

By the Committee on Health, Aging and Long-Term Care; and
Senator Sullivan

317-2061A-02

1 A bill to be entitled
2 An act relating to health regulation;
3 transferring to the Department of Health the
4 powers, duties, functions, and assets that
5 relate to the consumer complaint services,
6 investigations, and prosecutorial services
7 performed by the Agency for Health Care
8 Administration under contract with the
9 department; amending s. 20.43, F.S.; deleting a
10 provision authorizing the department to enter
11 into such contract with the agency, to conform;
12 updating a reference to provide the name of a
13 regulatory board under the Division of Medical
14 Quality Assurance; requiring a joint audit of
15 hearings and their billing formulas and a
16 report to the Legislature; repealing s.
17 456.047, F.S.; terminating the standardized
18 credentialing program for health care
19 practitioners; prohibiting the refund of moneys
20 collected through the credentialing program;
21 amending ss. 456.039, 456.0391, 456.072,
22 456.077, F.S.; removing references, to conform;
23 amending s. 458.309, F.S.; requiring
24 accreditation of physician offices in which
25 surgery is performed; amending s. 459.005,
26 F.S.; requiring accreditation of osteopathic
27 physician offices in which surgery is
28 performed; amending s. 456.004, F.S., relating
29 to powers and duties of the department;
30 requiring performance measures for certain
31 entities; providing procedures for considering

1 board requests to privatize regulatory
2 functions; amending s. 456.009, F.S.; requiring
3 performance measures for certain legal and
4 investigative services and annual review of
5 such services to determine whether such
6 performance measures are being met; amending s.
7 456.011, F.S.; requiring regulatory board
8 committee meetings, including probable cause
9 panels, to be held electronically unless
10 certain conditions are met; amending s.
11 456.026, F.S.; requiring inclusion of
12 performance measures for certain entities in
13 the department's annual report to the
14 Legislature; creating s. 458.3093, F.S.;
15 requiring submission of credentials for initial
16 physician licensure to a national licensure
17 verification service; requiring verification of
18 such credentials by that service or an
19 equivalent program; creating s. 459.0053, F.S.;
20 requiring submission of credentials for initial
21 osteopathic physician licensure to a national
22 licensure verification service; requiring
23 verification of such credentials by that
24 service, a specified association, or an
25 equivalent program; amending ss. 458.331,
26 459.015, F.S.; revising the definition of the
27 term "repeated malpractice" for purposes of
28 disciplinary action against physicians and
29 osteopaths; increasing the monetary limits of
30 claims against certain health care providers
31 which result in investigation; amending s.

1 627.912, F.S.; raising the malpractice closed
2 claims reporting requirement amount; requiring
3 a study of the field office structure and
4 organization of the Agency for Health Care
5 Administration and a report to the Legislature;
6 amending s. 456.025, F.S.; eliminating certain
7 restrictions on the setting of licensure
8 renewal fees for health care practitioners;
9 creating s. 456.0165, F.S.; restricting the
10 costs that may be charged by educational
11 institutions hosting health care practitioner
12 licensure examinations; amending s. 468.302,
13 F.S.; exempting certain persons from radiologic
14 technologist certification and providing
15 certain training requirements for such
16 exemption; amending s. 468.352, F.S.; revising
17 and providing definitions applicable to the
18 regulation of respiratory therapy; amending s.
19 468.355, F.S.; revising provisions relating to
20 respiratory therapy licensure and testing
21 requirements; amending s. 468.368, F.S.;
22 revising exemptions from respiratory therapy
23 licensure requirements; repealing s. 468.356,
24 F.S., relating to the approval of educational
25 programs; repealing s. 468.357, F.S., relating
26 to licensure by examination; renumbering ss.
27 381.0602, 381.6021, 381.6022, 381.6023,
28 381.6024, 381.6026, F.S., and renumbering and
29 amending ss. 381.60225, 381.6025, F.S., to move
30 provisions relating to organ and tissue
31 procurement, donation, and transplantation to

1 part V, ch. 765, F.S., relating to anatomical
2 gifts; conforming cross-references; amending
3 ss. 395.2050, 409.815, 765.5216, 765.522, F.S.;
4 conforming cross-references; amending s.
5 395.002, F.S.; defining the term "medically
6 unnecessary procedure"; amending s. 395.0161,
7 F.S.; requiring the Agency for Health Care
8 Administration to adopt rules governing the
9 conduct of inspections or investigations;
10 amending s. 395.0197, F.S.; revising provisions
11 governing the internal risk management program;
12 amending s. 456.0375, F.S.; redefining the term
13 "clinic"; amending s. 456.072, F.S.; revising
14 grounds for which a licensee may be
15 disciplined; amending s. 465.019, F.S.;
16 revising definitions; amending s. 631.57, F.S.;
17 exempting medical professional liability
18 insurance premiums from an assessment; amending
19 s. 766.101, F.S.; redefining the term "medical
20 review committee"; requiring the Office of
21 Legislative Services to develop a business plan
22 for the Board of Dentistry; appropriating
23 funds; providing effective dates.

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

26
27 Section 1. (1) Effective July 1, 2002, all powers,
28 duties, functions, records, personnel, property, and
29 unexpended balances of appropriations, allocations, and other
30 funds of the Agency for Health Care Administration which
31 relate to consumer complaint services, investigations, and

1 prosecutorial services currently provided by the Agency for
2 Health Care Administration under a contract with the
3 Department of Health are transferred to the Department of
4 Health by a type two transfer, as defined in section 20.06(2),
5 Florida Statutes. This transfer of funds shall include all
6 advance payments made from the Medical Quality Assurance Trust
7 Fund to the Agency for Health Care Administration.

8 (2)(a) Effective July 1, 2002, 259 full-time
9 equivalent positions are eliminated from the Agency for Health
10 Care Administration's total number of authorized positions and
11 are transferred to the Department of Health. Any such position
12 transferred to the Department of Health which remains unfilled
13 90 days after the transfer shall be eliminated.

14 (b) All records, personnel, and funds of the consumer
15 complaint and investigative services units of the agency are
16 transferred and assigned to the Division of Medical Quality
17 Assurance of the Department of Health.

18 (c) All records, personnel, and funds of the health
19 care practitioner prosecutorial unit of the agency are
20 transferred and assigned to the Office of the General Counsel
21 of the Department of Health.

22 (3) The Department of Health is deemed the successor
23 in interest in all legal proceedings and contracts currently
24 involving the Agency for Health Care Administration and
25 relating to health care practitioner regulation. Except as
26 provided in this section, no legal proceeding shall be
27 dismissed, nor any contract terminated, on the basis of this
28 type two transfer. The interagency agreement between the
29 Department of Health and the Agency for Health Care
30 Administration shall terminate on June 30, 2002.

31

1 Section 2. Paragraph (g) of subsection (3) of section
2 20.43, Florida Statutes, is amended to read:

3 20.43 Department of Health.--There is created a
4 Department of Health.

5 (3) The following divisions of the Department of
6 Health are established:

7 (g) Division of Medical Quality Assurance, which is
8 responsible for the following boards and professions
9 established within the division:

10 1. The Board of Acupuncture, created under chapter
11 457.

12 2. The Board of Medicine, created under chapter 458.

13 3. The Board of Osteopathic Medicine, created under
14 chapter 459.

15 4. The Board of Chiropractic Medicine, created under
16 chapter 460.

17 5. The Board of Podiatric Medicine, created under
18 chapter 461.

19 6. Naturopathy, as provided under chapter 462.

20 7. The Board of Optometry, created under chapter 463.

21 8. The Board of Nursing, created under part I of
22 chapter 464.

23 9. Nursing assistants, as provided under part II of
24 chapter 464.

25 10. The Board of Pharmacy, created under chapter 465.

26 11. The Board of Dentistry, created under chapter 466.

27 12. Midwifery, as provided under chapter 467.

28 13. The Board of Speech-Language Pathology and
29 Audiology, created under part I of chapter 468.

30 14. The Board of Nursing Home Administrators, created
31 under part II of chapter 468.

- 1 15. The Board of Occupational Therapy, created under
2 part III of chapter 468.
- 3 16. The Board of Respiratory Care ~~therapy~~, as created
4 ~~provided~~ under part V of chapter 468.
- 5 17. Dietetics and nutrition practice, as provided
6 under part X of chapter 468.
- 7 18. The Board of Athletic Training, created under part
8 XIII of chapter 468.
- 9 19. The Board of Orthotists and Prosthetists, created
10 under part XIV of chapter 468.
- 11 20. Electrolysis, as provided under chapter 478.
- 12 21. The Board of Massage Therapy, created under
13 chapter 480.
- 14 22. The Board of Clinical Laboratory Personnel,
15 created under part III of chapter 483.
- 16 23. Medical physicists, as provided under part IV of
17 chapter 483.
- 18 24. The Board of Opticianry, created under part I of
19 chapter 484.
- 20 25. The Board of Hearing Aid Specialists, created
21 under part II of chapter 484.
- 22 26. The Board of Physical Therapy Practice, created
23 under chapter 486.
- 24 27. The Board of Psychology, created under chapter
25 490.
- 26 28. School psychologists, as provided under chapter
27 490.
- 28 29. The Board of Clinical Social Work, Marriage and
29 Family Therapy, and Mental Health Counseling, created under
30 chapter 491.
- 31

1 ~~The department may contract with the Agency for Health Care~~
2 ~~Administration who shall provide consumer complaint,~~
3 ~~investigative, and prosecutorial services required by the~~
4 ~~Division of Medical Quality Assurance, councils, or boards, as~~
5 ~~appropriate.~~

6 Section 3. The Office of Program Policy Analysis and
7 Government Accountability and the Auditor General shall
8 conduct a joint audit of all hearings and billings therefor
9 conducted by the Division of Administrative Hearings for all
10 state agencies and nonstate agencies and shall present a
11 report to the President of the Senate and the Speaker of the
12 House of Representatives on or before January 1, 2003, which
13 contains findings and recommendations regarding the manner in
14 which the division charges for its services. The report shall
15 recommend alternative billing formulas.

16 Section 4. Section 456.047, Florida Statutes, is
17 repealed.

18 Section 5. All revenues associated with section
19 456.047, Florida Statutes, and collected by the Department of
20 Health on or before July 1, 2002, shall remain in the Medical
21 Quality Assurance Trust Fund, and no refunds shall be given.

22 Section 6. Paragraph (d) of subsection (4) of section
23 456.039, Florida Statutes, is amended to read:

24 456.039 Designated health care professionals;
25 information required for licensure.--

26 (4)

27 (d) Any applicant for initial licensure or renewal of
28 licensure as a health care practitioner who submits to the
29 Department of Health a set of fingerprints or information
30 required for the criminal history check required under this
31 section shall not be required to provide a subsequent set of

1 fingerprints or other duplicate information required for a
2 criminal history check to the Agency for Health Care
3 Administration, the Department of Juvenile Justice, or the
4 Department of Children and Family Services for employment or
5 licensure with such agency or department if the applicant has
6 undergone a criminal history check as a condition of initial
7 licensure or licensure renewal as a health care practitioner
8 with the Department of Health or any of its regulatory boards,
9 notwithstanding any other provision of law to the contrary. In
10 lieu of such duplicate submission, the Agency for Health Care
11 Administration, the Department of Juvenile Justice, and the
12 Department of Children and Family Services shall obtain
13 criminal history information for employment or licensure of
14 health care practitioners by such agency and departments from
15 the Department of Health ~~Health's health care practitioner~~
16 ~~credentialing system~~.

17 Section 7. Paragraph (d) of subsection (4) of section
18 456.0391, Florida Statutes, is amended to read:

19 456.0391 Advanced registered nurse practitioners;
20 information required for certification.--

21 (4)

22 (d) Any applicant for initial certification or renewal
23 of certification as an advanced registered nurse practitioner
24 who submits to the Department of Health a set of fingerprints
25 and information required for the criminal history check
26 required under this section shall not be required to provide a
27 subsequent set of fingerprints or other duplicate information
28 required for a criminal history check to the Agency for Health
29 Care Administration, the Department of Juvenile Justice, or
30 the Department of Children and Family Services for employment
31 or licensure with such agency or department, if the applicant

1 has undergone a criminal history check as a condition of
2 initial certification or renewal of certification as an
3 advanced registered nurse practitioner with the Department of
4 Health, notwithstanding any other provision of law to the
5 contrary. In lieu of such duplicate submission, the Agency for
6 Health Care Administration, the Department of Juvenile
7 Justice, and the Department of Children and Family Services
8 shall obtain criminal history information for employment or
9 licensure of persons certified under s. 464.012 by such agency
10 or department from the Department of Health ~~Health's health~~
11 ~~care practitioner credentialing system.~~

12 Section 8. Paragraph (v) of subsection (1) of section
13 456.072, Florida Statutes, is amended to read:

14 456.072 Grounds for discipline; penalties;
15 enforcement.--

16 (1) The following acts shall constitute grounds for
17 which the disciplinary actions specified in subsection (2) may
18 be taken:

19 (v) Failing to comply with the requirements for
20 profiling ~~and credentialing~~, including, but not limited to,
21 failing to provide initial information, failing to timely
22 provide updated information, or making misleading, untrue,
23 deceptive, or fraudulent representations on a profile;
24 ~~credentialing~~, or initial or renewal licensure application.

25 Section 9. Subsection (2) of section 456.077, Florida
26 Statutes, is amended to read:

27 456.077 Authority to issue citations.--

28 (2) The board, or the department if there is no board,
29 shall adopt rules designating violations for which a citation
30 may be issued. Such rules shall designate as citation
31 violations those violations for which there is no substantial

1 threat to the public health, safety, and welfare. Violations
2 for which a citation may be issued shall include violations of
3 continuing education requirements; failure to timely pay
4 required fees and fines; failure to comply with the
5 requirements of ss. 381.026 and 381.0261 regarding the
6 dissemination of information regarding patient rights; failure
7 to comply with advertising requirements; failure to timely
8 update practitioner profile ~~and credentialing~~ files; failure
9 to display signs, licenses, and permits; failure to have
10 required reference books available; and all other violations
11 that do not pose a direct and serious threat to the health and
12 safety of the patient.

13 Section 10. Subsection (3) of section 458.309, Florida
14 Statutes, is amended to read:

15 458.309 Authority to make rules.--

16 (3) All physicians who perform level 2 procedures
17 lasting more than 5 minutes and all level 3 surgical
18 procedures in an office setting must register the office with
19 the department unless that office is licensed as a facility
20 pursuant to chapter 395. Each office that is required under
21 this subsection to be registered must be ~~The department shall~~
22 ~~inspect the physician's office annually unless the office is~~
23 accredited by a nationally recognized accrediting agency
24 approved by the Board of Medicine by rule or an accrediting
25 organization ~~subsequently~~ approved by the Board of Medicine by
26 rule. Each office registered but not accredited as required
27 by this subsection must achieve full and unconditional
28 accreditation no later than July 1, 2003, and must maintain
29 unconditional accreditation as long as procedures described in
30 this subsection which require the office to be registered and
31 accredited are performed. Accreditation reports shall be

1 submitted to the department. The actual costs for registration
2 and ~~inspection or~~ accreditation shall be paid by the person
3 seeking to register and operate the office setting in which
4 office surgery is performed. The board may adopt rules
5 pursuant to ss. 120.536(1) and 120.54 to implement this
6 subsection.

7 Section 11. Subsection (2) of section 459.005, Florida
8 Statutes, is amended to read:

9 459.005 Rulemaking authority.--

10 (2) All osteopathic physicians who perform level 2
11 procedures lasting more than 5 minutes and all level 3
12 surgical procedures in an office setting must register the
13 office with the department unless that office is licensed as a
14 facility pursuant to chapter 395. Each office that is
15 required under this subsection to be registered must be ~~The~~
16 ~~department shall inspect the physician's office annually~~
17 ~~unless the office is~~ accredited by a nationally recognized
18 accrediting agency approved by the Board of Medicine or the
19 Board of Osteopathic Medicine by rule or an accrediting
20 organization ~~subsequently~~ approved by the Board of Medicine or
21 the Board of Osteopathic Medicine by rule. Each office
22 registered but not accredited as required by this subsection
23 must achieve full and unconditional accreditation no later
24 than July 1, 2003, and must maintain unconditional
25 accreditation as long as procedures described in this
26 subsection which require the office to be registered and
27 accredited are performed. Accreditation reports shall be
28 submitted to the department. The actual costs for registration
29 and ~~inspection~~ or accreditation shall be paid by the person
30 seeking to register and operate the office setting in which
31 office surgery is performed. The Board of Osteopathic

1 Medicine may adopt rules pursuant to ss. 120.536(1) and 120.54
2 to implement this subsection.

3 Section 12. Subsections (11) and (12) are added to
4 section 456.004, Florida Statutes, to read:

5 456.004 Department; powers and duties.--The
6 department, for the professions under its jurisdiction, shall:

7 (11) Require objective performance measures for all
8 bureaus, units, boards, contracted entities, and board
9 executive directors which reflect the expected quality and
10 quantity of services.

11 (12) Consider all board requests to use private
12 vendors for particular regulatory functions. In considering a
13 board request, the department shall conduct an analysis to
14 determine if the function could be appropriately and
15 successfully performed by a private entity at a lower cost or
16 with improved efficiency. If after reviewing the department's
17 analysis the board desires to contract with a vendor for a
18 particular regulatory function and the board has a positive
19 cash balance, the department shall enter into a contract for
20 the service. The contract shall include objective performance
21 measures that reflect the expected quality and quantity of the
22 service and shall include a provision that terminates the
23 contract if the service falls below expected levels. For
24 purposes of this subsection, a "regulatory function" shall be
25 defined to include licensure, licensure renewal, examination,
26 complaint analysis, investigation, or prosecution.

27 Section 13. Subsection (1) of section 456.009, Florida
28 Statutes, is amended to read:

29 456.009 Legal and investigative services.--

30 (1) The department shall provide board counsel for
31 boards within the department by contracting with the

1 Department of Legal Affairs, by retaining private counsel
2 pursuant to s. 287.059, or by providing department staff
3 counsel. The primary responsibility of board counsel shall be
4 to represent the interests of the citizens of the state. A
5 board shall provide for the periodic review and evaluation of
6 the services provided by its board counsel. Fees and costs of
7 such counsel shall be paid from a trust fund used by the
8 department to implement this chapter, subject to the
9 provisions of s. 456.025. All contracts for independent
10 counsel shall provide for periodic review and evaluation by
11 the board and the department of services provided. All legal
12 and investigative services shall be reviewed by the department
13 annually to determine if such services are meeting the
14 performance measures specified in law and in the contract. All
15 contracts for legal and investigative services must include
16 objective performance measures that reflect the expected
17 quality and quantity of the contracted services.

18 Section 14. Subsection (6) is added to section
19 456.011, Florida Statutes, to read:

20 456.011 Boards; organization; meetings; compensation
21 and travel expenses.--

22 (6) Meetings of board committees, including probable
23 cause panels, shall be conducted electronically unless held
24 concurrently with, or on the day immediately before or after,
25 a regularly scheduled in-person board meeting. However, if a
26 particular committee meeting is expected to last more than 5
27 hours and cannot be held before or after the in-person board
28 meeting, the chair of the committee may request special
29 permission from the director of the Division of Medical
30 Quality Assurance to hold an in-person committee meeting in
31 Tallahassee.

1 Section 15. Subsection (11) is added to section
2 456.026, Florida Statutes, to read:

3 456.026 Annual report concerning finances,
4 administrative complaints, disciplinary actions, and
5 recommendations.--The department is directed to prepare and
6 submit a report to the President of the Senate and the Speaker
7 of the House of Representatives by November 1 of each year. In
8 addition to finances and any other information the Legislature
9 may require, the report shall include statistics and relevant
10 information, profession by profession, detailing:

11 (11) The performance measures for all bureaus, units,
12 boards, and contracted entities required by the department to
13 reflect the expected quality and quantity of services, and a
14 description of any effort to improve the performance of such
15 services.

16 Section 16. Section 458.3093, Florida Statutes, is
17 created to read:

18 458.3093 Licensure credentials verification.--All
19 applicants for initial physician licensure pursuant to this
20 chapter must submit their credentials to the Federation of
21 State Medical Boards. Effective January 1, 2003, the board
22 and the department shall only consider applications for
23 initial physician licensure pursuant to this chapter which
24 have been verified by the Federation of State Medical Boards
25 Credentials Verification Service or an equivalent program
26 approved by the board.

27 Section 17. Section 459.0053, Florida Statutes, is
28 created to read:

29 459.0053 Licensure credentials verification.--All
30 applicants for initial osteopathic physician licensure
31 pursuant to this chapter must submit their credentials to the

1 Federation of State Medical Boards. Effective January 1,
2 2003, the board and the department shall only consider
3 applications for initial osteopathic physician licensure
4 pursuant to this chapter which have been verified by the
5 Federation of State Medical Boards Credentials Verification
6 Service, the American Osteopathic Association, or an
7 equivalent program approved by the board.

8 Section 18. Paragraph (t) of subsection (1) and
9 subsection (6) of section 458.331, Florida Statutes, are
10 amended to read:

11 458.331 Grounds for disciplinary action; action by the
12 board and department.--

13 (1) The following acts constitute grounds for denial
14 of a license or disciplinary action, as specified in s.
15 456.072(2):

16 (t) Gross or repeated malpractice or the failure to
17 practice medicine with that level of care, skill, and
18 treatment which is recognized by a reasonably prudent similar
19 physician as being acceptable under similar conditions and
20 circumstances. The board shall give great weight to the
21 provisions of s. 766.102 when enforcing this paragraph. As
22 used in this paragraph, "repeated malpractice" includes, but
23 is not limited to, three or more claims for medical
24 malpractice within the previous 5-year period resulting in
25 indemnities being paid in excess of ~~\$25,000~~ \$50,000 each to
26 the claimant in a judgment or settlement and which incidents
27 involved negligent conduct by the physician. As used in this
28 paragraph, "gross malpractice" or "the failure to practice
29 medicine with that level of care, skill, and treatment which
30 is recognized by a reasonably prudent similar physician as
31 being acceptable under similar conditions and circumstances,"

1 shall not be construed so as to require more than one
2 instance, event, or act. Nothing in this paragraph shall be
3 construed to require that a physician be incompetent to
4 practice medicine in order to be disciplined pursuant to this
5 paragraph.

6 (6) Upon the department's receipt from an insurer or
7 self-insurer of a report of a closed claim against a physician
8 pursuant to s. 627.912 or from a health care practitioner of a
9 report pursuant to s. 456.049, or upon the receipt from a
10 claimant of a presuit notice against a physician pursuant to
11 s. 766.106, the department shall review each report and
12 determine whether it potentially involved conduct by a
13 licensee that is subject to disciplinary action, in which case
14 the provisions of s. 456.073 shall apply. However, if it is
15 reported that a physician has had three or more claims with
16 indemnities exceeding ~~\$50,000~~\$25,000 each within the previous
17 5-year period, the department shall investigate the
18 occurrences upon which the claims were based and determine
19 whether if action by the department against the physician is
20 warranted.

21 Section 19. Paragraph (x) of subsection (1) and
22 subsection (6) of section 459.015, Florida Statutes, are
23 amended to read:

24 459.015 Grounds for disciplinary action; action by the
25 board and department.--

26 (1) The following acts constitute grounds for denial
27 of a license or disciplinary action, as specified in s.
28 456.072(2):

29 (x) Gross or repeated malpractice or the failure to
30 practice osteopathic medicine with that level of care, skill,
31 and treatment which is recognized by a reasonably prudent

1 similar osteopathic physician as being acceptable under
2 similar conditions and circumstances. The board shall give
3 great weight to the provisions of s. 766.102 when enforcing
4 this paragraph. As used in this paragraph, "repeated
5 malpractice" includes, but is not limited to, three or more
6 claims for medical malpractice within the previous 5-year
7 period resulting in indemnities being paid in excess of
8 \$50,000~~\$25,000~~ each to the claimant in a judgment or
9 settlement and which incidents involved negligent conduct by
10 the osteopathic physician. As used in this paragraph, "gross
11 malpractice" or "the failure to practice osteopathic medicine
12 with that level of care, skill, and treatment which is
13 recognized by a reasonably prudent similar osteopathic
14 physician as being acceptable under similar conditions and
15 circumstances" shall not be construed so as to require more
16 than one instance, event, or act. Nothing in this paragraph
17 shall be construed to require that an osteopathic physician be
18 incompetent to practice osteopathic medicine in order to be
19 disciplined pursuant to this paragraph. A recommended order
20 by an administrative law judge or a final order of the board
21 finding a violation under this paragraph shall specify whether
22 the licensee was found to have committed "gross malpractice,"
23 "repeated malpractice," or "failure to practice osteopathic
24 medicine with that level of care, skill, and treatment which
25 is recognized as being acceptable under similar conditions and
26 circumstances," or any combination thereof, and any
27 publication by the board shall so specify.

28 (6) Upon the department's receipt from an insurer or
29 self-insurer of a report of a closed claim against an
30 osteopathic physician pursuant to s. 627.912 or from a health
31 care practitioner of a report pursuant to s. 456.049, or upon

1 the receipt from a claimant of a presuit notice against an
2 osteopathic physician pursuant to s. 766.106, the department
3 shall review each report and determine whether it potentially
4 involved conduct by a licensee that is subject to disciplinary
5 action, in which case the provisions of s. 456.073 shall
6 apply. However, if it is reported that an osteopathic
7 physician has had three or more claims with indemnities
8 exceeding \$50,000 ~~\$25,000~~ each within the previous 5-year
9 period, the department shall investigate the occurrences upon
10 which the claims were based and determine whether ~~if~~ action by
11 the department against the osteopathic physician is warranted.

12 Section 20. Subsection (1) of section 627.912, Florida
13 Statutes, is amended to read:

14 627.912 Professional liability claims and actions;
15 reports by insurers.--

16 (1) Each self-insurer authorized under s. 627.357 and
17 each insurer or joint underwriting association providing
18 professional liability insurance to a practitioner of medicine
19 licensed under chapter 458, to a practitioner of osteopathic
20 medicine licensed under chapter 459, to a podiatric physician
21 licensed under chapter 461, to a dentist licensed under
22 chapter 466, to a hospital licensed under chapter 395, to a
23 crisis stabilization unit licensed under part IV of chapter
24 394, to a health maintenance organization certificated under
25 part I of chapter 641, to clinics included in chapter 390, to
26 an ambulatory surgical center as defined in s. 395.002, or to
27 a member of The Florida Bar shall report in duplicate to the
28 Department of Insurance any claim or action for damages for
29 personal injuries claimed to have been caused by error,
30 omission, or negligence in the performance of such insured's
31 professional services or based on a claimed performance of

1 professional services without consent, if the claim resulted
2 in:

3 (a) A final judgment in any amount.

4 (b) A settlement in any amount.

5
6 Reports shall be filed with the Department of Insurance.~~and,~~
7 If the insured party is licensed under chapter 458, chapter
8 459, or chapter 461, ~~or chapter 466~~, with the Department of
9 Health, and the final judgment or settlement was in an amount
10 exceeding \$50,000, the report shall also be filed with the
11 Department of Health. If the insured is licensed under chapter
12 466 and the final judgment or settlement was in an amount
13 exceeding \$25,000, the report shall also be filed with the
14 Department of Health. Reports must be filed no later than 30
15 days following the occurrence of any event listed in this
16 subsection ~~paragraph (a) or paragraph (b)~~. The Department of
17 Health shall review each report and determine whether any of
18 the incidents that resulted in the claim potentially involved
19 conduct by the licensee that is subject to disciplinary
20 action, in which case the provisions of s. 456.073 shall
21 apply. The Department of Health, as part of the annual report
22 required by s. 456.026, shall publish annual statistics,
23 without identifying licensees, on the reports it receives,
24 including final action taken on such reports by the Department
25 of Health or the appropriate regulatory board.

26 Section 21. The Office of Program Policy Analysis and
27 Governmental Accountability shall review the investigative
28 field office structure and organization of the Agency for
29 Health Care Administration to determine the feasibility of
30 eliminating all or some field offices, the feasibility of
31 combining field offices, and the feasibility of requiring

1 field inspectors and investigators to telecommute from home in
2 lieu of paying for office space. The review shall include all
3 agency programs that have field offices including health
4 practitioner regulation, even if health practitioner
5 regulation is transferred to the Department of Health. The
6 review shall be completed and a report issued to the President
7 of the Senate and the Speaker of the House of Representatives
8 no later than January 1, 2003.

9 Section 22. Subsection (1) of section 456.025, Florida
10 Statutes, is amended to read:

11 456.025 Fees; receipts; disposition.--

12 (1) It is the intent of the Legislature that all costs
13 of regulating health care professions and practitioners shall
14 be borne solely by licensees and licensure applicants. It is
15 also the intent of the Legislature that fees should be
16 reasonable and not serve as a barrier to licensure. Moreover,
17 it is the intent of the Legislature that the department
18 operate as efficiently as possible and regularly report to the
19 Legislature additional methods to streamline operational
20 costs. Therefore, the boards in consultation with the
21 department, or the department if there is no board, shall, by
22 rule, set renewal fees which:

23 (a) Shall be based on revenue projections prepared
24 using generally accepted accounting procedures;

25 (b) Shall be adequate to cover all expenses relating
26 to that board identified in the department's long-range policy
27 plan, as required by s. 456.005;

28 (c) Shall be reasonable, fair, and not serve as a
29 barrier to licensure;

30 (d) Shall be based on potential earnings from working
31 under the scope of the license;

1 (e) Shall be similar to fees imposed on similar
2 licensure types; and

3 ~~(f) Shall not be more than 10 percent greater than the~~
4 ~~fee imposed for the previous biennium;~~

5 ~~(g) Shall not be more than 10 percent greater than the~~
6 ~~actual cost to regulate that profession for the previous~~
7 ~~biennium; and~~

8 (f)(h) Shall be subject to challenge pursuant to
9 chapter 120.

10 Section 23. Section 456.0165, Florida Statutes, is
11 created to read:

12 456.0165 Examination location.--A college, university,
13 or vocational school in this state may serve as the host
14 school for a health care practitioner licensure examination.
15 However, the college, university, or vocational school may not
16 charge the department for rent, space, reusable equipment,
17 utilities, or janitorial services. The college, university,
18 or vocational school may charge the department only the actual
19 cost of nonreusable supplies provided by the school at the
20 request of the department.

21 Section 24. Subsection (6) of section 468.302, Florida
22 Statutes, is amended to read:

23 468.302 Use of radiation; identification of certified
24 persons; limitations; exceptions.--

25 (6) Requirement for certification does not apply to:

26 (a) A hospital resident who is not a licensed
27 practitioner in this state or a student enrolled in and
28 attending a school or college of medicine, osteopathic
29 medicine, chiropody, podiatric medicine, or chiropractic
30 medicine or a radiologic technology educational program and
31

1 who applies radiation to a human being while under the direct
2 supervision of a licensed practitioner.

3 (b) A person who is engaged in performing the duties
4 of a radiologic technologist in his or her employment by a
5 governmental agency of the United States.

6 (c) A person who is trained and skilled in invasive
7 cardiovascular ~~cardiopulmonary~~ technology, including the
8 radiologic technology duties associated with such procedures,
9 and who provides invasive cardiovascular ~~cardiopulmonary~~
10 technology services at the direction, and under the direct
11 supervision, of a licensed practitioner who is trained and
12 skilled in performing invasive cardiovascular procedures. Such
13 persons must have successfully completed a didactic and
14 clinical training program in the following areas before
15 performing radiologic technology duties:

16 1. Principles of X-ray production and equipment
17 operation.

18 2. Biological effects of radiation.

19 3. Radiation exposure and monitoring.

20 4. Radiation safety and protection.

21 5. Evaluation of radiographic equipment and

22 accessories.

23 6. Radiographic exposure and technique factors.

24 7. Film processing.

25 8. Image quality assurance.

26 9. Patient positioning.

27 10. Administration and complications of contrast
28 media.

29 11. Specific fluoroscopic and digital X-ray imaging
30 procedures related to invasive cardiovascular technology.

31

1 Section 25. Section 468.352, Florida Statutes, is
2 amended to read:

3 (Substantial rewording of section. See
4 s. 468.352, F.S., for present text.)

5 468.352 Definitions.--As used in this part the term:

6 (1) "Board" means the Board of Respiratory Care.

7 (2) "Certified respiratory therapist" means any person
8 licensed pursuant to this part who is certified by the
9 National Board for Respiratory Care or its successor; who is
10 employed to deliver respiratory care services, under the order
11 of a physician licensed pursuant to chapter 458 or chapter
12 459, in accordance with protocols established by a hospital or
13 other health care provider or the board; and who functions in
14 situations of unsupervised patient contact requiring
15 individual judgment.

16 (3) "Critical care" means care given to a patient in
17 any setting involving a life-threatening emergency.

18 (4) "Department" means the Department of Health.

19 (5) "Direct supervision" means practicing under the
20 direction of a licensed, registered, or certified respiratory
21 therapist who is physically on the premises and readily
22 available, as defined by the board.

23 (6) "Physician supervision" means supervision and
24 control by a physician licensed under chapter 458 or chapter
25 459 who assumes the legal liability for the services rendered
26 by the personnel employed in his or her office. Except in the
27 case of an emergency, physician supervision requires the easy
28 availability of the physician within the office or the
29 physical presence of the physician for consultation and
30 direction of the actions of the persons who deliver
31 respiratory care services.

1 (7) "Practice of respiratory care" or "respiratory
2 therapy" means the allied health specialty associated with the
3 cardiopulmonary system that is practiced under the orders of a
4 physician licensed under chapter 458 or chapter 459 and in
5 accordance with protocols, policies, and procedures
6 established by a hospital or other health care provider or the
7 board, including the assessment, diagnostic evaluation,
8 treatment, management, control, rehabilitation, education, and
9 care of patients.

10 (8) "Registered respiratory therapist" means any
11 person licensed under this part who is registered by the
12 National Board for Respiratory Care or its successor, and who
13 is employed to deliver respiratory care services under the
14 order of a physician licensed under chapter 458 or chapter
15 459, in accordance with protocols established by a hospital or
16 other health care provider or the board, and who functions in
17 situations of unsupervised patient contact requiring
18 individual judgment.

19 (9) "Respiratory care practitioner" means any person
20 licensed under this part who is employed to deliver
21 respiratory care services, under direct supervision, pursuant
22 to the order of a physician licensed under chapter 458 or
23 chapter 459.

24 (10) "Respiratory care services" includes:

25 (a) Evaluation and disease management.

26 (b) Diagnostic and therapeutic use of respiratory
27 equipment, devices, or medical gas.

28 (c) Administration of drugs, as duly ordered or
29 prescribed by a physician licensed under chapter 458 or
30 chapter 459 and in accordance with protocols, policies, and
31

1 procedures established by a hospital or other health care
2 provider or the board.

3 (d) Initiation, management, and maintenance of
4 equipment to assist and support ventilation and respiration.

5 (e) Diagnostic procedures, research, and therapeutic
6 treatment and procedures, including measurement of ventilatory
7 volumes, pressures, and flows; specimen collection and
8 analysis of blood for gas transport and acid/base
9 determinations; pulmonary-function testing; and other related
10 physiological monitoring of cardiopulmonary systems.

11 (f) Cardiopulmonary rehabilitation.

12 (g) Cardiopulmonary resuscitation, advanced cardiac
13 life support, neonatal resuscitation, and pediatric advanced
14 life support, or equivalent functions.

15 (h) Insertion and maintenance of artificial airways
16 and intravascular catheters.

17 (i) Performing sleep-disorder studies.

18 (j) Education of patients, families, the public, or
19 other health care providers, including disease process and
20 management programs and smoking prevention and cessation
21 programs.

22 (k) Initiation and management of hyperbaric oxygen.

23 Section 26. Section 468.355, Florida Statutes, is
24 amended to read:

25 (Substantial rewording of section. See
26 s. 468.355, F.S., for present text.)

27 468.355 Licensure requirements.--To be eligible for
28 licensure by the board, an applicant must be certified as a
29 "Certified Respiratory Therapist" or be registered as a
30 "Registered Respiratory Therapist" by the National Board for
31 Respiratory Care, or its successor.

1 Section 27. Section 468.368, Florida Statutes, is
2 amended to read:

3 (Substantial rewording of section. See
4 s. 468.368, F.S., for present text.)

5 468.368 Exemptions.--This part may not be construed to
6 prevent or restrict the practice, service, or activities of:

7 (1) Any person licensed in this state by any other law
8 from engaging in the profession or occupation for which he or
9 she is licensed.

10 (2) Any legally qualified person in the state or
11 another state or territory who is employed by the United
12 States Government or any agency thereof while such person is
13 discharging his or her official duties.

14 (3) A friend or family member who is providing
15 respiratory care services to an ill person and who does not
16 represent himself or herself to be a respiratory care
17 practitioner or respiratory therapist.

18 (4) An individual providing respiratory care services
19 in an emergency who does not represent himself or herself as a
20 respiratory care practitioner or respiratory therapist.

21 (5) Any individual employed to deliver, assemble, set
22 up, or test equipment for use in a home, upon the order of a
23 physician licensed pursuant to chapter 458 or chapter 459.
24 This subsection does not, however, authorize the practice of
25 respiratory care without a license.

26 (6) Any individual credentialed by the Board of
27 Registered Polysomnographic Technologists as a registered
28 polysomnographic technologist, as related to the diagnosis and
29 evaluation of treatment for sleep disorders.

30 (7) Any individual certified or registered as a
31 pulmonary function technologist who is credentialed by the

1 National Board for Respiratory Care for performing
2 cardiopulmonary diagnostic studies.

3 (8) Any student who is enrolled in an accredited
4 respiratory care program approved by the board, while
5 performing respiratory care as an integral part of a required
6 course.

7 (9) The delivery of incidental respiratory care to
8 noninstitutionalized persons by surrogate family members who
9 do not represent themselves as registered or certified
10 respiratory care therapists.

11 (10) Any individual credentialed by the Underseas
12 Hyperbaric Society in hyperbaric medicine or its equivalent as
13 determined by the board, while performing related duties. This
14 subsection does not, however, authorize the practice of
15 respiratory care without a license.

16 Section 28. Sections 468.356 and 468.357, Florida
17 Statutes, are repealed.

18 Section 29. Sections 381.0602, 381.6021, 381.6022,
19 381.6023, 381.6024, and 381.6026, Florida Statutes, are
20 renumbered as sections 765.53, 765.541, 765.542, 765.544,
21 765.545, and 765.547, Florida Statutes, respectively.

22 Section 30. Section 381.60225, Florida Statutes, is
23 renumbered as section 765.543, Florida Statutes, and is
24 amended to read:

25 765.543 ~~381.60225~~ Background screening.--

26 (1) Each applicant for certification must comply with
27 the following requirements:

28 (a) Upon receipt of a completed, signed, and dated
29 application, the Agency for Health Care Administration shall
30 require background screening, in accordance with the level 2
31 standards for screening set forth in chapter 435, of the

1 managing employee, or other similarly titled individual
2 responsible for the daily operation of the organization,
3 agency, or entity, and financial officer, or other similarly
4 titled individual who is responsible for the financial
5 operation of the organization, agency, or entity, including
6 billings for services. The applicant must comply with the
7 procedures for level 2 background screening as set forth in
8 chapter 435, as well as the requirements of s. 435.03(3).

9 (b) The Agency for Health Care Administration may
10 require background screening of any other individual who is an
11 applicant if the Agency for Health Care Administration has
12 probable cause to believe that he or she has been convicted of
13 a crime or has committed any other offense prohibited under
14 the level 2 standards for screening set forth in chapter 435.

15 (c) Proof of compliance with the level 2 background
16 screening requirements of chapter 435 which has been submitted
17 within the previous 5 years in compliance with any other
18 health care licensure requirements of this state is acceptable
19 in fulfillment of the requirements of paragraph (a).

20 (d) A provisional certification may be granted to the
21 organization, agency, or entity when each individual required
22 by this section to undergo background screening has met the
23 standards for the Department of Law Enforcement background
24 check, but the agency has not yet received background
25 screening results from the Federal Bureau of Investigation, or
26 a request for a disqualification exemption has been submitted
27 to the agency as set forth in chapter 435, but a response has
28 not yet been issued. A standard certification may be granted
29 to the organization, agency, or entity upon the agency's
30 receipt of a report of the results of the Federal Bureau of
31 Investigation background screening for each individual

1 required by this section to undergo background screening which
2 confirms that all standards have been met, or upon the
3 granting of a disqualification exemption by the agency as set
4 forth in chapter 435. Any other person who is required to
5 undergo level 2 background screening may serve in his or her
6 capacity pending the agency's receipt of the report from the
7 Federal Bureau of Investigation. However, the person may not
8 continue to serve if the report indicates any violation of
9 background screening standards and a disqualification
10 exemption has not been requested of and granted by the agency
11 as set forth in chapter 435.

12 (e) Each applicant must submit to the agency, with its
13 application, a description and explanation of any exclusions,
14 permanent suspensions, or terminations of the applicant from
15 the Medicare or Medicaid programs. Proof of compliance with
16 the requirements for disclosure of ownership and control
17 interests under the Medicaid or Medicare programs shall be
18 accepted in lieu of this submission.

19 (f) Each applicant must submit to the agency a
20 description and explanation of any conviction of an offense
21 prohibited under the level 2 standards of chapter 435 by a
22 member of the board of directors of the applicant, its
23 officers, or any individual owning 5 percent or more of the
24 applicant. This requirement does not apply to a director of a
25 not-for-profit corporation or organization if the director
26 serves solely in a voluntary capacity for the corporation or
27 organization, does not regularly take part in the day-to-day
28 operational decisions of the corporation or organization,
29 receives no remuneration for his or her services on the
30 corporation or organization's board of directors, and has no
31 financial interest and has no family members with a financial

1 interest in the corporation or organization, provided that the
2 director and the not-for-profit corporation or organization
3 include in the application a statement affirming that the
4 director's relationship to the corporation satisfies the
5 requirements of this paragraph.

6 (g) The agency may not certify any organization,
7 agency, or entity if any applicant or managing employee has
8 been found guilty of, regardless of adjudication, or has
9 entered a plea of nolo contendere or guilty to, any offense
10 prohibited under the level 2 standards for screening set forth
11 in chapter 435, unless an exemption from disqualification has
12 been granted by the agency as set forth in chapter 435.

13 (h) The agency may deny or revoke certification of any
14 organization, agency, or entity if the applicant:

15 1. Has falsely represented a material fact in the
16 application required by paragraph (e) or paragraph (f), or has
17 omitted any material fact from the application required by
18 paragraph (e) or paragraph (f); or

19 2. Has had prior action taken against the applicant
20 under the Medicaid or Medicare program as set forth in
21 paragraph (e).

22 (i) An application for renewal of certification must
23 contain the information required under paragraphs (e) and (f).

24 (2) An organ procurement organization, tissue bank, or
25 eye bank certified by the Agency for Health Care
26 Administration in accordance with ss. 381.6021 and 765.542
27 ~~381.6022~~ is not subject to the requirements of this section if
28 the entity has no direct patient care responsibilities and
29 does not bill patients or insurers directly for services under
30 the Medicare or Medicaid programs, or for privately insured
31 services.

1 Section 31. Section 381.6025, Florida Statutes, is
2 renumbered as section 765.546, Florida Statutes, and amended
3 to read:

4 765.546 ~~381.6025~~ Physician supervision of cadaveric
5 organ and tissue procurement coordinators.--Organ procurement
6 organizations, tissue banks, and eye banks may employ
7 coordinators, who are registered nurses, physician's
8 assistants, or other medically trained personnel who meet the
9 relevant standards for organ procurement organizations, tissue
10 banks, or eye banks as adopted by the Agency for Health Care
11 Administration under s. 765.541 ~~381.6021~~, to assist in the
12 medical management of organ donors or in the surgical
13 procurement of cadaveric organs, tissues, or eyes for
14 transplantation or research. A coordinator who assists in the
15 medical management of organ donors or in the surgical
16 procurement of cadaveric organs, tissues, or eyes for
17 transplantation or research must do so under the direction and
18 supervision of a licensed physician medical director pursuant
19 to rules and guidelines to be adopted by the Agency for Health
20 Care Administration. With the exception of organ procurement
21 surgery, this supervision may be indirect supervision. For
22 purposes of this section, the term "indirect supervision"
23 means that the medical director is responsible for the medical
24 actions of the coordinator, that the coordinator is operating
25 under protocols expressly approved by the medical director,
26 and that the medical director or his or her physician designee
27 is always available, in person or by telephone, to provide
28 medical direction, consultation, and advice in cases of organ,
29 tissue, and eye donation and procurement. Although indirect
30 supervision is authorized under this section, direct physician
31 supervision is to be encouraged when appropriate.

1 Section 32. Subsection (2) of section 395.2050,
2 Florida Statutes, is amended to read:

3 395.2050 Routine inquiry for organ and tissue
4 donation; certification for procurement activities.--

5 (2) Every hospital licensed under this chapter that is
6 engaged in the procurement of organs, tissues, or eyes shall
7 comply with the certification requirements of ss.

8 765.541-765.547 ~~381.6021-381.6026~~.

9 Section 33. Paragraph (e) of subsection (2) of section
10 409.815, Florida Statutes, is amended to read:

11 409.815 Health benefits coverage; limitations.--

12 (2) BENCHMARK BENEFITS.--In order for health benefits
13 coverage to qualify for premium assistance payments for an
14 eligible child under ss. 409.810-409.820, the health benefits
15 coverage, except for coverage under Medicaid and Medikids,
16 must include the following minimum benefits, as medically
17 necessary.

18 (e) Organ transplantation services.--Covered services
19 include pretransplant, transplant, and postdischarge services
20 and treatment of complications after transplantation for
21 transplants deemed necessary and appropriate within the
22 guidelines set by the Organ Transplant Advisory Council under
23 s. 765.53 ~~381.0602~~ or the Bone Marrow Transplant Advisory
24 Panel under s. 627.4236.

25 Section 34. Subsection (2) of section 765.5216,
26 Florida Statutes, is amended to read:

27 765.5216 Organ and tissue donor education panel.--

28 (2) There is created within the Agency for Health Care
29 Administration a statewide organ and tissue donor education
30 panel, consisting of 12 members, to represent the interests of
31 the public with regard to increasing the number of organ and

1 tissue donors within the state. The panel and the Organ and
2 Tissue Procurement and Transplantation Advisory Board
3 established in s. 765.544 ~~381.6023~~ shall jointly develop,
4 subject to the approval of the Agency for Health Care
5 Administration, education initiatives pursuant to s. 732.9215,
6 which the agency shall implement. The membership must be
7 balanced with respect to gender, ethnicity, and other
8 demographic characteristics so that the appointees reflect the
9 diversity of the population of this state. The panel members
10 must include:

11 (a) A representative from the Agency for Health Care
12 Administration, who shall serve as chairperson of the panel.

13 (b) A representative from a Florida licensed organ
14 procurement organization.

15 (c) A representative from a Florida licensed tissue
16 bank.

17 (d) A representative from a Florida licensed eye bank.

18 (e) A representative from a Florida licensed hospital.

19 (f) A representative from the Division of Driver
20 Licenses of the Department of Highway Safety and Motor
21 Vehicles, who possesses experience and knowledge in dealing
22 with the public.

23 (g) A representative from the family of an organ,
24 tissue, or eye donor.

25 (h) A representative who has been the recipient of a
26 transplanted organ, tissue, or eye, or is a family member of a
27 recipient.

28 (i) A representative who is a minority person as
29 defined in s. 381.81.

30 (j) A representative from a professional association
31 or public relations or advertising organization.

1 (k) A representative from a community service club or
2 organization.

3 (l) A representative from the Department of Education.

4 Section 35. Subsection (5) of section 765.522, Florida
5 Statutes, is amended to read:

6 765.522 Duty of certain hospital administrators;
7 liability of hospital administrators, organ procurement
8 organizations, eye banks, and tissue banks.--

9 (5) There shall be no civil or criminal liability
10 against any organ procurement organization, eye bank, or
11 tissue bank certified under s. 765.542 ~~381.6022~~, or against
12 any hospital or hospital administrator or designee, when
13 complying with the provisions of this part and the rules of
14 the Agency for Health Care Administration or when, in the
15 exercise of reasonable care, a request for organ donation is
16 inappropriate and the gift is not made according to this part
17 and the rules of the Agency for Health Care Administration.

18 Section 36. Present subsections (11) through (33) of
19 section 395.002, Florida Statutes, are renumbered as
20 subsections (12) through (34), respectively, and a new
21 subsection (11) is added to that section, to read:

22 395.002 Definitions.--As used in this chapter:

23 (11) "Medically unnecessary procedure" means a
24 surgical or other invasive procedure that no reasonable
25 physician, in light of the patient's history and available
26 diagnostic information, would deem to be indicated in order to
27 treat, cure, or palliate the patient's condition or disease.

28 Section 37. Subsection (5) is added to section
29 395.0161, Florida Statutes, to read:

30 395.0161 Licensure inspection.--

31

1 (5)(a) The agency shall adopt rules governing the
2 conduct of inspections or investigations it initiates in
3 response to:

4 1. Reports filed pursuant to s. 395.0197.

5 2. Complaints alleging violations of state or federal
6 emergency access laws.

7 3. Complaints made by the public alleging violations
8 of law by licensed facilities or personnel.

9 (b) The rules must set forth the procedures to be used
10 in the investigations or inspections in order to protect the
11 due process rights of licensed facilities and personnel and to
12 minimize, to the greatest reasonable extent possible, the
13 disruption of facility operations and the cost to facilities
14 resulting from those investigations.

15 Section 38. Subsections (2), (14), and (16) of section
16 395.0197, Florida Statutes, are amended to read:

17 395.0197 Internal risk management program.--

18 (2) The internal risk management program is the
19 responsibility of the governing board of the health care
20 facility. Each licensed facility shall use the services of
21 ~~hire~~ a risk manager, licensed under s. 395.10974, who is
22 responsible for implementation and oversight of such
23 facility's internal risk management program as required by
24 this section. ~~A risk manager must not be made responsible for~~
25 ~~more than four internal risk management programs in separate~~
26 ~~licensed facilities, unless the facilities are under one~~
27 ~~corporate ownership or the risk management programs are in~~
28 ~~rural hospitals.~~

29 (14) The agency shall have access, as set forth in
30 rules adopted under s. 395.0161(5), to all licensed facility
31 records necessary to carry out the provisions of this section.

1 The records obtained by the agency under subsection (6),
2 subsection (8), or subsection (10) are not available to the
3 public under s. 119.07(1), nor shall they be discoverable or
4 admissible in any civil or administrative action, except in
5 disciplinary proceedings by the agency or the appropriate
6 regulatory board, nor shall records obtained pursuant to s.
7 456.071 be available to the public as part of the record of
8 investigation for and prosecution in disciplinary proceedings
9 made available to the public by the agency or the appropriate
10 regulatory board. However, the agency or the appropriate
11 regulatory board shall make available, upon written request by
12 a health care professional against whom probable cause has
13 been found, any such records which form the basis of the
14 determination of probable cause, except that, with respect to
15 medical review committee records, s. 766.101 controls.

16 (16) The agency shall review, as part of its licensure
17 inspection process, the internal risk management program at
18 each licensed facility regulated by this section to determine
19 whether the program meets standards established in statutes
20 and rules, whether the program is being conducted in a manner
21 designed to reduce adverse incidents, and whether the program
22 is appropriately reporting incidents under this section. Only
23 a risk manager, licensed under s. 395.10974 and employed by
24 the Agency for Health Care Administration has the authority to
25 conduct inspections necessary to determine whether a program
26 meets the requirements of this section. A determination must
27 be based on the care, skill, and judgment which, in light of
28 all relevant surrounding circumstances, is recognized as
29 acceptable and appropriate by reasonably prudent similar
30 licensed risk managers.

31

1 Section 39. Paragraph (b) of subsection (1) of section
2 456.0375, Florida Statutes, is amended to read:

3 456.0375 Registration of certain clinics;
4 requirements; discipline; exemptions.--

5 (1)

6 (b) For purposes of this section, the term "clinic"
7 does not include and the registration requirements herein do
8 not apply to:

9 1. Entities licensed or registered by the state
10 pursuant to chapter 390, chapter 394, chapter 395, chapter
11 397, chapter 400, chapter 463, chapter 465, chapter 466,
12 chapter 478, chapter 480, or chapter 484.

13 2. Entities exempt from federal taxation under 26
14 U.S.C. s. 501(c)(3) and community college and university
15 clinics.

16 3. Sole proprietorships, group practices,
17 partnerships, or corporations that provide health care
18 services by licensed health care practitioners pursuant to
19 chapters 457, 458, 459, 460, 461, 462, 463, 466, 467, 484,
20 486, 490, 491, or part I, part III, part X, part XIII, or part
21 XIV of chapter 468, or s. 464.012, which are wholly owned by
22 licensed health care practitioners or the licensed health care
23 practitioner and the spouse, parent, or child of a licensed
24 health care practitioner, so long as one of the owners who is
25 a licensed health care practitioner is supervising the
26 services performed therein and is legally responsible for the
27 entity's compliance with all federal and state laws. However,
28 no health care practitioner may supervise the delivery of
29 health care services beyond the scope of the practitioner's
30 license. This section does not prohibit a health care

31

1 practitioner from providing administrative or managerial
2 supervision for personnel purposes.

3 Section 40. Paragraphs (aa) and (bb) of subsection (1)
4 of section 456.072, Florida Statutes, are amended to read:

5 456.072 Grounds for discipline; penalties;
6 enforcement.--

7 (1) The following acts shall constitute grounds for
8 which the disciplinary actions specified in subsection (2) may
9 be taken:

10 (aa) Performing ~~or attempting to perform~~ health care
11 services on the wrong patient, a wrong-site procedure, a wrong
12 procedure, or an unauthorized procedure or a procedure that is
13 medically unnecessary or otherwise unrelated to the patient's
14 diagnosis or medical condition. For the purposes of this
15 paragraph, performing ~~or attempting to perform~~ health care
16 services includes the preparation of the patient.

17 (bb) Leaving a foreign body in a patient, such as a
18 sponge, clamp, forceps, surgical needle, or other
19 paraphernalia commonly used in surgical, examination, or other
20 diagnostic procedures, unless leaving the foreign body is
21 medically indicated and documented in the patient record. For
22 the purposes of this paragraph, it shall be legally presumed
23 that retention of a foreign body is not in the best interest
24 of the patient and is not within the standard of care of the
25 profession, unless medically indicated and documented in the
26 patient record ~~regardless of the intent of the professional~~.

27 Section 41. Paragraph (b) of subsection (2) of section
28 465.019, Florida Statutes, is amended to read:

29 465.019 Institutional pharmacies; permits.--

30 (2) The following classes of institutional pharmacies
31 are established:

1 (b) "Class II institutional pharmacies" are those
2 institutional pharmacies which employ the services of a
3 registered pharmacist or pharmacists who, in practicing
4 institutional pharmacy, shall provide dispensing and
5 consulting services on the premises to patients of that
6 institution and to patients receiving care in a hospice
7 licensed under part IV of chapter 400 which is located on the
8 premises of that institution, for use on the premises of that
9 institution. However, an institutional pharmacy located in an
10 area or county included in an emergency order or proclamation
11 of a state of emergency declared by the Governor may provide
12 dispensing and consulting services to individuals who are not
13 patients of the institution. However, a single dose of a
14 medicinal drug may be obtained and administered to a patient
15 on a valid physician's drug order under the supervision of a
16 physician or charge nurse, consistent with good institutional
17 practice procedures. The obtaining and administering of such
18 single dose of a medicinal drug shall be pursuant to
19 drug-handling procedures established by a consultant
20 pharmacist. Medicinal drugs may be dispensed in a Class II
21 institutional pharmacy, but only in accordance with the
22 provisions of this section.

23 Section 42. Subsection (7) is added to section 631.57,
24 Florida Statutes, to read:

25 631.57 Powers and duties of the association.--

26 (7) Notwithstanding any other provision of law, the
27 net direct written premiums of medical malpractice insurance
28 are not subject to assessment under this section to cover
29 claims and administrative costs for the type of insurance
30 defined in s. 624.604.

31

1 Section 43. Paragraph (a) of subsection (1) of section
2 766.101, Florida Statutes, is amended to read:

3 766.101 Medical review committee, immunity from
4 liability.--

5 (1) As used in this section:

6 (a) The term "medical review committee" or "committee"
7 means:

8 1.a. A committee of a hospital or ambulatory surgical
9 center licensed under chapter 395 or a health maintenance
10 organization certificated under part I of chapter 641,

11 b. A committee of a physician-hospital organization, a
12 provider-sponsored organization, or an integrated delivery
13 system,

14 c. A committee of a state or local professional
15 society of health care providers,

16 d. A committee of a medical staff of a licensed
17 hospital or nursing home, provided the medical staff operates
18 pursuant to written bylaws that have been approved by the
19 governing board of the hospital or nursing home,

20 e. A committee of the Department of Corrections or the
21 Correctional Medical Authority as created under s. 945.602, or
22 employees, agents, or consultants of either the department or
23 the authority or both,

24 f. A committee of a professional service corporation
25 formed under chapter 621 or a corporation organized under
26 chapter 607 or chapter 617, which is formed and operated for
27 the practice of medicine as defined in s. 458.305(3), and
28 which has at least 25 health care providers who routinely
29 provide health care services directly to patients,

30 g. A committee of a mental health treatment facility
31 licensed under chapter 394 or a community mental health center

1 as defined in s. 394.907, provided the quality assurance
2 program operates pursuant to the guidelines which have been
3 approved by the governing board of the agency,

4 h. A committee of a substance abuse treatment and
5 education prevention program licensed under chapter 397
6 provided the quality assurance program operates pursuant to
7 the guidelines which have been approved by the governing board
8 of the agency,

9 i. A peer review or utilization review committee
10 organized under chapter 440,

11 j. A committee of the Department of Health, a county
12 health department, healthy start coalition, or certified rural
13 health network, when reviewing quality of care, or employees
14 of these entities when reviewing mortality records, ~~or~~

15 k. A continuous quality improvement committee of a
16 pharmacy licensed pursuant to chapter 465,

17 l. A committee established by a university board of
18 trustees, or

19 m. A committee comprised of faculty, residents,
20 students, and administrators of an accredited college of
21 medicine, nursing, or other health care discipline,

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23 which committee is formed to evaluate and improve the quality
24 of health care rendered by providers of health service or to
25 determine that health services rendered were professionally
26 indicated or were performed in compliance with the applicable
27 standard of care or that the cost of health care rendered was
28 considered reasonable by the providers of professional health
29 services in the area; or

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1 2. A committee of an insurer, self-insurer, or joint
2 underwriting association of medical malpractice insurance, or
3 other persons conducting review under s. 766.106.

4 Section 44. The Office of Legislative Services shall
5 develop a business plan, with accompanying revenue and cost
6 analysis, for the Board of Dentistry with regard to
7 outsourcing of administrative, investigative, legal, and
8 prosecutorial functions and other tasks and services that are
9 necessary to carry out the regulatory responsibilities of the
10 board; employing its own executive director and other staff;
11 and obtaining authority over collections and expenditures of
12 funds paid by dentists and dental hygienists into the Medical
13 Quality Assurance Trust Fund. The sum of \$50,000 is
14 appropriated to the Office of Legislative Services from the
15 Board of Dentistry account within the Medical Quality
16 Assurance Trust Fund for the purpose of developing this
17 business plan. The completed business plan shall be submitted
18 to the Governor, President of the Senate, and Speaker of the
19 House of Representatives no later than January 1, 2003, for
20 review by the appropriate legislative committees.

21 Section 45. Except as otherwise provided in this act,
22 this act shall take effect July 1, 2002.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1950

4 The committee substitute no longer:

- 5 - revises the administrative procedures applicable to
6 disciplinary complaints filed against licensed health
7 care practitioners and requires the assessment of
8 specified costs;
- 9 - provides for specified costs to be assessed from
10 participants in the impaired practitioner program;
- 11 - requires licensure and licensure renewal applicants for
12 health professions regulated by the Department of Health
13 (DOH) to submit application forms electronically via the
14 World Wide Web;
- 15 - requires the Division of Administrative Hearings (DOAH)
16 to follow a prescribed fee schedule for its assessment
17 of costs to DOH;
- 18 - requires fees to be set for health care professions
19 regulated by DOH at the profession's statutory fee cap
20 or at the actual per-licensee cost to regulate that
21 profession, whichever is less;
- 22 - requires the Division of Statutory Revision of the
23 Legislature, beginning with the 2004 Regular Session of
24 the Legislature, to prepare a reviser's bill for each
25 regular legislative session that proposes to increase by
26 2.5 percent the statutory fee caps set forth in
27 provisions for health care professions regulated by DOH;
- 28 - revises the definition of class I pharmacies for
29 dispensing to hospice patients; and
- 30 - prohibits organizations from pooling human cells or
31 tissue from two or more donors.

The committee substitute:

- 23 - defines "medically unnecessary procedure" for purposes
24 of the regulation of hospitals, ambulatory surgical
25 centers, and mobile surgical facilities and revises
26 requirements on internal risk management programs in
27 such facilities;
- 28 - revises exemptions to registration requirements for
29 certain clinics;
- 30 - revises grounds for which a health care practitioner may
31 be disciplined for performing health care services on
the wrong patient and establishes an exception to
discipline for leaving a foreign body in a patient;
- revises the definition of class II pharmacies for
dispensing to hospice patients;

- 1 - exempts medical malpractice insurance premiums from an
2 assessment from the Florida Insurance Guaranty
Association, Inc;
- 3 - redefines "medical review committee" to add a committee
4 established by a university board of trustees, and a
committee comprised of faculty, residents, students and
5 administrators of an accredited college of medicine,
nursing, or other health care discipline; and
- 6 - requires the Office of Legislative Services to develop a
7 business plan for the outsourcing of regulatory
functions of the Board of Dentistry and appropriates
8 funds to do so.
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