments made under ss. 409.911  
5 and 409.9112, the Agency for Health Care Administration  
6 ~~Department of Health and Rehabilitative Services~~ shall make  
7 disproportionate share payments to statutorily defined  
8 teaching hospitals for their increased costs associated with  
9 medical education programs and for tertiary health care  
10 services provided to the indigent. This system of payments  
11 shall conform with federal requirements and shall distribute  
12 funds in each fiscal year for which an appropriation is made  
13 by making quarterly Medicaid payments. Notwithstanding ~~the~~  
14 ~~provisions of s. 409.915~~, counties are exempt from  
15 contributing toward the cost of this special reimbursement for  
16 hospitals serving a disproportionate share of low-income  
17 patients.

18           (1) On or before September 15 of each year, the agency  
19 ~~for Health Care Administration~~ shall calculate an allocation  
20 fraction to be used for distributing funds to state statutory  
21 teaching hospitals. Subsequent to the end of each quarter of  
22 the state fiscal year, the agency ~~department~~ shall distribute  
23 to each statutory teaching hospital, as defined in s. 408.07,  
24 an amount determined by multiplying one-fourth of the funds  
25 appropriated for this purpose by the Legislature times such  
26 hospital's allocation fraction. The allocation fraction for  
27 each such hospital shall be determined by the sum of three  
28 primary factors, divided by three. The primary factors are:

29           (a) The number of nationally accredited graduate  
30 medical education programs offered by the hospital, including  
31 programs accredited by the Accreditation Council for Graduate

1 Medical Education and the combined Internal Medicine and  
2 Pediatrics programs acceptable to both the American Board of  
3 Internal Medicine and the American Board of Pediatrics at the  
4 beginning of the state fiscal year preceding the date on which  
5 the allocation fraction is calculated. The numerical value of  
6 this factor is the fraction that the hospital represents of  
7 the total number of programs, where the total is computed for  
8 all state statutory teaching hospitals.

9 (b) The number of full-time equivalent trainees in the  
10 hospital, which comprises two components:

11 1. The number of trainees enrolled in nationally  
12 accredited graduate medical education programs, as defined in  
13 paragraph (a). Full-time equivalents are computed using the  
14 fraction of the year during which each trainee is primarily  
15 assigned to the given institution, over the state fiscal year  
16 preceding the date on which the allocation fraction is  
17 calculated. The numerical value of this factor is the fraction  
18 that the hospital represents of the total number of full-time  
19 equivalent trainees enrolled in accredited graduate programs,  
20 where the total is computed for all state statutory teaching  
21 hospitals.

22 2. The number of medical students enrolled in  
23 accredited colleges of medicine and engaged in clinical  
24 activities, including required clinical clerkships and  
25 clinical electives. Full-time equivalents are computed using  
26 the fraction of the year during which each trainee is  
27 primarily assigned to the given institution, over the course  
28 of the state fiscal year preceding the date on which the  
29 allocation fraction is calculated. The numerical value of this  
30 factor is the fraction that the given hospital represents of  
31 the total number of full-time equivalent students enrolled in

1 accredited colleges of medicine, where the total is computed  
2 for all state statutory teaching hospitals.

3

4 The primary factor for full-time equivalent trainees is  
5 computed as the sum of these two components, divided by two.

6 (c) A service index that ~~which~~ comprises three  
7 components:

8 1. The Agency for Health Care Administration ~~Health~~  
9 ~~Care Cost Containment Board~~ Service Index, computed by  
10 applying the standard Service Inventory Scores established by  
11 the agency ~~Health Care Cost Containment Board~~ to services  
12 offered by the given hospital, as reported on ~~the Health Care~~  
13 ~~Cost Containment Board~~ Worksheet A-2 for the last fiscal year  
14 reported to the agency ~~board~~ before the date on which the  
15 allocation fraction is calculated. The numerical value of  
16 this factor is the fraction that the given hospital represents  
17 of the total Agency for Health Care Administration ~~Health Care~~  
18 ~~Cost Containment Board~~ Service Index values, where the total  
19 is computed for all state statutory teaching hospitals.

20 2. A volume-weighted service index, computed by  
21 applying the standard Service Inventory Scores established by  
22 the agency ~~Health Care Cost Containment Board~~ to the volume of  
23 each service, expressed in terms of the standard units of  
24 measure reported on ~~the Health Care Cost Containment Board~~  
25 Worksheet A-2 for the last fiscal year reported to the agency  
26 ~~board~~ before the date on which the allocation factor is  
27 calculated. The numerical value of this factor is the  
28 fraction that the given hospital represents of the total  
29 volume-weighted service index values, where the total is  
30 computed for all state statutory teaching hospitals.

31

1           3. Total Medicaid payments to each hospital for direct  
2 inpatient and outpatient services during the fiscal year  
3 preceding the date on which the allocation factor is  
4 calculated. This includes payments made to each hospital for  
5 such services by Medicaid prepaid health plans, whether the  
6 plan was administered by the hospital or not. The numerical  
7 value of this factor is the fraction that each hospital  
8 represents of the total of such Medicaid payments, where the  
9 total is computed for all state statutory teaching hospitals.

10  
11 The primary factor for the service index is computed as the  
12 sum of these three components, divided by three.

13           (2) By October 1 of each year, the agency shall use  
14 the following formula ~~shall be utilized by the department~~ to  
15 calculate the maximum additional disproportionate share  
16 payment for statutorily defined teaching hospitals:

$$17 \qquad \qquad \qquad 18 \qquad \qquad \qquad \text{TAP} = \text{THAF} \times \text{A}$$

19  
20 Where:

21           TAP = total additional payment.

22           THAF = teaching hospital allocation factor.

23           A = amount appropriated for a teaching hospital  
24 disproportionate share program.

25  
26           ~~(3) The Health Care Cost Containment Board shall~~  
27 ~~report to the department the statutory teaching hospital~~  
28 ~~allocation fraction prior to October 1 of each year.~~

29           Section 25. Subsection (9) of section 395.403, Florida  
30 Statutes, and sections 407.61, 408.003, 408.072, and 408.085,  
31 Florida Statutes, are repealed.

1           Section 26. The repeal of laws governing the review of  
2 hospital budgets and related penalties contained in this act  
3 operates retroactively and applies to any hospital budget  
4 prepared for a fiscal year that ended during the 1995 calendar  
5 year.

6           Section 27. Subsection (6) of section 381.026, Florida  
7 Statutes, is amended to read:

8           381.026 Florida Patient's Bill of Rights and  
9 Responsibilities.--

10           (6) SUMMARY OF RIGHTS AND RESPONSIBILITIES.--Any  
11 health care provider who treats a patient in an office or any  
12 health care facility licensed under chapter 395 that provides  
13 emergency services and care or outpatient services and care to  
14 a patient, or admits and treats a patient, shall adopt and  
15 make available to the patient ~~public~~, in writing, a statement  
16 of the rights and responsibilities of patients, including:

17  
18                           SUMMARY OF THE FLORIDA PATIENT'S BILL  
19                           OF RIGHTS AND RESPONSIBILITIES  
20

21           Florida law requires that your health care provider or  
22 health care facility recognize your rights while you are  
23 receiving medical care and that you respect the health care  
24 provider's or health care facility's right to expect certain  
25 behavior on the part of patients. You may request a copy of  
26 the full text of this law from your health care provider or  
27 health care facility. A summary of your rights and  
28 responsibilities follows:

29           A patient has the right to be treated with courtesy and  
30 respect, with appreciation of his or her individual dignity,  
31 and with protection of his or her need for privacy.

1           A patient has the right to a prompt and reasonable  
2 response to questions and requests.

3           A patient has the right to know who is providing  
4 medical services and who is responsible for his or her care.

5           A patient has the right to know what patient support  
6 services are available, including whether an interpreter is  
7 available if he or she does not speak English.

8           A patient has the right to know what rules and  
9 regulations apply to his or her conduct.

10          A patient has the right to be given by the health care  
11 provider information concerning diagnosis, planned course of  
12 treatment, alternatives, risks, and prognosis.

13          A patient has the right to refuse any treatment, except  
14 as otherwise provided by law.

15          A patient has the right to be given, upon request, full  
16 information and necessary counseling on the availability of  
17 known financial resources for his or her care.

18          A patient who is eligible for Medicare has the right to  
19 know, upon request and in advance of treatment, whether the  
20 health care provider or health care facility accepts the  
21 Medicare assignment rate.

22          A patient has the right to receive, upon request, prior  
23 to treatment, a reasonable estimate of charges for medical  
24 care.

25          A patient has the right to receive a copy of a  
26 reasonably clear and understandable, itemized bill and, upon  
27 request, to have the charges explained.

28          A patient has the right to impartial access to medical  
29 treatment or accommodations, regardless of race, national  
30 origin, religion, physical handicap, or source of payment.

31

1           A patient has the right to treatment for any emergency  
2 medical condition that will deteriorate from failure to  
3 provide treatment.

4           A patient has the right to know if medical treatment is  
5 for purposes of experimental research and to give his or her  
6 consent or refusal to participate in such experimental  
7 research.

8           A patient has the right to express grievances regarding  
9 any violation of his or her rights, as stated in Florida law,  
10 through the grievance procedure of the health care provider or  
11 health care facility which served him or her and to the  
12 appropriate state licensing agency.

13           A patient is responsible for providing to the health  
14 care provider, to the best of his or her knowledge, accurate  
15 and complete information about present complaints, past  
16 illnesses, hospitalizations, medications, and other matters  
17 relating to his or her health.

18           A patient is responsible for reporting unexpected  
19 changes in his or her condition to the health care provider.

20           A patient is responsible for reporting to the health  
21 care provider whether he or she comprehends a contemplated  
22 course of action and what is expected of him or her.

23           A patient is responsible for following the treatment  
24 plan recommended by the health care provider.

25           A patient is responsible for keeping appointments and,  
26 when he or she is unable to do so for any reason, for  
27 notifying the health care provider or health care facility.

28           A patient is responsible for his or her actions if he  
29 or she refuses treatment or does not follow the health care  
30 provider's instructions.

31



1           A patient is responsible for assuring that the  
2 financial obligations of his or her health care are fulfilled  
3 as promptly as possible.

4           A patient is responsible for following health care  
5 facility rules and regulations affecting patient care and  
6 conduct.

7           Section 28. Section 381.0261, Florida Statutes, is  
8 amended to read:

9           381.0261 ~~Distribution of~~ Summary of patient's bill of  
10 rights; distribution; penalty.--

11           (1) The Agency for Health Care Administration  
12 ~~Department of Health and Rehabilitative Services~~ shall have  
13 printed and made continuously available to health care  
14 facilities licensed under chapter 395, physicians licensed  
15 under chapter 458, osteopathic physicians licensed under  
16 chapter 459, and podiatrists licensed under chapter 461 a  
17 summary of the Florida Patient's Bill of Rights and  
18 Responsibilities. In adopting and making available to  
19 patients public the summary of the Florida Patient's Bill of  
20 Rights and Responsibilities, health care providers and health  
21 care facilities are not limited to the format in which the  
22 Agency for Health Care Administration ~~Department of Health and~~  
23 ~~Rehabilitative Services~~ prints and distributes the summary.

24           (2) Health care providers and health care facilities,  
25 if requested, shall inform patients of the address and  
26 telephone number of each state agency responsible for  
27 responding to patient complaints about a health care provider  
28 or health care facility's alleged noncompliance with state  
29 licensing requirements established pursuant to law.

30           (3) Health care facilities shall adopt policies and  
31 procedures to ensure that inpatients are provided the

1 opportunity during the course of admission to receive  
2 information regarding their rights and how to file complaints  
3 with the facility and appropriate state agencies.

4 (4) An administrative fine may be imposed by the  
5 agency when any health care provider or health care facility  
6 fails to make available to patients a summary of their rights,  
7 pursuant to s. 381.026 and this section. Initial nonwillful  
8 violations shall be subject to corrective action and shall not  
9 be subject to an administrative fine. The agency may levy a  
10 fine against a health care facility of up to \$5,000 for  
11 nonwillful violations and up to \$25,000 for intentional and  
12 willful violations. The agency may levy a fine against a  
13 health care provider of up to \$100 for nonwillful violations  
14 and up to \$500 for willful violations. Each intentional and  
15 willful violation constitutes a separate violation and is  
16 subject to a separate fine.

17 (5) In determining the amount of fine to be levied for  
18 a violation, as provided in subsection (4), the following  
19 factors shall be considered:

20 (a) The scope and severity of the violation, including  
21 the number of patients found to not have received notice of  
22 patient rights, and whether the failure to provide notice to  
23 patients was willful.

24 (b) Actions taken by the health care provider or  
25 health care facility to correct the violations or to remedy  
26 complaints.

27 (c) Any previous violations of this section by the  
28 health care provider or health care facility.

29 Section 29. Subsections (2) and (15) of section  
30 395.002, Florida Statutes, are repealed:

31 395.002 Definitions.--As used in this chapter:

1           ~~(2) "Adverse or untoward incident," for purposes of~~  
2 ~~reporting to the agency, means an event over which health care~~  
3 ~~personnel could exercise control, which is probably associated~~  
4 ~~in whole or in part with medical intervention rather than the~~  
5 ~~condition for which such intervention occurred, and which~~  
6 ~~causes injury to a patient, and which:~~  
7           ~~(a) Is not consistent with or expected to be a~~  
8 ~~consequence of such medical intervention;~~  
9           ~~(b) Occurs as a result of medical intervention to~~  
10 ~~which the patient has not given his or her informed consent;~~  
11           ~~(c) Occurs as the result of any other action or lack~~  
12 ~~of any other action on the part of the hospital or personnel~~  
13 ~~of the hospital;~~  
14           ~~(d) Results in a surgical procedure being performed on~~  
15 ~~the wrong patient; or~~  
16           ~~(e) Results in a surgical procedure being performed~~  
17 ~~that is unrelated to the patient's diagnosis or medical needs.~~  
18           ~~(15) "Injury," for purposes of reporting to the~~  
19 ~~agency, means any of the following outcomes if caused by an~~  
20 ~~adverse or untoward incident:~~  
21           ~~(a) Death;~~  
22           ~~(b) Brain damage;~~  
23           ~~(c) Spinal damage;~~  
24           ~~(d) Permanent disfigurement;~~  
25           ~~(e) Fracture or dislocation of bones or joints;~~  
26           ~~(f) Any condition requiring definitive or specialized~~  
27 ~~medical attention which is not consistent with the routine~~  
28 ~~management of the patient's case or patient's preexisting~~  
29 ~~physical condition;~~  
30           ~~(g) Any condition requiring surgical intervention to~~  
31 ~~correct or control;~~

1           ~~(h) Any condition resulting in transfer of the~~  
2 ~~patient, within or outside the facility, to a unit providing a~~  
3 ~~more acute level of care;~~

4           ~~(i) Any condition that extends the patient's length of~~  
5 ~~stay; or~~

6           ~~(j) Any condition that results in a limitation of~~  
7 ~~neurological, physical, or sensory function which continues~~  
8 ~~after discharge from the facility.~~

9           Section 30. Present subsections (3), (4), (5), and (7)  
10 of section 395.0193, Florida Statutes, are amended, present  
11 subsections (6), (7), (8), and (9) are renumbered as  
12 subsections (7), (8), (9), and (10), respectively, and a new  
13 subsection (6) is added to that section, to read:

14           395.0193 Licensed facilities; peer review;  
15 disciplinary powers; agency or partnership with physicians.--

16           (3) If reasonable belief exists that conduct by a  
17 staff member or physician who delivers health care services at  
18 the licensed facility may constitute one or more grounds for  
19 discipline as provided in this subsection, a peer review panel  
20 shall investigate and determine whether grounds for discipline  
21 exist with respect to such staff member or physician. The  
22 governing board of any licensed facility, after considering  
23 the recommendations of its peer review panel, shall suspend,  
24 deny, revoke, or curtail the privileges, or reprimand,  
25 counsel, or require education, of any such staff member or  
26 physician after a final determination has been made that one  
27 or more of the following grounds exist:

28           (a) Incompetence.

29           (b) Being found to be a habitual user of intoxicants  
30 or drugs to the extent that he or she is deemed dangerous to  
31 himself, herself, or others.

1 (c) Mental or physical impairment which may adversely  
2 affect patient care.

3 (d) Being found liable by a court of competent  
4 jurisdiction for medical negligence or malpractice involving  
5 negligent conduct.

6 (e) One or more settlements exceeding \$10,000 for  
7 medical negligence or malpractice involving negligent conduct  
8 by the staff member.

9 (f) Medical negligence other than as specified in  
10 paragraph (d) or paragraph (e).

11 (g) Failure to comply with the policies, procedures,  
12 or directives of the risk management program or any quality  
13 assurance committees of any licensed facility.

14  
15 However, the grounds specified in paragraphs (a)-(g) are not  
16 the only grounds for discipline of a practitioner. ~~procedures~~  
17 ~~for such actions shall comply with the standards outlined by~~  
18 ~~the Joint Commission on Accreditation of Healthcare~~  
19 ~~Organizations, the American Osteopathic Association, the~~  
20 ~~Commission on Accreditation of Rehabilitation Facilities, the~~  
21 ~~Accreditation Association for Ambulatory Health Care, Inc.,~~  
22 ~~and the "Medicare/Medicaid Conditions of Participation," and~~  
23 ~~rules of the agency and the department. The procedures shall~~  
24 ~~be adopted pursuant to hospital bylaws.~~

25 (4) Pursuant to ss. 458.337 and 459.016, any  
26 disciplinary actions taken under subsection (3) shall be  
27 reported in writing to the Division of Health Quality  
28 Assurance of the agency within 30 working days after its  
29 initial occurrence, regardless of the pendency of appeals to  
30 the governing board of the hospital. The notification shall  
31 identify the disciplined practitioner, the action taken, and

1 the reason for such action.All final disciplinary actions  
2 taken under subsection (3), if different than those which were  
3 reported to the agency within 30 days after the initial  
4 occurrence, shall be reported within 10 working days to the  
5 Division of Health Quality Assurance of the agency in writing  
6 and shall specify the disciplinary action taken and the  
7 specific grounds therefor. The division shall review each  
8 report and determine whether it potentially involved conduct  
9 by the licensee that is subject to disciplinary action, in  
10 which case s. 455.225 shall apply. The reports are not ~~report~~  
11 ~~shall not be~~ subject to inspection under s. 119.07(1) even if  
12 the division's investigation results in a finding of probable  
13 cause.

14 (5) There shall be no monetary liability on the part  
15 of, and no cause of action for damages against, any licensed  
16 facility, its governing board or governing board members, peer  
17 review panel, medical staff, or disciplinary body, or its  
18 agents, investigators, witnesses, or employees; a committee of  
19 a hospital, a physician-hospital organization, a  
20 provider-sponsored organization, or an integrated delivery  
21 system; ~~or any other person,~~ for any action taken without  
22 intentional fraud in carrying out the provisions of this  
23 section.

24 (6) For a single incident or series of isolated  
25 incidents that are nonwillful violations of the reporting  
26 requirements of this section, the agency shall first seek to  
27 obtain corrective action by the facility. If correction is not  
28 demonstrated within the timeframe established by the agency or  
29 if there is a pattern of nonwillful violations of this  
30 section, the agency may impose an administrative fine, not to  
31 exceed \$5,000 for any violation of the reporting requirements

1 of this section. The administrative fine for repeated  
2 nonwillful violations shall not exceed \$10,000 for any  
3 violation. The administrative fine for each intentional and  
4 willful violation may not exceed \$25,000 per violation, per  
5 day. The fine for an intentional and willful violation of this  
6 section may not exceed \$250,000. In determining the amount of  
7 fine to be levied, the agency shall be guided by s.  
8 395.1065(2)(b).

9 (8)(7) The investigations, proceedings, and records of  
10 the peer review panel, a committee of a hospital, a  
11 physician-hospital organization, a provider-sponsored  
12 organization, an integrated delivery system, a disciplinary  
13 board, or a governing board, or agent thereof with whom there  
14 is a specific written contract for that purpose, as described  
15 in this section shall not be subject to discovery or  
16 introduction into evidence in any civil or administrative  
17 action against a provider of professional health services  
18 arising out of the matters which are the subject of evaluation  
19 and review by such group or its agent, and a person who was in  
20 attendance at a meeting of such group or its agent may not be  
21 permitted or required to testify in any such civil or  
22 administrative action as to any evidence or other matters  
23 produced or presented during the proceedings of such group or  
24 its agent or as to any findings, recommendations, evaluations,  
25 opinions, or other actions of such group or its agent or any  
26 members thereof. However, information, documents, or records  
27 otherwise available from original sources are not to be  
28 construed as immune from discovery or use in any such civil or  
29 administrative action merely because they were presented  
30 during proceedings of such group, and any person who testifies  
31 before such group or who is a member of such group may not be

1 prevented from testifying as to matters within his or her  
2 knowledge, but such witness may not be asked about his or her  
3 testimony before such a group or opinions formed by him or her  
4 as a result of such group hearings.

5 Section 31. Section 395.0197, Florida Statutes, is  
6 amended to read:

7 395.0197 Internal risk management program.--

8 (1) Every licensed facility shall, as a part of its  
9 administrative functions, establish an internal risk  
10 management program that includes all of the following  
11 components:

12 (a) The investigation and analysis of the frequency  
13 and causes of general categories and specific types of adverse  
14 incidents ~~causing injury~~ to patients.

15 (b) The development of appropriate measures to  
16 minimize the risk of ~~injuries and~~ adverse incidents to  
17 patients, including, but not limited to:

18 1. Risk management and risk prevention education and  
19 training of all nonphysician personnel as follows:

20 a. Such education and training of all nonphysician  
21 personnel as part of their initial orientation; and

22 b. At least 1 hour of such education and training  
23 annually for all nonphysician personnel of the licensed  
24 facility working in clinical areas and providing patient care.

25 2. A prohibition, except when emergency circumstances  
26 require otherwise, against a staff member of the licensed  
27 facility attending a patient in the recovery room, unless the  
28 staff member is authorized to attend the patient in the  
29 recovery room and is in the company of at least one other  
30 person. However, a licensed facility ~~hospital~~ is exempt from  
31 the two-person requirement if it has:



1           a. Live visual observation;  
2           b. Electronic observation; or  
3           c. Any other reasonable measure taken to ensure  
4 patient protection and privacy.  
5           (c) The analysis of patient grievances that relate to  
6 patient care and the quality of medical services.  
7           (d) The development and implementation of an incident  
8 reporting system based upon the affirmative duty of all health  
9 care providers and all agents and employees of the licensed  
10 health care facility to report adverse incidents to the risk  
11 manager, or to his or her designee, within 3 business days  
12 after its occurrence.  
13           (2) The internal risk management program is the  
14 responsibility of the governing board of the health care  
15 facility. Each licensed facility shall hire a risk manager,  
16 licensed under part IX of chapter 626, who is responsible for  
17 implementation and oversight of such facility's internal risk  
18 management program as required by this section. A risk  
19 manager must not be made responsible for more than four  
20 internal risk management programs in separate licensed  
21 facilities, unless the facilities are under one corporate  
22 ownership or the risk management programs are in rural  
23 hospitals.  
24           (3) In addition to the programs mandated by this  
25 section, other innovative approaches intended to reduce the  
26 frequency and severity of medical malpractice and patient  
27 injury claims shall be encouraged and their implementation and  
28 operation facilitated. Such additional approaches may include  
29 extending internal risk management programs to health care  
30 providers' offices and the assuming of provider liability by a  
31

1 licensed health care facility for acts or omissions occurring  
2 within the licensed facility.

3 (4) The agency shall, after consulting with the  
4 Department of Insurance, adopt rules governing the  
5 establishment of internal risk management programs to meet the  
6 needs of individual licensed facilities. Each internal risk  
7 management program shall include the use of incident reports  
8 to be filed with an individual of responsibility who is  
9 competent in risk management techniques in the employ of each  
10 licensed facility, such as an insurance coordinator, or who is  
11 retained by the licensed facility as a consultant. The  
12 individual responsible for the risk management program shall  
13 have free access to all medical records of the licensed  
14 facility. The incident reports are part of the workpapers of  
15 the attorney defending the licensed facility in litigation  
16 relating to the licensed facility and are subject to  
17 discovery, but are not admissible as evidence in court. A  
18 person filing an incident report is not subject to civil suit  
19 by virtue of such incident report. As a part of each internal  
20 risk management program, the incident reports shall be used to  
21 develop categories of incidents which identify problem areas.  
22 Once identified, procedures shall be adjusted to correct the  
23 problem areas.

24 (5) For purposes of reporting to the agency pursuant  
25 to this section, the term "adverse incident" means an event  
26 over which health care personnel could exercise control and  
27 which is associated in whole or in part with medical  
28 intervention, rather than the condition for which such  
29 intervention occurred, and which:

30 (a) Results in one of the following injuries:

31 1. Death;

- 1           2. Brain or spinal damage;  
2           3. Permanent disfigurement;  
3           4. Fracture or dislocation of bones or joints;  
4           5. A resulting limitation of neurological, physical,  
5 or sensory function which continues after discharge from the  
6 facility;  
7           6. Any condition that required specialized medical  
8 attention or surgical intervention resulting from nonemergency  
9 medical intervention, other than an emergency medical  
10 condition, to which the patient has not given his or her  
11 informed consent; or  
12           7. Any condition that required the transfer of the  
13 patient, within or outside the facility, to a unit providing a  
14 more acute level of care due to the adverse incident, rather  
15 than the patient's condition prior to the adverse incident;  
16           (b) Was the performance of a surgical procedure on the  
17 wrong patient, a wrong surgical procedure, a wrong-site  
18 surgical procedure, or a surgical procedure otherwise  
19 unrelated to the patient's diagnosis or medical condition;  
20           (c) Required the surgical repair of damage resulting  
21 to a patient from a planned surgical procedure, where the  
22 damage was not a recognized specific risk, as disclosed to the  
23 patient on the informed consent form; or  
24           (d) Was a procedure to remove unplanned foreign  
25 objects remaining from a surgical procedure.  
26           ~~(6)(5)~~(a) Each licensed facility subject to this  
27 section shall submit an annual report to the agency  
28 summarizing the incident reports that have been filed in the  
29 facility for that year. The report shall include:  
30           1. The total number of adverse incidents ~~causing~~  
31 ~~injury to patients.~~

1           2. A listing, by category, of the types of operations,  
2 diagnostic or treatment procedures, or other actions causing  
3 the injuries, and the number of incidents occurring within  
4 each category.

5           3. A listing, by category, of the types of injuries  
6 caused and the number of incidents occurring within each  
7 category.

8           4. A code number using the health care professional's  
9 licensure number and a separate code number identifying all  
10 other individuals directly involved in adverse incidents  
11 ~~causing injury~~ to patients, the relationship of the individual  
12 to the licensed facility, and the number of incidents in which  
13 each individual has been directly involved. Each licensed  
14 facility shall maintain names of the health care professionals  
15 and individuals identified by code numbers for purposes of  
16 this section.

17           5. A description of all malpractice claims filed  
18 against the licensed facility, including the total number of  
19 pending and closed claims and the nature of the incident which  
20 led to, the persons involved in, and the status and  
21 disposition of each claim. Each report shall update status and  
22 disposition for all prior reports.

23           ~~6. A report of all disciplinary actions pertaining to~~  
24 ~~patient care taken against any medical staff member, including~~  
25 ~~the nature and cause of the action.~~

26           (b) The information reported to the agency pursuant to  
27 paragraph (a) which relates to persons licensed under chapter  
28 458, chapter 459, chapter 461, or chapter 466 shall be  
29 reviewed by the agency. The agency shall determine whether  
30 any of the incidents potentially involved conduct by a health  
31

1 care professional who is subject to disciplinary action, in  
2 which case the provisions of s. 455.225 shall apply.

3 (c) The report submitted to the agency shall also  
4 contain the name and license number of the risk manager of the  
5 licensed facility, a copy of its policy and procedures which  
6 govern the measures taken by the facility and its risk manager  
7 to reduce the risk of injuries and adverse ~~or untoward~~  
8 incidents, and the results of such measures. The annual  
9 report is confidential and is not available to the public  
10 pursuant to s. 119.07(1) or any other law providing access to  
11 public records. The annual report is not discoverable or  
12 admissible in any civil or administrative action, except in  
13 disciplinary proceedings by the agency or the appropriate  
14 regulatory board. The annual report is not available to the  
15 public as part of the record of investigation for and  
16 prosecution in disciplinary proceedings made available to the  
17 public by the agency or the appropriate regulatory board.  
18 However, the agency or the appropriate regulatory board shall  
19 make available, upon written request by a health care  
20 professional against whom probable cause has been found, any  
21 such records which form the basis of the determination of  
22 probable cause.

23 (7) The licensed facility shall notify the agency no  
24 later than 1 business day after the risk manager or his or her  
25 designee has received a report pursuant to paragraph (1)(d)  
26 and can determine within 1 business day that any of the  
27 following adverse incidents has occurred, whether occurring in  
28 the licensed facility or arising from health care prior to  
29 admission in the licensed facility:

30 (a) The death of a patient;  
31 (b) Brain or spinal damage to a patient;

1           (c) The performance of a surgical procedure on the  
2 wrong patient;  
3           (d) The performance of a wrong-site surgical  
4 procedure; or  
5           (e) The performance of a wrong surgical procedure.  
6  
7 The notification must be made in writing and be provided by  
8 facsimile device or overnight mail delivery. The notification  
9 must include information regarding the identity of the  
10 affected patient, the type of adverse incident, the initiation  
11 of an investigation by the facility, and whether the events  
12 causing or resulting in the adverse incident represent a  
13 potential risk to other patients.  
14           ~~(8)(6)~~ Any of the following adverse incidents, whether  
15 occurring in the licensed facility or arising from health care  
16 prior to admission in the licensed facility, shall be reported  
17 by the facility to the agency within 15 calendar days after  
18 its occurrence:~~If an adverse or untoward incident, whether~~  
19 ~~occurring in the licensed facility or arising from health care~~  
20 ~~prior to admission in the licensed facility, results in:~~  
21           (a) The death of a patient;  
22           (b) Brain or spinal damage to a patient;  
23           (c) The performance of a surgical procedure on the  
24 wrong patient; ~~or~~  
25           (d) The performance of a wrong-site surgical  
26 procedure;  
27           (e) The performance of a wrong surgical procedure;  
28           (f) The performance of a surgical procedure that is  
29 medically unnecessary or otherwise unrelated to the patient's  
30 diagnosis or medical condition;  
31

1           (g) The surgical repair of damage resulting to a  
2 patient from a planned surgical procedure, where the damage is  
3 not a recognized specific risk, as disclosed to the patient on  
4 the informed consent form; or

5           (h) The performance of procedures to remove unplanned  
6 foreign objects remaining from a surgical procedure.

7           ~~(d) A surgical procedure unrelated to the patient's~~  
8 ~~diagnosis or medical needs being performed on any patient,~~  
9 ~~including the surgical repair of injuries or damage resulting~~  
10 ~~from the planned surgical procedure, wrong site or wrong~~  
11 ~~procedure surgeries, and procedures to remove foreign objects~~  
12 ~~remaining from surgical procedures,~~

13  
14 ~~the licensed facility shall report this incident to the agency~~  
15 ~~within 15 calendar days after its occurrence. The agency may~~  
16 grant extensions to this reporting requirement for more than  
17 15 days upon justification submitted in writing by the  
18 facility administrator to the agency. The agency may require  
19 an additional, final report. These reports shall not be  
20 available to the public pursuant to s. 119.07(1) or any other  
21 law providing access to public records, nor be discoverable or  
22 admissible in any civil or administrative action, except in  
23 disciplinary proceedings by the agency or the appropriate  
24 regulatory board, nor shall they be available to the public as  
25 part of the record of investigation for and prosecution in  
26 disciplinary proceedings made available to the public by the  
27 agency or the appropriate regulatory board. However, the  
28 agency or the appropriate regulatory board shall make  
29 available, upon written request by a health care professional  
30 against whom probable cause has been found, any such records  
31 which form the basis of the determination of probable cause.

1 The agency may investigate, as it deems appropriate, any such  
2 incident and prescribe measures that must or may be taken in  
3 response to the incident. The agency shall review each  
4 incident and determine whether it potentially involved conduct  
5 by the health care professional who is subject to disciplinary  
6 action, in which case the provisions of s. 455.225 shall  
7 apply.

8 (9)~~(7)~~ The internal risk manager of each licensed  
9 facility shall:

10 (a)~~(b)~~ Investigate every allegation of sexual  
11 misconduct which is made against a member of the facility's  
12 personnel who has direct patient contact, when the allegation  
13 is that the sexual misconduct occurred at the facility or on  
14 the grounds of the facility; ~~and~~

15 (b)~~(c)~~ Report every allegation of sexual misconduct to  
16 the administrator of the licensed facility; ~~and~~

17 (c)~~(a)~~ Notify the family or guardian of the victim, if  
18 a minor, that an allegation of sexual misconduct has been made  
19 and that an investigation is being conducted. ~~†~~

20 (10)~~(8)~~ Any witness who witnessed or who possesses  
21 actual knowledge of the act that is the basis of an allegation  
22 of sexual abuse shall:

23 (a) Notify the local police; and

24 (b) Notify the hospital risk manager and the  
25 administrator.

26  
27 For purposes of this subsection, "sexual abuse" means acts of  
28 a sexual nature committed for the sexual gratification of  
29 anyone upon, or in the presence of, a vulnerable adult,  
30 without the vulnerable adult's informed consent, or a minor.

31 "Sexual abuse" includes, but is not limited to, the acts



1 defined in s. 794.011(1)(h), fondling, exposure of a  
2 vulnerable adult's or minor's sexual organs, or the use of the  
3 vulnerable adult or minor to solicit for or engage in  
4 prostitution or sexual performance. "Sexual abuse" does not  
5 include any act intended for a valid medical purpose or any  
6 act which may reasonably be construed to be a normal  
7 caregiving action.

8 ~~(11)(9)~~ A person who, with malice or with intent to  
9 discredit or harm a licensed facility or any person, makes a  
10 false allegation of sexual misconduct against a member of a  
11 licensed facility's personnel is guilty of a misdemeanor of  
12 the second degree, punishable as provided in s. 775.082 or s.  
13 775.083.

14 ~~(12)(10)~~ In addition to any penalty imposed pursuant  
15 to this section, the agency shall require a written plan of  
16 correction from the facility. For a single incident or series  
17 of isolated incidents that are nonwillful violations of the  
18 reporting requirements of this section, the agency shall first  
19 seek to obtain corrective action by the facility. If the  
20 correction is not demonstrated within the timeframe  
21 established by the agency or if there is a pattern of  
22 nonwillful violations of this section, the agency may impose  
23 an administrative fine, not to exceed \$5,000 for any violation  
24 of the reporting requirements of this section. The  
25 administrative fine for repeated nonwillful violations shall  
26 not exceed \$10,000 for any violation. The administrative fine  
27 for each intentional and willful violation may not exceed  
28 \$25,000 per violation, per day. The fine for an intentional  
29 and willful violation of this section may not exceed \$250,000.  
30 In determining the amount of fine to be levied, the agency  
31 shall be guided by s. 395.1065(2)(b). The provisions of this

1 subsection do not apply to the notice requirement under  
2 subsection (7)~~may impose an administrative fine, not to~~  
3 ~~exceed \$5,000, for any violation of the reporting requirements~~  
4 ~~of this section.~~

5 (13)~~(11)~~ The agency shall have access to all licensed  
6 facility records necessary to carry out the provisions of this  
7 section. The records obtained by the agency under subsection  
8 (6), subsection (8), or subsection (9)are not available to  
9 the public under s. 119.07(1), nor shall they be discoverable  
10 or admissible in any civil or administrative action, except in  
11 disciplinary proceedings by the agency or the appropriate  
12 regulatory board, nor shall records obtained pursuant to s.  
13 455.223 be available to the public as part of the record of  
14 investigation for and prosecution in disciplinary proceedings  
15 made available to the public by the agency or the appropriate  
16 regulatory board. However, the agency or the appropriate  
17 regulatory board shall make available, upon written request by  
18 a health care professional against whom probable cause has  
19 been found, any such records which form the basis of the  
20 determination of probable cause, except that, with respect to  
21 medical review committee records, s. 766.101 controls.

22 (14)~~(12)~~ The meetings of the committees and governing  
23 board of a licensed facility held solely for the purpose of  
24 achieving the objectives of risk management as provided by  
25 this section shall not be open to the public under the  
26 provisions of chapter 286. The records of such meetings are  
27 confidential and exempt from s. 119.07(1), except as provided  
28 in subsection(13)~~(11)~~.

29 (15)~~(13)~~ The agency shall review, as part of its  
30 licensure inspection process, the internal risk management  
31 program at each licensed facility regulated by this section to

1 determine whether the program meets standards established in  
2 statutes and rules, whether the program is being conducted in  
3 a manner designed to reduce adverse incidents, and whether the  
4 program is appropriately reporting incidents under subsections  
5 (5), and (6), (7), and (8).

6 (16)~~(14)~~ There shall be no monetary liability on the  
7 part of, and no cause of action for damages shall arise  
8 against, any risk manager, licensed under part IX of chapter  
9 626, for the implementation and oversight of the internal risk  
10 management program in a facility licensed under this chapter  
11 or chapter 390 as required by this section, for any act or  
12 proceeding undertaken or performed within the scope of the  
13 functions of such internal risk management program if the risk  
14 manager acts without intentional fraud.

15 (17)~~(15)~~ If the agency, through its receipt of the  
16 annual reports prescribed in subsection(6)~~(5)~~ or through any  
17 investigation, has a reasonable belief that conduct by a staff  
18 member or employee of a licensed facility is grounds for  
19 disciplinary action by the appropriate regulatory board, the  
20 agency shall report this fact to such regulatory board.

21 (18)~~(16)~~ The agency shall annually publish a report  
22 summarizing the information contained in the annual incident  
23 reports submitted by licensed facilities pursuant to  
24 subsection (6), and any serious incident reports submitted by  
25 licensed facilities, and disciplinary actions reported to the  
26 agency pursuant to s. 395.0193. The report must, at a minimum,  
27 summarize:

28 (a) Adverse and serious incidents, ~~by service district~~  
29 ~~of the department as defined in s. 20.19,~~ by category of  
30 reported incident, and by type of professional involved.

31

1 (b) Types of malpractice claims filed, ~~by service~~  
2 ~~district of the department as defined in s. 20.19,~~ and by type  
3 of professional involved.

4 (c) Disciplinary actions taken against professionals,  
5 ~~by service district of the department as defined in s. 20.19,~~  
6 ~~and~~ by type of professional involved.

7 Section 32. Effective January 1, 1999, section  
8 626.941, Florida Statutes, is renumbered as section 395.10971,  
9 Florida Statutes.

10 Section 33. Effective January 1, 1999, section  
11 626.942, Florida Statutes, is renumbered as section 395.10972,  
12 Florida Statutes, and amended to read:

13 395.10972 ~~626.942~~ Health Care Risk Manager Advisory  
14 Council.--The Director of Health Care Administration ~~Insurance~~  
15 ~~Commissioner~~ may appoint a five-member advisory council to  
16 advise the agency ~~department~~ on matters pertaining to health  
17 care risk managers. The members of the council shall serve at  
18 the pleasure of the director ~~Insurance Commissioner~~. The  
19 council shall designate a chair. The council shall meet at  
20 the call of the director ~~Insurance Commissioner~~ or at those  
21 times as may be required by rule of the agency ~~department~~.  
22 The members of the advisory council shall receive no  
23 compensation for their services, but shall be reimbursed for  
24 travel expenses as provided in s. 112.061. The council shall  
25 consist of individuals representing the following areas:

26 (1) Two shall be active health care risk managers.

27 (2) One shall be an active hospital administrator.

28 (3) One shall be an employee of an insurer or  
29 self-insurer of medical malpractice coverage.

30 (4) One shall be a representative of the  
31 health-care-consuming public.

1           Section 34. Effective January 1, 1999, section  
2 626.943, Florida Statutes, is renumbered as section 395.10973,  
3 Florida Statutes, and amended to read:

4           395.10973 ~~626.943~~ Powers and duties of the agency  
5 ~~department~~.--It is the function of the agency ~~department~~ to:

6           (1) Adopt ~~Promulgate~~ rules necessary to carry out the  
7 duties conferred upon it under this part to protect the public  
8 health, safety, and welfare.

9           (2) Develop, impose, and enforce specific standards  
10 within the scope of the general qualifications established by  
11 this part which must be met by individuals in order to receive  
12 licenses as health care risk managers. These standards shall  
13 be designed to ensure that health care risk managers are  
14 individuals of good character and otherwise suitable and, by  
15 training or experience in the field of health care risk  
16 management, qualified in accordance with the provisions of  
17 this part to serve as health care risk managers, within  
18 statutory requirements.

19           (3) Develop a method for determining whether an  
20 individual meets the standards set forth in s. 395.10974 ~~s.~~  
21 ~~626.944~~.

22           (4) Issue licenses, ~~beginning on June 1, 1986,~~ to  
23 qualified individuals meeting the standards set forth in s.  
24 395.10974 ~~s. 626.944~~.

25           (5) Receive, investigate, and take appropriate action  
26 with respect to any charge or complaint filed with the agency  
27 ~~department~~ to the effect that a certified health care risk  
28 manager has failed to comply with the requirements or  
29 standards adopted by rule by the agency ~~department~~ or to  
30 comply with the provisions of this part.

31

1           (6) Establish procedures for providing ~~the Department~~  
2 ~~of Health and Rehabilitative Services with~~ periodic reports on  
3 persons certified or disciplined by the agency ~~department~~  
4 under this part.

5           (7) Develop a model risk management program for health  
6 care facilities which will satisfy the requirements of s.  
7 395.0197.

8           Section 35. Effective January 1, 1999, section  
9 626.944, Florida Statutes, is renumbered as section 395.10974,  
10 Florida Statutes, and amended to read:

11           395.10974 ~~626.944~~ Qualifications for health care risk  
12 managers.--

13           (1) Any person desiring to be licensed as a health  
14 care risk manager shall submit an application on a form  
15 provided by the agency ~~department~~. In order to qualify, the  
16 applicant shall submit evidence satisfactory to the agency  
17 ~~department~~ which demonstrates the applicant's competence, by  
18 education or experience, in the following areas:

19           (a) Applicable standards of health care risk  
20 management.

21           (b) Applicable federal, state, and local health and  
22 safety laws and rules.

23           (c) General risk management administration.

24           (d) Patient care.

25           (e) Medical care.

26           (f) Personal and social care.

27           (g) Accident prevention.

28           (h) Departmental organization and management.

29           (i) Community interrelationships.

30           (j) Medical terminology.

31

1 The agency ~~department~~ may require such additional information,  
2 from the applicant or any other person, as may be reasonably  
3 required to verify the information contained in the  
4 application.

5 (2) The agency ~~department~~ shall not grant or issue a  
6 license as a health care risk manager to any individual unless  
7 from the application it affirmatively appears that the  
8 applicant:

9 (a) Is 18 years of age or over;

10 (b) Is a high school graduate or equivalent; and

11 (c)1. Has fulfilled the requirements of a 1-year  
12 program or its equivalent in health care risk management  
13 training which may be developed or approved by the agency  
14 ~~department~~;

15 2. Has completed 2 years of college-level studies  
16 which would prepare the applicant for health care risk  
17 management, to be further defined by rule; or

18 3. Has obtained 1 year of practical experience in  
19 health care risk management.

20 (3) The agency ~~department~~ shall issue a license,  
21 ~~beginning on June 1, 1986,~~ to practice health care risk  
22 management to any applicant who qualifies under this section  
23 and submits an application fee of not more than \$75, a  
24 fingerprinting fee of not more than \$75, and a license fee of  
25 not more than \$100. The agency shall by rule establish fees  
26 and procedures for the issuance and cancellation of licenses.  
27 ~~the license fee as set forth in s. 624.501. Licenses shall be~~  
28 ~~issued and canceled in the same manner as provided in part I~~  
29 ~~of this chapter.~~

30 (4) The agency ~~department~~ shall renew a health care  
31 risk manager license upon receipt of a biennial renewal

1 application and fees. The agency shall by rule establish a  
2 procedure for the biennial renewal of licenses ~~in accordance~~  
3 ~~with procedures prescribed in s. 626.381 for agents in~~  
4 ~~general.~~

5 Section 36. Effective January 1, 1999, section  
6 626.945, Florida Statutes, is renumbered as section 395.10975,  
7 Florida Statutes, and amended to read:

8 395.10975 ~~626.945~~ Grounds for denial, suspension, or  
9 revocation of a health care risk manager's license;  
10 administrative fine.--

11 (1) The agency ~~department~~ may, in its discretion,  
12 deny, suspend, revoke, or refuse to renew or continue the  
13 license of any health care risk manager or applicant, if it  
14 finds that as to such applicant or licensee any one or more of  
15 the following grounds exist:

16 (a) Any cause for which issuance of the license could  
17 have been refused had it then existed and been known to the  
18 agency ~~department~~.

19 (b) Giving false or forged evidence to the agency  
20 ~~department~~ for the purpose of obtaining a license.

21 (c) Having been found guilty of, or having pleaded  
22 guilty or nolo contendere to, a crime in this state or any  
23 other state relating to the practice of risk management or the  
24 ability to practice risk management, whether or not a judgment  
25 or conviction has been entered.

26 (d) Having been found guilty of, or having pleaded  
27 guilty or nolo contendere to, a felony, or a crime involving  
28 moral turpitude punishable by imprisonment of 1 year or more  
29 under the law of the United States, under the law of any  
30 state, or under the law of any other country, without regard  
31



1 to whether a judgment of conviction has been entered by the  
2 court having jurisdiction of such cases.

3 (e) Making or filing a report or record which the  
4 licensee knows to be false; or intentionally failing to file a  
5 report or record required by state or federal law; or  
6 willfully impeding or obstructing, or inducing another person  
7 to impede or obstruct, the filing of a report or record  
8 required by state or federal law. Such reports or records  
9 shall include only those which are signed in the capacity of a  
10 licensed health care risk manager.

11 (f) Fraud or deceit, negligence, incompetence, or  
12 misconduct in the practice of health care risk management.

13 (g) Violation of any provision of this part or any  
14 other law applicable to the business of health care risk  
15 management.

16 (h) Violation of any lawful order or rule of the  
17 agency ~~department~~ or failure to comply with a lawful subpoena  
18 issued by the department.

19 (i) Practicing with a revoked or suspended health care  
20 risk manager license.

21 (j) Repeatedly acting in a manner inconsistent with  
22 the health and safety of the patients of the licensed facility  
23 in which the licensee is the health care risk manager.

24 (k) Being unable to practice health care risk  
25 management with reasonable skill and safety to patients by  
26 reason of illness; drunkenness; or use of drugs, narcotics,  
27 chemicals, or any other material or substance or as a result  
28 of any mental or physical condition. Any person affected  
29 under this paragraph shall have the opportunity, at reasonable  
30 intervals, to demonstrate that he or she can resume the  
31

1 competent practices of health care risk manager with  
2 reasonable skill and safety to patients.

3 (l) Willfully permitting unauthorized disclosure of  
4 information relating to a patient or a patient's records.

5 (m) Discriminating in respect to patients, employees,  
6 or staff on account of race, religion, color, sex, or national  
7 origin.

8 (2) If the agency department finds that one or more of  
9 the grounds set forth in subsection (1) exist, it may, in lieu  
10 of or in addition to suspension or revocation, enter an order  
11 imposing one or more of the following penalties:

12 (a) Imposition of an administrative fine not to exceed  
13 \$2,500 for each count or separate offense.

14 (b) Issuance of a reprimand.

15 (c) Placement of the licensee on probation for a  
16 period of time and subject to such conditions as the agency  
17 ~~department~~ may specify, including requiring the licensee to  
18 attend continuing education courses or to work under the  
19 supervision of another licensee.

20 (3) The agency department may reissue the license of a  
21 disciplined licensee in accordance with the provisions of this  
22 part.

23 Section 37. Subsection (7) of section 394.4787,  
24 Florida Statutes, is amended to read:

25 394.4787 Definitions.--As used in this section and ss.  
26 394.4786, 394.4788, and 394.4789:

27 (7) "Specialty psychiatric hospital" means a hospital  
28 licensed by the agency pursuant to s. 395.002(25)~~s.~~  
29 ~~395.002(27)~~ as a specialty psychiatric hospital.

30 Section 38. Paragraph (c) of subsection (2) of section  
31 395.602, Florida Statutes, is amended to read:

1           395.602 Rural hospitals.--

2           (2) DEFINITIONS.--As used in this part:

3           (c) "Inactive rural hospital bed" means a licensed  
4 acute care hospital bed, as defined in s. 395.002(12)~~s.~~  
5 ~~395.002(13)~~, that is inactive in that it cannot be occupied by  
6 acute care inpatients.

7           Section 39. Paragraph (b) of subsection (1) of section  
8 400.051, Florida Statutes, is amended to read:

9           400.051 Homes or institutions exempt from the  
10 provisions of this part.--

11           (1) The following shall be exempt from the provisions  
12 of this part:

13           (b) Any hospital, as defined in s. 395.002(9)~~s.~~  
14 ~~395.002(10)~~, that is licensed under chapter 395.

15           Section 40. Subsection (8) of section 409.905, Florida  
16 Statutes, is amended to read:

17           409.905 Mandatory Medicaid services.--The agency may  
18 make payments for the following services, which are required  
19 of the state by Title XIX of the Social Security Act,  
20 furnished by Medicaid providers to recipients who are  
21 determined to be eligible on the dates on which the services  
22 were provided. Any service under this section shall be  
23 provided only when medically necessary and in accordance with  
24 state and federal law. Nothing in this section shall be  
25 construed to prevent or limit the agency from adjusting fees,  
26 reimbursement rates, lengths of stay, number of visits, number  
27 of services, or any other adjustments necessary to comply with  
28 the availability of moneys and any limitations or directions  
29 provided for in the General Appropriations Act or chapter 216.

30           (8) NURSING FACILITY SERVICES.--The agency shall pay  
31 for 24-hour-a-day nursing and rehabilitative services for a

1 recipient in a nursing facility licensed under part II of  
2 chapter 400 or in a rural hospital, as defined in s. 395.602,  
3 or in a Medicare certified skilled nursing facility operated  
4 by a hospital, as defined by s. 395.002(9)~~s. 395.002(10)~~,  
5 that is licensed under part I of chapter 395, and in  
6 accordance with provisions set forth in s. 409.908(2)(a),  
7 which services are ordered by and provided under the direction  
8 of a licensed physician. However, if a nursing facility has  
9 been destroyed or otherwise made uninhabitable by natural  
10 disaster or other emergency and another nursing facility is  
11 not available, the agency must pay for similar services  
12 temporarily in a hospital licensed under part I of chapter 395  
13 provided federal funding is approved and available.

14 Section 41. Paragraph (g) of subsection (1) of section  
15 440.13, Florida Statutes, is amended to read:

16 440.13 Medical services and supplies; penalty for  
17 violations; limitations.--

18 (1) DEFINITIONS.--As used in this section, the term:

19 (g) "Emergency services and care" means emergency  
20 services and care as defined in s. 395.002(9).

21 Section 42. Subsection (9) of section 458.331, Florida  
22 Statutes, is amended to read:

23 458.331 Grounds for disciplinary action; action by the  
24 board and department.--

25 (9) When an investigation of a physician is  
26 undertaken, the department shall promptly furnish to the  
27 physician or the physician's attorney a copy of the complaint  
28 or document which resulted in the initiation of the  
29 investigation. For purposes of this subsection, such  
30 documents include, but are not limited to: the pertinent  
31 portions of an annual report submitted to the department

1 pursuant to s. 395.0197(6)~~s. 395.0197(5)(b)~~; a report of an  
2 adverse ~~or untoward~~ incident which is provided to the  
3 department pursuant to s. 395.0197(8)~~the provisions of s.~~  
4 ~~395.0197(6)~~; a report of peer review disciplinary action  
5 submitted to the department pursuant to ~~the provisions of s.~~  
6 395.0193(4) or s. 458.337, providing that the investigations,  
7 proceedings, and records relating to such peer review  
8 disciplinary action shall continue to retain their privileged  
9 status even as to the licensee who is the subject of the  
10 investigation, as provided by ss. 395.0193(8)~~395.0193(7)~~ and  
11 458.337(3); a report of a closed claim submitted pursuant to  
12 s. 627.912; a presuit notice submitted pursuant to s.  
13 766.106(2); and a petition brought under the Florida  
14 Birth-Related Neurological Injury Compensation Plan, pursuant  
15 to s. 766.305(2). The physician may submit a written response  
16 to the information contained in the complaint or document  
17 which resulted in the initiation of the investigation within  
18 45 days after service to the physician of the complaint or  
19 document. The physician's written response shall be considered  
20 by the probable cause panel.

21 Section 43. Subsection (9) of section 459.015, Florida  
22 Statutes, is amended to read:

23 459.015 Grounds for disciplinary action by the  
24 board.--

25 (9) When an investigation of an osteopathic physician  
26 is undertaken, the department shall promptly furnish to the  
27 osteopathic physician or his or her attorney a copy of the  
28 complaint or document which resulted in the initiation of the  
29 investigation. For purposes of this subsection, such documents  
30 include, but are not limited to: the pertinent portions of an  
31 annual report submitted to the department pursuant to s.

1 395.0197(6)~~s. 395.0197(5)(b)~~; a report of an adverse or  
2 ~~untoward~~ incident which is provided to the department pursuant  
3 to s. 395.0197(8)~~the provisions of s. 395.0197(6)~~; a report  
4 of peer review disciplinary action submitted to the department  
5 pursuant to ~~the provisions of~~ s. 395.0193(4) or s. 459.016,  
6 provided that the investigations, proceedings, and records  
7 relating to such peer review disciplinary action shall  
8 continue to retain their privileged status even as to the  
9 licensee who is the subject of the investigation, as provided  
10 by ss. 395.0193(8)~~395.0193(7)~~ and 459.016(3); a report of a  
11 closed claim submitted pursuant to s. 627.912; a presuit  
12 notice submitted pursuant to s. 766.106(2); and a petition  
13 brought under the Florida Birth-Related Neurological Injury  
14 Compensation Plan, pursuant to s. 766.305(2). The osteopathic  
15 physician may submit a written response to the information  
16 contained in the complaint or document which resulted in the  
17 initiation of the investigation within 45 days after service  
18 to the osteopathic physician of the complaint or document. The  
19 osteopathic physician's written response shall be considered  
20 by the probable cause panel.

21 Section 44. Subsection (1) of section 468.505, Florida  
22 Statutes, is amended to read:

23 468.505 Exemptions; exceptions.--

24 (1) Nothing in this part may be construed as  
25 prohibiting or restricting the practice, services, or  
26 activities of:

27 (a) A person licensed in this state under chapter 457,  
28 chapter 458, chapter 459, chapter 460, chapter 461, chapter  
29 462, chapter 463, chapter 464, chapter 465, chapter 466,  
30 chapter 480, chapter 490, or chapter 491, when engaging in the  
31 profession or occupation for which he or she is licensed, or

1 of any person employed by and under the supervision of the  
2 licensee when rendering services within the scope of the  
3 profession or occupation of the licensee.†  
4 (b) A person employed as a dietitian by the government  
5 of the United States, if the person engages in dietetics  
6 solely under direction or control of the organization by which  
7 the person is employed.†  
8 (c) A person employed as a cooperative extension home  
9 economist.†  
10 (d) A person pursuing a course of study leading to a  
11 degree in dietetics and nutrition from a program or school  
12 accredited pursuant to s. 468.509(2), if the activities and  
13 services constitute a part of a supervised course of study and  
14 if the person is designated by a title that clearly indicates  
15 the person's status as a student or trainee.†  
16 (e) A person fulfilling the supervised experience  
17 component of s. 468.509, if the activities and services  
18 constitute a part of the experience necessary to meet the  
19 requirements of s. 468.509.†  
20 (f) Any dietitian or nutritionist from another state  
21 practicing dietetics or nutrition incidental to a course of  
22 study when taking or giving a postgraduate course or other  
23 course of study in this state, provided such dietitian or  
24 nutritionist is licensed in another jurisdiction or is a  
25 registered dietitian or holds an appointment on the faculty of  
26 a school accredited pursuant to s. 468.509(2).†  
27 (g) A person who markets or distributes food, food  
28 materials, or dietary supplements, or any person who engages  
29 in the explanation of the use and benefits of those products  
30 or the preparation of those products, if that person does not  
31

1 engage for a fee in dietetics and nutrition practice or  
2 nutrition counseling.†

3 (h) A person who markets or distributes food, food  
4 materials, or dietary supplements, or any person who engages  
5 in the explanation of the use of those products or the  
6 preparation of those products, as an employee of an  
7 establishment permitted pursuant to chapter 465.†

8 (i) An educator who is in the employ of a nonprofit  
9 organization approved by the council; a federal, state,  
10 county, or municipal agency, or other political subdivision;  
11 an elementary or secondary school; or an accredited  
12 institution of higher education the definition of which, as  
13 provided in s. 468.509(2), applies to other sections of this  
14 part, insofar as the activities and services of the educator  
15 are part of such employment.†

16 (j) Any person who provides weight control services or  
17 related weight control products, provided the program has been  
18 reviewed by, consultation is available from, and no program  
19 change can be initiated without prior approval by a licensed  
20 dietitian/nutritionist, a dietitian or nutritionist licensed  
21 in another state that has licensure requirements considered by  
22 the council to be at least as stringent as the requirements  
23 for licensure under this part, or a registered dietitian.†

24 (k) A person employed by a hospital licensed under  
25 chapter 395, or by a nursing home or assisted living facility  
26 licensed under part II or part III of chapter 400, or by a  
27 continuing care facility certified under chapter 651, if the  
28 person is employed in compliance with the laws and rules  
29 adopted thereunder regarding the operation of its dietetic  
30 department.†

31



1           (1) A person employed by a nursing facility exempt  
2 from licensing under s. 395.002(11)~~s. 395.002(12)~~, or a  
3 person exempt from licensing under s. 464.022. ~~or~~

4           (m) A person employed as a dietetic technician.

5           Section 45. Effective January 1, 1999, subsection (2)  
6 of section 641.55, Florida Statutes, is amended to read:

7           641.55 Internal risk management program.--

8           (2) The risk management program shall be the  
9 responsibility of the governing authority or board of the  
10 organization. Every organization which has an annual premium  
11 volume of \$10 million or more and which directly provides  
12 health care in a building owned or leased by the organization  
13 shall hire a risk manager, certified under ss.

14 395.10971-395.10975 ~~ss. 626.941-626.945~~, who shall be  
15 responsible for implementation of the organization's risk  
16 management program required by this section. A part-time risk  
17 manager shall not be responsible for risk management programs  
18 in more than four organizations or facilities. Every  
19 organization which does not directly provide health care in a  
20 building owned or leased by the organization and every  
21 organization with an annual premium volume of less than \$10  
22 million shall designate an officer or employee of the  
23 organization to serve as the risk manager.

24  
25 The gross data compiled under this section or s. 395.0197  
26 shall be furnished by the agency upon request to organizations  
27 to be utilized for risk management purposes. The agency shall  
28 adopt rules necessary to carry out the provisions of this  
29 section.

30           Section 46. Paragraph (c) of subsection (4) of section  
31 766.1115, Florida Statutes, is amended to read:

1           766.1115 Health care providers; creation of agency  
2 relationship with governmental contractors.--  
3           (4) CONTRACT REQUIREMENTS.--A health care provider  
4 that executes a contract with a governmental contractor to  
5 deliver health care services on or after April 17, 1992, as an  
6 agent of the governmental contractor is an agent for purposes  
7 of s. 768.28(9), while acting within the scope of duties  
8 pursuant to the contract, if the contract complies with the  
9 requirements of this section. A health care provider under  
10 contract with the state may not be named as a defendant in any  
11 action arising out of the medical care or treatment provided  
12 on or after April 17, 1992, pursuant to contracts entered into  
13 under this section. The contract must provide that:  
14           (c) Adverse incidents and information on treatment  
15 outcomes must be reported by any health care provider to the  
16 governmental contractor if such incidents and information  
17 pertain to a patient treated pursuant to the contract. The  
18 health care provider shall annually submit an adverse incident  
19 report that includes all information required by s.  
20 395.0197(6)(a)~~s. 395.0197(5)(a)~~, unless the adverse incident  
21 involves a result described by s. 395.0197(8)~~s. 395.0197(6)~~,  
22 in which case it shall be reported within 15 days after ~~of~~ the  
23 occurrence of such incident. If an incident involves a  
24 professional licensed by the Department of Health Business and  
25 Professional Regulation or a facility licensed by the Agency  
26 for Health Care Administration ~~Department of Health and~~  
27 ~~Rehabilitative Services~~, the governmental contractor shall  
28 submit such incident reports to the appropriate department or  
29 agency, which shall review each incident and determine whether  
30 it involves conduct by the licensee that is subject to  
31 disciplinary action. All patient medical records and any

1 identifying information contained in adverse incident reports  
2 and treatment outcomes which are obtained by governmental  
3 entities pursuant to this paragraph are confidential and  
4 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.  
5 I of the State Constitution.

6  
7 A governmental contractor that is also a health care provider  
8 is not required to enter into a contract under this section  
9 with respect to the health care services delivered by its  
10 employees.

11           Section 47. Effective January 1, 1999, all powers,  
12 duties and functions, rules, records, personnel, property, and  
13 unexpended balances of appropriations, allocations, or other  
14 funds of the Department of Insurance related to the health  
15 care risk manager licensure program, as established in part IX  
16 of chapter 626, Florida Statutes, are transferred by a type  
17 two transfer, as defined in section 20.06(2), Florida  
18 Statutes, from the Department of Insurance to the Agency for  
19 Health Care Administration.

20           Section 48. There is hereby appropriated from the  
21 Health Care Trust Fund to the Agency for Health Care  
22 Administration, one full-time position and \$100,281 in a lump  
23 sum to administer the provisions of this act.

24           Section 49. Except as otherwise expressly provided in  
25 this act, this act shall take effect July 1 of the year in  
26 which enacted.

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