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1 A bill to be entitled

2 An act relating to health care; amending s. 395.004, F.S.;  
3 providing for discounted medical liability insurance based  
4 on certification of certain programs; providing  
5 responsibilities of the Office of Insurance Regulation in  
6 reviewing discounted rates; creating s. 395.0056, F.S.;  
7 requiring a licensed facility report of certain medical  
8 malpractice litigation; requiring a licensed facility to  
9 notify the Agency for Health Care Administration of  
10 certain actions; requiring the agency to obtain certain  
11 information on internal risk management program  
12 requirements for compliance purposes; requiring the agency  
13 to annually publish certain litigation information;  
14 creating s. 395.0187, F.S.; providing for a nurse-to-  
15 patient ratio; providing for circumstances and  
16 methodologies for varying the ratio; amending s. 395.0193,  
17 F.S.; providing for peer review and discipline of a  
18 physician for staff abuse; limiting liability of certain  
19 participants in certain disciplinary actions; clarifying  
20 that certain documents and communications are not  
21 privileged; requiring specified entities to provide lists  
22 of privileged documents or communications; providing for  
23 court review; providing for determination of privilege  
24 application; specifying required list information;  
25 providing for protection of patient-identifying  
26 information; amending s. 395.0197, F.S.; deleting an  
27 exception from the risk prevention education requirement  
28 for certain health care practitioners; requiring a patient  
29 notification system for adverse incidents; requiring risk  
30 managers or their designees to give notice; requiring



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31 licensed facilities to annually report certain health care  
32 practitioner information; requiring the Agency for Health  
33 Care Administration and the Department of Health to  
34 annually publish statistics about certain licensed  
35 facilities; providing for certain disciplinary actions;  
36 providing a fine for adverse incident report failure;  
37 revising adverse incident notification circumstances;  
38 requiring certain notification of adverse incidents;  
39 deleting a list of adverse incidents requiring notice;  
40 adding certain information to required agency website  
41 publications; requiring the agency to annually publish  
42 facility incident report information; requiring public  
43 access; requiring an adverse incident data use statement  
44 on facility assessments; requiring licensed facility  
45 sexual misconduct allegation reports to the agency;  
46 requiring licensed facilities to offer testing of certain  
47 persons at no cost; authorizing the agency to publish  
48 certain adverse incident information; amending s. 456.025,  
49 F.S.; eliminating certain restrictions on setting certain  
50 licensure renewal fees; amending s. 456.026, F.S.;  
51 requiring the Office of Insurance Regulation to publish a  
52 certain annual report relating to health maintenance  
53 organizations on its website; requiring inclusion of  
54 certain information; amending s. 456.041, F.S.; requiring  
55 the office to compile certain information in a  
56 practitioner profile; requiring health care practitioners  
57 to report certain information; providing for disciplinary  
58 action and a fine for certain submissions; deleting  
59 language relating to certain profile information;  
60 authorizing the office or regulatory board to investigate



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61 certain information; requiring the department to report on  
62 certain disciplinary actions; requiring certain Internet  
63 access to final orders on disciplinary matters; requiring  
64 certain Internet access to certain claims experience  
65 comparison reports; specifying required information  
66 relating to disciplinary actions; deleting certain office  
67 consultation requirements relating to a health care  
68 practitioner's profile; providing for a penalty for  
69 certain compliance failures; specifying a required  
70 department statement relating to certain profile  
71 information; requiring the department to provide certain  
72 disciplinary action information; requiring certain  
73 Internet access to a practitioner's website when  
74 requested; amending s. 456.042, F.S.; providing for  
75 departmental practitioner profile updates; providing  
76 profile update review requirements; amending s. 456.049,  
77 F.S.; deleting a practitioner report requirement; imposing  
78 fines on practitioners for certain reporting compliance  
79 failures; providing for discoverability of certain  
80 unreported claims and actions information; amending s.  
81 456.051, F.S.; establishing Department of Health  
82 responsibility to provide professional liability action  
83 and bankruptcy reports; requiring inclusion of such  
84 reports in a practitioner's profile; amending s. 458.320,  
85 F.S.; specifying certain notice criteria; requiring  
86 suspension of a medical physician's license for not making  
87 certain payments; amending s. 458.331, F.S.; providing  
88 grounds for medical physician disciplinary actions;  
89 requiring an explicit statement of certain findings in  
90 certain orders or publications; adding liability for



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91 | medical malpractice judgments as a ground for disciplinary  
92 | action against a medical physician; making refusal to  
93 | provide health care to a patient participating in certain  
94 | actions a ground for disciplinary action; raising a  
95 | monetary threshold for a medical physician's repeated  
96 | malpractice; amending s. 459.0085, F.S.; requiring  
97 | suspension of an osteopathic physician's license for  
98 | failing to make certain payments; amending s. 459.015,  
99 | F.S.; providing grounds for osteopathic physician  
100 | disciplinary actions; adding liability for malpractice  
101 | judgments as a ground for certain disciplinary actions;  
102 | raising a monetary threshold for an osteopathic  
103 | physician's repeated malpractice; providing civil immunity  
104 | for certain participants in quality improvement processes;  
105 | designating as privileged certain communications by  
106 | patient safety organizations; clarifying that certain  
107 | documents and communications are not privileged; requiring  
108 | certain entities to provide a list of privileged documents  
109 | or communications; providing for court review; providing  
110 | for privilege application determinations; specifying  
111 | required list information; providing for protection of  
112 | patient-identifying information under certain  
113 | circumstances; requiring provision of patient safety data  
114 | to certain agencies; directing the Department of Health  
115 | and the Office of Insurance Regulation to publish a list  
116 | of certain health care practitioners who do not carry  
117 | malpractice insurance; requiring inclusion of a specific  
118 | statement in medical malpractice action settlement  
119 | statements; prohibiting confidential legal settlements in  
120 | medical malpractice actions; providing for revising the



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121 Office of Insurance Regulation's closed claim form;  
122 requiring the office to compile annual statistical reports  
123 pertaining to closed claims; requiring annualized  
124 historical statistical summaries; specifying certain  
125 information to be collected on closed claim forms;  
126 providing severability; providing an effective date.

127

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

129

130 Section 1. Subsection (3) is added to section 395.004,  
131 Florida Statutes, to read:

132 395.004 Application for license, fees; expenses.--

133 (3) A licensed facility may apply to the agency for  
134 certification of a quality improvement program that results in  
135 the reduction of adverse incidents at that facility. The agency,  
136 in consultation with the Office of Insurance Regulation, shall  
137 develop criteria for such certification. Insurers shall file  
138 with the office a discount in the rate or rates applicable for  
139 medical liability insurance coverage to reflect the  
140 implementation of a certified program. In reviewing insurance  
141 company filings, as they relate to rate discounts authorized  
142 under this subsection, the office shall consider whether, and  
143 the extent to which, the program certified under this subsection  
144 is otherwise covered under a program of risk management offered  
145 by an insurance company or self-insurance plan providing medical  
146 liability coverage.

147 Section 2. Section 395.0056, Florida Statutes, is created  
148 to read:

149 395.0056 Litigation notice requirement.--

150 (1) A licensed facility shall notify the agency of all



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151 medical malpractice lawsuits filed against the facility or a  
 152 member of its staff, when the underlying cause of action  
 153 pertaining to the staff member involves the licensed facility,  
 154 within 15 calendar days after the facility receives notice or  
 155 otherwise becomes aware that such an action has been initiated  
 156 against the facility or a current or former staff member.

157 (2) The agency shall obtain a copy of the complaint and  
 158 review the agency's adverse incident report files pertaining to  
 159 each licensed facility that submits a notice required by  
 160 subsection (1) to determine whether the facility timely complied  
 161 with the requirements of s. 395.0197. The agency shall annually  
 162 publish information about litigation filed against licensed  
 163 facilities sufficient for the public to be able to clearly  
 164 understand the issues raised and the status of the litigation at  
 165 publication.

166 Section 3. Section 395.0187, Florida Statutes, is created  
 167 to read:

168 395.0187 Nurse-to-patient ratio required.--Each licensed  
 169 facility shall establish a nurse-to-patient ratio consistent  
 170 with the findings of the Pennsylvania study funded by a grant  
 171 from the National Institute of Nursing Research. Each licensed  
 172 facility shall work with the agency to determine the  
 173 circumstances and methods for varying an established ratio that  
 174 is designed to ensure that a patient's quality of care is  
 175 minimally impacted.

176 Section 4. Paragraph (h) is added to subsection (3) of  
 177 section 395.0193, Florida Statutes, and subsection (8) and  
 178 paragraph (b) of subsection (9) of said section are amended, to  
 179 read:



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180 395.0193 Licensed facilities; peer review; disciplinary  
181 powers; agency or partnership with physicians.--

182 (3) If reasonable belief exists that conduct by a staff  
183 member or physician who delivers health care services at the  
184 licensed facility may constitute one or more grounds for  
185 discipline as provided in this subsection, a peer review panel  
186 shall investigate and determine whether grounds for discipline  
187 exist with respect to such staff member or physician. The  
188 governing board of any licensed facility, after considering the  
189 recommendations of its peer review panel, shall suspend, deny,  
190 revoke, or curtail the privileges, or reprimand, counsel, or  
191 require education, of any such staff member or physician after a  
192 final determination has been made that one or more of the  
193 following grounds exist:

194 (h) Mental or physical abuse of a nurse or other staff  
195 member.

196 (8)(a) The investigations, proceedings, and records of the  
197 peer review panel, a committee of a hospital, a disciplinary  
198 board, or a governing board, or agent thereof with whom there is  
199 a specific written contract for that purpose, as described in  
200 this section shall not be subject to discovery or introduction  
201 into evidence in any civil or administrative action against a  
202 provider of professional health services arising out of the  
203 matters which are the subject of evaluation and review by such  
204 group or its agent, and a person who was in attendance at a  
205 meeting of such group or its agent may not be permitted or  
206 required to testify in any such civil or administrative action  
207 as to any evidence or other matters produced or presented during  
208 the proceedings of such group or its agent or as to any  
209 findings, recommendations, evaluations, opinions, or other



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210 actions of such group or its agent or any members thereof.  
211 However, information, documents, or records otherwise available  
212 from original sources are not to be construed as immune from  
213 discovery or use in any such civil or administrative action  
214 merely because they were presented during proceedings of such  
215 group, and any person who testifies before such group or who is  
216 a member of such group may not be prevented from testifying as  
217 to matters within his or her knowledge, but such witness may not  
218 be asked about his or her testimony before such a group or  
219 opinions formed by him or her as a result of such group  
220 hearings.

221 (b) Documents and communications pertaining to the  
222 professional conduct of a physician or staff member of a  
223 hospital or pertaining to service delivered by a physician or  
224 staff member of a hospital that are not generated during the  
225 course of deliberation, investigation, and analysis of a peer  
226 review panel, committee of a hospital, disciplinary board, or  
227 governing board or agent thereof with whom there is a specific  
228 written contract for that purpose, as described in this section,  
229 are not considered privileged. In response to a request for  
230 discovery, a claim of privilege by any such entities or agents  
231 must be accompanied by a list identifying all documents or  
232 communications for which privilege is asserted. The list, and a  
233 document or communication, when appropriate, shall be reviewed  
234 in camera for determination of whether the document or  
235 communication is privileged. Patient-identifying information  
236 shall be redacted or otherwise excluded from the list, unless a  
237 court of competent jurisdiction orders disclosure of such  
238 information in the list. A list of documents or communications  
239 for which privilege is asserted must include:





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- 240       1. The date the subject document or communication was  
241 created.
- 242       2. The name and address of the document's author or  
243 communication's originator, unless a patient whose identity has  
244 not been ordered disclosed by a court of competent jurisdiction.
- 245       3. The name and address of the party from whom the  
246 document or communication was received.
- 247       4. The date the document or communication was received.
- 248       5. The name and address of the original document's  
249 custodian or communication's originator.
- 250       6. The statutory or case law on which the privilege is  
251 asserted.

252           (9)

253           (b) As a condition of any staff member or physician  
254 bringing any action against any person or entity that initiated,  
255 participated in, was a witness in, or conducted any review as  
256 authorized by this section and before any responsive pleading is  
257 due, the staff member or physician shall post a bond or other  
258 security, as set by the court having jurisdiction of the action,  
259 in an amount sufficient to pay the costs and attorney's fees. A  
260 defendant's monetary liability under this section shall not  
261 exceed \$250,000.

262           Section 5. Paragraph (b) of subsection (1), subsections  
263 (3), (4), (7), (8), and (9), paragraph (b) of subsection (10),  
264 and subsection (13) of section 395.0197, Florida Statutes, are  
265 amended, paragraph (e) is added to subsection (1) of said  
266 section, and subsections (21) and (22) are added to said  
267 section, to read:

268           395.0197 Internal risk management program.--



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

272 (b) The development of appropriate measures to minimize  
273 the risk of adverse incidents to patients, including, but not  
274 limited to:

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

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

279 b. At least 1 hour of such education and training annually  
280 for all personnel of the licensed facility working in clinical  
281 areas and providing patient care, ~~except those persons licensed~~  
282 ~~as health care practitioners who are required to complete~~  
283 ~~continuing education coursework pursuant to chapter 456 or the~~  
284 ~~respective practice act.~~

285 2. A prohibition, except when emergency circumstances  
286 require otherwise, against a staff member of the licensed  
287 facility attending a patient in the recovery room, unless the  
288 staff member is authorized to attend the patient in the recovery  
289 room and is in the company of at least one other person.

290 However, a licensed facility is exempt from the two-person  
291 requirement if it has:

292 a. Live visual observation;

293 b. Electronic observation; or

294 c. Any other reasonable measure taken to ensure patient  
295 protection and privacy.

296 3. A prohibition against an unlicensed person from  
297 assisting or participating in any surgical procedure unless the  
298 facility has authorized the person to do so following a



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299 competency assessment, and such assistance or participation is  
300 done under the direct and immediate supervision of a licensed  
301 physician and is not otherwise an activity that may only be  
302 performed by a licensed health care practitioner.

303 4. Development, implementation, and ongoing evaluation of  
304 procedures, protocols, and systems to accurately identify  
305 patients, planned procedures, and the correct site of the  
306 planned procedure so as to minimize the performance of a  
307 surgical procedure on the wrong patient, a wrong surgical  
308 procedure, a wrong-site surgical procedure, or a surgical  
309 procedure otherwise unrelated to the patient's diagnosis or  
310 medical condition.

311 (e) A system for giving written notification to a patient,  
312 a family member of the patient, or a designated representative  
313 of a patient who is specified in accordance with the  
314 requirements of chapter 709, chapter 744, or chapter 765, that  
315 the patient is the victim of an adverse incident. Such notice  
316 shall be given by the risk manager, or his or her designee, as  
317 soon as practicable to allow the patient an opportunity to  
318 minimize damage or injury.

319 (3) In addition to the programs mandated by this section,  
320 other innovative approaches intended to reduce the frequency and  
321 severity of medical malpractice and patient injury claims shall  
322 be encouraged and their implementation and operation  
323 facilitated. Such additional approaches may include extending  
324 internal risk management programs to health care providers'  
325 offices and the assuming of provider liability by a licensed  
326 health care facility for acts or omissions occurring within the  
327 licensed facility. Each licensed facility shall annually report  
328 to the agency and the Department of Health the name, license



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329 number, period of coverage, notices of intent to sue received,  
330 and judgments entered against each health care practitioner for  
331 which the facility assumes liability. The agency and Department  
332 of Health, in their respective annual reports, shall include  
333 statistics that report the number of licensed facilities that  
334 assume such liability and the number of health care  
335 practitioners, by profession, for whom they assume liability.

336 (4) The agency shall adopt rules governing the  
337 establishment of internal risk management programs to meet the  
338 needs of individual licensed facilities. Each internal risk  
339 management program shall include the use of incident reports to  
340 be filed with an individual of responsibility who is competent  
341 in risk management techniques in the employ of each licensed  
342 facility, such as an insurance coordinator, or who is retained  
343 by the licensed facility as a consultant. The individual  
344 responsible for the risk management program shall have free  
345 access to all medical records of the licensed facility. The  
346 incident reports are part of the workpapers of the attorney  
347 defending the licensed facility in litigation relating to the  
348 licensed facility and are subject to discovery, but are not  
349 admissible as evidence in court. A person filing an incident  
350 report is not subject to civil suit by virtue of such incident  
351 report. A person who has the duty to file an incident report but  
352 who fails to do so within the timeframes established under this  
353 section shall be subject to disciplinary action by the licensed  
354 facility and the appropriate regulatory board and is subject to  
355 a fine of up to \$1,000 for each day the report was not timely  
356 submitted. As a part of each internal risk management program,  
357 the incident reports shall be used to develop categories of



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358 incidents which identify problem areas. Once identified,  
 359 procedures shall be adjusted to correct the problem areas.

360 (7) The licensed facility shall notify the agency no later  
 361 than 1 business day after the risk manager or his or her  
 362 designee has received a report pursuant to paragraph (1)(d) ~~and~~  
 363 ~~can determine within 1 business day that~~ an any of the following  
 364 adverse incident incidents has occurred or there is a reasonable  
 365 possibility that an adverse incident has occurred, whether  
 366 occurring in the licensed facility or arising from health care  
 367 prior to admission in the licensed facility:-

- 368 ~~(a) The death of a patient;~~
- 369 ~~(b) Brain or spinal damage to a patient;~~
- 370 ~~(c) The performance of a surgical procedure on the wrong~~  
 371 ~~patient;~~
- 372 ~~(d) The performance of a wrong site surgical procedure; or~~
- 373 ~~(e) The performance of a wrong surgical procedure.~~

374

375 The notification must be made in writing and be provided by  
 376 facsimile device or overnight mail delivery. The notification  
 377 must include information regarding the identity of the affected  
 378 patient, the type of adverse incident, the initiation of an  
 379 investigation by the facility, and whether the events causing or  
 380 resulting in the adverse incident represent a potential risk to  
 381 other patients.

382 (8) An adverse incident ~~Any of the following adverse~~  
 383 ~~incidents~~, whether occurring in the licensed facility or arising  
 384 from health care prior to admission in the licensed facility,  
 385 shall be reported by the facility to the agency within 15  
 386 calendar days after its occurrence:-

- 387 ~~(a) The death of a patient;~~



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- 388       ~~(b) Brain or spinal damage to a patient;~~
- 389       ~~(c) The performance of a surgical procedure on the wrong~~
- 390 ~~patient;~~
- 391       ~~(d) The performance of a wrong site surgical procedure;~~
- 392       ~~(e) The performance of a wrong surgical procedure;~~
- 393       ~~(f) The performance of a surgical procedure that is~~
- 394 ~~medically unnecessary or otherwise unrelated to the patient's~~
- 395 ~~diagnosis or medical condition;~~
- 396       ~~(g) The surgical repair of damage resulting to a patient~~
- 397 ~~from a planned surgical procedure, where the damage is not a~~
- 398 ~~recognized specific risk, as disclosed to the patient and~~
- 399 ~~documented through the informed consent process; or~~
- 400       ~~(h) The performance of procedures to remove unplanned~~
- 401 ~~foreign objects remaining from a surgical procedure.~~

402

403 The agency may grant extensions to this reporting requirement

404 for more than 15 days upon justification submitted in writing by

405 the facility administrator to the agency. The agency may require

406 an additional, final report. These reports shall not be

407 available to the public pursuant to s. 119.07(1) or any other

408 law providing access to public records, nor be ~~discoverable or~~

409 ~~admissible~~ in any civil or administrative action, except in

410 disciplinary proceedings by the agency or the appropriate

411 regulatory board, nor shall they be available to the public as

412 part of the record of investigation for and prosecution in

413 disciplinary proceedings made available to the public by the

414 agency or the appropriate regulatory board. However, the agency

415 or the appropriate regulatory board shall make available, upon

416 written request by a health care professional against whom

417 probable cause has been found, any such records which form the



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418 basis of the determination of probable cause. The agency may  
419 investigate, as it deems appropriate, any such incident and  
420 prescribe measures that must or may be taken in response to the  
421 incident. The agency shall review each incident and determine  
422 whether it potentially involved conduct by the health care  
423 professional who is subject to disciplinary action, in which  
424 case the provisions of s. 456.073 shall apply.

425 (9) The agency shall publish on the agency's website, no  
426 less than quarterly, a summary and trend analysis of adverse  
427 incident reports received pursuant to this section, which shall  
428 not include information that would identify the patient, the  
429 reporting facility, or the health care practitioners involved.  
430 The agency shall publish on the agency's website an annual  
431 summary and trend analysis of all adverse incident reports and  
432 malpractice claims and errors, omissions, or negligence  
433 information provided by facilities in their annual reports or as  
434 reported under ss. 627.912 and 627.9122, which shall not include  
435 information that would identify the patient, the reporting  
436 facility, or the practitioners involved. The purpose of the  
437 publication of the summary and trend analysis is to promote the  
438 rapid dissemination of information relating to adverse incidents  
439 and malpractice claims to assist in avoidance of similar  
440 incidents and reduce morbidity and mortality.

441 (10) The internal risk manager of each licensed facility  
442 shall:

443 (b) Report every allegation of sexual misconduct to the  
444 administrator of the licensed facility and the agency.

445 (13) In addition to any penalty imposed pursuant to this  
446 section, the agency shall require a written plan of correction  
447 from the facility. For a single incident or series of isolated



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448 incidents that are nonwillful violations of the reporting  
449 requirements of this section, the agency shall first seek to  
450 obtain corrective action by the facility. If the correction is  
451 not demonstrated within the timeframe established by the agency  
452 or if there is a pattern of nonwillful violations of this  
453 section, the agency may impose an administrative fine, not to  
454 exceed \$5,000 for any violation of the reporting requirements of  
455 this section. The administrative fine for repeated nonwillful  
456 violations shall not exceed \$10,000 for any violation. The  
457 administrative fine for each intentional and willful violation  
458 may not exceed \$25,000 per violation, per day. The fine for an  
459 intentional and willful violation of this section may not exceed  
460 \$250,000. In determining the amount of fine to be levied, the  
461 agency shall be guided by s. 395.1065(2)(b). This subsection  
462 does not apply to the notice requirements under subsection (7).  
463 The agency may make available to the public information about  
464 any nonwillful or willful adverse incident that the agency  
465 discovers was not timely reported as required under this  
466 section, in addition to the sanctions authorized under this  
467 subsection.

468 (21) The agency shall annually publish a report card  
469 providing statistical summaries and narrative explanation, as  
470 appropriate, of the information contained in the annual incident  
471 reports submitted by licensed facilities pursuant to subsection  
472 (6) and disciplinary actions reported to the agency pursuant to  
473 s. 395.0193. The report card must be made available to the  
474 public through the Internet and other commonly used means of  
475 distribution no later than July 1 of each year. The report card  
476 must be organized by county and, at a minimum, for each facility  
477 licensed under this part, present an itemized list showing:





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- 478        (a) The name and address of the facility.
- 479        (b) Whether the entity is a private, for-profit or not-  
480 for-profit, public, or teaching facility.
- 481        (c) The total number of beds.
- 482        (d) A description of the categories of services provided  
483 by the facility.
- 484        (e) Whether the hospital facility, including the emergency  
485 room or trauma center, has medical equipment and instruments  
486 appropriate for pediatric care.
- 487        (f) On an annual basis, the percentage of adverse  
488 incidents per total number of patients in the facility, by  
489 category of reported incident and by type of professional  
490 involved.
- 491        (g) A listing, by category, of the types of operations,  
492 diagnostic or treatment procedures, or other actions or  
493 inactions, giving rise to the adverse incidents and the number  
494 of adverse incidents in each category.
- 495        (h) Types of malpractice claims filed, by type of  
496 professional involved.
- 497        (i) Disciplinary actions taken against professionals, by  
498 type of professional involved.
- 499        (j) The abduction of an infant or discharge of an infant  
500 to the wrong family.
- 501        (k) Pertinent information reported to the Office of  
502 Insurance Regulation under s. 627.912 or s. 627.9122.
- 503
- 504 The report card must include the following statement: "Adverse  
505 incident reports are just one part of the picture that emerges  
506 about a facility. You should also consider that facility's  
507 survey results and complaint investigations and conduct your own



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508 research on a facility before forming your final conclusion  
509 about that facility. When making comparisons among facilities,  
510 some may have many more adverse incidents than others because  
511 this report is not adjusted for the size of the facility nor the  
512 severity or complexity of the health problems of the people it  
513 serves."

514 (22) If appropriate, a licensed facility in which sexual  
515 abuse occurs must offer the victim of sexual abuse testing for  
516 sexually transmissible diseases at no cost to the victim.

517 Section 6. Subsection (1) of section 456.025, Florida  
518 Statutes, is amended to read:

519 456.025 Fees; receipts; disposition.--

520 (1) It is the intent of the Legislature that all costs of  
521 regulating health care professions and practitioners shall be  
522 borne solely by licensees and licensure applicants. It is also  
523 the intent of the Legislature that fees should be reasonable and  
524 not serve as a barrier to licensure. Moreover, it is the intent  
525 of the Legislature that the department operate as efficiently as  
526 possible and regularly report to the Legislature additional  
527 methods to streamline operational costs. Therefore, the boards  
528 in consultation with the department, or the department if there  
529 is no board, shall, by rule, set renewal fees which:

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

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

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



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

539 (e) Shall be similar to fees imposed on similar licensure  
540 types; and

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

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

546 (f)(h) Shall be subject to challenge pursuant to chapter  
547 120.

548 Section 7. Section 456.026, Florida Statutes, is amended  
549 to read:

550 456.026 Annual report concerning finances, administrative  
551 complaints, disciplinary actions, and recommendations.--The  
552 department, in consultation with the Agency for Health Care  
553 Administration and the Office of Insurance Regulation, relating  
554 to information pertaining to health maintenance organizations,  
555 is directed to prepare and submit a report to the President of  
556 the Senate and the Speaker of the House of Representatives by  
557 November 1 of each year. The department shall publish the report  
558 to its website simultaneously with delivery to the President of  
559 the Senate and the Speaker of the House of Representatives. The  
560 department must present report contents in language that is at  
561 the ninth-grade reading level. The report must be directly  
562 accessible on the department's Internet homepage highlighted by  
563 easily identifiable links and buttons. In addition to finances  
564 and any other information the Legislature may require, the  
565 report shall include statistics and relevant information,  
566 profession by profession, detailing:



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- 567 (1) The revenues, expenditures, and cash balances for the  
568 prior year, and a review of the adequacy of existing fees.
- 569 (2) The number of complaints received and investigated.
- 570 (3) The number of findings of probable cause made.
- 571 (4) The number of findings of no probable cause made.
- 572 (5) The number of administrative complaints filed.
- 573 (6) The disposition of all administrative complaints.
- 574 (7) A description of disciplinary actions taken.
- 575 (8) A description of any effort by the department to  
576 reduce or otherwise close any investigation or disciplinary  
577 proceeding not before the Division of Administrative Hearings  
578 under chapter 120 or otherwise not completed within 1 year after  
579 the initial filing of a complaint under this chapter.
- 580 (9) The status of the development and implementation of  
581 rules providing for disciplinary guidelines pursuant to s.  
582 456.079.
- 583 (10) Such recommendations for administrative and statutory  
584 changes necessary to facilitate efficient and cost-effective  
585 operation of the department and the various boards.
- 586 (11) The number of health care professionals licensed by  
587 the department or otherwise authorized to provide services in  
588 the state, if known to the department.
- 589 (12) For licensees under chapters 395, 458, 459, 461, 466,  
590 and part I of chapter 641, the professional liability claims and  
591 actions reported by insurers, as provided in s. 627.912. Such  
592 information must be provided in a separate section of the report  
593 restricted to providing professional liability claims and  
594 actions data.
- 595 (13) For licensees under part I of chapter 641, any claim  
596 or action for damages caused by the errors, omissions, or



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597 negligence of officers or directors, as provided in s. 627.9122.  
598 Such information must be provided in a separate section of the  
599 report restricted to providing professional liability claims and  
600 actions data.

601 Section 8. Section 456.041, Florida Statutes, is amended  
602 to read:

603 456.041 Practitioner profile; creation.--

604 (1)(a) Beginning July 1, 1999, the Department of Health  
605 shall compile the information submitted pursuant to s. 456.039  
606 into a practitioner profile of the applicant submitting the  
607 information, except that the Department of Health may develop a  
608 format to compile uniformly any information submitted under s.  
609 456.039(4)(b). Beginning July 1, 2001, the Department of Health  
610 shall ~~may~~ compile the information submitted pursuant to s.  
611 456.0391 into a practitioner profile of the applicant submitting  
612 the information.

613 (b) Each practitioner licensed under chapter 458 or  
614 chapter 459 must report to the Department of Health and the  
615 Board of Medicine or the Board of Osteopathic Medicine,  
616 respectively, all final disciplinary actions, sanctions by a  
617 governmental agency or a facility or entity licensed under state  
618 law, and claims or actions, as provided under s. 456.051, to  
619 which he or she is subjected no later than 15 calendar days  
620 after such action or sanction is imposed. Failure to submit the  
621 requisite information within 15 calendar days, in accordance  
622 with the requirements of this section, shall subject the  
623 practitioner to discipline by the Board of Medicine or the Board  
624 of Osteopathic Medicine and a fine of \$100 for each day that the  
625 information is not submitted after the expiration of the 15-day  
626 reporting period provided under this section.



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627 (c) The department shall take no longer than 15 business  
628 days to update the practitioner's profile, in accordance with  
629 the requirements of subsection (7).

630 (2) On the profile published under subsection (1), the  
631 department shall indicate if the information provided under s.  
632 456.039(1)(a)7. or s. 456.0391(1)(a)7. is or is not corroborated  
633 by a criminal history check conducted according to this  
634 subsection. ~~If the information provided under s. 456.039(1)(a)7.~~  
635 ~~or s. 456.0391(1)(a)7. is corroborated by the criminal history~~  
636 ~~check, the fact that the criminal history check was performed~~  
637 ~~need not be indicated on the profile.~~ The department, or the  
638 board having regulatory authority over the practitioner acting  
639 on behalf of the department, may ~~shall~~ investigate any  
640 information received by the department or the board ~~when it has~~  
641 ~~reasonable grounds to believe that the practitioner has violated~~  
642 ~~any law that relates to the practitioner's practice.~~

643 (3) The Department of Health shall ~~may~~ include in each  
644 practitioner's practitioner profile that criminal information  
645 that directly relates to the practitioner's ability to  
646 competently practice his or her profession. The department must  
647 include in each practitioner's practitioner profile the  
648 following statement: "The criminal history information, if any  
649 exists, may be incomplete; federal criminal history information  
650 is not available to the public." The department shall provide in  
651 each practitioner profile, for every final disciplinary action  
652 taken against the practitioner, a narrative description written  
653 in plain English that explains the administrative complaint  
654 filed against the practitioner and the final disciplinary action  
655 imposed on the practitioner. The department shall include a  
656 hyperlink to each final order listed in its website report of



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657 dispositions of recent disciplinary actions taken against  
658 practitioners.

659 (4) The Department of Health shall include, with respect  
660 to a practitioner licensed under chapter 458 or chapter 459, a  
661 statement of how the practitioner has elected to comply with the  
662 financial responsibility requirements of s. 458.320 or s.  
663 459.0085. The department shall include, with respect to  
664 practitioners subject to s. 456.048, a statement of how the  
665 practitioner has elected to comply with the financial  
666 responsibility requirements of that section. The department  
667 shall include, with respect to practitioners licensed under  
668 chapter 458, chapter 459, or chapter 461, information relating  
669 to liability actions which has been reported under s. 456.049 or  
670 s. 627.912 within the previous 10 years for any paid claim that  
671 exceeds \$5,000. Such claims information shall be reported in the  
672 context of comparing an individual practitioner's claims to the  
673 experience of other practitioners within the same specialty, or  
674 profession if the practitioner is not a specialist, ~~to the~~  
675 ~~extent such information is available to the Department of~~  
676 Health. The department shall provide a hyperlink in such  
677 practitioner's profile to all such comparison reports. If  
678 information relating to a liability action is included in a  
679 practitioner's practitioner profile, the profile must also  
680 include the following statement: "Settlement of a claim may  
681 occur for a variety of reasons that do not necessarily reflect  
682 negatively on the professional competence or conduct of the  
683 practitioner. A payment in settlement of a medical malpractice  
684 action or claim should not be construed as creating a  
685 presumption that medical malpractice has occurred."



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686 (5) The Department of Health shall ~~may not~~ include the  
687 date of a hospital or ambulatory surgical center disciplinary  
688 action taken by a licensed hospital or an ambulatory surgical  
689 center, in accordance with the requirements of s. 395.0193, in  
690 the practitioner profile. Any practitioner disciplined under  
691 paragraph (1)(b) must report to the department the date the  
692 disciplinary action was imposed. The department shall state  
693 whether the action related to professional competence or whether  
694 it related to the delivery of services to a patient.

695 (6) The Department of Health shall ~~may~~ include in the  
696 practitioner's practitioner profile any other information that  
697 is a public record of any governmental entity and that relates  
698 to a practitioner's ability to competently practice his or her  
699 profession. ~~However, the department must consult with the board~~  
700 ~~having regulatory authority over the practitioner before such~~  
701 ~~information is included in his or her profile.~~

702 (7) Upon the completion of a practitioner profile under  
703 this section, the Department of Health shall verify all  
704 information included and furnish the practitioner who is the  
705 subject of the profile a copy of it for review and verification.  
706 The practitioner has a period of 30 days in which to review and  
707 verify the contents of the profile and to correct any factual  
708 inaccuracies in it. The Department of Health shall make the  
709 profile available to the public at the end of the 30-day period  
710 regardless of whether the practitioner has provided verification  
711 of the profile contents. A practitioner shall be subject to a  
712 fine of up to \$100 per day for failure to verify the profile  
713 contents and to correct any factual errors in his or her profile  
714 within the 30-day period. The department shall make the profiles  
715 available to the public through the World Wide Web and other





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716 commonly used means of distribution. The department shall  
717 include the following statement, in boldface type, in each  
718 profile that has not been reviewed by the practitioner to which  
719 the profile applies: "The practitioner has not verified the  
720 information contained in this profile."

721 (8) Making a practitioner profile available to the public  
722 under this section does not constitute agency action for which a  
723 hearing under s. 120.57 may be sought.

724 (9) The Department of Health shall provide in each profile  
725 an easy to read explanation of any disciplinary action taken and  
726 the reason the sanction or sanctions were imposed.

727 (10) The Department of Health shall provide one link in  
728 each profile to a practitioner's professional website if the  
729 practitioner requests that such a link be included in his or her  
730 profile.

731 Section 9. Section 456.042, Florida Statutes, is amended  
732 to read:

733 456.042 Practitioner profiles; update.--A practitioner  
734 shall submit updates of required information within 15 days  
735 after the final activity that renders such information a fact.

736 The Department of Health shall update each practitioner's  
737 practitioner profile quarterly ~~periodically~~. An updated profile  
738 is subject to the same requirements as an original profile ~~with~~  
739 ~~respect to the period within which the practitioner may review~~  
740 ~~the profile for the purpose of correcting factual inaccuracies.~~

741 Section 10. Subsection (1) of section 456.049, Florida  
742 Statutes, is amended, and subsections (3) and (4) are added to  
743 said section, to read:

744 456.049 Health care practitioners; reports on professional  
745 liability claims and actions.--



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746 (1) Any practitioner of medicine licensed pursuant to the  
747 provisions of chapter 458, practitioner of osteopathic medicine  
748 licensed pursuant to the provisions of chapter 459, podiatric  
749 physician licensed pursuant to the provisions of chapter 461, or  
750 dentist licensed pursuant to the provisions of chapter 466 shall  
751 report to the department any claim or action for damages for  
752 personal injury alleged to have been caused by error, omission,  
753 or negligence in the performance of such licensee's professional  
754 services or based on a claimed performance of professional  
755 services without consent ~~if the claim was not covered by an~~  
756 ~~insurer required to report under s. 627.912~~ and the claim  
757 resulted in:

758 (a) A final judgment in any amount.

759 (b) A settlement in any amount.

760 (c) A final disposition not resulting in payment on behalf  
761 of the licensee.

762  
763 Reports shall be filed with the department no later than 60 days  
764 following the occurrence of any event listed in paragraph (a),  
765 paragraph (b), or paragraph (c).

766 (3) Failure of a practitioner, as specified in subsection  
767 (1), to comply with the requirements of this section within 60  
768 days after the payment of a claim or disposition of action for  
769 damages has been determined shall result in a fine of up to \$500  
770 imposed by the department. Failure to comply within 90 days shall  
771 subject the practitioner to a fine of up to an additional \$1,000.

772 (4) A practitioner who has not complied with the provisions  
773 of this section and who is the subject of a subsequent action for  
774 damages at which time it is determined that he or she paid or had  
775 paid on his or her behalf a claim or was the subject of an action



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776 for damages, as provided in subsection (1), shall be subject to  
777 discovery of all such unreported information during the  
778 subsequent action.

779 Section 11. Section 456.051, Florida Statutes, is amended  
780 to read:

781 456.051 Reports of professional liability actions;  
782 bankruptcies; Department of Health's responsibility to provide.--

783 (1) The report of a claim or action for damages for  
784 personal injury which is required to be provided to the  
785 Department of Health under s. 456.049 or s. 627.912 is public  
786 information except for the name of the claimant or injured  
787 person, which remains confidential as provided in ss.  
788 456.049(2)(d) and 627.912(2)(e). The Department of Health shall,  
789 upon request, make such report available to any person. The  
790 department shall make such report available as a part of the  
791 practitioner's profile within 15 calendar days after receipt.

792 (2) Any information in the possession of the Department of  
793 Health which relates to a bankruptcy proceeding by a practitioner  
794 of medicine licensed under chapter 458, a practitioner of  
795 osteopathic medicine licensed under chapter 459, a podiatric  
796 physician licensed under chapter 461, or a dentist licensed under  
797 chapter 466 is public information. The Department of Health  
798 shall, upon request, make such information available to any  
799 person. The department shall make such report available as a part  
800 of the practitioner's profile within 15 calendar days after  
801 receipt.

802 Section 12. Paragraph (g) of subsection (5) of section  
803 458.320, Florida Statutes, is amended, and subsection (9) is  
804 added to said section, to read:

805 458.320 Financial responsibility.--



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806 (5) The requirements of subsections (1), (2), and (3) shall  
807 not apply to:

808 (g) Any person holding an active license under this chapter  
809 who agrees to meet all of the following criteria:

810 1. Upon the entry of an adverse final judgment arising from  
811 a medical malpractice arbitration award, from a claim of medical  
812 malpractice either in contract or tort, or from noncompliance  
813 with the terms of a settlement agreement arising from a claim of  
814 medical malpractice either in contract or tort, the licensee  
815 shall pay the judgment creditor the lesser of the entire amount  
816 of the judgment with all accrued interest or either \$100,000, if  
817 the physician is licensed pursuant to this chapter but does not  
818 maintain hospital staff privileges, or \$250,000, if the physician  
819 is licensed pursuant to this chapter and maintains hospital staff  
820 privileges, within 60 days after the date such judgment became  
821 final and subject to execution, unless otherwise mutually agreed  
822 to in writing by the parties. Such adverse final judgment shall  
823 include any cross-claim, counterclaim, or claim for indemnity or  
824 contribution arising from the claim of medical malpractice. Upon  
825 notification of the existence of an unsatisfied judgment or  
826 payment pursuant to this subparagraph, the department shall  
827 notify the licensee by certified mail that he or she shall be  
828 subject to disciplinary action unless, within 30 days from the  
829 date of mailing, he or she either:

830 a. Shows proof that the unsatisfied judgment has been paid  
831 in the amount specified in this subparagraph; or

832 b. Furnishes the department with a copy of a timely filed  
833 notice of appeal and either:

834 (I) A copy of a supersedeas bond properly posted in the  
835 amount required by law; or



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836 (II) An order from a court of competent jurisdiction  
837 staying execution on the final judgment pending disposition of  
838 the appeal.

839 2. The Department of Health shall issue an emergency order  
840 suspending the license of any licensee who, after 30 days  
841 following receipt of a notice from the Department of Health, has  
842 failed to: satisfy a medical malpractice claim against him or  
843 her; furnish the Department of Health a copy of a timely filed  
844 notice of appeal; furnish the Department of Health a copy of a  
845 supersedeas bond properly posted in the amount required by law;  
846 or furnish the Department of Health an order from a court of  
847 competent jurisdiction staying execution on the final judgment  
848 pending disposition of the appeal.

849 3. Upon the next meeting of the probable cause panel of the  
850 board following 30 days after the date of mailing the notice of  
851 disciplinary action to the licensee, the panel shall make a  
852 determination of whether probable cause exists to take  
853 disciplinary action against the licensee pursuant to subparagraph  
854 1.

855 4. If the board determines that the factual requirements of  
856 subparagraph 1. are met, it shall take disciplinary action as it  
857 deems appropriate against the licensee. Such disciplinary action  
858 shall include, at a minimum, probation of the license with the  
859 restriction that the licensee must make payments to the judgment  
860 creditor on a schedule determined by the board to be reasonable  
861 and within the financial capability of the physician.  
862 Notwithstanding any other disciplinary penalty imposed, the  
863 disciplinary penalty may include suspension of the license for a  
864 period not to exceed 5 years. In the event that an agreement to



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865 satisfy a judgment has been met, the board shall remove any  
866 restriction on the license.

867 5. The licensee has completed a form supplying necessary  
868 information as required by the department.

869  
870 A licensee who meets the requirements of this paragraph shall be  
871 required either to post notice in the form of a sign, with  
872 dimensions of 8 ½ inches by 11 inches in boldface type that is at  
873 least 1/2 inch in height in a font style specified by the  
874 department, prominently displayed in at least two distinct places  
875 in the reception area and each place or room used for examination  
876 or treatment of patients. Such notice shall be clearly visible to  
877 noticeable by all patients and other persons who may accompany a  
878 patient on an office visit. Alternatively, a licensee may ~~or to~~  
879 provide a written statement, printed in boldface type with a  
880 minimum font size of 12, to each ~~any~~ person to whom medical  
881 services are being provided. Such sign or statement shall state:  
882 "~~Under Florida law, physicians are generally required to carry~~  
883 ~~medical malpractice insurance or otherwise demonstrate financial~~  
884 ~~responsibility to cover potential claims for medical malpractice.~~  
885 YOUR DOCTOR HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE  
886 INSURANCE. This is permitted under Florida law subject to certain  
887 conditions. Florida law imposes penalties against noninsured  
888 physicians who fail to satisfy adverse judgments arising from  
889 claims of medical malpractice. This notice is provided pursuant  
890 to Florida law."

891 (9) Notwithstanding any other provision of this section,  
892 the department shall suspend the license of any physician  
893 against whom a final judgment, arbitration award, or other order  
894 has been entered or who has entered into a settlement agreement



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895 to pay damages arising out of a claim for medical malpractice,  
896 if all appellate remedies have been exhausted and payment up to  
897 the amounts required by this section has not been made within 30  
898 days after the entering of such judgment, award, or order or  
899 agreement, until proof of payment is received by the department.  
900 This subsection does not apply to physicians who have met the  
901 financial responsibility requirements in paragraphs (1)(b) and  
902 (2)(b).

903 Section 13. Paragraphs (t) and (x) of subsection (1) and  
904 subsection (6) of section 458.331, Florida Statutes, are amended,  
905 and paragraphs (oo) and (pp) are added to subsection (1), to  
906 read:

907 458.331 Grounds for disciplinary action; action by the  
908 board and department.--

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

911 (t) Gross or repeated malpractice or the failure to  
912 practice medicine with that level of care, skill, and treatment  
913 which is recognized by a reasonably prudent similar physician as  
914 being acceptable under similar conditions and circumstances. The  
915 board shall give great weight to the provisions of s. 766.102  
916 when enforcing this paragraph. As used in this paragraph,  
917 "repeated malpractice" includes, but is not limited to, three or  
918 more claims for medical malpractice within the previous 5-year  
919 period resulting in indemnities being paid in excess of \$50,000  
920 ~~\$25,000~~ each to the claimant in a judgment or settlement and  
921 which incidents involved negligent conduct by the physician. As  
922 used in this paragraph, "gross malpractice" or "the failure to  
923 practice medicine with that level of care, skill, and treatment  
924 which is recognized by a reasonably prudent similar physician as



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925 being acceptable under similar conditions and circumstances,"  
926 shall not be construed so as to require more than one instance,  
927 event, or act. Nothing in this paragraph shall be construed to  
928 require that a physician be incompetent to practice medicine in  
929 order to be disciplined pursuant to this paragraph. A recommended  
930 order by an administrative law judge or a final order of the  
931 board finding a violation under this paragraph shall specify  
932 whether the licensee was found to have committed gross  
933 malpractice, repeated malpractice, or a failure to practice  
934 medicine with that level of care, skill, and treatment which is  
935 recognized as being acceptable under similar conditions and  
936 circumstances, or any combination thereof, and any publication by  
937 the board shall so specify.

938 (x) Violating a lawful order of the board or department  
939 previously entered in a disciplinary hearing or failing to comply  
940 with a lawfully issued subpoena of the board or department.

941 (oo) Being held liable for a medical malpractice judgment.

942 (pp) Refusing to provide health care based on a patient's  
943 participation in pending or past litigation or participation in  
944 any disciplinary action conducted pursuant to this chapter,  
945 unless such litigation or disciplinary action directly involves  
946 the physician requested to provide services.

947 (6) Upon the department's receipt from an insurer or self-  
948 insurer of a report of a closed claim against a physician  
949 pursuant to s. 627.912 or from a health care practitioner of a  
950 report pursuant to s. 456.049, or upon the receipt from a  
951 claimant of a presuit notice against a physician pursuant to s.  
952 766.106, the department shall review each report and determine  
953 whether it potentially involved conduct by a licensee that is  
954 subject to disciplinary action, in which case the provisions of





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955 s. 456.073 shall apply. However, if it is reported that a  
956 physician has had three or more claims with indemnities exceeding  
957 \$50,000 ~~\$25,000~~ each within the previous 5-year period, the  
958 department shall investigate the occurrences upon which the  
959 claims were based and determine whether ~~if~~ action by the  
960 department against the physician is warranted.

961 Section 14. Subsection (10) is added to section 459.0085,  
962 Florida Statutes, to read:

963 459.0085 Financial responsibility.--

964 (10) Notwithstanding any other provision of this section,  
965 the department shall suspend the license of any osteopathic  
966 physician against whom has been entered a final judgment,  
967 arbitration award, or other order or who has entered into a  
968 settlement agreement to pay damages arising out of a claim for  
969 medical malpractice, if all appellate remedies have been  
970 exhausted and payment up to the amounts required by this section  
971 has not been made within 30 days after the entering of such  
972 judgment, award, order, or agreement, until proof of payment is  
973 received by the department. This subsection does not apply to  
974 osteopathic physicians who have met the financial responsibility  
975 requirements in paragraphs (1)(b) and (2)(b).

976 Section 15. Paragraphs (h), (l), (w), and (x) of subsection  
977 (1) and subsection (6) of section 459.015, Florida Statutes, are  
978 amended, and paragraph (qq) is added to subsection (1), to read:

979 459.015 Grounds for disciplinary action; action by the  
980 board and department.--

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



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983 (h) Giving false testimony in the course of any legal or  
984 administrative proceedings relating to the practice of  
985 osteopathic medicine or the delivery of health care services.

986 (l) Exercising influence within a patient-physician  
987 relationship for purposes of engaging a patient in sexual  
988 activity. A patient shall be presumed to be incapable of giving  
989 free, full, and informed consent to sexual activity with his or  
990 her osteopathic physician.

991 (w) Being unable to practice osteopathic medicine with  
992 reasonable skill and safety to patients by reason of illness or  
993 use of alcohol, drugs, narcotics, chemicals, or any other type of  
994 material or as a result of any mental or physical condition. In  
995 enforcing this paragraph, the department shall, upon a finding of  
996 the secretary or the secretary's designee that probable cause  
997 exists to believe that the licensee is unable to practice  
998 osteopathic medicine because of the reasons stated in this  
999 paragraph, have the authority to issue an order to compel a  
1000 licensee to submit to a mental or physical examination by  
1001 physicians designated by the department. If the licensee refuses  
1002 to comply with such order, the department's order directing such  
1003 examination may be enforced by filing a petition for enforcement  
1004 in the circuit court where the licensee resides or does business.  
1005 The licensee against whom the petition is filed shall not be  
1006 named or identified by initials in any public court records or  
1007 documents, and the proceedings shall be closed to the public. The  
1008 department shall be entitled to the summary procedure provided in  
1009 s. 51.011. A licensee or certificateholder affected under this  
1010 paragraph shall at reasonable intervals be afforded an  
1011 opportunity to demonstrate that he or she can resume the



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1012 competent practice of osteopathic medicine with reasonable skill  
 1013 and safety to patients.

1014 (x) Gross or repeated malpractice or the failure to  
 1015 practice osteopathic medicine with that level of care, skill, and  
 1016 treatment which is recognized by a reasonably prudent similar  
 1017 osteopathic physician as being acceptable under similar  
 1018 conditions and circumstances. The board shall give great weight  
 1019 to the provisions of s. 766.102 when enforcing this paragraph. As  
 1020 used in this paragraph, "repeated malpractice" includes, but is  
 1021 not limited to, three or more claims for medical malpractice  
 1022 within the previous 5-year period resulting in indemnities being  
 1023 paid in excess of \$50,000 ~~\$25,000~~ each to the claimant in a  
 1024 judgment or settlement and which incidents involved negligent  
 1025 conduct by the osteopathic physician. As used in this paragraph,  
 1026 "gross malpractice" or "the failure to practice osteopathic  
 1027 medicine with that level of care, skill, and treatment which is  
 1028 recognized by a reasonably prudent similar osteopathic physician  
 1029 as being acceptable under similar conditions and circumstances"  
 1030 shall not be construed so as to require more than one instance,  
 1031 event, or act. Nothing in this paragraph shall be construed to  
 1032 require that an osteopathic physician be incompetent to practice  
 1033 osteopathic medicine in order to be disciplined pursuant to this  
 1034 paragraph. A recommended order by an administrative law judge or  
 1035 a final order of the board finding a violation under this  
 1036 paragraph shall specify whether the licensee was found to have  
 1037 committed "gross malpractice," "repeated malpractice," or  
 1038 "failure to practice osteopathic medicine with that level of  
 1039 care, skill, and treatment which is recognized as being  
 1040 acceptable under similar conditions and circumstances," or any



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1041 combination thereof, and any publication by the board shall so  
 1042 specify.

1043 (qq) Being held liable for a malpractice judgment.

1044 (6) Upon the department's receipt from an insurer or self-  
 1045 insurer of a report of a closed claim against an osteopathic  
 1046 physician pursuant to s. 627.912 or from a health care  
 1047 practitioner of a report pursuant to s. 456.049, or upon the  
 1048 receipt from a claimant of a presuit notice against an  
 1049 osteopathic physician pursuant to s. 766.106, the department  
 1050 shall review each report and determine whether it potentially  
 1051 involved conduct by a licensee that is subject to disciplinary  
 1052 action, in which case the provisions of s. 456.073 shall apply.  
 1053 However, if it is reported that an osteopathic physician has had  
 1054 three or more claims with indemnities exceeding \$50,000 ~~\$25,000~~  
 1055 each within the previous 5-year period, the department shall  
 1056 investigate the occurrences upon which the claims were based and  
 1057 determine whether ~~if~~ action by the department against the  
 1058 osteopathic physician is warranted.

1059 Section 16. Civil immunity for members of or consultants  
 1060 to certain boards, committees, or other entities.--

1061 (1) Every member of, or health care professional  
 1062 consultant to, any committee, board, group, commission, or other  
 1063 entity shall be immune from civil liability for any act,  
 1064 decision, omission, or utterance done or made in performance of  
 1065 his or her duties while serving as a member of or consultant to  
 1066 such committee, board, group, commission, or other entity  
 1067 established and operated for purposes of quality improvement  
 1068 review, evaluation, and planning in a state-licensed health care  
 1069 facility. Such entities must function primarily to review,  
 1070 evaluate, or make recommendations relating to:



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- 1071        (a) The duration of patient stays in health care  
1072 facilities;
- 1073        (b) The professional services furnished with respect to  
1074 the medical, dental, psychological, podiatric, chiropractic, or  
1075 optometric necessity for such services;
- 1076        (c) The purpose of promoting the most efficient use of  
1077 available health care facilities and services;
- 1078        (d) The adequacy or quality of professional services;
- 1079        (e) The competency and qualifications for professional  
1080 staff privileges;
- 1081        (f) The reasonableness or appropriateness of charges made  
1082 by or on behalf of health care facilities; or
- 1083        (g) Patient safety, including entering into contracts with  
1084 patient safety organizations.

1085        (2) Such committee, board, group, commission, or other  
1086 entity must be established in accordance with state law or in  
1087 accordance with requirements of the Joint Commission on  
1088 Accreditation of Healthcare Organizations, or established and  
1089 duly constituted by one or more public or licensed private  
1090 hospitals or behavioral health agencies, or established by a  
1091 governmental agency. To be protected by this section, the act,  
1092 decision, omission, or utterance may not be made or done in bad  
1093 faith or with malicious intent.

1094        Section 17. Privileged communications of certain  
1095 committees and entities developing, maintaining, and sharing  
1096 patient safety data.--

1097        (1) For the purposes of this section:

1098        (a) "Patient safety data" means reports made to patient  
1099 safety organizations together with all health care data,  
1100 interviews, memoranda, analyses, root cause analyses, products



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1101 of quality assurance or quality improvement processes,  
1102 corrective action plans or information collected or created by a  
1103 health care provider as a result of an occurrence related to the  
1104 provision of health care services that exacerbates an existing  
1105 medical condition or could result in injury, illness, or death.

1106 (b) "Patient safety organization" means any organization,  
1107 group, or other entity that collects and analyzes patient safety  
1108 data for the purpose of improving patient safety and health care  
1109 outcomes and that is independent and not under the control of  
1110 the entity that reports patient safety data.

1111 (2)(a) The proceedings, minutes, records, and reports of  
1112 any medical staff committee, utilization review committee, or  
1113 other committee, board, group, commission, or other entity, as  
1114 specified in chapter 395 or chapter 641, Florida Statutes,  
1115 together with all communications, both oral and written,  
1116 originating in the course of deliberation, investigation, or  
1117 analysis of such committees or entities, are privileged  
1118 communications which may not be disclosed or obtained by legal  
1119 discovery proceedings unless a circuit court, after a hearing  
1120 and for good cause, orders the disclosure of such proceedings,  
1121 minutes, records, reports, or communications. For the purposes  
1122 of this section, accreditation and peer review records are  
1123 considered privileged communications.

1124 (b) Documents and communications pertaining to the  
1125 professional conduct of a physician or staff of the facility or  
1126 pertaining to service delivered by a physician or staff member  
1127 of the facility that are not generated during the course of  
1128 deliberation, investigation, and analysis of a patient safety  
1129 organization are not considered privileged. In response to a  
1130 request for discovery, a claim of privilege by a patient safety



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1131 organization must be accompanied by a list identifying all  
1132 documents or communications for which privilege is asserted. The  
1133 list, and a document or communication, when appropriate, shall  
1134 be reviewed in camera for determination of whether the document  
1135 or communication is privileged. Patient identifying information  
1136 shall be redacted or otherwise excluded from the list, unless a  
1137 court of competent jurisdiction orders disclosure of such  
1138 information. A list of documents or communications for which  
1139 privilege is asserted must include:

1140 1. The date the subject document or communication was  
1141 created.

1142 2. The name and address of the document's author or  
1143 communication's originator, unless a patient whose identity has  
1144 not been ordered disclosed by a court of competent jurisdiction.

1145 3. The name and address of the party from whom the  
1146 document or communication was received.

1147 4. The date the document or communication was received.

1148 5. The name and address of the original document's  
1149 custodian or communication's originator.

1150 6. The statutory or case law on which the privilege is  
1151 asserted.

1152 (3) Nothing in this section shall be construed as  
1153 providing any additional privilege to hospital; physician, for  
1154 services provided in a licensed physician office; or behavioral  
1155 health provider medical records kept with respect to any patient  
1156 in the ordinary course of business of operating a hospital,  
1157 licensed physician's office, or behavioral health provider or to  
1158 any facts or information contained in such records. This section  
1159 shall not preclude or affect discovery of or production of  
1160 evidence relating to hospitalization or treatment of any patient



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1161 in the ordinary course of hospitalization or treatment of such  
1162 patient.

1163 (4) Any patient safety organization shall promptly remove  
1164 all patient-identifying information after receipt of a complete  
1165 patient safety data report unless such organization is otherwise  
1166 permitted by state or federal law to maintain such information.  
1167 Patient safety organizations shall maintain the confidentiality  
1168 of all patient-identifying information and shall not disseminate  
1169 such information except as permitted by state or federal law.

1170 (5) Exchange of patient safety data among health care  
1171 providers or patient safety organizations that does not identify  
1172 any patient shall not constitute a waiver of any privilege  
1173 established in this section.

1174 (6) Reports of patient safety data to patient safety  
1175 organizations shall not abrogate obligations to make reports to  
1176 the Department of Health, the Agency for Health Care  
1177 Administration, or other state or federal law regulatory  
1178 agencies.

1179 (7) No employer shall take retaliatory action against an  
1180 employee who in good faith makes a report of patient safety data  
1181 to a patient safety organization.

1182 (8) Each patient safety organization convened under this  
1183 section shall quarterly submit statistical reports of its  
1184 findings to the Department of Health, the Agency for Health Care  
1185 Administration, and the Office of Insurance Regulation. Each  
1186 department shall use such statistics for comparison to  
1187 information the department generates from its regulatory  
1188 operations and to improve its regulation of health care  
1189 providers.

1190 Section 18. The Department of Health and the Office of





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1191 Insurance Regulation shall jointly publish a list, updated  
1192 semiannually, of all health care professionals authorized to  
1193 practice in this state, licensed under chapter 458 or chapter  
1194 459, Florida Statutes, who do not carry medical malpractice  
1195 insurance. Such list shall indicate the last date such health  
1196 care professional was covered by professional liability  
1197 insurance and any explanation of insurance status deemed  
1198 appropriate.

1199       Section 19. Each final settlement statement relating to  
1200 medical malpractice shall include the following statement: "The  
1201 decision to settle a case may reflect the economic  
1202 practicalities pertaining to the cost of litigation and is not,  
1203 alone, an admission that the insured failed to meet the required  
1204 standard of care applicable to the patient's treatment. The  
1205 decision to settle a case may be made by the insurance company  
1206 without consulting its client for input."

1207       Section 20. Notwithstanding any other provision of law to  
1208 the contrary, confidential legal settlements pertaining to  
1209 medical malpractice actions are prohibited. A legal settlement  
1210 shall be public information.

1211       Section 21. Office of Insurance Regulation; closed claim  
1212 forms; report required.--The Office of Insurance Regulation  
1213 shall revise its closed claim form for readability at the ninth-  
1214 grade level. The office shall compile annual statistical reports  
1215 that provide data summaries of all closed claims, including, but  
1216 not limited to, the number of closed claims on file pertaining  
1217 to the referent health care professional or health care entity,  
1218 the nature of the errant conduct, the size of payments, and the  
1219 frequency and size of noneconomic damage awards. The office  
1220 shall develop annualized historical statistical summaries



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1221 beginning with state fiscal year 1976 and publish these reports  
 1222 on its website no later than state fiscal year 2005. The form  
 1223 must comply with the following minimum requirements:

1224 (1) A practitioner of medicine licensed pursuant to the  
 1225 provisions of chapter 458, Florida Statutes, or practitioner of  
 1226 osteopathic medicine licensed pursuant to the provisions of  
 1227 chapter 459, Florida Statutes, shall report to the Office of  
 1228 Insurance Regulation and the Department of Health any claim or  
 1229 action for damages for personal injury alleged to have been  
 1230 caused by error, omission, or negligence in the performance of  
 1231 such licensee's professional services or based on a claimed  
 1232 performance of professional services without consent if the  
 1233 claim was not covered by an insurer required to report under s.  
 1234 627.912, Florida Statutes, is not a claim for medical  
 1235 malpractice that is subject to the provisions of s. 766.106,  
 1236 Florida Statutes, and the claim resulted in:

- 1237 (a) A final judgment in any amount.
- 1238 (b) A settlement in any amount.
- 1239 (c) A final disposition not resulting in payment on behalf  
 1240 of the licensee.

1241  
 1242 Reports shall be filed with the office no later than 60 days  
 1243 following the occurrence of any event listed in this subsection.

- 1244 (2) Health professional reports shall contain:
- 1245 (a) The name and address of the licensee.
- 1246 (b) The alleged occurrence.
- 1247 (c) The date of the alleged occurrence.
- 1248 (d) The date the claim or action was reported to the  
 1249 licensee.
- 1250 (e) The name and address of the opposing party.



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- 1251        (f) The date of suit, if filed.
- 1252        (g) The injured person's age and sex.
- 1253        (h) The total number and names of all defendants involved  
1254 in the claim.
- 1255        (i) The date and amount of judgment or settlement, if any,  
1256 including the itemization of the verdict, together with a copy  
1257 of the settlement or judgment.
- 1258        (j) In the case of a settlement, such information as the  
1259 Office of Insurance Regulation may require with regard to the  
1260 injured person's incurred and anticipated medical expenses, wage  
1261 loss, and other expenses.
- 1262        (k) The loss adjustment expense paid to defense counsel,  
1263 and all other allocated loss adjustment expense paid.
- 1264        (l) The date and reason for final disposition, if no  
1265 judgment or settlement.
- 1266        (m) A summary of the occurrence which created the claim,  
1267 which shall include:
- 1268            1. The name of the institution, if any, and the location  
1269 within such institution, at which the injury occurred.
- 1270            2. The final diagnosis for which treatment was sought or  
1271 rendered, including the patient's actual condition.
- 1272            3. A description of the misdiagnosis made, if any, of the  
1273 patient's actual condition.
- 1274            4. The operation or the diagnostic or treatment procedure  
1275 causing the injury.
- 1276            5. A description of the principal injury giving rise to  
1277 the claim.
- 1278            6. The safety management steps that have been taken by the  
1279 licensee to make similar occurrences or injuries less likely in  
1280 the future.



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1281        (n) Any other information required by the Office of  
1282        Insurance Regulation to analyze and evaluate the nature, causes,  
1283        location, cost, and damages involved in professional liability  
1284        cases.

1285            Section 22. If any provision of this act or its  
1286        application to any person or circumstance is held invalid, the  
1287        invalidity shall not affect other provisions or applications of  
1288        the act which can be given effect without the invalid provision  
1289        or application, and to this end the provisions of this act are  
1290        declared severable.

1291            Section 23. This act shall take effect upon becoming a law.