

By the Committees on Judiciary; Health, Aging, and Long-Term Care; and Senators Saunders and Peadar

308-2319-03

1 A bill to be entitled
2 An act relating to health care; amending s.
3 120.57, F.S.; providing procedures for hearings
4 related to disputed issues of fact in cases
5 involving the standard of care of certain
6 health care professions; amending s. 120.80,
7 F.S.; allowing a board within the Department of
8 Health to appoint an administrative law judge
9 or hearing officer who has certain expertise to
10 hear a case involving standard of care;
11 creating s. 381.0409, F.S.; providing that
12 creation of the Florida Center for Excellence
13 in Health Care is contingent on the enactment
14 of a public-records exemption; creating the
15 Florida Center for Excellence in Health Care;
16 providing goals and duties of the center;
17 providing definitions; providing limitations on
18 the center's liability for any lawful actions
19 taken; requiring the center to issue patient
20 safety recommendations; requiring the
21 development of a statewide electronic
22 infrastructure to improve patient care and the
23 delivery and quality of health care services;
24 providing requirements for development of a
25 core electronic medical record; authorizing
26 access to the electronic medical records and
27 other data maintained by the center; providing
28 for the use of computerized physician
29 medication ordering systems; providing for the
30 establishment of a simulation center for high
31 technology intervention surgery and intensive

1 care; providing for the immunity of specified
2 information in adverse incident reports from
3 discovery or admissibility in civil or
4 administrative actions; providing limitations
5 on liability of specified health care
6 practitioners and facilities under specified
7 conditions; providing requirements for the
8 appointment of a board of directors for the
9 center; establishing a mechanism for financing
10 the center through the assessment of specified
11 fees; requiring the Florida Center for
12 Excellence in Health Care to develop a business
13 and financing plan; authorizing state agencies
14 to contract with the center for specified
15 projects; authorizing the use of center funds
16 and the use of state purchasing and travel
17 contracts for the center; requiring the center
18 to submit an annual report and providing
19 requirements for the annual report; providing
20 for the center's books, records, and audits to
21 be open to the public; requiring the center to
22 annually furnish an audited report to the
23 Governor and Legislature; creating s. 395.1012,
24 F.S.; requiring facilities to adopt a patient
25 safety plan; providing requirements for a
26 patient safety plan; requiring facilities to
27 appoint a patient safety officer and a patient
28 safety committee and providing duties for the
29 patient safety officer and committee; amending
30 s. 395.004, F.S., relating to licensure of
31 certain health care facilities; providing for

1 discounted medical liability insurance based on
2 certification of programs that reduce adverse
3 incidents; requiring the Office of Insurance
4 Regulation to consider certain information in
5 reviewing discounted rates; amending s.
6 766.106, F.S.; providing that the claimant must
7 also provide the Agency for Health Care
8 Administration with a copy of a complaint
9 alleging medical malpractice after filing a
10 complaint; requiring the Agency for Health Care
11 Administration to review such complaints for
12 licensure noncompliance; creating s. 395.0056,
13 F.S.; requiring the Agency for Health Care
14 Administration to review complaints submitted
15 if the defendant is a hospital; amending s.
16 395.0193, F.S., relating to peer review and
17 disciplinary actions; providing for discipline
18 of a physician for mental or physical abuse of
19 staff; limiting liability of certain
20 participants in certain disciplinary actions at
21 a licensed facility; providing that a
22 defendant's monetary liability shall not exceed
23 \$250,000 on any action brought under this
24 section; amending s. 395.0197, F.S., relating
25 to internal risk management programs; deleting
26 an exception from the risk prevention education
27 requirement for certain health care
28 practitioners; requiring a system for notifying
29 patients that they are victims of an adverse
30 incident; requiring risk managers or their
31 designees to give notice; requiring licensed

1 facilities to annually report certain
2 information about health care practitioners for
3 whom they assume liability; requiring the
4 Agency for Health Care Administration and the
5 Department of Health to annually publish
6 statistics about licensed facilities that
7 assume liability for health care practitioners;
8 providing for disciplinary action against a
9 person who has a duty to report an adverse
10 incident but who fails to timely do so;
11 providing for a fine for each day an adverse
12 incident is not timely reported; requiring a
13 licensed facility at which sexual abuse occurs
14 to offer testing for sexually transmitted
15 disease at no cost to the victim; amending s.
16 456.025, F.S.; eliminating certain restrictions
17 on the setting of licensure renewal fees for
18 health care practitioners; directing the Agency
19 for Health Care Administration to conduct or
20 contract for a study to determine what
21 information to provide to the public comparing
22 hospitals, based on inpatient quality
23 indicators developed by the federal Agency for
24 Healthcare Research and Quality; creating s.
25 395.1051, F.S.; requiring certain facilities to
26 notify patients about adverse incidents under
27 specified conditions; creating s. 456.0575,
28 F.S.; requiring licensed healthcare
29 practitioners to notify patients about adverse
30 incidents under certain conditions; amending s.
31 456.026, F.S., relating to an annual report

1 published by the Department of Health;
2 requiring that the department publish the
3 report to its website; requiring the department
4 to include certain detailed information;
5 amending s. 456.041, F.S., relating to
6 practitioner profiles; requiring the Department
7 of Health to compile certain specified
8 information in a practitioner profile; deleting
9 provisions that provide that a profile need not
10 indicate whether a criminal history check was
11 performed to corroborate information in the
12 profile; authorizing the department or
13 regulatory board to investigate any information
14 received; requiring the department to provide a
15 narrative explanation, in plain English,
16 concerning final disciplinary action taken
17 against a practitioner; requiring a hyperlink
18 to each final order on the department's website
19 which provides information about disciplinary
20 actions; requiring the department to provide a
21 hyperlink to certain comparison reports
22 pertaining to claims experience; requiring the
23 department to include the date that a reported
24 disciplinary action was taken by a licensed
25 facility and a characterization of the
26 practitioner's conduct that resulted in the
27 action; deleting provisions requiring the
28 department to consult with a regulatory board
29 before including certain information in a
30 health care practitioner's profile; providing
31 for a penalty for failure to comply with the

1 timeframe for verifying and correcting a
2 practitioner profile; requiring the department
3 to add a statement to a practitioner profile
4 when the profile information has not been
5 verified by the practitioner; requiring the
6 department to provide, in the practitioner
7 profile, an explanation of disciplinary action
8 taken and the reason for sanctions imposed;
9 requiring the department to include a hyperlink
10 to a practitioner's website when requested;
11 providing that practitioners licensed under ch.
12 458 or ch. 459, F.S. shall have claim
13 information concerning an indemnity payment
14 greater than \$100,000 posted in the
15 practitioner profile; amending s. 456.042,
16 F.S.; providing for the update of practitioner
17 profiles; designating a timeframe within which
18 a practitioner must submit new information to
19 update his or her profile; amending s. 456.049,
20 F.S., relating to practitioner reports on
21 professional liability claims and actions;
22 deleting a requirement that a practitioner
23 report only if the claim or action was not
24 covered by an insurer that is required to
25 report; amending s. 456.051, F.S.; establishing
26 the responsibility of the Department of Health
27 to provide reports of professional liability
28 actions and bankruptcies; requiring the
29 department to include such reports in a
30 practitioner's profile within a specified
31 period; amending s. 458.320, F.S., relating to

1 financial responsibility requirements for
2 medical physicians; requiring the department to
3 suspend the license of a medical physician who
4 has not paid, up to the amounts required by any
5 applicable financial responsibility provision,
6 any outstanding judgment, arbitration award,
7 other order, or settlement; amending s.
8 459.0085, F.S., relating to financial
9 responsibility requirements for osteopathic
10 physicians; requiring that the department
11 suspend the license of an osteopathic physician
12 who has not paid, up to the amounts required by
13 any applicable financial responsibility
14 provision, any outstanding judgment,
15 arbitration award, other order, or settlement;
16 providing civil immunity for certain
17 participants in quality improvement processes;
18 defining the terms "patient safety data" and
19 "patient safety organization"; providing for
20 use of patient safety data by patient safety
21 organization; providing limitations on use of
22 patient safety data; providing for protection
23 of patient-identifying information; providing
24 for determination of whether privilege applies
25 as asserted; providing that an employer may not
26 take retaliatory action against an employee who
27 makes a good-faith report concerning patient
28 safety data; requiring that a specific
29 statement be included in each final settlement
30 statement relating to medical malpractice
31 actions; providing requirements for the closed

1 claim form of the Office of Insurance
2 Regulation; requiring the Office of Insurance
3 Regulation to compile annual statistical
4 reports pertaining to closed claims; requiring
5 historical statistical summaries; specifying
6 certain information to be included on the
7 closed claim form; amending s. 456.039, F.S.;
8 amending the information required to be
9 furnished to the Department of Health for
10 licensure purposes; amending s. 456.057, F.S.;
11 allowing the department to obtain patient
12 records by subpoena without the patient's
13 written authorization, in specified
14 circumstances; amending s. 456.063, F.S.;
15 providing for adopting rules to implement
16 requirements for reporting allegations of
17 sexual misconduct; authorizing health care
18 practitioner regulatory boards to adopt rules
19 to establish standards of practice for
20 prescribing drugs to patients via the Internet;
21 amending s. 456.072, F.S.; providing for
22 determining the amount of any costs to be
23 assessed in a disciplinary proceeding;
24 prescribing the standard of proof in certain
25 disciplinary proceedings; amending s. 456.073,
26 F.S.; authorizing the Department of Health to
27 investigate certain paid claims made on behalf
28 of practitioners licensed under ch. 458 or ch.
29 459, F.S.; amending procedures for certain
30 disciplinary proceedings; providing a deadline
31 for raising issues of material fact; providing

1 a deadline relating to notice of receipt of a
2 request for a formal hearing; amending s.
3 456.077, F.S.; providing a presumption related
4 to an undisputed citation; amending s. 456.078,
5 F.S.; revising standards for determining which
6 violations of the applicable professional
7 practice act are appropriate for mediation;
8 amending s. 458.331, F.S., relating to grounds
9 for disciplinary action of a physician;
10 redefining the term "repeated malpractice";
11 revising the standards for the burden of proof
12 in an administrative action against a
13 physician; revising the minimum amount of a
14 claim against a licensee which will trigger a
15 departmental investigation; amending s.
16 459.015, F.S., relating to grounds for
17 disciplinary action against an osteopathic
18 physician; redefining the term "repeated
19 malpractice"; revising the standards for the
20 burden of proof in an administrative action
21 against an osteopathic physician; amending
22 conditions that necessitate a departmental
23 investigation of an osteopathic physician;
24 revising the minimum amount of a claim against
25 a licensee which will trigger a departmental
26 investigation; revising the minimum amount of a
27 claim against a licensee which will trigger a
28 departmental investigation; amending s.
29 461.013, F.S., relating to grounds for
30 disciplinary action against a podiatric
31 physician; redefining the term "repeated

1 malpractice"; amending the minimum amount of a
2 claim against such a physician which will
3 trigger a department investigation; amending s.
4 466.028, F.S., relating to grounds for
5 disciplinary action against a dentist or a
6 dental hygienist; redefining the term "dental
7 malpractice"; revising the minimum amount of a
8 claim against a dentist which will trigger a
9 departmental investigation; amending s.
10 627.912, F.S.; amending provisions prescribing
11 conditions under which insurers must file
12 certain reports with the Department of
13 Insurance; requiring the Office of Program
14 Policy Analysis and Government Accountability
15 and the Office of the Auditor General to
16 conduct an audit, as specified, and to report
17 to the Legislature; creating ss. 1004.08,
18 1005.07, F.S.; requiring schools, colleges, and
19 universities to include material on patient
20 safety in their curricula if the institution
21 awards specified degrees; creating a workgroup
22 to study the health care practitioner
23 disciplinary process; providing for workgroup
24 membership; providing that the workgroup
25 deliver its report by January 1, 2004;
26 providing for severability; providing a
27 contingent effective date.

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Paragraph (1) of subsection (1) of section
2 120.57, Florida Statutes, is amended to read:

3 120.57 Additional procedures for particular cases.--

4 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS
5 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.--

6 (1)1. The agency may adopt the recommended order as
7 the final order of the agency. The agency in its final order
8 may reject or modify the conclusions of law over which it has
9 substantive jurisdiction and interpretation of administrative
10 rules over which it has substantive jurisdiction. When
11 rejecting or modifying such conclusion of law or
12 interpretation of administrative rule, the agency must state
13 with particularity its reasons for rejecting or modifying such
14 conclusion of law or interpretation of administrative rule and
15 must make a finding that its substituted conclusion of law or
16 interpretation of administrative rule is as or more reasonable
17 than that which was rejected or modified. Rejection or
18 modification of conclusions of law may not form the basis for
19 rejection or modification of findings of fact. The agency may
20 not reject or modify the findings of fact unless the agency
21 first determines from a review of the entire record, and
22 states with particularity in the order, that the findings of
23 fact were not based upon competent substantial evidence or
24 that the proceedings on which the findings were based did not
25 comply with essential requirements of law. The agency may
26 accept the recommended penalty in a recommended order, but may
27 not reduce or increase it without a review of the complete
28 record and without stating with particularity its reasons
29 therefor in the order, by citing to the record in justifying
30 the action.

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1 2. Notwithstanding subparagraph 1., as a matter of
2 law, any decision involving the standard of care of a health
3 care profession regulated by any board within the Department
4 of Health is infused with overriding policy considerations
5 that are best left to the regulatory board that has
6 jurisdiction over that profession. When rejecting or modifying
7 a recommended finding of fact in standard-of-care cases, the
8 appropriate board within the Department of Health may reassess
9 and resolve conflicting evidence in a recommended order based
10 on the record in the case.

11 Section 2. Subsection (15) of section 120.80, Florida
12 Statutes, is amended to read:

13 120.80 Exceptions and special requirements;
14 agencies.--

15 (15) DEPARTMENT OF HEALTH.--Notwithstanding s.
16 120.57(1)(a), formal hearings may not be conducted by the
17 Secretary of Health, the Secretary of Health Care
18 Administration, or a board or member of a board within the
19 Department of Health or the Agency for Health Care
20 Administration for matters relating to the regulation of
21 professions, as defined by chapter 456, except that a board
22 within the Department of Health may appoint an administrative
23 law judge or hearing officer who has expertise in the
24 profession regulated by the board to conduct hearings
25 involving standard-of-care cases. Notwithstanding s.
26 120.57(1)(a), hearings conducted within the Department of
27 Health in execution of the Special Supplemental Nutrition
28 Program for Women, Infants, and Children; Child Care Food
29 Program; Children's Medical Services Program; the Brain and
30 Spinal Cord Injury Program; and the exemption from
31 disqualification reviews for certified nurse assistants

1 program need not be conducted by an administrative law judge
2 assigned by the division. The Department of Health may
3 contract with the Department of Children and Family Services
4 for a hearing officer in these matters.

5 Section 3. Effective upon this act becoming law if CS
6 for SB 566 or similar legislation is adopted in the same
7 legislative session or an extension thereof and becomes law,
8 section 381.0409, Florida Statutes, is created to read:

9 381.0409 Florida Center for Excellence in Health
10 Care.--There is created the Florida Center for Excellence in
11 Health Care which shall be responsible for performing
12 activities and functions that are designed to improve the
13 quality of health care delivered by health care facilities and
14 health care practitioners. The principal goals of the center
15 are to improve health care quality and patient safety. The
16 long-term goal is to improve diagnostic and treatment
17 decisions, thus further improving quality.

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

19 (a) "Center" means the Center for Excellence in Health
20 Care.

21 (b) "Health care practitioner" means any person as
22 defined under s. 456.001(4).

23 (c) "Health care facility" means any facility licensed
24 under chapter 395.

25 (d) "Health research entity" means any university or
26 academic health center engaged in research designed to
27 improve, prevent, diagnose, or treat diseases or medical
28 conditions or an entity that receives state or federal funds
29 for such research.

30 (e) "Patient safety data" means any data, reports,
31 records, memoranda, or analyses of patient safety events and

1 adverse incidents reported by a licensed facility pursuant to
2 s. 395.0197 which are submitted to the Florida Center for
3 Health Care Excellence or the corrective actions taken in
4 response to such patient safety events or adverse incidents.

5 (f) "Patient safety event" means an event over which
6 health care personnel could exercise control and which is
7 associated in whole or in part with medical intervention,
8 rather than the condition for which such intervention
9 occurred, and which could have resulted, but did not result in
10 serious patient injury or death.

11 (2) The center shall, either directly or by contract:

12 (a) Analyze patient safety data for the purpose of
13 recommending changes in practices and procedures which may be
14 implemented by health care practitioners and health care
15 facilities to prevent future adverse incidents.

16 (b) Collect, analyze, and evaluate patient safety data
17 submitted voluntarily by a health care practitioner or health
18 care facility. The center shall recommend to health care
19 practitioners and health care facilities changes in practices
20 and procedures that may be implemented for the purpose of
21 improving patient safety and preventing patient safety events.

22 (c) Foster the development of a statewide electronic
23 infrastructure, which may be implemented in phases over a
24 multiyear period, that is designed to improve patient care and
25 the delivery and quality of health care services by health
26 care facilities and practitioners. The electronic
27 infrastructure shall be a secure platform for communication
28 and the sharing of clinical and other data, such as business
29 data, among providers and between patients and providers. The
30 electronic infrastructure shall include a "core" electronic
31 medical record. Health care practitioners and health care

1 facilities shall have access to individual electronic medical
2 records subject to the consent of the individual. Health
3 insurers licensed under chapter 627 or chapter 641 shall have
4 access to the electronic medical records of their policy
5 holders and, subject to the provisions of s. 381.04091, to
6 other data if such access is for the sole purpose of
7 conducting research to identify diagnostic tests and
8 treatments that are medically effective. Health research
9 entities shall have access to the electronic medical records
10 of individuals subject to the consent of the individual and
11 subject to the provisions of s. 381.04091 and to other data if
12 such access is for the sole purpose of conducting research to
13 identify diagnostic tests and treatments that are medically
14 effective.

15 (d) Foster the use of computerized physician
16 medication ordering systems by hospitals which do not have
17 such systems and develop protocols for these systems.

18 (e) Establish a simulation center for high technology
19 intervention surgery and intensive care for use by all
20 hospitals.

21 (f) Identify best practices and share this information
22 with health care providers.

23

24 Nothing in this section shall serve to limit the scope of
25 services provided by the center with regard to engaging in
26 other activities that improve health care quality, improve the
27 diagnosis and treatment of diseases and medical conditions,
28 increase the efficiency of the delivery of health care
29 services, increase administrative efficiency, and increase
30 access to quality health care services.

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1 (3) Notwithstanding s. 381.04091, the center may
2 release information contained in patient safety data to any
3 health care practitioner or health care facility when
4 recommending changes in practices and procedures which may be
5 implemented by such practitioner or facility to prevent
6 patient safety events or adverse incidents.

7 (4) All information related to adverse incident
8 reports and all patient safety data submitted to or received
9 by the center shall not be subject to discovery or
10 introduction into evidence in any civil or administrative
11 action. Individuals in attendance at meetings held for the
12 purpose of discussing information related to adverse incidents
13 and patient safety data and meetings held to formulate
14 recommendations to prevent future adverse incidents or patient
15 safety events may not be permitted or required to testify in
16 any civil or administrative action related to such events.
17 There shall be no liability on the part of, and no cause of
18 action of any nature shall arise against, any employee or
19 agent of the center for any lawful action taken by such
20 individual in advising health practitioners or health care
21 facilities with regard to carrying out their duties under this
22 section. There shall be no liability on the part of, and no
23 cause of action of any nature shall arise against, a health
24 care practitioner or health care facility, its agents, or
25 employees, when it acts in reliance on any advice or
26 information provided by the center.

27 (5) The center shall be a nonprofit corporation
28 registered, incorporated, organized, and operated in
29 compliance with chapter 617, and shall have all powers
30 necessary to carry out the purposes of this section,
31 including, but not limited to, the power to receive and accept

1 from any source contributions of money, property, labor, or
2 any other thing of value, to be held, used, and applied for
3 the purpose of this section.

4 (6) The center shall:

5 1. Be designed and operated by an individual or entity
6 with demonstrated expertise in health care quality data and
7 systems analysis, health information management, systems
8 thinking and analysis, human factors analysis, and
9 identification of latent and active errors.

10 2. Include procedures for ensuring the confidentiality
11 of data which are consistent with state and federal law.

12 (7) The center shall be governed by a 10-member board
13 of directors appointed by the Governor.

14 (a) The Governor shall appoint two members
15 representing hospitals, one member representing physicians,
16 one member representing nurses, one member representing health
17 insurance indemnity plans, one member representing health
18 maintenance organizations, one member representing business,
19 and one member representing consumers. The Governor shall
20 appoint members for a 2-year term. Such members shall serve
21 until their successors are appointed. Members are eligible to
22 be reappointed for additional terms.

23 (b) The Secretary of Health or his or her designee
24 shall be a member of the board.

25 (c) The Secretary of Health Care Administration or his
26 or her designee shall be a member of the board.

27 (d) The members shall elect a chairperson.

28 (e) Board members shall serve without compensation but
29 may be reimbursed for travel expenses pursuant to s. 112.061.

30 (8) The center shall be financed as follows:

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1 (a) Notwithstanding any law to the contrary, each
2 health insurer issued a certificate of authority under part
3 VI, part VII, or part VIII of chapter 627 shall, as a
4 condition of maintaining such certificate, make payment to the
5 center on April 1 of each year, in the amount of \$1 for each
6 individual included in every insurance policy issued during
7 the previous calendar year. Accompanying any payment shall be
8 a certification under oath by the chief executive officer that
9 states the number of individuals that such payment was based
10 on. The health insurer may collect this \$1 from policyholders.
11 The center may direct the insurer to provide an independent
12 audit of the certification that shall be furnished within 90
13 days. If payment is not received by the center within 30 days
14 after April 1, interest at the annualized rate of 18 percent
15 shall begin to be charged on the amount due. If payment has
16 not been received within 60 days after interest is charged,
17 the center shall notify the Office of Insurance Regulation
18 that payment has not been received pursuant to the
19 requirements of this paragraph. An insurer that refuses to
20 comply with the requirements of this paragraph is subject to
21 the forfeiture of its certificate of authority.

22 (b) Notwithstanding any law to the contrary, each
23 health maintenance organization issued a certificate of
24 authority under part I of chapter 641 and each prepaid clinic
25 issued a certificate of authority under part II of chapter 641
26 shall, as a condition of maintaining such certificate, make
27 payment to the center on April 1 of each year, in the amount
28 of \$1 for each individual who is eligible to receive services
29 pursuant to a contract with the health maintenance
30 organization or the prepaid clinic during the previous
31 calendar year. Accompanying any payment shall be a

1 certification under oath by the chief executive officer that
2 states the number of individuals that such payment was based
3 on. The health maintenance organization or prepaid clinic may
4 collect the \$1 from individuals eligible to receive services
5 under contract. The center may direct the health maintenance
6 organization or prepaid clinic to provide an independent audit
7 of the certification that shall be furnished within 90 days.
8 If payment is not received by the center within 30 days after
9 April 1, interest at the annualized rate of 18 percent shall
10 begin to be charged on the amount due. If payment has not been
11 received within 60 days after interest is charged, the center
12 shall notify the Department of Financial Services that payment
13 has not been received pursuant to the requirements of this
14 paragraph. A health maintenance organization or prepaid clinic
15 that refuses to comply with the requirements of this paragraph
16 is subject to the forfeiture of its certificate of authority.
17 (c) Notwithstanding any law to the contrary, each
18 hospital and ambulatory surgical center licensed under chapter
19 395 shall, as a condition of licensure, make payment to the
20 center on April 1 of each year, in the amount of \$1 for each
21 individual during the previous 12 months who was an inpatient
22 discharged by the hospital or who was a patient in the
23 ambulatory surgical center. Accompanying payment shall be a
24 certification under oath by the chief executive officer that
25 states the number of individuals that such payment was based
26 on. The facility may collect the \$1 from patients discharged
27 from the facility. The center may direct the facility to
28 provide an independent audit of the certification that shall
29 be furnished within 90 days. If payment is not received by the
30 center within 30 days after April 1, interest at the
31 annualized rate of 18 percent shall begin to be charged on the

1 amount due. If payment has not been received within 60 days
2 after interest is charged, the center shall notify the Agency
3 for Health Care Administration that payment has not been
4 received pursuant to the requirements of this paragraph. An
5 entity that refuses to comply with the requirements of this
6 paragraph is subject to the forfeiture of its license.

7 (d) Notwithstanding any law to the contrary, each
8 nursing home licensed under part II of chapter 400, each
9 assisted living facility licensed under part III of chapter
10 400, each home health agency licensed under part IV of chapter
11 400, each hospice licensed under part VI of chapter 400, each
12 prescribed pediatric extended care center licensed under part
13 IX of chapter 400, and each health care services pool licensed
14 under part XII of chapter 400 shall, as a condition of
15 licensure, make payment to the center on April 1 of each year,
16 in the amount of \$1 for each individual served by each
17 aforementioned entity during the previous 12 months.
18 Accompanying payment shall be a certification under oath by
19 the chief executive officer that states the number of
20 individuals that such payment was based on. The entity may
21 collect the \$1 from individuals served by the entity. The
22 center may direct the entity to provide an independent audit
23 of the certification that shall be furnished within 90 days.
24 If payment is not received by the center within 30 days after
25 April 1, interest at the annualized rate of 18 percent shall
26 begin to be charged on the amount due. If payment has not been
27 received within 60 days after interest is charged, the center
28 shall notify the Agency for Health Care Administration that
29 payment has not been received pursuant to the requirements of
30 this paragraph. An entity that refuses to comply with the

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1 requirements of this paragraph is subject to the forfeiture of
2 its license.

3 (e) Notwithstanding any law to the contrary, each
4 initial application and renewal fee for each license and each
5 fee for certification or recertification for each person
6 licensed or certified under chapter 401 or chapter 404, and
7 for each person licensed as a health care practitioner defined
8 in s. 456.001(4), shall be increased by the amount of \$1 for
9 each year for which the license or certification is issued.
10 The Department of Health shall make payment to the center on
11 April 1 of each year in the amount of the total received
12 pursuant to this paragraph during the preceding 12 months.

13 (f) The center shall develop a business and financing
14 plan to obtain funds through other means if funds beyond those
15 that are provided for in this subsection are needed to
16 accomplish the objectives of the center.

17 (9) The center may enter into affiliations with
18 universities for any purpose.

19 (10) Pursuant to s. 287.057(5)(f)6., state agencies
20 may contract with the center on a sole source basis for
21 projects to improve the quality of program administration,
22 such as, but not limited to, the implementation of an
23 electronic medical record for Medicaid program recipients.

24 (11) All travel and per diem paid with center funds
25 shall be in accordance with s. 112.061.

26 (12) The center may use state purchasing and travel
27 contracts and the state communications system in accordance
28 with s. 282.105(3).

29 (13) The center may acquire, enjoy, use, and dispose
30 of patents, copyrights, trademarks and any licenses,

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1 royalties, and other rights or interests thereunder or
2 therein.

3 (14) The center shall submit an annual report to the
4 Governor, the President of the Senate, and the Speaker of the
5 House of Representatives no later than October 1 of each year
6 which includes:

7 (a) The status report on the implementation of a
8 program to analyze data concerning adverse incidents and
9 patient safety events.

10 (b) The status report on the implementation of a
11 computerized physician medication ordering system.

12 (c) The status report on the implementation of an
13 electronic medical record.

14 (d) Other pertinent information relating to the
15 efforts of the center to improve health care quality and
16 efficiency.

17 (e) A financial statement and balance sheet.

18
19 The initial report shall include any recommendations that the
20 center deems appropriate regarding revisions in the definition
21 of adverse incidents in s. 395.0197 and the reporting of such
22 adverse incidents by licensed facilities.

23 (15) The center may establish and manage an operating
24 fund for the purposes of addressing the center's cash-flow
25 needs and facilitating the fiscal management of the
26 corporation. Upon dissolution of the corporation, any
27 remaining cash balances of any state funds shall revert to the
28 General Revenue Fund, or such other state funds consistent
29 with appropriated funding, as provided by law.

30 (16) The center may carry over funds from year to
31 year.

1 (17) All books, records, and audits of the center
2 shall be open to the public unless exempted by law.

3 (18) The center shall furnish an annual audited report
4 to the Governor and Legislature by March 1 of each year.

5 (19) In carrying out this section, the center shall
6 consult with and develop partnerships, as appropriate, with
7 all segments of the health care industry, including, among
8 others, health practitioners, health care facilities, health
9 care consumers, professional organizations, agencies, health
10 care practitioner licensing boards, and educational
11 institutions.

12 Section 4. Section 395.1012, Florida Statutes, is
13 created to read:

14 395.1012 Patient safety.--

15 (1) Each licensed facility must adopt a patient safety
16 plan. A plan adopted to implement the requirements of 42 CFR
17 482.21 shall be deemed to comply with this requirement.

18 (2) Each licensed facility shall appoint a patient
19 safety officer and a patient safety committee, which shall
20 include at least one person who is neither employed by nor
21 practicing in the facility, for the purpose of promoting the
22 health and safety of patients, reviewing and evaluating the
23 quality of patient safety measures used by the facility, and
24 for assisting in the implementation of the facility patient
25 safety plan.

26 Section 5. Subsection (3) is added to section 395.004,
27 Florida Statutes, to read:

28 395.004 Application for license, fees; expenses.--

29 (3) A licensed facility may apply to the agency for
30 certification of a quality improvement program that results in
31 the reduction of adverse incidents at that facility. The

1 agency, in consultation with the Office of Insurance
2 Regulation, shall develop criteria for such certification.
3 Insurers shall file with the Office of Insurance Regulation a
4 discount in the rate or rates applicable for medical liability
5 insurance coverage to reflect the implementation of a
6 certified program. In reviewing insurance company filings with
7 respect to rate discounts authorized under this subsection,
8 the Office of Insurance Regulation shall consider whether, and
9 the extent to which, the program certified under this
10 subsection is otherwise covered under a program of risk
11 management offered by an insurance company or self-insurance
12 plan providing medical liability coverage.

13 Section 6. Subsection (2) of section 766.106, Florida
14 Statutes, is amended to read:

15 766.106 Notice before filing action for medical
16 malpractice; presuit screening period; offers for admission of
17 liability and for arbitration; informal discovery; review.--

18 (2) After completion of presuit investigation pursuant
19 to s. 766.203 and prior to filing a claim for medical
20 malpractice, a claimant shall notify each prospective
21 defendant by certified mail, return receipt requested, of
22 intent to initiate litigation for medical malpractice.
23 Following the initiation of a suit alleging medical
24 malpractice with a court of competent jurisdiction, and
25 service of the complaint upon a defendant, the claimant shall
26 provide a copy of the complaint to the Department of Health
27 and, if the complaint involves a facility licensed under
28 chapter 395, the Agency for Health Care Administration. The
29 requirement of providing the complaint to the Department of
30 Health or the Agency for Health Care Administration does not
31 impair the claimant's legal rights or ability to seek relief

1 for his or her claim. The Department of Health or the Agency
2 for Health Care Administration shall review each incident that
3 is the subject of the complaint and determine whether it
4 involved conduct by a licensee which is potentially subject to
5 disciplinary action, in which case the provisions of s.
6 456.073 or s. 395.1046 apply.

7 Section 7. Section 395.0056, Florida Statutes, is
8 created to read:

9 395.0056 Litigation notice requirement.--Upon receipt
10 of a copy of a complaint filed against a hospital as a
11 defendant in a medical malpractice action as required by s.
12 766.106(2), the agency shall:

13 (1) Review its adverse incident report files
14 pertaining to the licensed facility that is the subject of the
15 complaint to determine whether the facility timely complied
16 with the requirements of s. 395.0197; and

17 (2) Review the incident that is the subject of the
18 complaint and determine whether it involved conduct by a
19 licensee which is potentially subject to disciplinary action.

20 Section 8. Subsections (3) and (9) of section
21 395.0193, Florida Statutes, are amended to read:

22 395.0193 Licensed facilities; peer review;
23 disciplinary powers; agency or partnership with physicians.--

24 (3) If reasonable belief exists that conduct by a
25 staff member or physician who delivers health care services at
26 the licensed facility may constitute one or more grounds for
27 discipline as provided in this subsection, a peer review panel
28 shall investigate and determine whether grounds for discipline
29 exist with respect to such staff member or physician. The
30 governing board of any licensed facility, after considering
31 the recommendations of its peer review panel, shall suspend,

1 deny, revoke, or curtail the privileges, or reprimand,
2 counsel, or require education, of any such staff member or
3 physician after a final determination has been made that one
4 or more of the following grounds exist:

5 (a) Incompetence.

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

9 (c) Mental or physical impairment which may adversely
10 affect patient care.

11 (d) Mental or physical abuse of a nurse or other staff
12 member.

13 (e)~~(d)~~ Being found liable by a court of competent
14 jurisdiction for medical negligence or malpractice involving
15 negligent conduct.

16 (f)~~(e)~~ One or more settlements exceeding \$10,000 for
17 medical negligence or malpractice involving negligent conduct
18 by the staff member.

19 (g)~~(f)~~ Medical negligence other than as specified in
20 paragraph (d) or paragraph (e).

21 (h)~~(g)~~ Failure to comply with the policies,
22 procedures, or directives of the risk management program or
23 any quality assurance committees of any licensed facility.

24 (9)(a) If the defendant prevails in an action brought
25 by a staff member or physician who delivers health care
26 services at the licensed facility against any person or entity
27 that initiated, participated in, was a witness in, or
28 conducted any review as authorized by this section, the court
29 shall award reasonable attorney's fees and costs to the
30 defendant.

31

1 (b) As a condition of any staff member or physician
2 bringing any action against any person or entity that
3 initiated, participated in, was a witness in, or conducted any
4 review as authorized by this section and before any responsive
5 pleading is due, the staff member or physician shall post a
6 bond or other security, as set by the court having
7 jurisdiction of the action, in an amount sufficient to pay the
8 costs and attorney's fees. A defendant's monetary liability
9 under this section shall not exceed \$250,000.

10 Section 9. Subsections (1), (3), (4), and (8) of
11 section 395.0197, Florida Statutes, are amended, present
12 subsections (12) through (20) of that section are redesignated
13 as subsections (13) through (21), respectively, and a new
14 subsection (12) is added to that section, to read:

15 395.0197 Internal risk management program.--

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

20 (a) The investigation and analysis of the frequency
21 and causes of general categories and specific types of adverse
22 incidents to patients.

23 (b) The development of appropriate measures to
24 minimize the risk of adverse incidents to patients, including,
25 but not limited to:

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

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

30 b. At least 1 hour of such education and training
31 annually for all personnel of the licensed facility working in

1 clinical areas and providing patient care, ~~except those~~
2 ~~persons licensed as health care practitioners who are required~~
3 ~~to complete continuing education coursework pursuant to~~
4 ~~chapter 456 or the respective practice act.~~

5 2. A prohibition, except when emergency circumstances
6 require otherwise, against a staff member of the licensed
7 facility attending a patient in the recovery room, unless the
8 staff member is authorized to attend the patient in the
9 recovery room and is in the company of at least one other
10 person. However, a licensed facility is exempt from the
11 two-person requirement if it has:

- 12 a. Live visual observation;
13 b. Electronic observation; or
14 c. Any other reasonable measure taken to ensure
15 patient protection and privacy.

16 3. A prohibition against an unlicensed person from
17 assisting or participating in any surgical procedure unless
18 the facility has authorized the person to do so following a
19 competency assessment, and such assistance or participation is
20 done under the direct and immediate supervision of a licensed
21 physician and is not otherwise an activity that may only be
22 performed by a licensed health care practitioner.

23 4. Development, implementation, and ongoing evaluation
24 of procedures, protocols, and systems to accurately identify
25 patients, planned procedures, and the correct site of the
26 planned procedure so as to minimize the performance of a
27 surgical procedure on the wrong patient, a wrong surgical
28 procedure, a wrong-site surgical procedure, or a surgical
29 procedure otherwise unrelated to the patient's diagnosis or
30 medical condition.

31

1 (c) The analysis of patient grievances that relate to
2 patient care and the quality of medical services.

3 (d) A system for informing a patient or an individual
4 identified pursuant to s. 765.401(1) that the patient was the
5 subject of an adverse incident, as defined in subsection (5).
6 Such notice shall be given by the risk manager, or his or her
7 designee, as soon as practicable to allow the patient an
8 opportunity to minimize damage or injury.

9 (e)~~(d)~~ The development and implementation of an
10 incident reporting system based upon the affirmative duty of
11 all health care providers and all agents and employees of the
12 licensed health care facility to report adverse incidents to
13 the risk manager, or to his or her designee, within 3 business
14 days after their occurrence.

15 (3) In addition to the programs mandated by this
16 section, other innovative approaches intended to reduce the
17 frequency and severity of medical malpractice and patient
18 injury claims shall be encouraged and their implementation and
19 operation facilitated. Such additional approaches may include
20 extending internal risk management programs to health care
21 providers' offices and the assuming of provider liability by a
22 licensed health care facility for acts or omissions occurring
23 within the licensed facility. Each licensed facility shall
24 annually report to the agency and the Department of Health the
25 name and judgments entered against each health care
26 practitioner for which it assumes liability. The agency and
27 Department of Health, in their respective annual reports,
28 shall include statistics that report the number of licensed
29 facilities that assume such liability and the number of health
30 care practitioners, by profession, for whom they assume
31 liability.

1 (4) The agency shall adopt rules governing the
2 establishment of internal risk management programs to meet the
3 needs of individual licensed facilities. Each internal risk
4 management program shall include the use of incident reports
5 to be filed with an individual of responsibility who is
6 competent in risk management techniques in the employ of each
7 licensed facility, such as an insurance coordinator, or who is
8 retained by the licensed facility as a consultant. The
9 individual responsible for the risk management program shall
10 have free access to all medical records of the licensed
11 facility. The incident reports are part of the workpapers of
12 the attorney defending the licensed facility in litigation
13 relating to the licensed facility and are subject to
14 discovery, but are not admissible as evidence in court. A
15 person filing an incident report is not subject to civil suit
16 by virtue of such incident report. A person who has the duty
17 to file an incident report but who fails to do so within the
18 timeframes established under this section shall be subject to
19 disciplinary action by the licensed facility and the
20 appropriate regulatory board and is subject to a fine of up to
21 \$1,000 for each day the report was not timely submitted.As a
22 part of each internal risk management program, the incident
23 reports shall be used to develop categories of incidents which
24 identify problem areas. Once identified, procedures shall be
25 adjusted to correct the problem areas.

26 (8) Any of the following adverse incidents, whether
27 occurring in the licensed facility or arising from health care
28 prior to admission in the licensed facility, shall be reported
29 by the facility to the agency within 15 calendar days after
30 its occurrence:

31 (a) The death of a patient;

- 1 (b) Brain or spinal damage to a patient;
2 (c) The performance of a surgical procedure on the
3 wrong patient;
4 (d) The performance of a wrong-site surgical
5 procedure;
6 (e) The performance of a wrong surgical procedure;
7 (f) The performance of a surgical procedure that is
8 medically unnecessary or otherwise unrelated to the patient's
9 diagnosis or medical condition;
10 (g) The surgical repair of damage resulting to a
11 patient from a planned surgical procedure, where the damage is
12 not a recognized specific risk, as disclosed to the patient
13 and documented through the informed-consent process; or
14 (h) The performance of procedures to remove unplanned
15 foreign objects remaining from a surgical procedure.

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

1 such records which form the basis of the determination of
2 probable cause. The agency may investigate, as it deems
3 appropriate, any such incident and prescribe measures that
4 must or may be taken in response to the incident. The agency
5 shall review each incident and determine whether it
6 potentially involved conduct by the health care professional
7 who is subject to disciplinary action, in which case the
8 provisions of s. 456.073 shall apply. Copies of all reports of
9 adverse incidents submitted to the agency by hospitals and
10 ambulatory surgical centers shall be forwarded to the Center
11 for Health Care Excellence, as defined in s. 381.0409, for
12 analysis by experts who may make recommendations regarding the
13 prevention of such incidents. Such information shall remain
14 confidential as otherwise provided by law.

15 (12) If appropriate, a licensed facility in which
16 sexual abuse occurs must offer the victim of sexual abuse
17 testing for sexually transmissible diseases and shall provide
18 all such testing at no cost to the victim.

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

21 456.025 Fees; receipts; disposition.--

22 (1) It is the intent of the Legislature that all costs
23 of regulating health care professions and practitioners shall
24 be borne solely by licensees and licensure applicants. It is
25 also the intent of the Legislature that fees should be
26 reasonable and not serve as a barrier to licensure. Moreover,
27 it is the intent of the Legislature that the department
28 operate as efficiently as possible and regularly report to the
29 Legislature additional methods to streamline operational
30 costs. Therefore, the boards in consultation with the

31

1 department, or the department if there is no board, shall, by
2 rule, set renewal fees which:

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

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

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

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

12 (e) Shall be similar to fees imposed on similar
13 licensure types; and

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

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

19 ~~(f)(h)~~ Shall be subject to challenge pursuant to
20 chapter 120.

21 Section 11. (1) The Agency for Health Care
22 Administration shall conduct or contract for a study to
23 determine what information is most feasible to provide to the
24 public comparing state-licensed hospitals on certain inpatient
25 quality indicators developed by the federal Agency for
26 Healthcare Research and Quality. Such indicators shall be
27 designed to identify information about specific procedures
28 performed in hospitals for which there is strong evidence of a
29 link to quality of care. The Agency for Health Care
30 Administration or the study contractor shall refer to the

31

1 hospital quality reports published in New York and Texas as
2 guides during the evaluation.

3 (2) The following concepts shall be specifically
4 addressed in the study report:

5 (a) Whether hospital discharge data about services can
6 be translated into understandable and meaningful information
7 for the public.

8 (b) Whether the following measures are useful consumer
9 guides relating to care provided in state-licensed hospitals:

10 1. Inpatient mortality for medical conditions;

11 2. Inpatient mortality for procedures;

12 3. Utilization of procedures for which there are
13 questions of overuse, underuse, or misuse; and

14 4. Volume of procedures for which there is evidence
15 that a higher volume of procedures is associated with lower
16 mortality.

17 (c) Whether there are quality indicators that are
18 particularly useful relative to the state's unique
19 demographics.

20 (d) Whether all hospitals should be included in the
21 comparison.

22 (e) The criteria for comparison.

23 (f) Whether comparisons are best within metropolitan
24 statistical areas or some other geographic configuration.

25 (g) Identify several websites to which such a report
26 should be published to achieve the broadest dissemination of
27 the information.

28 (3) The Agency for Health Care Administration shall
29 consider the input of all interested parties, including
30 hospitals, physicians, consumer organizations, and patients,
31

1 and submit the final report to the Governor and the presiding
2 officers of the Legislature by January 1, 2004.

3 Section 12. Section 395.1051, Florida Statutes, is
4 created to read:

5 395.1051 Duty to notify patients.--Every licensed
6 facility shall inform each patient, or an individual
7 identified pursuant to s. 765.401(1), in person about adverse
8 incidents that result in serious harm to the patient.

9 Notification of outcomes of care that result in harm to the
10 patient under this section shall not constitute an
11 acknowledgement or admission of liability, nor can it be
12 introduced as evidence.

13 Section 13. Section 456.0575, Florida Statutes, is
14 created to read:

15 456.0575 Duty to notify patients.--Every licensed
16 healthcare practitioner shall inform each patient, or an
17 individual identified pursuant to s. 765.401(1), in person
18 about adverse incidents that result in serious harm to the
19 patient. Notification of outcomes of care that result in harm
20 to the patient under this section shall not constitute an
21 acknowledgement of admission of liability, nor can such
22 notifications be introduced as evidence.

23 Section 14. Section 456.026, Florida Statutes, is
24 amended to read:

25 456.026 Annual report concerning finances,
26 administrative complaints, disciplinary actions, and
27 recommendations.--The department is directed to prepare and
28 submit a report to the President of the Senate and the Speaker
29 of the House of Representatives by November 1 of each year.
30 The department shall publish the report to its website
31 simultaneously with delivery to the President of the Senate

1 and the Speaker of the House of Representatives. The report
2 must be directly accessible on the department's Internet
3 homepage highlighted by easily identifiable links and buttons.
4 In addition to finances and any other information the
5 Legislature may require, the report shall include statistics
6 and relevant information, profession by profession, detailing:
7 (1) The number of health care practitioners licensed
8 by the Division of Medical Quality Assurance or otherwise
9 authorized to provide services in the state, if known to the
10 department.
11 ~~(2)(1)~~ The revenues, expenditures, and cash balances
12 for the prior year, and a review of the adequacy of existing
13 fees.
14 ~~(3)(2)~~ The number of complaints received and
15 investigated.
16 ~~(4)(3)~~ The number of findings of probable cause made.
17 ~~(5)(4)~~ The number of findings of no probable cause
18 made.
19 ~~(6)(5)~~ The number of administrative complaints filed.
20 ~~(7)(6)~~ The disposition of all administrative
21 complaints.
22 ~~(8)(7)~~ A description of disciplinary actions taken.
23 (9) For licensees under chapter 458, chapter 459,
24 chapter 461, or chapter 466, the professional liability claims
25 and actions reported by insurers, as provided in s. 627.912.
26 This information must be provided in a separate section of the
27 report restricted to providing professional liability claims
28 and actions data.
29 ~~(10)(8)~~ A description of any effort by the department
30 to reduce or otherwise close any investigation or disciplinary
31 proceeding not before the Division of Administrative Hearings

1 under chapter 120 or otherwise not completed within 1 year
2 after the initial filing of a complaint under this chapter.

3 (11)~~(9)~~ The status of the development and
4 implementation of rules providing for disciplinary guidelines
5 pursuant to s. 456.079.

6 (12)~~(10)~~ Such recommendations for administrative and
7 statutory changes necessary to facilitate efficient and
8 cost-effective operation of the department and the various
9 boards.

10 Section 15. Section 456.041, Florida Statutes, is
11 amended to read:

12 456.041 Practitioner profile; creation.--

13 (1)(a) Beginning July 1, 1999, the Department of
14 Health shall compile the information submitted pursuant to s.
15 456.039 into a practitioner profile of the applicant
16 submitting the information, except that the Department of
17 Health shall ~~may~~ develop a format to compile uniformly any
18 information submitted under s. 456.039(4)(b). Beginning July
19 1, 2001, the Department of Health may compile the information
20 submitted pursuant to s. 456.0391 into a practitioner profile
21 of the applicant submitting the information.

22 (b) The department shall take no longer than 45
23 business days to update the practitioner's profile in
24 accordance with the requirements of subsection (7).

25 (2) On the profile published under subsection (1), the
26 department shall indicate if the information provided under s.
27 456.039(1)(a)7. or s. 456.0391(1)(a)7. is or is not
28 corroborated by a criminal history check conducted according
29 to this subsection. ~~If the information provided under s.~~
30 ~~456.039(1)(a)7. or s. 456.0391(1)(a)7. is corroborated by the~~
31 ~~criminal history check, the fact that the criminal history~~

1 ~~check was performed need not be indicated on the profile.~~The
2 department, or the board having regulatory authority over the
3 practitioner acting on behalf of the department, shall
4 investigate any information received by the department or the
5 board ~~when it has reasonable grounds to believe that the~~
6 ~~practitioner has violated any law that relates to the~~
7 ~~practitioner's practice.~~

8 (3) The Department of Health shall ~~may~~ include in each
9 practitioner's practitioner profile that criminal information
10 that directly relates to the practitioner's ability to
11 competently practice his or her profession. The department
12 must include in each practitioner's practitioner profile the
13 following statement: "The criminal history information, if
14 any exists, may be incomplete; federal criminal history
15 information is not available to the public." The department
16 shall provide in each practitioner profile, for every final
17 disciplinary action taken against the practitioner, a
18 narrative description, written in plain English that explains
19 the administrative complaint filed against the practitioner
20 and the final disciplinary action imposed on the practitioner.
21 The department shall include a hyperlink to each final order
22 listed in its website report of dispositions of recent
23 disciplinary actions taken against practitioners.

24 (4) The Department of Health shall include, with
25 respect to a practitioner licensed under chapter 458 or
26 chapter 459, a statement of how the practitioner has elected
27 to comply with the financial responsibility requirements of s.
28 458.320 or s. 459.0085. The department shall include, with
29 respect to practitioners subject to s. 456.048, a statement of
30 how the practitioner has elected to comply with the financial
31 responsibility requirements of that section. The department

1 shall include, with respect to practitioners licensed under
2 ~~chapter 458, chapter 459, or chapter 461,~~ information relating
3 to liability actions which has been reported under s. 456.049
4 or s. 627.912 within the previous 10 years for any paid claim
5 that exceeds \$5,000. The department shall include, with
6 respect to practitioners licensed under chapter 458 or chapter
7 459, information relating to liability actions which has been
8 reported under s. 456.049 or s. 627.912 within the previous 10
9 years for any paid claim that exceeds \$100,000. Such claims
10 information shall be reported in the context of comparing an
11 individual practitioner's claims to the experience of other
12 practitioners within the same specialty, or profession if the
13 practitioner is not a specialist, ~~to the extent such~~
14 ~~information is available to the Department of Health.~~ The
15 department must provide a hyperlink in such practitioner's
16 profile to all such comparison reports. If information
17 relating to a liability action is included in a practitioner's
18 practitioner profile, the profile must also include the
19 following statement: "Settlement of a claim may occur for a
20 variety of reasons that do not necessarily reflect negatively
21 on the professional competence or conduct of the practitioner.
22 A payment in settlement of a medical malpractice action or
23 claim should not be construed as creating a presumption that
24 medical malpractice has occurred."

25 (5) The Department of Health shall ~~may not~~ include the
26 date of a hospital or ambulatory surgical center disciplinary
27 action taken by a licensed hospital or an ambulatory surgical
28 center, in accordance with the requirements of s. 395.0193, in
29 the practitioner profile. Any practitioner disciplined under
30 paragraph (1)(b) must report to the department the date the
31 disciplinary action was imposed. The department shall state

1 whether the action related to professional competence and
2 whether it related to the delivery of services to a patient.

3 (6) The Department of Health may include in the
4 practitioner's practitioner profile any other information that
5 is a public record of any governmental entity and that relates
6 to a practitioner's ability to competently practice his or her
7 profession. ~~However, the department must consult with the~~
8 ~~board having regulatory authority over the practitioner before~~
9 ~~such information is included in his or her profile.~~

10 (7) Upon the completion of a practitioner profile
11 under this section, the Department of Health shall furnish the
12 practitioner who is the subject of the profile a copy of it
13 for review and verification. The practitioner has a period of
14 30 days in which to review and verify the contents of the
15 profile and to correct any factual inaccuracies in it. The
16 Department of Health shall make the profile available to the
17 public at the end of the 30-day period regardless of whether
18 the practitioner has provided verification of the profile
19 content. A practitioner shall be subject to a fine of up to
20 \$100 per day for failure to verify the profile contents and to
21 correct any factual errors in his or her profile within the
22 30-day period.The department shall make the profiles
23 available to the public through the World Wide Web and other
24 commonly used means of distribution. The department must
25 include the following statement, in boldface type, in each
26 profile that has not been reviewed by the practitioner to
27 which it applies: "The practitioner has not verified the
28 information contained in this profile."

29 (8) The Department of Health must provide in each
30 profile an easy-to-read explanation of any disciplinary action
31 taken and the reason the sanction or sanctions were imposed.

1 (9) The Department of Health may provide one link in
2 each profile to a practitioner's professional website if the
3 practitioner requests that such a link be included in his or
4 her profile.

5 (10)(8) Making a practitioner profile available to the
6 public under this section does not constitute agency action
7 for which a hearing under s. 120.57 may be sought.

8 Section 16. Section 456.042, Florida Statutes, is
9 amended to read:

10 456.042 Practitioner profiles; update.--A practitioner
11 must submit updates of required information within 15 days
12 after the final activity that renders such information a fact.

13 The Department of Health shall update each practitioner's
14 practitioner profile periodically. An updated profile is
15 subject to the same requirements as an original profile ~~with~~
16 ~~respect to the period within which the practitioner may review~~
17 ~~the profile for the purpose of correcting factual~~
18 ~~inaccuracies.~~

19 Section 17. Subsection (1) of section 456.049, Florida
20 Statutes, is amended to read:

21 456.049 Health care practitioners; reports on
22 professional liability claims and actions.--

23 (1) Any practitioner of medicine licensed pursuant to
24 the provisions of chapter 458, practitioner of osteopathic
25 medicine licensed pursuant to the provisions of chapter 459,
26 podiatric physician licensed pursuant to the provisions of
27 chapter 461, or dentist licensed pursuant to the provisions of
28 chapter 466 shall report to the department any claim or action
29 for damages for personal injury alleged to have been caused by
30 error, omission, or negligence in the performance of such
31 licensee's professional services or based on a claimed

1 performance of professional services without consent ~~if the~~
2 ~~claim was not covered by an insurer required to report under~~
3 ~~s. 627.912~~ and the claim resulted in:

4 (a) A final judgment in any amount.

5 (b) A settlement in any amount.

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

8
9 Reports shall be filed with the department no later than 60
10 days following the occurrence of any event listed in paragraph
11 (a), paragraph (b), or paragraph (c).

12 Section 18. Section 456.051, Florida Statutes, is
13 amended to read:

14 456.051 Reports of professional liability actions;
15 bankruptcies; Department of Health's responsibility to
16 provide.--

17 (1) The report of a claim or action for damages for
18 personal injury which is required to be provided to the
19 Department of Health under s. 456.049 or s. 627.912 is public
20 information except for the name of the claimant or injured
21 person, which remains confidential as provided in ss.
22 456.049(2)(d) and 627.912(2)(e). The Department of Health
23 shall, upon request, make such report available to any person.
24 The department shall make such report available as a part of
25 the practitioner's profile within 45 calendar days after
26 receipt.

27 (2) Any information in the possession of the
28 Department of Health which relates to a bankruptcy proceeding
29 by a practitioner of medicine licensed under chapter 458, a
30 practitioner of osteopathic medicine licensed under chapter
31 459, a podiatric physician licensed under chapter 461, or a

1 dentist licensed under chapter 466 is public information. The
2 Department of Health shall, upon request, make such
3 information available to any person. The department shall make
4 such report available as a part of the practitioner's profile
5 within 45 calendar days after receipt.

6 Section 19. Present subsection (8) of section 458.320,
7 Florida Statutes, is redesignated as subsection (9), and a new
8 subsection (8) is added to that section, to read:

9 458.320 Financial responsibility.--

10 (8) Notwithstanding any other provision of this
11 section, the department shall suspend the license of any
12 physician against whom has been entered a final judgment,
13 arbitration award, or other order or who has entered into a
14 settlement agreement to pay damages arising out of a claim for
15 medical malpractice, if all appellate remedies have been
16 exhausted and payment up to the amounts required by this
17 section has not been made within 30 days after the entering of
18 such judgment, award, or order or agreement, until proof of
19 payment is received by the department or a payment schedule
20 has been agreed upon by the physician and the claimant and
21 presented to the department. This subsection does not apply to
22 a physician who has met the financial responsibility
23 requirements in paragraphs (1)(b) and (2)(b).

24 Section 20. Present subsection (9) of section
25 459.0085, Florida Statutes, is redesignated as subsection
26 (10), and a new subsection (9) is added to that section, to
27 read:

28 459.0085 Financial responsibility.--

29 (9) Notwithstanding any other provision of this
30 section, the department shall suspend the license of any
31 osteopathic physician against whom has been entered a final

1 judgment, arbitration award, or other order or who has entered
2 into a settlement agreement to pay damages arising out of a
3 claim for medical malpractice, if all appellate remedies have
4 been exhausted and payment up to the amounts required by this
5 section has not been made within 30 days after the entering of
6 such judgment, award, or order or agreement, until proof of
7 payment is received by the department or a payment schedule
8 has been agreed upon by the osteopathic physician and the
9 claimant and presented to the department. This subsection does
10 not apply to an osteopathic physician who has met the
11 financial responsibility requirements in paragraphs (1)(b) and
12 (2)(b).

13 Section 21. Civil immunity for members of or
14 consultants to certain boards, committees, or other
15 entities.--

16 (1) Each member of, or health care professional
17 consultant to, any committee, board, group, commission, or
18 other entity shall be immune from civil liability for any act,
19 decision, omission, or utterance done or made in performance
20 of his duties while serving as a member of or consultant to
21 such committee, board, group, commission, or other entity
22 established and operated for purposes of quality improvement
23 review, evaluation, and planning in a state-licensed health
24 care facility. Such entities must function primarily to
25 review, evaluate, or make recommendations relating to:

26 (a) The duration of patient stays in health care
27 facilities;

28 (b) The professional services furnished with respect
29 to the medical, dental, psychological, podiatric,
30 chiropractic, or optometric necessity for such services;
31

1 (c) The purpose of promoting the most efficient use of
2 available health care facilities and services;

3 (d) The adequacy or quality of professional services;

4 (e) The competency and qualifications for professional
5 staff privileges;

6 (f) The reasonableness or appropriateness of charges
7 made by or on behalf of health care facilities; or

8 (g) Patient safety, including entering into contracts
9 with patient safety organizations.

10 (2) Such committee, board, group, commission, or other
11 entity must be established in accordance with state law or in
12 accordance with requirements of the Joint Commission on
13 Accreditation of Healthcare Organizations, established and
14 duly constituted by one or more public or licensed private
15 hospitals or behavioral health agencies, or established by a
16 governmental agency. To be protected by this section, the act,
17 decision, omission, or utterance may not be made or done in
18 bad faith or with malicious intent.

19 Section 22. Patient safety data privilege.--

20 (1) As used in this section, the term:

21 (a) "Patient safety data" means reports made to
22 patient safety organizations, including all health care data,
23 interviews, memoranda, analyses, root cause analyses, products
24 of quality assurance or quality improvement processes,
25 corrective action plans, or information collected or created
26 by a health care facility licensed under chapter 395 or a
27 health care practitioner as defined in section 456.001(4),
28 Florida Statutes, as a result of an occurrence related to the
29 provision of health care services which exacerbates an
30 existing medical condition or could result in injury, illness,
31 or death.

1 (b) "Patient safety organization" means any
2 organization, group, or other entity that collects and
3 analyzes patient safety data for the purpose of improving
4 patient safety and health care outcomes and that is
5 independent and not under the control of the entity that
6 reports patient safety data.

7 (2) Patient safety data shall not be subject to
8 discovery or introduction into evidence in any civil or
9 administrative action.

10 (3) Unless otherwise provided by law, a patient safety
11 organization shall promptly remove all patient-identifying
12 information after receipt of a complete patient safety data
13 report unless such organization is otherwise permitted by
14 state or federal law to maintain such information. Patient
15 safety organizations shall maintain the confidentiality of all
16 patient-identifying information and may not disseminate such
17 information, except as permitted by state or federal law.

18 (4) The exchange of patient safety data among health
19 care facilities licensed under chapter 395 or health care
20 practitioners as defined in section 456.001 (4), Florida
21 Statutes, or patient safety organizations which does not
22 identify any patient shall not constitute a waiver of any
23 privilege established in this section.

24 (5) Reports of patient safety data to patient safety
25 organizations does not abrogate obligations to make reports to
26 the Department of Health, the Agency for Health Care
27 Administration, or other state or federal regulatory agencies.

28 (6) An employer may not take retaliatory action
29 against an employee who in good faith makes a report of
30 patient safety data to a patient safety organization.

31

1 Section 23. Each final settlement statement relating
2 to medical malpractice shall include the following statement:

3 "The decision to settle a case may reflect the economic
4 practicalities pertaining to the cost of litigation and is
5 not, alone, an admission that the insured failed to meet the
6 required standard of care applicable to the patient's
7 treatment. The decision to settle a case may be made by the
8 insurance company without consulting its client for input,
9 unless otherwise provided by the insurance policy."

10 Section 24. Office of Insurance Regulation; closed
11 claim forms; report required.--The Office of Insurance
12 Regulation shall revise its closed claim form for readability
13 at the 9th grade level. The office shall compile annual
14 statistical reports that provide data summaries of all closed
15 claims, including, but not limited to, the number of closed
16 claims on file pertaining to the referent health care
17 professional or health care entity, the nature of the errant
18 conduct, the size of payments, and the frequency and size of
19 noneconomic damage awards. The office shall develop annualized
20 historical statistical summaries beginning with the 1976 state
21 fiscal year and publish these reports on its website no later
22 than the 2005 state fiscal year. The form must accommodate the
23 following minimum requirements:

24 (1) A practitioner of medicine licensed pursuant to
25 chapter 458, Florida Statutes, or a practitioner of
26 osteopathic medicine licensed pursuant to chapter 459, Florida
27 Statutes, shall report to the Office of Insurance Regulation
28 and the Department of Health any claim or action for damages
29 for personal injury alleged to have been caused by error,
30 omission, or negligence in the performance of such licensee's
31 professional services or based on a claimed performance of

1 professional services without consent if the claim was not
2 covered by an insurer required to report under section
3 627.912, Florida Statutes, is not a claim for medical
4 malpractice that is subject to the provisions of section
5 766.106, Florida Statutes, and the claim resulted in:

6 (a) A final judgment in any amount.

7 (b) A settlement in any amount.

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

10
11 Reports shall be filed with the Office of Insurance Regulation
12 no later than 60 days following the occurrence of any event
13 listed in this subsection.

14 (2) Health professional reports must contain:

15 (a) The name and address of the licensee.

16 (b) The alleged occurrence.

17 (c) The date of the alleged occurrence.

18 (d) The date the claim or action was reported to the
19 licensee.

20 (e) The name and address of the opposing party.

21 (f) The date of suit, if filed.

22 (g) The injured person's age and sex.

23 (h) The total number and names of all defendants
24 involved in the claim.

25 (i) The date and amount of judgment or settlement, if
26 any, including the itemization of the verdict, together with a
27 copy of the settlement or judgment.

28 (j) In the case of a settlement, any information
29 required by the Office of Insurance Regulation concerning the
30 injured person's incurred and anticipated medical expense,
31 wage loss, and other expenses.

1 (k) The loss adjustment expense paid to defense
2 counsel, and all other allocated loss adjustment expense paid.

3 (l) The date and reason for final disposition, if
4 there was no judgment or settlement.

5 (m) A summary of the occurrence that created the
6 claim, which must include:

7 1. The name of the institution, if any, and the
8 location within such institution, at which the injury
9 occurred.

10 2. The final diagnosis for which treatment was sought
11 or rendered, including the patient's actual condition.

12 3. A description of the misdiagnosis made, if any, of
13 the patient's actual condition.

14 4. The operation or the diagnostic or treatment
15 procedure causing the injury.

16 5. A description of the principal injury giving rise
17 to the claim.

18 6. The safety management steps that have been taken by
19 the licensee to make similar occurrences or injuries less
20 likely in the future.

21 (n) Any other information required by the Office of
22 Insurance Regulation to analyze and evaluate the nature,
23 causes, location, cost, and damages involved in professional
24 liability cases.

25 Section 25. Paragraph (a) of subsection (1) of section
26 456.039, Florida Statutes, is amended to read:

27 456.039 Designated health care professionals;
28 information required for licensure.--

29 (1) Each person who applies for initial licensure as a
30 physician under chapter 458, chapter 459, chapter 460, or
31 chapter 461, except a person applying for registration

1 pursuant to ss. 458.345 and 459.021, must, at the time of
2 application, and each physician who applies for license
3 renewal under chapter 458, chapter 459, chapter 460, or
4 chapter 461, except a person registered pursuant to ss.
5 458.345 and 459.021, must, in conjunction with the renewal of
6 such license and under procedures adopted by the Department of
7 Health, and in addition to any other information that may be
8 required from the applicant, furnish the following information
9 to the Department of Health:

10 (a)1. The name of each medical school that the
11 applicant has attended, with the dates of attendance and the
12 date of graduation, and a description of all graduate medical
13 education completed by the applicant, excluding any coursework
14 taken to satisfy medical licensure continuing education
15 requirements.

16 2. The name of each hospital at which the applicant
17 has privileges.

18 3. The address at which the applicant will primarily
19 conduct his or her practice.

20 4. Any certification that the applicant has received
21 from a specialty board that is recognized by the board to
22 which the applicant is applying.

23 5. The year that the applicant began practicing
24 medicine.

25 6. Any appointment to the faculty of a medical school
26 which the applicant currently holds and an indication as to
27 whether the applicant has had the responsibility for graduate
28 medical education within the most recent 10 years.

29 7. A description of any criminal offense of which the
30 applicant has been found guilty, regardless of whether
31 adjudication of guilt was withheld, or to which the applicant

1 has pled guilty or nolo contendere. A criminal offense
2 committed in another jurisdiction which would have been a
3 felony or misdemeanor if committed in this state must be
4 reported. If the applicant indicates that a criminal offense
5 is under appeal and submits a copy of the notice for appeal of
6 that criminal offense, the department must state that the
7 criminal offense is under appeal if the criminal offense is
8 reported in the applicant's profile. If the applicant
9 indicates to the department that a criminal offense is under
10 appeal, the applicant must, upon disposition of the appeal,
11 submit to the department a copy of the final written order of
12 disposition.

13 8. A description of any final disciplinary action
14 taken within the previous 10 years against the applicant by
15 the agency regulating the profession that the applicant is or
16 has been licensed to practice, whether in this state or in any
17 other jurisdiction, by a specialty board that is recognized by
18 the American Board of Medical Specialties, the American
19 Osteopathic Association, or a similar national organization,
20 or by a licensed hospital, health maintenance organization,
21 prepaid health clinic, ambulatory surgical center, or nursing
22 home. Disciplinary action includes resignation from or
23 nonrenewal of medical staff membership or the restriction of
24 privileges at a licensed hospital, health maintenance
25 organization, prepaid health clinic, ambulatory surgical
26 center, or nursing home taken in lieu of or in settlement of a
27 pending disciplinary case related to competence or character.
28 If the applicant indicates that the disciplinary action is
29 under appeal and submits a copy of the document initiating an
30 appeal of the disciplinary action, the department must state
31

1 that the disciplinary action is under appeal if the
2 disciplinary action is reported in the applicant's profile.

3 9. Relevant professional qualifications as defined by
4 the applicable board.

5 Section 26. Paragraph (a) of subsection (7) of section
6 456.057, Florida Statutes, is amended to read:

7 456.057 Ownership and control of patient records;
8 report or copies of records to be furnished.--

9 (7)(a)1. The department may obtain patient records
10 pursuant to a subpoena without written authorization from the
11 patient if the department and the probable cause panel of the
12 appropriate board, if any, find reasonable cause to believe
13 that a health care practitioner has excessively or
14 inappropriately prescribed any controlled substance specified
15 in chapter 893 in violation of this chapter or any
16 professional practice act or that a health care practitioner
17 has practiced his or her profession below that level of care,
18 skill, and treatment required as defined by this chapter or
19 any professional practice act and also find that appropriate,
20 reasonable attempts were made to obtain a patient release.

21 2. The department may obtain patient records and
22 insurance information pursuant to a subpoena without written
23 authorization from the patient if the department and the
24 probable cause panel of the appropriate board, if any, find
25 reasonable cause to believe that a health care practitioner
26 has provided inadequate medical care based on termination of
27 insurance and also find that appropriate, reasonable attempts
28 were made to obtain a patient release.

29 3. The department may obtain patient records, billing
30 records, insurance information, provider contracts, and all
31 attachments thereto pursuant to a subpoena without written

1 authorization from the patient if the department and probable
2 cause panel of the appropriate board, if any, find reasonable
3 cause to believe that a health care practitioner has submitted
4 a claim, statement, or bill using a billing code that would
5 result in payment greater in amount than would be paid using a
6 billing code that accurately describes the services performed,
7 requested payment for services that were not performed by that
8 health care practitioner, used information derived from a
9 written report of an automobile accident generated pursuant to
10 chapter 316 to solicit or obtain patients personally or
11 through an agent regardless of whether the information is
12 derived directly from the report or a summary of that report
13 or from another person, solicited patients fraudulently,
14 received a kickback as defined in s. 456.054, violated the
15 patient brokering provisions of s. 817.505, or presented or
16 caused to be presented a false or fraudulent insurance claim
17 within the meaning of s. 817.234(1)(a), and also find that,
18 within the meaning of s. 817.234(1)(a), patient authorization
19 cannot be obtained because the patient cannot be located or is
20 deceased, incapacitated, or suspected of being a participant
21 in the fraud or scheme, and if the subpoena is issued for
22 specific and relevant records. For purposes of this
23 subsection, if the patient refuses to cooperate, is
24 unavailable, or fails to execute a patient release, the
25 department may obtain patient records pursuant to a subpoena
26 without written authorization from the patient.

27 Section 27. Subsection (4) is added to section
28 456.063, Florida Statutes, to read:

29 456.063 Sexual misconduct; disqualification for
30 license, certificate, or registration.--

31

1 (4) Each board, or the department if there is no
2 board, may adopt rules to implement the requirements for
3 reporting allegations of sexual misconduct, including rules to
4 determine the sufficiency of the allegations.

5 Section 28. Each board within the Department of Health
6 which has jurisdiction over health care practitioners who are
7 authorized to prescribe drugs may adopt by rule standards of
8 practice for practitioners who are under that board's
9 jurisdiction for the safe and ethical prescription of drugs to
10 patients via the Internet or other electronic means.

11 Section 29. Subsection (4) of section 456.072, Florida
12 Statutes, is amended, and a new subsection (7) is added to
13 that section to read:

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

16 (4) In addition to any other discipline imposed
17 through final order, or citation, entered on or after July 1,
18 2001, pursuant to this section or discipline imposed through
19 final order, or citation, entered on or after July 1, 2001,
20 for a violation of any practice act, the board, or the
21 department when there is no board, shall assess costs related
22 to the investigation and prosecution of the case. The board,
23 or the department when there is no board, shall determine the
24 amount of costs to be assessed.In any case where the board or
25 the department imposes a fine or assessment and the fine or
26 assessment is not paid within a reasonable time, such
27 reasonable time to be prescribed in the rules of the board, or
28 the department when there is no board, or in the order
29 assessing such fines or costs, the department or the
30 Department of Legal Affairs may contract for the collection
31

1 of, or bring a civil action to recover, the fine or
2 assessment.

3 (7) In any formal administrative hearing conducted
4 under s. 120.57(1), the department shall establish grounds for
5 the discipline of a licensee by the greater weight of the
6 evidence.

7 Section 30. Subsections (1) and (5) of section
8 456.073, Florida Statutes, are amended to read:

9 456.073 Disciplinary proceedings.--Disciplinary
10 proceedings for each board shall be within the jurisdiction of
11 the department.

12 (1) The department, for the boards under its
13 jurisdiction, shall cause to be investigated any complaint
14 that is filed before it if the complaint is in writing, signed
15 by the complainant, and legally sufficient. A complaint is
16 legally sufficient if it contains ultimate facts that show
17 that a violation of this chapter, of any of the practice acts
18 relating to the professions regulated by the department, or of
19 any rule adopted by the department or a regulatory board in
20 the department has occurred. In order to determine legal
21 sufficiency, the department may require supporting information
22 or documentation. The department may investigate, and the
23 department or the appropriate board may take appropriate final
24 action on, a complaint even though the original complainant
25 withdraws it or otherwise indicates a desire not to cause the
26 complaint to be investigated or prosecuted to completion. The
27 department may investigate an anonymous complaint if the
28 complaint is in writing and is legally sufficient, if the
29 alleged violation of law or rules is substantial, and if the
30 department has reason to believe, after preliminary inquiry,
31 that the violations alleged in the complaint are true. The

1 department may investigate a complaint made by a confidential
2 informant if the complaint is legally sufficient, if the
3 alleged violation of law or rule is substantial, and if the
4 department has reason to believe, after preliminary inquiry,
5 that the allegations of the complainant are true. The
6 department may initiate an investigation if it has reasonable
7 cause to believe that a licensee or a group of licensees has
8 violated a Florida statute, a rule of the department, or a
9 rule of a board. The department may investigate information
10 filed pursuant to s. 456.041(4) relating to liability actions
11 with respect to practitioners licensed under chapter 458 and
12 chapter 459 which have been reported under s. 456.049 or s.
13 627.912 within the previous 10 years for any paid claim that
14 exceeds \$50,000.Except as provided in ss. 458.331(9),
15 459.015(9), 460.413(5), and 461.013(6), when an investigation
16 of any subject is undertaken, the department shall promptly
17 furnish to the subject or the subject's attorney a copy of the
18 complaint or document that resulted in the initiation of the
19 investigation. The subject may submit a written response to
20 the information contained in such complaint or document within
21 20 days after service to the subject of the complaint or
22 document. The subject's written response shall be considered
23 by the probable cause panel. The right to respond does not
24 prohibit the issuance of a summary emergency order if
25 necessary to protect the public. However, if the secretary, or
26 the secretary's designee, and the chair of the respective
27 board or the chair of its probable cause panel agree in
28 writing that such notification would be detrimental to the
29 investigation, the department may withhold notification. The
30 department may conduct an investigation without notification
31

1 to any subject if the act under investigation is a criminal
2 offense.

3 (5) A formal hearing before an administrative law
4 judge from the Division of Administrative Hearings, or before
5 an administrative law judge or hearing officer appointed by
6 the appropriate board who has expertise in the profession
7 regulated by the board in cases involving violations of the
8 standard of care in that profession, shall be requested held
9 pursuant to chapter 120 if there are any disputed issues of
10 material fact raised within 45 days after service of the
11 administrative complaint. The administrative law judge shall
12 issue a recommended order pursuant to chapter 120.
13 Notwithstanding s. 120.569(2), the department shall notify the
14 division within 45 days after receipt of a petition or request
15 for a formal hearing. ~~If any party raises an issue of disputed~~
16 ~~fact during an informal hearing, the hearing shall be~~
17 ~~terminated and a formal hearing pursuant to chapter 120 shall~~
18 ~~be held.~~

19 Section 31. Subsection (1) of section 456.077, Florida
20 Statutes, is amended to read:

21 456.077 Authority to issue citations.--

22 (1) Notwithstanding s. 456.073, the board, or the
23 department if there is no board, shall adopt rules to permit
24 the issuance of citations. The citation shall be issued to the
25 subject and shall contain the subject's name and address, the
26 subject's license number if applicable, a brief factual
27 statement, the sections of the law allegedly violated, and the
28 penalty imposed. The citation must clearly state that the
29 subject may choose, in lieu of accepting the citation, to
30 follow the procedure under s. 456.073. If the subject disputes
31 the matter in the citation, the procedures set forth in s.

1 456.073 must be followed. However, if the subject does not
2 dispute the matter in the citation with the department within
3 30 days after the citation is served, the citation becomes a
4 final order and does not constitute ~~constitutes~~ discipline for
5 a first offense. The penalty shall be a fine or other
6 conditions as established by rule.

7 Section 32. Subsection (1) of section 456.078, Florida
8 Statutes, is amended to read:

9 456.078 Mediation.--

10 (1) Notwithstanding the provisions of s. 456.073, the
11 board, or the department when there is no board, shall adopt
12 rules to designate which violations of the applicable
13 professional practice act, including standard-of-care
14 violations, are appropriate for mediation. The board, or the
15 department when there is no board, must ~~may~~ designate as
16 mediation offenses those complaints where harm caused by the
17 licensee is economic in nature or can be remedied by the
18 licensee.

19 Section 33. Paragraph (t) of subsection (1) and
20 subsections (3) and (6) of section 458.331, Florida Statutes,
21 are amended to read:

22 458.331 Grounds for disciplinary action; action by the
23 board and department.--

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

27 (t) Gross or repeated malpractice or the failure to
28 practice medicine with that level of care, skill, and
29 treatment which is recognized by a reasonably prudent similar
30 physician as being acceptable under similar conditions and
31 circumstances. The board shall give great weight to the

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

24 (3) In any administrative action against a physician
25 ~~which does not involve revocation or suspension of license,~~
26 the division shall have the burden, by the greater weight of
27 the evidence, to establish the existence of grounds for
28 disciplinary action. ~~The division shall establish grounds for~~
29 ~~revocation or suspension of license by clear and convincing~~
30 ~~evidence.~~

31

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

15 Section 34. Paragraph (x) of subsection (1) and
16 subsections (3) and (6) of section 459.015, Florida Statutes,
17 are amended to read:

18 459.015 Grounds for disciplinary action; action by the
19 board and department.--

20 (1) The following acts constitute grounds for denial
21 of a license or disciplinary action, as specified in s.
22 456.072(2):

23 (x) Gross or repeated malpractice or the failure to
24 practice osteopathic medicine with that level of care, skill,
25 and treatment which is recognized by a reasonably prudent
26 similar osteopathic physician as being acceptable under
27 similar conditions and circumstances. The board shall give
28 great weight to the provisions of s. 766.102 when enforcing
29 this paragraph. As used in this paragraph, "repeated
30 malpractice" includes, but is not limited to, three or more
31 claims for medical malpractice within the previous 5-year

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

22 (3) In any administrative action against a physician
23 ~~which does not involve revocation or suspension of license,~~
24 the division shall have the burden, by the greater weight of
25 the evidence, to establish the existence of grounds for
26 disciplinary action. ~~The division shall establish grounds for~~
27 ~~revocation or suspension of license by clear and convincing~~
28 ~~evidence.~~

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

1 care practitioner of a report pursuant to s. 456.049, or upon
2 the receipt from a claimant of a presuit notice against an
3 osteopathic physician pursuant to s. 766.106, the department
4 shall review each report and determine whether it potentially
5 involved conduct by a licensee that is subject to disciplinary
6 action, in which case the provisions of s. 456.073 shall
7 apply. However, if it is reported that an osteopathic
8 physician has had three or more claims with indemnities
9 exceeding \$50,000~~\$25,000~~ each within the previous 5-year
10 period, the department shall investigate the occurrences upon
11 which the claims were based and determine if action by the
12 department against the osteopathic physician is warranted.

13 Section 35. Paragraph (s) of subsection (1) and
14 paragraph (a) of subsection (5) of section 461.013, Florida
15 Statutes, are amended to read:

16 461.013 Grounds for disciplinary action; action by the
17 board; investigations by department.--

18 (1) The following acts constitute grounds for denial
19 of a license or disciplinary action, as specified in s.
20 456.072(2):

21 (s) Gross or repeated malpractice or the failure to
22 practice podiatric medicine at a level of care, skill, and
23 treatment which is recognized by a reasonably prudent
24 podiatric physician as being acceptable under similar
25 conditions and circumstances. The board shall give great
26 weight to the standards for malpractice in s. 766.102 in
27 interpreting this section. As used in this paragraph,
28 "repeated malpractice" includes, but is not limited to, three
29 or more claims for medical malpractice within the previous
30 5-year period resulting in indemnities being paid in excess of
31 \$50,000~~\$10,000~~ each to the claimant in a judgment or

1 settlement and which incidents involved negligent conduct by
2 the podiatric physicians. As used in this paragraph, "gross
3 malpractice" or "the failure to practice podiatric medicine
4 with the level of care, skill, and treatment which is
5 recognized by a reasonably prudent similar podiatric physician
6 as being acceptable under similar conditions and
7 circumstances" shall not be construed so as to require more
8 than one instance, event, or act.

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

23 Section 36. Paragraph (x) of subsection (1) of section
24 466.028, Florida Statutes, is amended to read:

25 466.028 Grounds for disciplinary action; action by the
26 board.--

27 (1) The following acts constitute grounds for denial
28 of a license or disciplinary action, as specified in s.
29 456.072(2):

30 (x) Being guilty of incompetence or negligence by
31 failing to meet the minimum standards of performance in

1 diagnosis and treatment when measured against generally
2 prevailing peer performance, including, but not limited to,
3 the undertaking of diagnosis and treatment for which the
4 dentist is not qualified by training or experience or being
5 guilty of dental malpractice. For purposes of this paragraph,
6 it shall be legally presumed that a dentist is not guilty of
7 incompetence or negligence by declining to treat an individual
8 if, in the dentist's professional judgment, the dentist or a
9 member of her or his clinical staff is not qualified by
10 training and experience, or the dentist's treatment facility
11 is not clinically satisfactory or properly equipped to treat
12 the unique characteristics and health status of the dental
13 patient, provided the dentist refers the patient to a
14 qualified dentist or facility for appropriate treatment. As
15 used in this paragraph, "dental malpractice" includes, but is
16 not limited to, three or more claims within the previous
17 5-year period which resulted in indemnity being paid, or any
18 single indemnity paid in excess of \$25,000~~\$5,000~~ in a
19 judgment or settlement, as a result of negligent conduct on
20 the part of the dentist.

21 Section 37. Subsection (1) of section 627.912, Florida
22 Statutes, is amended to read:

23 627.912 Professional liability claims and actions;
24 reports by insurers.--

25 (1) Each self-insurer authorized under s. 627.357 and
26 each insurer or joint underwriting association providing
27 professional liability insurance to a practitioner of medicine
28 licensed under chapter 458, to a practitioner of osteopathic
29 medicine licensed under chapter 459, to a podiatric physician
30 licensed under chapter 461, to a dentist licensed under
31 chapter 466, to a hospital licensed under chapter 395, to a

1 crisis stabilization unit licensed under part IV of chapter
2 394, to a health maintenance organization certificated under
3 part I of chapter 641, to clinics included in chapter 390, to
4 an ambulatory surgical center as defined in s. 395.002, or to
5 a member of The Florida Bar shall report in duplicate to the
6 Department of Insurance any claim or action for damages for
7 personal injuries claimed to have been caused by error,
8 omission, or negligence in the performance of such insured's
9 professional services or based on a claimed performance of
10 professional services without consent, if the claim resulted
11 in:

12 (a) A final judgment in any amount.

13 (b) A settlement in any amount.

14

15 Reports shall be filed with the department ~~and~~, If the
16 insured party is licensed under chapter 458, chapter 459, or
17 chapter 461, and the final judgment or settlement amount was
18 \$50,000 or more, or if the insured party is licensed under
19 chapter 466 and the final judgment or settlement amount was
20 \$25,000 or more, the report shall be filed ~~or chapter 466,~~
21 with the Department of Health, no later than 30 days following
22 the occurrence of any event listed in paragraph (a) or
23 paragraph (b). The Department of Health shall review each
24 report and determine whether any of the incidents that
25 resulted in the claim potentially involved conduct by the
26 licensee that is subject to disciplinary action, in which case
27 the provisions of s. 456.073 shall apply. The Department of
28 Health, as part of the annual report required by s. 456.026,
29 shall publish annual statistics, without identifying
30 licensees, on the reports it receives, including final action
31

1 taken on such reports by the Department of Health or the
2 appropriate regulatory board.

3 Section 38. The Office of Program Policy Analysis and
4 Government Accountability and the Office of the Auditor
5 General must jointly conduct an audit of the Department of
6 Health's health care practitioner disciplinary process and
7 closed claims that are filed with the department under section
8 627.912, Florida Statutes. The Office of Program Policy
9 Analysis and Government Accountability and the Office of the
10 Auditor General shall submit a report to the Legislature by
11 January 1, 2004.

12 Section 39. Section 1004.08, Florida Statutes, is
13 created to read:

14 1004.08 Patient safety instructional
15 requirements.--Each public school, college, and university
16 that offers degrees in medicine, nursing, or allied health
17 shall include in the curricula applicable to such degrees
18 material on patient safety, including patient safety
19 improvement. Materials shall include, but need not be limited
20 to, effective communication and teamwork; epidemiology of
21 patient injuries and medical errors; medical injuries;
22 vigilance, attention and fatigue; checklists and inspections;
23 automation, technological, and computer support; psychological
24 factors in human error; and reporting systems.

25 Section 40. Section 1005.07, Florida Statutes, is
26 created to read:

27 1005.07 Patient safety instructional
28 requirements.--Each private school, college, and university
29 that offers degrees in medicine, nursing, and allied health
30 shall include in the curricula applicable to such degrees
31 material on patient safety, including patient safety

1 improvement. Materials shall include, but need not be limited
2 to, effective communication and teamwork; epidemiology of
3 patient injuries and medical errors; medical injuries;
4 vigilance, attention and fatigue; checklists and inspections;
5 automation, technological, and computer support; psychological
6 factors in human error; and reporting systems.

7 Section 41. If any provision of this act or its
8 application to any person or circumstance is held invalid, the
9 invalidity does not affect other provisions or applications of
10 the act which can be given effect without the invalid
11 provision or application, and to this end the provisions of
12 this act are severable.

13 Section 42. No later than September 1, 2003, the
14 Department of Health shall convene a workgroup to study the
15 current healthcare practitioner disciplinary process. The
16 workgroup shall include a representative of the Administrative
17 Law section of The Florida Bar, a representative of the Health
18 Law section of The Florida Bar, a representative of the
19 Florida Medical Association, a representative of the Florida
20 Osteopathic Medical Association, a representative of the
21 Florida Dental Association, a member of the Florida Board of
22 Medicine who has served on the probable cause panel, a member
23 of the Board of Osteopathic Medicine who has served on the
24 probable cause panel, and a member of the Board of Dentistry
25 who has served on the probable cause panel. The workgroup
26 shall also include one consumer member of the Board of
27 Medicine. The Department of Health shall present the findings
28 and recommendations to the Governor, the President of the
29 Senate, and the Speaker of the House of Representatives no
30 later than January 1, 2004. The sponsoring organizations shall
31 assume the costs of their representative.

1 Section 43. Except as otherwise expressly provided in
2 this act, this act shall take effect upon becoming a law.

3
4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 Senate Bill CS 0562

- 7 - Provides that the act relates to health care;
- 8 - Contains elements of SB 1912, relating to health care,
9 including provisions addressing the reports of adverse
10 incidents, revising practitioner profiles and other licensing
11 issues and providing civil immunity for peer-review
12 activities;
- 13 - Provides additional authority to Department of Health to
14 investigate closed claims against medical and osteopathic
15 physicians which had payments greater than \$50,000;
- 16 - Provides rulemaking authority to each board within the
17 Department of Health to adopt rules governing the prescribing
18 of drugs to patients over the internet;
- 19 - Provides that regulated entities assessed by the Florida
20 Center for Excellence in Health Care may apply the assessment
21 against individuals served by the entities;
- 22 - Removes provisions reducing the standard of proof from
23 clear and convincing evidence to a preponderance of the
24 evidence in suspension/revocation disciplinary cases against
25 chiropractors;
- 26 - Removes statement of legislative intent concerning the
27 issue of standard of proof in suspension/revocation
28 disciplinary cases against practitioners; and
- 29 - Creates a study workgroup on the health care practitioner
30 disciplinary process which is to provide its report by January
31 1, 2004.