

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

309-2427-03

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

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

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

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

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

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

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

1 historical statistical summaries; specifying
2 certain information to be included on the
3 closed claim form; amending s. 456.039, F.S.;
4 amending the information required to be
5 furnished to the Department of Health for
6 licensure purposes; amending s. 456.057, F.S.;
7 allowing the department to obtain patient
8 records by subpoena without the patient's
9 written authorization, in specified
10 circumstances; amending s. 456.063, F.S.;
11 providing for adopting rules to implement
12 requirements for reporting allegations of
13 sexual misconduct; authorizing health care
14 practitioner regulatory boards to adopt rules
15 to establish standards of practice for
16 prescribing drugs to patients via the Internet;
17 amending s. 456.072, F.S.; providing for
18 determining the amount of any costs to be
19 assessed in a disciplinary proceeding;
20 prescribing the standard of proof in certain
21 disciplinary proceedings; amending s. 456.073,
22 F.S.; authorizing the Department of Health to
23 investigate certain paid claims made on behalf
24 of practitioners licensed under ch. 458 or ch.
25 459, F.S.; amending procedures for certain
26 disciplinary proceedings; providing a deadline
27 for raising issues of material fact; providing
28 a deadline relating to notice of receipt of a
29 request for a formal hearing; amending s.
30 456.077, F.S.; providing a presumption related
31 to an undisputed citation; amending s. 456.078,

1 F.S.; revising standards for determining which
2 violations of the applicable professional
3 practice act are appropriate for mediation;
4 amending s. 458.331, F.S., relating to grounds
5 for disciplinary action of a physician;
6 redefining the term "repeated malpractice";
7 revising the standards for the burden of proof
8 in an administrative action against a
9 physician; revising the minimum amount of a
10 claim against a licensee which will trigger a
11 departmental investigation; amending s.
12 459.015, F.S., relating to grounds for
13 disciplinary action against an osteopathic
14 physician; redefining the term "repeated
15 malpractice"; revising the standards for the
16 burden of proof in an administrative action
17 against an osteopathic physician; amending
18 conditions that necessitate a departmental
19 investigation of an osteopathic physician;
20 revising the minimum amount of a claim against
21 a licensee which will trigger a departmental
22 investigation; amending s. 461.013, F.S.,
23 relating to grounds for disciplinary action
24 against a podiatric physician; redefining the
25 term "repeated malpractice"; amending the
26 minimum amount of a claim against such a
27 physician which will trigger a department
28 investigation; amending s. 466.028, F.S.,
29 relating to grounds for disciplinary action
30 against a dentist or a dental hygienist;
31 redefining the term "dental malpractice";

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

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsection (15) of section 120.80, Florida
26 Statutes, is amended to read:

27 120.80 Exceptions and special requirements;
28 agencies.--

29 (15) DEPARTMENT OF HEALTH.--Notwithstanding s.
30 120.57(1)(a), formal hearings may not be conducted by the
31 Secretary of Health, the Secretary of Health Care

1 Administration, or a board or member of a board within the
2 Department of Health or the Agency for Health Care
3 Administration for matters relating to the regulation of
4 professions, as defined by chapter 456, except that a board
5 within the Department of Health may appoint an administrative
6 law judge or hearing officer who has expertise in the
7 profession regulated by the board to conduct hearings
8 involving standard-of-care cases. Notwithstanding s.
9 120.57(1)(a), hearings conducted within the Department of
10 Health in execution of the Special Supplemental Nutrition
11 Program for Women, Infants, and Children; Child Care Food
12 Program; Children's Medical Services Program; the Brain and
13 Spinal Cord Injury Program; and the exemption from
14 disqualification reviews for certified nurse assistants
15 program need not be conducted by an administrative law judge
16 assigned by the division. The Department of Health may
17 contract with the Department of Children and Family Services
18 for a hearing officer in these matters.

19 Section 2. Effective upon this act becoming law if CS
20 for SB 566 or similar legislation is adopted in the same
21 legislative session or an extension thereof and becomes law,
22 section 381.0409, Florida Statutes, is created to read:

23 381.0409 Florida Center for Excellence in Health
24 Care.--There is created the Florida Center for Excellence in
25 Health Care which shall be responsible for performing
26 activities and functions that are designed to improve the
27 quality of health care delivered by health care facilities and
28 health care practitioners. The principal goals of the center
29 are to improve health care quality and patient safety. The
30 long-term goal is to improve diagnostic and treatment
31 decisions, thus further improving quality.

- 1 (1) As used in this section, the term:
2 (a) "Center" means the Center for Excellence in Health
3 Care.
4 (b) "Health care practitioner" means any person as
5 defined under s. 456.001(4).
6 (c) "Health care facility" means any facility licensed
7 under chapter 395.
8 (d) "Health research entity" means any university or
9 academic health center engaged in research designed to
10 improve, prevent, diagnose, or treat diseases or medical
11 conditions or an entity that receives state or federal funds
12 for such research.
13 (e) "Patient safety data" means any data, reports,
14 records, memoranda, or analyses of patient safety events and
15 adverse incidents reported by a licensed facility pursuant to
16 s. 395.0197 which are submitted to the Florida Center for
17 Health Care Excellence or the corrective actions taken in
18 response to such patient safety events or adverse incidents.
19 (f) "Patient safety event" means an event over which
20 health care personnel could exercise control and which is
21 associated in whole or in part with medical intervention,
22 rather than the condition for which such intervention
23 occurred, and which could have resulted, but did not result in
24 serious patient injury or death.
25 (2) The center shall, either directly or by contract:
26 (a) Analyze patient safety data for the purpose of
27 recommending changes in practices and procedures which may be
28 implemented by health care practitioners and health care
29 facilities to prevent future adverse incidents.
30 (b) Collect, analyze, and evaluate patient safety data
31 submitted voluntarily by a health care practitioner or health

1 care facility. The center shall recommend to health care
2 practitioners and health care facilities changes in practices
3 and procedures that may be implemented for the purpose of
4 improving patient safety and preventing patient safety events.

5 (c) Foster the development of a statewide electronic
6 infrastructure, which may be implemented in phases over a
7 multiyear period, that is designed to improve patient care and
8 the delivery and quality of health care services by health
9 care facilities and practitioners. The electronic
10 infrastructure shall be a secure platform for communication
11 and the sharing of clinical and other data, such as business
12 data, among providers and between patients and providers. The
13 electronic infrastructure shall include a "core" electronic
14 medical record. Health care practitioners and health care
15 facilities shall have access to individual electronic medical
16 records subject to the consent of the individual. Health
17 insurers licensed under chapter 627 or chapter 641 shall have
18 access to the electronic medical records of their policy
19 holders and, subject to the provisions of s. 381.04091, to
20 other data if such access is for the sole purpose of
21 conducting research to identify diagnostic tests and
22 treatments that are medically effective. Health research
23 entities shall have access to the electronic medical records
24 of individuals subject to the consent of the individual and
25 subject to the provisions of s. 381.04091 and to other data if
26 such access is for the sole purpose of conducting research to
27 identify diagnostic tests and treatments that are medically
28 effective.

29 (d) Inventory hospitals to determine the current
30 status of implementation of computerized physician medication
31 ordering systems and recommend a plan for expediting

1 implementation statewide or, in hospitals where the center
2 determines that implementation of such systems is not
3 practicable, alternative methods to reduce medication errors.
4 The center shall identify in its plan any barriers to
5 statewide implementation and shall include recommendations to
6 the Legislature of statutory changes that may be necessary to
7 eliminate those barriers.

8 (e) Establish a simulation center for high technology
9 intervention surgery and intensive care for use by all
10 hospitals.

11 (f) Identify best practices and share this information
12 with health care providers.

13
14 Nothing in this section shall serve to limit the scope of
15 services provided by the center with regard to engaging in
16 other activities that improve health care quality, improve the
17 diagnosis and treatment of diseases and medical conditions,
18 increase the efficiency of the delivery of health care
19 services, increase administrative efficiency, and increase
20 access to quality health care services.

21 (3) Notwithstanding s. 381.04091, the center may
22 release information contained in patient safety data to any
23 health care practitioner or health care facility when
24 recommending changes in practices and procedures which may be
25 implemented by such practitioner or facility to prevent
26 patient safety events or adverse incidents.

27 (4) All information related to adverse incident
28 reports and all patient safety data submitted to or received
29 by the center shall not be subject to discovery or
30 introduction into evidence in any civil or administrative
31 action. Individuals in attendance at meetings held for the

1 purpose of discussing information related to adverse incidents
2 and patient safety data and meetings held to formulate
3 recommendations to prevent future adverse incidents or patient
4 safety events may not be permitted or required to testify in
5 any civil or administrative action related to such events.
6 There shall be no liability on the part of, and no cause of
7 action of any nature shall arise against, any employee or
8 agent of the center for any lawful action taken by such
9 individual in advising health practitioners or health care
10 facilities with regard to carrying out their duties under this
11 section. There shall be no liability on the part of, and no
12 cause of action of any nature shall arise against, a health
13 care practitioner or health care facility, its agents, or
14 employees, when it acts in reliance on any advice or
15 information provided by the center.

16 (5) The center shall be a nonprofit corporation
17 registered, incorporated, organized, and operated in
18 compliance with chapter 617, and shall have all powers
19 necessary to carry out the purposes of this section,
20 including, but not limited to, the power to receive and accept
21 from any source contributions of money, property, labor, or
22 any other thing of value, to be held, used, and applied for
23 the purpose of this section.

24 (6) The center shall:

25 1. Be designed and operated by an individual or entity
26 with demonstrated expertise in health care quality data and
27 systems analysis, health information management, systems
28 thinking and analysis, human factors analysis, and
29 identification of latent and active errors.

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

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

3 (a) The Governor shall appoint two members
4 representing hospitals, one member representing physicians,
5 one member representing nurses, one member representing health
6 insurance indemnity plans, one member representing health
7 maintenance organizations, one member representing business,
8 and one member representing consumers. The Governor shall
9 appoint members for a 2-year term. Such members shall serve
10 until their successors are appointed. Members are eligible to
11 be reappointed for additional terms.

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

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

16 (d) The members shall elect a chairperson.

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

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

20 (a) Notwithstanding any law to the contrary, each
21 health insurer issued a certificate of authority under part
22 VI, part VII, or part VIII of chapter 627 shall, as a
23 condition of maintaining such certificate, make payment to the
24 center on April 1 of each year, in the amount of \$1 for each
25 individual included in every insurance policy issued during
26 the previous calendar year. Accompanying any payment shall be
27 a certification under oath by the chief executive officer that
28 states the number of individuals that such payment was based
29 on. The health insurer may collect this \$1 from policyholders.
30 The center may direct the insurer to provide an independent
31 audit of the certification that shall be furnished within 90

1 days. If payment is not received by the center within 30 days
2 after April 1, interest at the annualized rate of 18 percent
3 shall begin to be charged on the amount due. If payment has
4 not been received within 60 days after interest is charged,
5 the center shall notify the Office of Insurance Regulation
6 that payment has not been received pursuant to the
7 requirements of this paragraph. An insurer that refuses to
8 comply with the requirements of this paragraph is subject to
9 the forfeiture of its certificate of authority.

10 (b) Notwithstanding any law to the contrary, each
11 health maintenance organization issued a certificate of
12 authority under part I of chapter 641 and each prepaid clinic
13 issued a certificate of authority under part II of chapter 641
14 shall, as a condition of maintaining such certificate, make
15 payment to the center on April 1 of each year, in the amount
16 of \$1 for each individual who is eligible to receive services
17 pursuant to a contract with the health maintenance
18 organization or the prepaid clinic during the previous
19 calendar year. Accompanying any payment shall be a
20 certification under oath by the chief executive officer that
21 states the number of individuals that such payment was based
22 on. The health maintenance organization or prepaid clinic may
23 collect the \$1 from individuals eligible to receive services
24 under contract. The center may direct the health maintenance
25 organization or prepaid clinic to provide an independent audit
26 of the certification that shall be furnished within 90 days.
27 If payment is not received by the center within 30 days after
28 April 1, interest at the annualized rate of 18 percent shall
29 begin to be charged on the amount due. If payment has not been
30 received within 60 days after interest is charged, the center
31 shall notify the Department of Financial Services that payment

1 has not been received pursuant to the requirements of this
2 paragraph. A health maintenance organization or prepaid clinic
3 that refuses to comply with the requirements of this paragraph
4 is subject to the forfeiture of its certificate of authority.

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

26 (d) Notwithstanding any law to the contrary, each
27 nursing home licensed under part II of chapter 400, each
28 assisted living facility licensed under part III of chapter
29 400, each home health agency licensed under part IV of chapter
30 400, each hospice licensed under part VI of chapter 400, each
31 prescribed pediatric extended care center licensed under part

1 IX of chapter 400, and each health care services pool licensed
2 under part XII of chapter 400 shall, as a condition of
3 licensure, make payment to the center on April 1 of each year,
4 in the amount of \$1 for each individual served by each
5 aforementioned entity during the previous 12 months.
6 Accompanying payment shall be a certification under oath by
7 the chief executive officer that states the number of
8 individuals that such payment was based on. The entity may
9 collect the \$1 from individuals served by the entity. The
10 center may direct the entity to provide an independent audit
11 of the certification that shall be furnished within 90 days.
12 If payment is not received by the center within 30 days after
13 April 1, interest at the annualized rate of 18 percent shall
14 begin to be charged on the amount due. If payment has not been
15 received within 60 days after interest is charged, the center
16 shall notify the Agency for Health Care Administration that
17 payment has not been received pursuant to the requirements of
18 this paragraph. An entity that refuses to comply with the
19 requirements of this paragraph is subject to the forfeiture of
20 its license.

21 (e) Notwithstanding any law to the contrary, each
22 initial application and renewal fee for each license and each
23 fee for certification or recertification for each person
24 licensed or certified under chapter 401 or chapter 404, and
25 for each person licensed as a health care practitioner defined
26 in s. 456.001(4), shall be increased by the amount of \$1 for
27 each year for which the license or certification is issued.
28 The Department of Health shall make payment to the center on
29 April 1 of each year in the amount of the total received
30 pursuant to this paragraph during the preceding 12 months.

31

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

5 (9) The center may enter into affiliations with
6 universities for any purpose.

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

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

14 (12) The center may use state purchasing and travel
15 contracts and the state communications system in accordance
16 with s. 282.105(3).

17 (13) The center may acquire, enjoy, use, and dispose
18 of patents, copyrights, trademarks and any licenses,
19 royalties, and other rights or interests thereunder or
20 therein.

21 (14) The center shall submit an annual report to the
22 Governor, the President of the Senate, and the Speaker of the
23 House of Representatives no later than October 1 of each year
24 which includes:

25 (a) The status report on the implementation of a
26 program to analyze data concerning adverse incidents and
27 patient safety events.

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

30 (c) The status report on the implementation of an
31 electronic medical record.

1 (d) Other pertinent information relating to the
2 efforts of the center to improve health care quality and
3 efficiency.

4 (e) A financial statement and balance sheet.

5
6 The initial report shall include any recommendations that the
7 center deems appropriate regarding revisions in the definition
8 of adverse incidents in s. 395.0197 and the reporting of such
9 adverse incidents by licensed facilities.

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

17 (16) The center may carry over funds from year to
18 year.

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

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

23 (19) In carrying out this section, the center shall
24 consult with and develop partnerships, as appropriate, with
25 all segments of the health care industry, including, among
26 others, health practitioners, health care facilities, health
27 care consumers, professional organizations, agencies, health
28 care practitioner licensing boards, and educational
29 institutions.

30 Section 3. Section 395.1012, Florida Statutes, is
31 created to read:

1 395.1012 Patient safety.--

2 (1) Each licensed facility must adopt a patient safety
3 plan. A plan adopted to implement the requirements of 42 CFR
4 482.21 shall be deemed to comply with this requirement.

5 (2) Each licensed facility shall appoint a patient
6 safety officer and a patient safety committee, which shall
7 include at least one person who is neither employed by nor
8 practicing in the facility, for the purpose of promoting the
9 health and safety of patients, reviewing and evaluating the
10 quality of patient safety measures used by the facility, and
11 for assisting in the implementation of the facility patient
12 safety plan.

13 Section 4. Subsection (3) is added to section 395.004,
14 Florida Statutes, to read:

15 395.004 Application for license, fees; expenses.--

16 (3) A licensed facility may apply to the agency for
17 certification of a quality improvement program that results in
18 the reduction of adverse incidents at that facility. The
19 agency, in consultation with the Office of Insurance
20 Regulation, shall develop criteria for such certification.
21 Insurers shall file with the Office of Insurance Regulation a
22 discount in the rate or rates applicable for medical liability
23 insurance coverage to reflect the implementation of a
24 certified program. In reviewing insurance company filings with
25 respect to rate discounts authorized under this subsection,
26 the Office of Insurance Regulation shall consider whether, and
27 the extent to which, the program certified under this
28 subsection is otherwise covered under a program of risk
29 management offered by an insurance company or self-insurance
30 plan providing medical liability coverage.

31

1 Section 5. Subsection (2) of section 766.106, Florida
2 Statutes, is amended to read:

3 766.106 Notice before filing action for medical
4 malpractice; presuit screening period; offers for admission of
5 liability and for arbitration; informal discovery; review.--

6 (2) After completion of presuit investigation pursuant
7 to s. 766.203 and prior to filing a claim for medical
8 malpractice, a claimant shall notify each prospective
9 defendant by certified mail, return receipt requested, of
10 intent to initiate litigation for medical malpractice.
11 Following the initiation of a suit alleging medical
12 malpractice with a court of competent jurisdiction, and
13 service of the complaint upon a defendant, the claimant shall
14 provide a copy of the complaint to the Department of Health
15 and, if the complaint involves a facility licensed under
16 chapter 395, the Agency for Health Care Administration. The
17 requirement of providing the complaint to the Department of
18 Health or the Agency for Health Care Administration does not
19 impair the claimant's legal rights or ability to seek relief
20 for his or her claim. The Department of Health or the Agency
21 for Health Care Administration shall review each incident that
22 is the subject of the complaint and determine whether it
23 involved conduct by a licensee which is potentially subject to
24 disciplinary action, in which case the provisions of s.
25 456.073 or s. 395.1046 apply.

26 Section 6. Section 395.0056, Florida Statutes, is
27 created to read:

28 395.0056 Litigation notice requirement.--Upon receipt
29 of a copy of a complaint filed against a hospital as a
30 defendant in a medical malpractice action as required by s.
31 766.106(2), the agency shall:

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

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

8 Section 7. Subsections (3) and (9) of section
9 395.0193, Florida Statutes, are amended to read:

10 395.0193 Licensed facilities; peer review;
11 disciplinary powers; agency or partnership with physicians.--

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

24 (a) Incompetence.

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

28 (c) Mental or physical impairment which may adversely
29 affect patient care.

30 (d) Mental or physical abuse of a nurse or other staff
31 member.

1 ~~(e)(d)~~ Being found liable by a court of competent
2 jurisdiction for medical negligence or malpractice involving
3 negligent conduct.

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

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

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

12 (9)(a) If the defendant prevails in an action brought
13 by a staff member or physician who delivers health care
14 services at the licensed facility against any person or entity
15 that initiated, participated in, was a witness in, or
16 conducted any review as authorized by this section, the court
17 shall award reasonable attorney's fees and costs to the
18 defendant.

19 (b) As a condition of any staff member or physician
20 bringing any action against any person or entity that
21 initiated, participated in, was a witness in, or conducted any
22 review as authorized by this section and before any responsive
23 pleading is due, the staff member or physician shall post a
24 bond or other security, as set by the court having
25 jurisdiction of the action, in an amount sufficient to pay the
26 costs and attorney's fees. A defendant's monetary liability
27 under this section shall not exceed \$250,000.

28 Section 8. Subsections (1), (3), (4), and (8) of
29 section 395.0197, Florida Statutes, are amended, present
30 subsections (12) through (20) of that section are redesignated
31

1 as subsections (13) through (21), respectively, and a new
2 subsection (12) is added to that section, to read:

3 395.0197 Internal risk management program.--

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

8 (a) The investigation and analysis of the frequency
9 and causes of general categories and specific types of adverse
10 incidents to patients.

11 (b) The development of appropriate measures to
12 minimize the risk of adverse incidents to patients, including,
13 but not limited to:

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

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

18 b. At least 1 hour of such education and training
19 annually for all personnel of the licensed facility working in
20 clinical areas and providing patient care, ~~except those~~
21 ~~persons licensed as health care practitioners who are required~~
22 ~~to complete continuing education coursework pursuant to~~
23 ~~chapter 456 or the respective practice act.~~

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

31 a. Live visual observation;

- 1 b. Electronic observation; or
- 2 c. Any other reasonable measure taken to ensure
- 3 patient protection and privacy.
- 4 3. A prohibition against an unlicensed person from
- 5 assisting or participating in any surgical procedure unless
- 6 the facility has authorized the person to do so following a
- 7 competency assessment, and such assistance or participation is
- 8 done under the direct and immediate supervision of a licensed
- 9 physician and is not otherwise an activity that may only be
- 10 performed by a licensed health care practitioner.
- 11 4. Development, implementation, and ongoing evaluation
- 12 of procedures, protocols, and systems to accurately identify
- 13 patients, planned procedures, and the correct site of the
- 14 planned procedure so as to minimize the performance of a
- 15 surgical procedure on the wrong patient, a wrong surgical
- 16 procedure, a wrong-site surgical procedure, or a surgical
- 17 procedure otherwise unrelated to the patient's diagnosis or
- 18 medical condition.
- 19 (c) The analysis of patient grievances that relate to
- 20 patient care and the quality of medical services.
- 21 (d) A system for informing a patient or an individual
- 22 identified pursuant to s. 765.401(1) that the patient was the
- 23 subject of an adverse incident, as defined in subsection (5).
- 24 Such notice shall be given by the risk manager, or his or her
- 25 designee, as soon as practicable to allow the patient an
- 26 opportunity to minimize damage or injury.
- 27 (e)~~(d)~~ The development and implementation of an
- 28 incident reporting system based upon the affirmative duty of
- 29 all health care providers and all agents and employees of the
- 30 licensed health care facility to report adverse incidents to
- 31

1 the risk manager, or to his or her designee, within 3 business
2 days after their occurrence.

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

20 (4) The agency shall adopt rules governing the
21 establishment of internal risk management programs to meet the
22 needs of individual licensed facilities. Each internal risk
23 management program shall include the use of incident reports
24 to be filed with an individual of responsibility who is
25 competent in risk management techniques in the employ of each
26 licensed facility, such as an insurance coordinator, or who is
27 retained by the licensed facility as a consultant. The
28 individual responsible for the risk management program shall
29 have free access to all medical records of the licensed
30 facility. The incident reports are part of the workpapers of
31 the attorney defending the licensed facility in litigation

1 relating to the licensed facility and are subject to
2 discovery, but are not admissible as evidence in court. A
3 person filing an incident report is not subject to civil suit
4 by virtue of such incident report. A person who has the duty
5 to file an incident report but who fails to do so within the
6 timeframes established under this section shall be subject to
7 disciplinary action by the licensed facility and the
8 appropriate regulatory board and is subject to a fine of up to
9 \$1,000 for each day the report was not timely submitted.As a
10 part of each internal risk management program, the incident
11 reports shall be used to develop categories of incidents which
12 identify problem areas. Once identified, procedures shall be
13 adjusted to correct the problem areas.

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

19 (a) The death of a patient;

20 (b) Brain or spinal damage to a patient;

21 (c) The performance of a surgical procedure on the
22 wrong patient;

23 (d) The performance of a wrong-site surgical
24 procedure;

25 (e) The performance of a wrong surgical procedure;

26 (f) The performance of a surgical procedure that is
27 medically unnecessary or otherwise unrelated to the patient's
28 diagnosis or medical condition;

29 (g) The surgical repair of damage resulting to a
30 patient from a planned surgical procedure, where the damage is
31

1 not a recognized specific risk, as disclosed to the patient
2 and documented through the informed-consent process; or

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

5
6 The agency may grant extensions to this reporting requirement
7 for more than 15 days upon justification submitted in writing
8 by the facility administrator to the agency. The agency may
9 require an additional, final report. These reports shall not
10 be available to the public pursuant to s. 119.07(1) or any
11 other law providing access to public records, nor be
12 discoverable or admissible in any civil or administrative
13 action, except in disciplinary proceedings by the agency or
14 the appropriate regulatory board, nor shall they be available
15 to the public as part of the record of investigation for and
16 prosecution in disciplinary proceedings made available to the
17 public by the agency or the appropriate regulatory board.
18 However, the agency or the appropriate regulatory board shall
19 make available, upon written request by a health care
20 professional against whom probable cause has been found, any
21 such records which form the basis of the determination of
22 probable cause. The agency may investigate, as it deems
23 appropriate, any such incident and prescribe measures that
24 must or may be taken in response to the incident. The agency
25 shall review each incident and determine whether it
26 potentially involved conduct by the health care professional
27 who is subject to disciplinary action, in which case the
28 provisions of s. 456.073 shall apply. Copies of all reports of
29 adverse incidents submitted to the agency by hospitals and
30 ambulatory surgical centers shall be forwarded to the Center
31 for Health Care Excellence, as defined in s. 381.0409, for

1 analysis by experts who may make recommendations regarding the
2 prevention of such incidents. Such information shall remain
3 confidential as otherwise provided by law.

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

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

10 456.025 Fees; receipts; disposition.--

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

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

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

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

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

31

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

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

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

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

10 Section 10. (1) The Agency for Health Care
11 Administration shall conduct or contract for a study to
12 determine what information is most feasible to provide to the
13 public comparing state-licensed hospitals on certain inpatient
14 quality indicators developed by the federal Agency for
15 Healthcare Research and Quality. Such indicators shall be
16 designed to identify information about specific procedures
17 performed in hospitals for which there is strong evidence of a
18 link to quality of care. The Agency for Health Care
19 Administration or the study contractor shall refer to the
20 hospital quality reports published in New York and Texas as
21 guides during the evaluation.

22 (2) The following concepts shall be specifically
23 addressed in the study report:

24 (a) Whether hospital discharge data about services can
25 be translated into understandable and meaningful information
26 for the public.

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

29 1. Inpatient mortality for medical conditions;

30 2. Inpatient mortality for procedures;

31

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

3 4. Volume of procedures for which there is evidence
4 that a higher volume of procedures is associated with lower
5 mortality.

6 (c) Whether there are quality indicators that are
7 particularly useful relative to the state's unique
8 demographics.

9 (d) Whether all hospitals should be included in the
10 comparison.

11 (e) The criteria for comparison.

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

14 (g) Identify several websites to which such a report
15 should be published to achieve the broadest dissemination of
16 the information.

17 (3) The Agency for Health Care Administration shall
18 consider the input of all interested parties, including
19 hospitals, physicians, consumer organizations, and patients,
20 and submit the final report to the Governor and the presiding
21 officers of the Legislature by January 1, 2004.

22 Section 11. Section 395.1051, Florida Statutes, is
23 created to read:

24 395.1051 Duty to notify patients.--Every licensed
25 facility shall inform each patient, or an individual
26 identified pursuant to s. 765.401(1), in person about adverse
27 incidents that result in serious harm to the patient.

28 Notification of outcomes of care that result in harm to the
29 patient under this section shall not constitute an
30 acknowledgement or admission of liability, nor can it be
31 introduced as evidence.

1 Section 12. Section 456.0575, Florida Statutes, is
2 created to read:

3 456.0575 Duty to notify patients.--Every licensed
4 healthcare practitioner shall inform each patient, or an
5 individual identified pursuant to s. 765.401(1), in person
6 about adverse incidents that result in serious harm to the
7 patient. Notification of outcomes of care that result in harm
8 to the patient under this section shall not constitute an
9 acknowledgement of admission of liability, nor can such
10 notifications be introduced as evidence.

11 Section 13. Section 456.026, Florida Statutes, is
12 amended to read:

13 456.026 Annual report concerning finances,
14 administrative complaints, disciplinary actions, and
15 recommendations.--The department is directed to prepare and
16 submit a report to the President of the Senate and the Speaker
17 of the House of Representatives by November 1 of each year.
18 The department shall publish the report to its website
19 simultaneously with delivery to the President of the Senate
20 and the Speaker of the House of Representatives. The report
21 must be directly accessible on the department's Internet
22 homepage highlighted by easily identifiable links and buttons.

23 In addition to finances and any other information the
24 Legislature may require, the report shall include statistics
25 and relevant information, profession by profession, detailing:

26 (1) The number of health care practitioners licensed
27 by the Division of Medical Quality Assurance or otherwise
28 authorized to provide services in the state, if known to the
29 department.

30
31

- 1 ~~(2)~~~~(1)~~ The revenues, expenditures, and cash balances
2 for the prior year, and a review of the adequacy of existing
3 fees.
- 4 ~~(3)~~~~(2)~~ The number of complaints received and
5 investigated.
- 6 ~~(4)~~~~(3)~~ The number of findings of probable cause made.
7 ~~(5)~~~~(4)~~ The number of findings of no probable cause
8 made.
- 9 ~~(6)~~~~(5)~~ The number of administrative complaints filed.
10 ~~(7)~~~~(6)~~ The disposition of all administrative
11 complaints.
- 12 ~~(8)~~~~(7)~~ A description of disciplinary actions taken.
13 ~~(9)~~ For licensees under chapter 458, chapter 459,
14 chapter 461, or chapter 466, the professional liability claims
15 and actions reported by insurers, as provided in s. 627.912.
16 This information must be provided in a separate section of the
17 report restricted to providing professional liability claims
18 and actions data.
- 19 ~~(10)~~~~(8)~~ A description of any effort by the department
20 to reduce or otherwise close any investigation or disciplinary
21 proceeding not before the Division of Administrative Hearings
22 under chapter 120 or otherwise not completed within 1 year
23 after the initial filing of a complaint under this chapter.
- 24 ~~(11)~~~~(9)~~ The status of the development and
25 implementation of rules providing for disciplinary guidelines
26 pursuant to s. 456.079.
- 27 ~~(12)~~~~(10)~~ Such recommendations for administrative and
28 statutory changes necessary to facilitate efficient and
29 cost-effective operation of the department and the various
30 boards.
31

1 Section 14. Section 456.041, Florida Statutes, is
2 amended to read:

3 456.041 Practitioner profile; creation.--

4 (1)(a) Beginning July 1, 1999, the Department of
5 Health shall compile the information submitted pursuant to s.
6 456.039 into a practitioner profile of the applicant
7 submitting the information, except that the Department of
8 Health shall ~~may~~ develop a format to compile uniformly any
9 information submitted under s. 456.039(4)(b). Beginning July
10 1, 2001, the Department of Health may compile the information
11 submitted pursuant to s. 456.0391 into a practitioner profile
12 of the applicant submitting the information.

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

16 (2) On the profile published under subsection (1), the
17 department shall indicate if the information provided under s.
18 456.039(1)(a)7. or s. 456.0391(1)(a)7. is or is not
19 corroborated by a criminal history check conducted according
20 to this subsection. ~~If the information provided under s.~~
21 ~~456.039(1)(a)7. or s. 456.0391(1)(a)7. is corroborated by the~~
22 ~~criminal history check, the fact that the criminal history~~
23 ~~check was performed need not be indicated on the profile.~~The
24 department, or the board having regulatory authority over the
25 practitioner acting on behalf of the department, shall
26 investigate any information received by the department or the
27 board ~~when it has reasonable grounds to believe that the~~
28 ~~practitioner has violated any law that relates to the~~
29 ~~practitioner's practice.~~

30 (3) The Department of Health shall ~~may~~ include in each
31 practitioner's practitioner profile that criminal information

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

15 (4) The Department of Health shall include, with
16 respect to a practitioner licensed under chapter 458 or
17 chapter 459, a statement of how the practitioner has elected
18 to comply with the financial responsibility requirements of s.
19 458.320 or s. 459.0085. The department shall include, with
20 respect to practitioners subject to s. 456.048, a statement of
21 how the practitioner has elected to comply with the financial
22 responsibility requirements of that section. The department
23 shall include, with respect to practitioners licensed under
24 ~~chapter 458, chapter 459, or chapter 461~~, information relating
25 to liability actions which has been reported under s. 456.049
26 or s. 627.912 within the previous 10 years for any paid claim
27 that exceeds \$5,000. The department shall include, with
28 respect to practitioners licensed under chapter 458 or chapter
29 459, information relating to liability actions which has been
30 reported under s. 456.049 or s. 627.912 within the previous 10
31 years for any paid claim that exceeds \$100,000.Such claims

1 information shall be reported in the context of comparing an
2 individual practitioner's claims to the experience of other
3 practitioners within the same specialty, or profession if the
4 practitioner is not a specialist, ~~to the extent such~~
5 ~~information is available to the Department of Health. The~~
6 department must provide a hyperlink in such practitioner's
7 profile to all such comparison reports. If information
8 relating to a liability action is included in a practitioner's
9 practitioner profile, the profile must also include the
10 following statement: "Settlement of a claim may occur for a
11 variety of reasons that do not necessarily reflect negatively
12 on the professional competence or conduct of the practitioner.
13 A payment in settlement of a medical malpractice action or
14 claim should not be construed as creating a presumption that
15 medical malpractice has occurred."

16 (5) The Department of Health shall ~~may not~~ include the
17 date of a hospital or ambulatory surgical center disciplinary
18 action taken by a licensed hospital or an ambulatory surgical
19 center, in accordance with the requirements of s. 395.0193, in
20 the practitioner profile. Any practitioner disciplined under
21 paragraph (1)(b) must report to the department the date the
22 disciplinary action was imposed. The department shall state
23 whether the action related to professional competence and
24 whether it related to the delivery of services to a patient.

25 (6) The Department of Health may include in the
26 practitioner's practitioner profile any other information that
27 is a public record of any governmental entity and that relates
28 to a practitioner's ability to competently practice his or her
29 profession. ~~However, the department must consult with the~~
30 ~~board having regulatory authority over the practitioner before~~
31 ~~such information is included in his or her profile.~~

1 (7) Upon the completion of a practitioner profile
2 under this section, the Department of Health shall furnish the
3 practitioner who is the subject of the profile a copy of it
4 for review and verification. The practitioner has a period of
5 30 days in which to review and verify the contents of the
6 profile and to correct any factual inaccuracies in it. The
7 Department of Health shall make the profile available to the
8 public at the end of the 30-day period regardless of whether
9 the practitioner has provided verification of the profile
10 content. A practitioner shall be subject to a fine of up to
11 \$100 per day for failure to verify the profile contents and to
12 correct any factual errors in his or her profile within the
13 30-day period.The department shall make the profiles
14 available to the public through the World Wide Web and other
15 commonly used means of distribution. The department must
16 include the following statement, in boldface type, in each
17 profile that has not been reviewed by the practitioner to
18 which it applies: "The practitioner has not verified the
19 information contained in this profile."

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

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

27 (10)~~(8)~~ Making a practitioner profile available to the
28 public under this section does not constitute agency action
29 for which a hearing under s. 120.57 may be sought.

30 Section 15. Section 456.042, Florida Statutes, is
31 amended to read:

1 456.042 Practitioner profiles; update.--A practitioner
2 must submit updates of required information within 15 days
3 after the final activity that renders such information a fact.

4 The Department of Health shall update each practitioner's
5 practitioner profile periodically. An updated profile is
6 subject to the same requirements as an original profile ~~with~~
7 ~~respect to the period within which the practitioner may review~~
8 ~~the profile for the purpose of correcting factual~~
9 ~~inaccuracies.~~

10 Section 16. Subsection (1) of section 456.049, Florida
11 Statutes, is amended to read:

12 456.049 Health care practitioners; reports on
13 professional liability claims and actions.--

14 (1) Any practitioner of medicine licensed pursuant to
15 the provisions of chapter 458, practitioner of osteopathic
16 medicine licensed pursuant to the provisions of chapter 459,
17 podiatric physician licensed pursuant to the provisions of
18 chapter 461, or dentist licensed pursuant to the provisions of
19 chapter 466 shall report to the department any claim or action
20 for damages for personal injury alleged to have been caused by
21 error, omission, or negligence in the performance of such
22 licensee's professional services or based on a claimed
23 performance of professional services without consent ~~if the~~
24 ~~claim was not covered by an insurer required to report under~~
25 ~~s. 627.912~~ and the claim resulted in:

- 26 (a) A final judgment in any amount.
27 (b) A settlement in any amount.
28 (c) A final disposition not resulting in payment on
29 behalf of the licensee.

30
31

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

4 Section 17. Section 456.051, Florida Statutes, is
5 amended to read:

6 456.051 Reports of professional liability actions;
7 bankruptcies; Department of Health's responsibility to
8 provide.--

9 (1) The report of a claim or action for damages for
10 personal injury which is required to be provided to the
11 Department of Health under s. 456.049 or s. 627.912 is public
12 information except for the name of the claimant or injured
13 person, which remains confidential as provided in ss.
14 456.049(2)(d) and 627.912(2)(e). The Department of Health
15 shall, upon request, make such report available to any person.
16 The department shall make such report available as a part of
17 the practitioner's profile within 45 calendar days after
18 receipt.

19 (2) Any information in the possession of the
20 Department of Health which relates to a bankruptcy proceeding
21 by a practitioner of medicine licensed under chapter 458, a
22 practitioner of osteopathic medicine licensed under chapter
23 459, a podiatric physician licensed under chapter 461, or a
24 dentist licensed under chapter 466 is public information. The
25 Department of Health shall, upon request, make such
26 information available to any person. The department shall make
27 such report available as a part of the practitioner's profile
28 within 45 calendar days after receipt.

29 Section 18. Present subsection (8) of section 458.320,
30 Florida Statutes, is redesignated as subsection (9), and a new
31 subsection (8) is added to that section, to read:

1 458.320 Financial responsibility.--

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

16 Section 19. Present subsection (9) of section
17 459.0085, Florida Statutes, is redesignated as subsection
18 (10), and a new subsection (9) is added to that section, to
19 read:

20 459.0085 Financial responsibility.--

21 (9) Notwithstanding any other provision of this
22 section, the department shall suspend the license of any
23 osteopathic physician against whom has been entered a final
24 judgment, arbitration award, or other order or who has entered
25 into a settlement agreement to pay damages arising out of a
26 claim for medical malpractice, if all appellate remedies have
27 been exhausted and payment up to the amounts required by this
28 section has not been made within 30 days after the entering of
29 such judgment, award, or order or agreement, until proof of
30 payment is received by the department or a payment schedule
31 has been agreed upon by the osteopathic physician and the

1 claimant and presented to the department. This subsection does
2 not apply to an osteopathic physician who has met the
3 financial responsibility requirements in paragraphs (1)(b) and
4 (2)(b).

5 Section 20. Civil immunity for members of or
6 consultants to certain boards, committees, or other
7 entities.--

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

18 (a) The duration of patient stays in health care
19 facilities;

20 (b) The professional services furnished with respect
21 to the medical, dental, psychological, podiatric,
22 chiropractic, or optometric necessity for such services;

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

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

26 (e) The competency and qualifications for professional
27 staff privileges;

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

30 (g) Patient safety, including entering into contracts
31 with patient safety organizations.

1 (2) Such committee, board, group, commission, or other
2 entity must be established in accordance with state law or in
3 accordance with requirements of the Joint Commission on
4 Accreditation of Healthcare Organizations, established and
5 duly constituted by one or more public or licensed private
6 hospitals or behavioral health agencies, or established by a
7 governmental agency. To be protected by this section, the act,
8 decision, omission, or utterance may not be made or done in
9 bad faith or with malicious intent.

10 Section 21. Patient safety data privilege.--

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

12 (a) "Patient safety data" means reports made to
13 patient safety organizations, including all health care data,
14 interviews, memoranda, analyses, root cause analyses, products
15 of quality assurance or quality improvement processes,
16 corrective action plans, or information collected or created
17 by a health care facility licensed under chapter 395 or a
18 health care practitioner as defined in section 456.001(4),
19 Florida Statutes, as a result of an occurrence related to the
20 provision of health care services which exacerbates an
21 existing medical condition or could result in injury, illness,
22 or death.

23 (b) "Patient safety organization" means any
24 organization, group, or other entity that collects and
25 analyzes patient safety data for the purpose of improving
26 patient safety and health care outcomes and that is
27 independent and not under the control of the entity that
28 reports patient safety data.

29 (2) Patient safety data shall not be subject to
30 discovery or introduction into evidence in any civil or
31 administrative action.

1 (3) Unless otherwise provided by law, a patient safety
2 organization shall promptly remove all patient-identifying
3 information after receipt of a complete patient safety data
4 report unless such organization is otherwise permitted by
5 state or federal law to maintain such information. Patient
6 safety organizations shall maintain the confidentiality of all
7 patient-identifying information and may not disseminate such
8 information, except as permitted by state or federal law.

9 (4) The exchange of patient safety data among health
10 care facilities licensed under chapter 395 or health care
11 practitioners as defined in section 456.001 (4), Florida
12 Statutes, or patient safety organizations which does not
13 identify any patient shall not constitute a waiver of any
14 privilege established in this section.

15 (5) Reports of patient safety data to patient safety
16 organizations does not abrogate obligations to make reports to
17 the Department of Health, the Agency for Health Care
18 Administration, or other state or federal regulatory agencies.

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

22 Section 22. Each final settlement statement relating
23 to medical malpractice shall include the following statement:

24 "The decision to settle a case may reflect the economic
25 practicalities pertaining to the cost of litigation and is
26 not, alone, an admission that the insured failed to meet the
27 required standard of care applicable to the patient's
28 treatment. The decision to settle a case may be made by the
29 insurance company without consulting its client for input,
30 unless otherwise provided by the insurance policy."

31

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

15 (1) A practitioner of medicine licensed pursuant to
16 chapter 458, Florida Statutes, or a practitioner of
17 osteopathic medicine licensed pursuant to chapter 459, Florida
18 Statutes, shall report to the Office of Insurance Regulation
19 and the Department of Health any claim or action for damages
20 for personal injury alleged to have been caused by error,
21 omission, or negligence in the performance of such licensee's
22 professional services or based on a claimed performance of
23 professional services without consent if the claim was not
24 covered by an insurer required to report under section
25 627.912, Florida Statutes, is not a claim for medical
26 malpractice that is subject to the provisions of section
27 766.106, Florida Statutes, and the claim resulted in:

28 (a) A final judgment in any amount.

29 (b) A settlement in any amount.

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

1
2 Reports shall be filed with the Office of Insurance Regulation
3 no later than 60 days following the occurrence of any event
4 listed in this subsection.
5 (2) Health professional reports must contain:
6 (a) The name and address of the licensee.
7 (b) The alleged occurrence.
8 (c) The date of the alleged occurrence.
9 (d) The date the claim or action was reported to the
10 licensee.
11 (e) The name and address of the opposing party.
12 (f) The date of suit, if filed.
13 (g) The injured person's age and sex.
14 (h) The total number and names of all defendants
15 involved in the claim.
16 (i) The date and amount of judgment or settlement, if
17 any, including the itemization of the verdict, together with a
18 copy of the settlement or judgment.
19 (j) In the case of a settlement, any information
20 required by the Office of Insurance Regulation concerning the
21 injured person's incurred and anticipated medical expense,
22 wage loss, and other expenses.
23 (k) The loss adjustment expense paid to defense
24 counsel, and all other allocated loss adjustment expense paid.
25 (l) The date and reason for final disposition, if
26 there was no judgment or settlement.
27 (m) A summary of the occurrence that created the
28 claim, which must include:
29 1. The name of the institution, if any, and the
30 location within such institution, at which the injury
31 occurred.

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

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

5 4. The operation or the diagnostic or treatment
6 procedure causing the injury.

7 5. A description of the principal injury giving rise
8 to the claim.

9 6. The safety management steps that have been taken by
10 the licensee to make similar occurrences or injuries less
11 likely in the future.

12 (n) Any other information required by the Office of
13 Insurance Regulation to analyze and evaluate the nature,
14 causes, location, cost, and damages involved in professional
15 liability cases.

16 Section 24. Paragraph (a) of subsection (1) of section
17 456.039, Florida Statutes, is amended to read:

18 456.039 Designated health care professionals;
19 information required for licensure.--

20 (1) Each person who applies for initial licensure as a
21 physician under chapter 458, chapter 459, chapter 460, or
22 chapter 461, except a person applying for registration
23 pursuant to ss. 458.345 and 459.021, must, at the time of
24 application, and each physician who applies for license
25 renewal under chapter 458, chapter 459, chapter 460, or
26 chapter 461, except a person registered pursuant to ss.
27 458.345 and 459.021, must, in conjunction with the renewal of
28 such license and under procedures adopted by the Department of
29 Health, and in addition to any other information that may be
30 required from the applicant, furnish the following information
31 to the Department of Health:

1 (a)1. The name of each medical school that the
2 applicant has attended, with the dates of attendance and the
3 date of graduation, and a description of all graduate medical
4 education completed by the applicant, excluding any coursework
5 taken to satisfy medical licensure continuing education
6 requirements.

7 2. The name of each hospital at which the applicant
8 has privileges.

9 3. The address at which the applicant will primarily
10 conduct his or her practice.

11 4. Any certification that the applicant has received
12 from a specialty board that is recognized by the board to
13 which the applicant is applying.

14 5. The year that the applicant began practicing
15 medicine.

16 6. Any appointment to the faculty of a medical school
17 which the applicant currently holds and an indication as to
18 whether the applicant has had the responsibility for graduate
19 medical education within the most recent 10 years.

20 7. A description of any criminal offense of which the
21 applicant has been found guilty, regardless of whether
22 adjudication of guilt was withheld, or to which the applicant
23 has pled guilty or nolo contendere. A criminal offense
24 committed in another jurisdiction which would have been a
25 felony or misdemeanor if committed in this state must be
26 reported. If the applicant indicates that a criminal offense
27 is under appeal and submits a copy of the notice for appeal of
28 that criminal offense, the department must state that the
29 criminal offense is under appeal if the criminal offense is
30 reported in the applicant's profile. If the applicant
31 indicates to the department that a criminal offense is under

1 appeal, the applicant must, upon disposition of the appeal,
2 submit to the department a copy of the final written order of
3 disposition.

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

24 9. Relevant professional qualifications as defined by
25 the applicable board.

26 Section 25. Paragraph (a) of subsection (7) of section
27 456.057, Florida Statutes, is amended to read:

28 456.057 Ownership and control of patient records;
29 report or copies of records to be furnished.--

30 (7)(a)1. The department may obtain patient records
31 pursuant to a subpoena without written authorization from the

1 patient if the department and the probable cause panel of the
2 appropriate board, if any, find reasonable cause to believe
3 that a health care practitioner has excessively or
4 inappropriately prescribed any controlled substance specified
5 in chapter 893 in violation of this chapter or any
6 professional practice act or that a health care practitioner
7 has practiced his or her profession below that level of care,
8 skill, and treatment required as defined by this chapter or
9 any professional practice act and also find that appropriate,
10 reasonable attempts were made to obtain a patient release.

11 2. The department may obtain patient records and
12 insurance information pursuant to a subpoena without written
13 authorization from the patient if the department and the
14 probable cause panel of the appropriate board, if any, find
15 reasonable cause to believe that a health care practitioner
16 has provided inadequate medical care based on termination of
17 insurance and also find that appropriate, reasonable attempts
18 were made to obtain a patient release.

19 3. The department may obtain patient records, billing
20 records, insurance information, provider contracts, and all
21 attachments thereto pursuant to a subpoena without written
22 authorization from the patient if the department and probable
23 cause panel of the appropriate board, if any, find reasonable
24 cause to believe that a health care practitioner has submitted
25 a claim, statement, or bill using a billing code that would
26 result in payment greater in amount than would be paid using a
27 billing code that accurately describes the services performed,
28 requested payment for services that were not performed by that
29 health care practitioner, used information derived from a
30 written report of an automobile accident generated pursuant to
31 chapter 316 to solicit or obtain patients personally or

1 through an agent regardless of whether the information is
2 derived directly from the report or a summary of that report
3 or from another person, solicited patients fraudulently,
4 received a kickback as defined in s. 456.054, violated the
5 patient brokering provisions of s. 817.505, or presented or
6 caused to be presented a false or fraudulent insurance claim
7 within the meaning of s. 817.234(1)(a), and also find that,
8 within the meaning of s. 817.234(1)(a), patient authorization
9 cannot be obtained because the patient cannot be located or is
10 deceased, incapacitated, or suspected of being a participant
11 in the fraud or scheme, and if the subpoena is issued for
12 specific and relevant records. For purposes of this
13 subsection, if the patient refuses to cooperate, is
14 unavailable, or fails to execute a patient release, the
15 department may obtain patient records pursuant to a subpoena
16 without written authorization from the patient.

17 Section 26. Subsection (4) is added to section
18 456.063, Florida Statutes, to read:

19 456.063 Sexual misconduct; disqualification for
20 license, certificate, or registration.--

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

25 Section 27. Each board within the Department of Health
26 which has jurisdiction over health care practitioners who are
27 authorized to prescribe drugs may adopt by rule standards of
28 practice for practitioners who are under that board's
29 jurisdiction for the safe and ethical prescription of drugs to
30 patients via the Internet or other electronic means.

31

1 Section 28. Subsection (4) of section 456.072, Florida
2 Statutes, is amended, and a new subsection (7) is added to
3 that section to read:

4 456.072 Grounds for discipline; penalties;
5 enforcement.--

6 (4) In addition to any other discipline imposed
7 through final order, or citation, entered on or after July 1,
8 2001, pursuant to this section or discipline imposed through
9 final order, or citation, entered on or after July 1, 2001,
10 for a violation of any practice act, the board, or the
11 department when there is no board, shall assess costs related
12 to the investigation and prosecution of the case. The board,
13 or the department when there is no board, shall determine the
14 amount of costs to be assessed.In any case where the board or
15 the department imposes a fine or assessment and the fine or
16 assessment is not paid within a reasonable time, such
17 reasonable time to be prescribed in the rules of the board, or
18 the department when there is no board, or in the order
19 assessing such fines or costs, the department or the
20 Department of Legal Affairs may contract for the collection
21 of, or bring a civil action to recover, the fine or
22 assessment.

23 (7) In any formal administrative hearing conducted
24 under s. 120.57(1), the department shall establish grounds for
25 the discipline of a licensee by the greater weight of the
26 evidence.

27 Section 29. Subsections (1) and (5) of section
28 456.073, Florida Statutes, are amended to read:

29 456.073 Disciplinary proceedings.--Disciplinary
30 proceedings for each board shall be within the jurisdiction of
31 the department.

1 (1) The department, for the boards under its
2 jurisdiction, shall cause to be investigated any complaint
3 that is filed before it if the complaint is in writing, signed
4 by the complainant, and legally sufficient. A complaint is
5 legally sufficient if it contains ultimate facts that show
6 that a violation of this chapter, of any of the practice acts
7 relating to the professions regulated by the department, or of
8 any rule adopted by the department or a regulatory board in
9 the department has occurred. In order to determine legal
10 sufficiency, the department may require supporting information
11 or documentation. The department may investigate, and the
12 department or the appropriate board may take appropriate final
13 action on, a complaint even though the original complainant
14 withdraws it or otherwise indicates a desire not to cause the
15 complaint to be investigated or prosecuted to completion. The
16 department may investigate an anonymous complaint if the
17 complaint is in writing and is legally sufficient, if the
18 alleged violation of law or rules is substantial, and if the
19 department has reason to believe, after preliminary inquiry,
20 that the violations alleged in the complaint are true. The
21 department may investigate a complaint made by a confidential
22 informant if the complaint is legally sufficient, if the
23 alleged violation of law or rule is substantial, and if the
24 department has reason to believe, after preliminary inquiry,
25 that the allegations of the complainant are true. The
26 department may initiate an investigation if it has reasonable
27 cause to believe that a licensee or a group of licensees has
28 violated a Florida statute, a rule of the department, or a
29 rule of a board. The department may investigate information
30 filed pursuant to s. 456.041(4) relating to liability actions
31 with respect to practitioners licensed under chapter 458 and

1 chapter 459 which have been reported under s. 456.049 or s.
2 627.912 within the previous 10 years for any paid claim that
3 exceeds \$50,000.Except as provided in ss. 458.331(9),
4 459.015(9), 460.413(5), and 461.013(6), when an investigation
5 of any subject is undertaken, the department shall promptly
6 furnish to the subject or the subject's attorney a copy of the
7 complaint or document that resulted in the initiation of the
8 investigation. The subject may submit a written response to
9 the information contained in such complaint or document within
10 20 days after service to the subject of the complaint or
11 document. The subject's written response shall be considered
12 by the probable cause panel. The right to respond does not
13 prohibit the issuance of a summary emergency order if
14 necessary to protect the public. However, if the secretary, or
15 the secretary's designee, and the chair of the respective
16 board or the chair of its probable cause panel agree in
17 writing that such notification would be detrimental to the
18 investigation, the department may withhold notification. The
19 department may conduct an investigation without notification
20 to any subject if the act under investigation is a criminal
21 offense.

22 (5) A formal hearing before an administrative law
23 judge from the Division of Administrative Hearings, or before
24 an administrative law judge or hearing officer appointed by
25 the appropriate board who has expertise in the profession
26 regulated by the board in cases involving violations of the
27 standard of care in that profession, shall be requested ~~held~~
28 pursuant to chapter 120 if there are any disputed issues of
29 material fact raised within 45 days after service of the
30 administrative complaint. The administrative law judge shall
31 issue a recommended order pursuant to chapter 120.

1 Notwithstanding s. 120.569(2), the department shall notify the
2 division within 45 days after receipt of a petition or request
3 for a formal hearing.~~If any party raises an issue of disputed~~
4 ~~fact during an informal hearing, the hearing shall be~~
5 ~~terminated and a formal hearing pursuant to chapter 120 shall~~
6 ~~be held.~~

7 Section 30. Subsection (1) of section 456.077, Florida
8 Statutes, is amended to read:

9 456.077 Authority to issue citations.--

10 (1) Notwithstanding s. 456.073, the board, or the
11 department if there is no board, shall adopt rules to permit
12 the issuance of citations. The citation shall be issued to the
13 subject and shall contain the subject's name and address, the
14 subject's license number if applicable, a brief factual
15 statement, the sections of the law allegedly violated, and the
16 penalty imposed. The citation must clearly state that the
17 subject may choose, in lieu of accepting the citation, to
18 follow the procedure under s. 456.073. If the subject disputes
19 the matter in the citation, the procedures set forth in s.
20 456.073 must be followed. However, if the subject does not
21 dispute the matter in the citation with the department within
22 30 days after the citation is served, the citation becomes a
23 final order and does not constitute ~~constitutes~~ discipline for
24 a first offense. The penalty shall be a fine or other
25 conditions as established by rule.

26 Section 31. Subsection (1) of section 456.078, Florida
27 Statutes, is amended to read:

28 456.078 Mediation.--

29 (1) Notwithstanding the provisions of s. 456.073, the
30 board, or the department when there is no board, shall adopt
31 rules to designate which violations of the applicable

1 professional practice act, including standard-of-care
2 violations, are appropriate for mediation. The board, or the
3 department when there is no board, must ~~may~~ designate as
4 mediation offenses those complaints where harm caused by the
5 licensee is economic in nature or can be remedied by the
6 licensee.

7 Section 32. Paragraph (t) of subsection (1) and
8 subsections (3) and (6) of section 458.331, Florida Statutes,
9 are amended to read:

10 458.331 Grounds for disciplinary action; action by the
11 board and department.--

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

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

1 instance, event, or act. Nothing in this paragraph shall be
2 construed to require that a physician be incompetent to
3 practice medicine in order to be disciplined pursuant to this
4 paragraph. A recommended order by an administrative law judge
5 or a final order of the board finding a violation under this
6 paragraph shall specify whether the licensee was found to have
7 committed "gross malpractice," "repeated malpractice," or
8 "failure to practice medicine with that level of care, skill,
9 and treatment which is recognized as being acceptable under
10 similar conditions and circumstances," or any combination
11 thereof, and any publication by the board must so specify.

12 (3) In any administrative action against a physician
13 ~~which does not involve revocation or suspension of license,~~
14 the division shall have the burden, by the greater weight of
15 the evidence, to establish the existence of grounds for
16 disciplinary action. ~~The division shall establish grounds for~~
17 ~~revocation or suspension of license by clear and convincing~~
18 ~~evidence.~~

19 (6) Upon the department's receipt from an insurer or
20 self-insurer of a report of a closed claim against a physician
21 pursuant to s. 627.912 or from a health care practitioner of a
22 report pursuant to s. 456.049, or upon the receipt from a
23 claimant of a presuit notice against a physician pursuant to
24 s. 766.106, the department shall review each report and
25 determine whether it potentially involved conduct by a
26 licensee that is subject to disciplinary action, in which case
27 the provisions of s. 456.073 shall apply. However, if it is
28 reported that a physician has had three or more claims with
29 indemnities exceeding ~~\$50,000~~ \$25,000 each within the previous
30 5-year period, the department shall investigate the
31

1 occurrences upon which the claims were based and determine if
2 action by the department against the physician is warranted.

3 Section 33. Paragraph (x) of subsection (1) and
4 subsections (3) and (6) of section 459.015, Florida Statutes,
5 are amended to read:

6 459.015 Grounds for disciplinary action; action by the
7 board and department.--

8 (1) The following acts constitute grounds for denial
9 of a license or disciplinary action, as specified in s.
10 456.072(2):

11 (x) Gross or repeated malpractice or the failure to
12 practice osteopathic medicine with that level of care, skill,
13 and treatment which is recognized by a reasonably prudent
14 similar osteopathic physician as being acceptable under
15 similar conditions and circumstances. The board shall give
16 great weight to the provisions of s. 766.102 when enforcing
17 this paragraph. As used in this paragraph, "repeated
18 malpractice" includes, but is not limited to, three or more
19 claims for medical malpractice within the previous 5-year
20 period resulting in indemnities being paid in excess of
21 \$50,000~~\$25,000~~ each to the claimant in a judgment or
22 settlement and which incidents involved negligent conduct by
23 the osteopathic physician. As used in this paragraph, "gross
24 malpractice" or "the failure to practice osteopathic medicine
25 with that level of care, skill, and treatment which is
26 recognized by a reasonably prudent similar osteopathic
27 physician as being acceptable under similar conditions and
28 circumstances" shall not be construed so as to require more
29 than one instance, event, or act. Nothing in this paragraph
30 shall be construed to require that an osteopathic physician be
31 incompetent to practice osteopathic medicine in order to be

1 | disciplined pursuant to this paragraph. A recommended order
2 | by an administrative law judge or a final order of the board
3 | finding a violation under this paragraph shall specify whether
4 | the licensee was found to have committed "gross malpractice,"
5 | "repeated malpractice," or "failure to practice osteopathic
6 | medicine with that level of care, skill, and treatment which
7 | is recognized as being acceptable under similar conditions and
8 | circumstances," or any combination thereof, and any
9 | publication by the board shall so specify.

10 | (3) In any administrative action against a physician
11 | ~~which does not involve revocation or suspension of license,~~
12 | the division shall have the burden, by the greater weight of
13 | the evidence, to establish the existence of grounds for
14 | disciplinary action. ~~The division shall establish grounds for~~
15 | ~~revocation or suspension of license by clear and convincing~~
16 | ~~evidence.~~

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

1 Section 34. Paragraph (s) of subsection (1) and
2 paragraph (a) of subsection (5) of section 461.013, Florida
3 Statutes, are amended to read:

4 461.013 Grounds for disciplinary action; action by the
5 board; investigations by department.--

6 (1) The following acts constitute grounds for denial
7 of a license or disciplinary action, as specified in s.
8 456.072(2):

9 (s) Gross or repeated malpractice or the failure to
10 practice podiatric medicine at a level of care, skill, and
11 treatment which is recognized by a reasonably prudent
12 podiatric physician as being acceptable under similar
13 conditions and circumstances. The board shall give great
14 weight to the standards for malpractice in s. 766.102 in
15 interpreting this section. As used in this paragraph,
16 "repeated malpractice" includes, but is not limited to, three
17 or more claims for medical malpractice within the previous
18 5-year period resulting in indemnities being paid in excess of
19 \$50,000~~\$10,000~~ each to the claimant in a judgment or
20 settlement and which incidents involved negligent conduct by
21 the podiatric physicians. As used in this paragraph, "gross
22 malpractice" or "the failure to practice podiatric medicine
23 with the level of care, skill, and treatment which is
24 recognized by a reasonably prudent similar podiatric physician
25 as being acceptable under similar conditions and
26 circumstances" shall not be construed so as to require more
27 than one instance, event, or act.

28 (5)(a) Upon the department's receipt from an insurer
29 or self-insurer of a report of a closed claim against a
30 podiatric physician pursuant to s. 627.912, or upon the
31 receipt from a claimant of a presuit notice against a

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

11 | Section 35. Paragraph (x) of subsection (1) of section
12 | 466.028, Florida Statutes, is amended to read:

13 | 466.028 Grounds for disciplinary action; action by the
14 | board.--

15 | (1) The following acts constitute grounds for denial
16 | of a license or disciplinary action, as specified in s.
17 | 456.072(2):

18 | (x) Being guilty of incompetence or negligence by
19 | failing to meet the minimum standards of performance in
20 | diagnosis and treatment when measured against generally
21 | prevailing peer performance, including, but not limited to,
22 | the undertaking of diagnosis and treatment for which the
23 | dentist is not qualified by training or experience or being
24 | guilty of dental malpractice. For purposes of this paragraph,
25 | it shall be legally presumed that a dentist is not guilty of
26 | incompetence or negligence by declining to treat an individual
27 | if, in the dentist's professional judgment, the dentist or a
28 | member of her or his clinical staff is not qualified by
29 | training and experience, or the dentist's treatment facility
30 | is not clinically satisfactory or properly equipped to treat
31 | the unique characteristics and health status of the dental

1 patient, provided the dentist refers the patient to a
2 qualified dentist or facility for appropriate treatment. As
3 used in this paragraph, "dental malpractice" includes, but is
4 not limited to, three or more claims within the previous
5 5-year period which resulted in indemnity being paid, or any
6 single indemnity paid in excess of \$25,000~~\$5,000~~ in a
7 judgment or settlement, as a result of negligent conduct on
8 the part of the dentist.

9 Section 36. Subsection (1) of section 627.912, Florida
10 Statutes, is amended to read:

11 627.912 Professional liability claims and actions;
12 reports by insurers.--

13 (1) Each self-insurer authorized under s. 627.357 and
14 each insurer or joint underwriting association providing
15 professional liability insurance to a practitioner of medicine
16 licensed under chapter 458, to a practitioner of osteopathic
17 medicine licensed under chapter 459, to a podiatric physician
18 licensed under chapter 461, to a dentist licensed under
19 chapter 466, to a hospital licensed under chapter 395, to a
20 crisis stabilization unit licensed under part IV of chapter
21 394, to a health maintenance organization certificated under
22 part I of chapter 641, to clinics included in chapter 390, to
23 an ambulatory surgical center as defined in s. 395.002, or to
24 a member of The Florida Bar shall report in duplicate to the
25 Department of Insurance any claim or action for damages for
26 personal injuries claimed to have been caused by error,
27 omission, or negligence in the performance of such insured's
28 professional services or based on a claimed performance of
29 professional services without consent, if the claim resulted
30 in:

31 (a) A final judgment in any amount.

1 (b) A settlement in any amount.
2
3 Reports shall be filed with the department, ~~and~~, If the
4 insured party is licensed under chapter 458, chapter 459, or
5 chapter 461, and the final judgment or settlement amount was
6 \$50,000 or more, or if the insured party is licensed under
7 chapter 466 and the final judgment or settlement amount was
8 \$25,000 or more, the report shall be filed ~~or chapter 466,~~
9 with the Department of Health, no later than 30 days following
10 the occurrence of any event listed in paragraph (a) or
11 paragraph (b). The Department of Health shall review each
12 report and determine whether any of the incidents that
13 resulted in the claim potentially involved conduct by the
14 licensee that is subject to disciplinary action, in which case
15 the provisions of s. 456.073 shall apply. The Department of
16 Health, as part of the annual report required by s. 456.026,
17 shall publish annual statistics, without identifying
18 licensees, on the reports it receives, including final action
19 taken on such reports by the Department of Health or the
20 appropriate regulatory board.

21 Section 37. The Office of Program Policy Analysis and
22 Government Accountability and the Office of the Auditor
23 General must jointly conduct an audit of the Department of
24 Health's health care practitioner disciplinary process and
25 closed claims that are filed with the department under section
26 627.912, Florida Statutes. The Office of Program Policy
27 Analysis and Government Accountability and the Office of the
28 Auditor General shall submit a report to the Legislature by
29 January 1, 2004.

30 Section 38. Section 1004.08, Florida Statutes, is
31 created to read:

1 1004.08 Patient safety instructional
2 requirements.--Each public school, college, and university
3 that offers degrees in medicine, nursing, or allied health
4 shall include in the curricula applicable to such degrees
5 material on patient safety, including patient safety
6 improvement. Materials shall include, but need not be limited
7 to, effective communication and teamwork; epidemiology of
8 patient injuries and medical errors; medical injuries;
9 vigilance, attention and fatigue; checklists and inspections;
10 automation, technological, and computer support; psychological
11 factors in human error; and reporting systems.

12 Section 39. Section 1005.07, Florida Statutes, is
13 created to read:

14 1005.07 Patient safety instructional
15 requirements.--Each private school, college, and university
16 that offers degrees in medicine, nursing, and 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. If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 invalidity does not affect other provisions or applications of
28 the act which can be given effect without the invalid
29 provision or application, and to this end the provisions of
30 this act are severable.

31

1 Section 41. No later than September 1, 2003, the
2 Department of Health shall convene a workgroup to study the
3 current healthcare practitioner disciplinary process. The
4 workgroup shall include a representative of the Administrative
5 Law section of The Florida Bar, a representative of the Health
6 Law section of The Florida Bar, a representative of the
7 Florida Medical Association, a representative of the Florida
8 Osteopathic Medical Association, a representative of the
9 Florida Dental Association, a member of the Florida Board of
10 Medicine who has served on the probable cause panel, a member
11 of the Board of Osteopathic Medicine who has served on the
12 probable cause panel, and a member of the Board of Dentistry
13 who has served on the probable cause panel. The workgroup
14 shall also include one consumer member of the Board of
15 Medicine. The Department of Health shall present the findings
16 and recommendations to the Governor, the President of the
17 Senate, and the Speaker of the House of Representatives no
18 later than January 1, 2004. The sponsoring organizations shall
19 assume the costs of their representative.

20 Section 42. The sum of \$687,786 is appropriated from
21 the Medical Quality Assurance Trust Fund to the Department of
22 Health, and seven positions are authorized, for the purpose of
23 implementing this act during the 2003-2004 fiscal year. The
24 sum of \$452,122 is appropriated from the General Revenue Fund
25 to the Agency for Health Care Administration, and five
26 positions are authorized, for the purpose of implementing this
27 act during the 2003-2004 fiscal year.

28 Section 43. Except as otherwise expressly provided in
29 this act, this act shall take effect upon becoming a law.
30
31

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 CS for CS for Senate Bill 562 & CS for Senate Bill
4 1912

5 Removes language that would have allowed regulatory boards
6 within the Department of Health to reassess and resolve
7 conflicting evidence in a recommended order based on the
8 record in cases involving standard-of-care.

9 Revises the responsibility of the Florida Center for
10 Excellence in Health Care to require an inventory of hospitals
11 to determine the current status of computerized physician
12 medication ordering systems. Requires the center to make
13 recommendations for statewide implementation of these systems,
14 identify barriers to implementation, and provide alternative
15 methods to reduce medication errors when statewide
16 implementation is not practicable.

17 Appropriates \$687,786 from the Medical Quality Assurance Trust
18 Fund and authorizes seven positions to the Department of
19 Health, and appropriates \$452,122 from the General Revenue
20 Fund and authorizes five positions to the Agency for Health
21 Care Administration for the purpose of implementing this act
22 during the 2003-04 fiscal year.