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1 A bill to be entitled

2 An act relating to medical incidents; providing findings;
3 amending s. 46.015, F.S.; providing for a setoff of
4 amounts received by a claimant in settlements; authorizing
5 settling defendants to assign rights of contribution;
6 amending s. 120.57, F.S.; authorizing certain professional
7 boards and the Department of Health to modify or reject
8 findings of fact determined by an administrative law judge
9 which relate to the standard of care; amending s. 120.65,
10 F.S.; requiring the Division of Administrative Hearings to
11 designate administrative law judges to preside over
12 actions involving a health care practitioner; providing
13 qualifications for such administrative law judges;
14 amending s. 391.025, F.S.; providing that the Children's
15 Medical Services Act applies to infants eligible for
16 compensation under the Florida Birth-Related Neurological
17 Injury Compensation Plan; amending s. 391.029, F.S.;
18 providing that infants eligible for compensation under the
19 Florida Birth-Related Neurological Injury Compensation
20 Plan are eligible for the Children's Medical Services
21 program; requiring the plan to reimburse the program for
22 certain costs; providing a patient safety data privilege
23 and providing requirements with respect thereto; amending
24 s. 766.304, F.S.; providing that a claimant may not
25 receive compensation from the Florida Birth-Related
26 Neurological Injury Compensation Plan if damages are
27 provided pursuant to a settlement or a final judgment in a
28 civil action is entered; amending s. 766.305, F.S.;
29 revising the information required to be included in a
30 petition seeking recovery from the Florida Birth-Related



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31 Neurological Injury Compensation Plan; revising
32 requirements for the service of such petitions; requiring
33 claimants to provide additional information to the
34 executive director of the Florida Birth-Related
35 Neurological Injury Compensation Association; amending s.
36 766.309, F.S.; authorizing the bifurcation of
37 administrative proceedings regarding claims for recovery
38 from the Florida Birth-Related Neurological Injury
39 Compensation Plan; amending s. 766.31, F.S.; excluding
40 Medicaid services from those compensable under the Florida
41 Birth-Related Neurological Injury Compensation Plan;
42 providing a death benefit under the plan in lieu of
43 funeral expenses; providing that if there is an award of
44 benefits under the plan, the claimants shall not be liable
45 for any attorney's fees incurred in connection with the
46 filing of a claim under ss. 766.301-766.316, F.S., other
47 than those fees awarded under this section; amending s.
48 766.314, F.S.; correcting terminology; authorizing certain
49 hospitals to pay assessments on behalf of certain health
50 care professionals; providing for the dates of coverage of
51 a participating physician; amending s. 391.035, F.S.;
52 declaring certain physicians to be agents of the
53 Department of Health for the purposes of s. 768.28, F.S.,
54 when providing services through the Children's Medical
55 Services network; requiring indemnification of the state
56 by such physicians; creating s. 395.0194, F.S.;
57 authorizing the governing boards of hospitals to reject or
58 modify medical staff recommendations or to take action
59 where the medical staff has failed to act under certain
60 circumstances; providing procedures for corrective or



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61 disciplinary actions, including referral of such matters
62 to a joint conference committee appointed by the governing
63 board and the medical staff; providing for review and
64 consideration of the recommendations of the joint
65 conference committee by the governing board; amending s.
66 395.0197, F.S.; revising provisions relating to internal
67 risk management programs; repealing s. 395.0198, F.S.,
68 relating to public records exemptions for notification of
69 adverse incidents; creating s. 395.1012, F.S.; requiring
70 hospitals, ambulatory surgical centers, and mobile
71 surgical facilities to establish patient safety plans,
72 officers, and committees; creating s. 395.1051, F.S.;
73 providing for notification of injuries in a hospital,
74 ambulatory surgical center, or mobile surgical facility;
75 amending s. 415.1111, F.S.; providing that such section
76 shall not apply to actions involving allegations of
77 medical malpractice by a hospital; creating s. 408.932,
78 F.S.; requiring certain health care facilities to provide
79 notice of unanticipated outcomes of care which result in
80 serious harm to the patient to patients or the patients'
81 representatives; providing that such notice shall not
82 constitute an acknowledgment or admission of guilt and
83 shall not be introduced in any civil action; creating s.
84 456.0575, F.S.; requiring health care providers to provide
85 notice of unanticipated outcomes of care which result in
86 serious harm to the patient to patients or the patients'
87 representatives; providing that such notice shall not
88 constitute an acknowledgment or admission of guilt and
89 shall not be introduced in any civil action; authorizing
90 health care practitioner regulatory boards to adopt rules



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91 to establish standards of practice for prescribing drugs
92 to patients via the Internet; amending s. 456.039, F.S.;
93 requiring additional information to be furnished to the
94 Department of Health for licensure purposes; amending s.
95 456.049, F.S.; requiring the Department of Health to
96 forward reports on professional liability claims and
97 actions to the Office of Insurance Regulation; amending s.
98 456.057, F.S.; providing an exception to the
99 confidentiality of medical information when a release has
100 been provided; authorizing the Department of Health to
101 utilize subpoenas to obtain patient records without
102 patients' consent under certain circumstances; amending s.
103 456.063, F.S.; providing for adopting rules to implement
104 requirements for reporting allegations of sexual
105 misconduct; amending s. 456.072, F.S.; revising provisions
106 assessing costs of disciplinary investigation and
107 prosecution; changing the burden of proof in certain
108 administrative actions; amending s. 456.073, F.S.;
109 providing a deadline for raising issues of material fact;
110 extending the time for the Department of Health to refer a
111 request for an administrative hearing; amending s.
112 456.077, F.S.; revising provisions relating to designation
113 of certain citation violations; amending s. 456.078, F.S.;
114 providing that violations involving standard of care may
115 be appropriate for mediation; revising provisions relating
116 to designation of certain mediation offenses; amending s.
117 458.320, F.S.; providing that a hospital shall not be
118 liable for the failure of a physician to meet financial
119 responsibility requirements; amending s. 459.0085, F.S.;
120 providing that a hospital shall not be liable for the



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121 failure of a physician to meet financial responsibility
122 requirements; amending s. 458.331, F.S., relating to
123 grounds for disciplinary action of a physician; redefining
124 the term "repeated malpractice"; revising the standards
125 for the burden of proof in an administrative action
126 against a physician; revising the minimum amount of a
127 claim against a licensee which will trigger a departmental
128 investigation; amending s. 459.015, F.S., relating to
129 grounds for disciplinary action against an osteopathic
130 physician; redefining the term "repeated malpractice";
131 revising the standards for the burden of proof in an
132 administrative action against an osteopathic physician;
133 amending conditions that necessitate a departmental
134 investigation of an osteopathic physician; revising the
135 minimum amount of a claim against a licensee which will
136 trigger a departmental investigation; amending s. 460.413,
137 F.S.; revising the standards for the burden of proof in an
138 administrative action against a chiropractic physician;
139 amending s. 461.013, F.S., relating to grounds for
140 disciplinary action against a podiatric physician;
141 redefining the term "repeated malpractice"; revising the
142 minimum amount of a claim against a licensee which will
143 trigger a departmental investigation; amending s. 466.028,
144 F.S., relating to grounds for disciplinary action against
145 a dentist or a dental hygienist; redefining the term
146 "dental malpractice"; revising the minimum amount of a
147 claim against a licensee which will trigger a departmental
148 investigation; amending s. 624.155, F.S.; eliminating
149 third-party actions against insurers in certain matters
150 involving medical negligence; revising standards for



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151 determination of bad faith by an insurer in medical
152 liability cases; providing factors to be considered in
153 determining whether an insurer has acted in bad faith in
154 such cases; requiring the reporting of certain judgments
155 to the Office of Insurance Regulation; providing a
156 limitation on damages recoverable in certain bad faith
157 actions; providing an exemption to certain insureds from
158 judgment liens and execution in an amount equal to sums
159 paid on behalf of such insured by a liability insurer;
160 providing that no award for attorney's fees shall be
161 enhanced by a contingency risk multiplier in certain
162 actions relating to professional liability insurance
163 coverage for medical negligence; providing for
164 severability and applicability of the amendments to s.
165 624.155, F.S.; amending s. 627.062, F.S.; prohibiting the
166 inclusion of payments made by insurers for bad faith
167 claims in an insurer's rate base; requiring certain rate
168 filings; amending s. 627.357, F.S.; deleting the
169 prohibition against formation of medical malpractice self-
170 insurance funds; providing requirements to form a self-
171 insurance fund; providing rulemaking authority to the
172 Financial Services Commission; amending s. 627.4147, F.S.;
173 deleting the requirement that medical malpractice policies
174 authorize the insurer to admit liability without the
175 consent of the insured; amending s. 627.912, F.S.;
176 requiring certain claims information to be filed with the
177 Office of Insurance Regulation and the Department of
178 Health; providing for rulemaking by the Financial Services
179 Commission; increasing the limit on and making mandatory a
180 fine against insurers for certain actions; creating s.



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181 627.41493, F.S.; requiring a medical malpractice insurance
182 rate rollback; providing a minimum percentage for the
183 average reduction in rates; providing that the decrease in
184 rates need not be uniform across specialties; providing
185 for review of such rates; providing an exception to the
186 minimum roll back required if any provision of this act is
187 declared unconstitutional by a court of competent
188 jurisdiction; creating s. 627.9121, F.S.; requiring
189 certain information relating to medical malpractice to be
190 reported to the Office of Insurance Regulation; providing
191 for enforcement; amending s. 641.19, F.S.; providing that
192 health care providers providing services pursuant to
193 coverage provided under a health maintenance organization
194 contract are not employees or agents of the health
195 maintenance organization; amending s. 641.51, F.S.;
196 providing that a health maintenance organization shall not
197 have the right to control the professional judgment of a
198 physician; providing that a health maintenance
199 organization shall not be vicariously liable for the
200 medical negligence of a health care provider; amending s.
201 766.102, F.S.; redefining the term "similar health care
202 provider"; deleting authority for certain persons to
203 testify as expert witnesses; amending s. 766.104, F.S.;
204 providing that the presuit written expert opinion received
205 by counsel for a claimant shall be subject to discovery;
206 amending s. 766.106, F.S.; providing that the presuit
207 written expert opinions received pursuant to s. 766.203,
208 F.S., shall be subject to discovery and admissible in
209 evidence; requiring medical malpractice claimants to
210 execute a medical information release that allows a



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211 defendant or his or her legal representative to conduct ex
212 parte interviews with the claimant's treating physicians;
213 amending s. 766.1115, F.S.; providing that certain
214 university faculty providing health care services to
215 patients of a public hospital shall not be considered
216 agents of the hospital for the purposes of this section;
217 amending s. 766.202, F.S.; redefining the terms "economic
218 damages," "medical expert," "noneconomic damages," and
219 "periodic payment"; amending s. 766.207, F.S.; providing
220 for the applicability of the Wrongful Death Act and
221 general law to arbitration awards; providing an aggregate
222 cap on noneconomic damages which may be awarded in
223 arbitration; providing that all future damages awarded in
224 arbitration shall be paid by periodic payment and offset
225 by future collateral source payments; amending s. 766.209,
226 F.S.; providing an aggregate cap on noneconomic damages
227 which may be awarded at trial where a claimant has
228 rejected a defendant's offer to enter voluntary binding
229 arbitration; creating s. 766.213, F.S.; providing for the
230 termination of periodic payments for unincurred medical
231 expenses upon the death of the claimant; providing for the
232 payment of medical expenses incurred prior to the death of
233 the claimant; amending s. 766.309, F.S.; requiring
234 claimants filing suit for injuries determined to be
235 compensable under the Florida Birth-Related Neurological
236 Injury Compensation Plan to decline such benefits as a
237 condition of proceeding to trial; providing a timeframe
238 within which such declination must be made; amending s.
239 768.041, F.S.; providing for a setoff of amounts received
240 by a claimant in settlements; authorizing settling



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241 defendants to assign rights of contribution; amending s.
242 768.13, F.S.; revising guidelines for immunity from
243 liability under the Good Samaritan Act; providing
244 legislative intent and findings with respect to the
245 provision of emergency medical services and care by care
246 providers and with respect to public hospitals and
247 affiliations with not-for-profit colleges and universities
248 with medical schools and other health practitioner
249 educational programs; amending s. 768.28, F.S., relating
250 to waiver of sovereign immunity in tort actions; revising
251 the definition of "officer, employee, or agent"; providing
252 such immunity to certain colleges and universities
253 affiliated with public hospitals while providing patient
254 services; amending s. 768.77, F.S.; prescribing a method
255 for itemization of specific categories of damages awarded
256 in medical malpractice actions; creating s. 766.1067,
257 F.S.; providing for mandatory mediation in medical
258 negligence causes of action; creating s. 766.118, F.S.;
259 providing a limitation on noneconomic damages which can be
260 awarded in causes of action involving medical negligence;
261 amending s. 768.78, F.S.; revising the means for
262 compensating medical malpractice claimants for future
263 economic and future noneconomic losses; conforming a cross
264 reference; amending ss. 766.112 and 768.81, F.S.;
265 providing that a defendant's liability for damages in
266 medical negligence cases is several only; creating s.
267 1004.08, F.S.; requiring patient safety instruction for
268 certain students in public schools, colleges, and
269 universities; creating s. 1005.07, F.S.; requiring patient
270 safety instruction for certain students in nonpublic



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271 schools, colleges, and universities; requiring the
272 Department of Health to study the efficacy and
273 constitutionality of medical review panels; requiring a
274 report; requiring a report by the Agency for Health Care
275 Administration regarding information to be provided to
276 health care consumers; requiring the Office of Program
277 Policy Analysis and Government Accountability to study and
278 report to the Legislature on requirements for coverage by
279 the Florida Birth-Related Neurological Injury Compensation
280 Association; requiring the Office of Program Policy
281 Analysis and Government Accountability and the Office of
282 the Auditor General to conduct an audit, as specified, and
283 to report to the Legislature; requiring a report by the
284 Agency for Health Care Administration regarding the
285 establishment of a Patient Safety Authority; specifying
286 elements of the report; creating the Medical Injury
287 Nonjudicial Compensation Study Commission and providing
288 for its membership, organization, and duties; authorizing
289 public hearings; authorizing appointment of technical
290 advisory committees; authorizing appointment of an
291 executive director and the hiring of staff and
292 consultants; authorizing per diem and reimbursement for
293 travel expenses; requiring interim and final reports;
294 providing for termination of the commission; providing
295 severability; providing for construction of the act in
296 pari materia with laws enacted during the 2003 Regular
297 Session or the 2003 Special Session A of the Legislature;
298 providing applicability; providing an effective date.

299
300 Be It Enacted by the Legislature of the State of Florida:



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Section 1. Findings.--

(1) The Legislature finds that Florida is in the midst of a medical malpractice insurance crisis of unprecedented magnitude.

(2) The Legislature finds that this crisis threatens the quality and availability of health care for all Florida citizens.

(3) The Legislature finds that the rapidly growing population and the changing demographics of Florida make it imperative that students continue to choose Florida as the place they will receive their medical educations and practice medicine.

(4) The Legislature finds that Florida is among the states with the highest medical malpractice insurance premiums in the nation.

(5) The Legislature finds that the cost of medical malpractice insurance has increased dramatically during the past decade and both the increase and the current cost are substantially higher than the national average.

(6) The Legislature finds that the increase in medical malpractice liability insurance rates is forcing physicians to practice medicine without professional liability insurance, to leave Florida, to not perform high-risk procedures, and to retire early from the practice of medicine.

(7) The Legislature finds that there are certain elements of damage presently recoverable that have no monetary value, except on a purely arbitrary basis, while other elements of damage are either easily measured on a monetary basis or reflect ultimate monetary loss.



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331 (8) The Governor created the Governor's Select Task Force
332 on Healthcare Professional Liability Insurance to study and make
333 recommendations to address these problems.

334 (9) The Legislature has reviewed the findings and
335 recommendations of the Governor's Select Task Force on
336 Healthcare Professional Liability Insurance.

337 (10) The Legislature finds that the Governor's Select Task
338 Force on Healthcare Professional Liability Insurance has
339 established that a medical malpractice crisis exists in the
340 state which can be alleviated by the adoption of comprehensive
341 legislatively enacted reforms.

342 (11) The Legislature finds that making high-quality health
343 care available to the citizens of the state is an overwhelming
344 public necessity.

345 (12) The Legislature finds that ensuring that physicians
346 continue to practice in Florida is an overwhelming public
347 necessity.

348 (13) The Legislature finds that ensuring the availability
349 of affordable professional liability insurance for physicians is
350 an overwhelming public necessity.

351 (14) The Legislature finds, based upon the findings and
352 recommendations of the Governor's Select Task Force on
353 Healthcare Professional Liability Insurance, the findings and
354 recommendations of various study groups throughout the nation,
355 and the experience of other states, that the overwhelming public
356 necessities of making quality health care available to the
357 citizens of this state, of ensuring that physicians continue to
358 practice in Florida, and of ensuring that those physicians have
359 the opportunity to purchase affordable professional liability
360 insurance cannot be met unless a cap on noneconomic damages in



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361 an amount no higher than \$250,000 is imposed.

362 (15) The Legislature finds that the high cost of medical
363 malpractice claims can be substantially alleviated by imposing a
364 limitation on noneconomic damages in medical malpractice
365 actions.

366 (16) The Legislature further finds that there is no
367 alternative measure of accomplishing such result without
368 imposing even greater limits upon the ability of persons to
369 recover damages for medical malpractice.

370 (17) The Legislature finds that the provisions of this act
371 are naturally and logically connected to each other and to the
372 purpose of making quality health care available to the citizens
373 of Florida.

374 (18) The Legislature finds that it is important to have a
375 comprehensive bill with all issues resolved rather than separate
376 bills.

377 (19) The Legislature finds that each of the provisions of
378 this act is necessary to alleviate the crisis relating to
379 medical malpractice insurance.

380 Section 2. Subsection (4) is added to section 46.015,
381 Florida Statutes, to read:

382 46.015 Release of parties.--

383 (4)(a) At trial pursuant to a suit filed under chapter 766
384 or pursuant to s. 766.209, or in arbitration pursuant to s.
385 766.207, if any defendant shows the court that the plaintiff, or
386 his or her legal representative, has delivered a written release
387 or covenant not to sue to any person in partial satisfaction of
388 the damages resulting from the same injury or injuries, the
389 court shall set off this amount from the amount of any judgment
390 to which the plaintiff would otherwise be entitled at the time



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391 of rendering judgment, regardless of whether the jury has
392 allocated fault to the settling defendant at trial.

393 (b) The amount of any setoff under this subsection shall
394 include all sums received by the plaintiff, including economic
395 and noneconomic damages, costs, and attorney's fees, and shall
396 be applied against the total damages, after reduction for any
397 comparative negligence of the plaintiff, rather than against the
398 apportioned damages caused by a particular defendant.

399 (c) A defendant entering into a settlement agreement with
400 a plaintiff may assign any right of contribution arising under
401 s. 768.31 as a consequence of having paid more than his or her
402 proportionate share of the entire liability.

403 Section 3. Paragraph (1) of subsection (1) of section
404 120.57, Florida Statutes, is amended to read:

405 120.57 Additional procedures for particular cases.--

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

408 (1)1. The agency may adopt the recommended order as the
409 final order of the agency. The agency in its final order may
410 reject or modify the conclusions of law over which it has
411 substantive jurisdiction and interpretation of administrative
412 rules over which it has substantive jurisdiction. When rejecting
413 or modifying such conclusion of law or interpretation of
414 administrative rule, the agency must state with particularity
415 its reasons for rejecting or modifying such conclusion of law or
416 interpretation of administrative rule and must make a finding
417 that its substituted conclusion of law or interpretation of
418 administrative rule is as or more reasonable than that which was
419 rejected or modified. Rejection or modification of conclusions
420 of law may not form the basis for rejection or modification of



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421 findings of fact. The agency may not reject or modify the
422 findings of fact unless the agency first determines from a
423 review of the entire record, and states with particularity in
424 the order, that the findings of fact were not based upon
425 competent substantial evidence or that the proceedings on which
426 the findings were based did not comply with essential
427 requirements of law. The agency may accept the recommended
428 penalty in a recommended order, but may not reduce or increase
429 it without a review of the complete record and without stating
430 with particularity its reasons therefor in the order, by citing
431 to the record in justifying the action.

432 2. Notwithstanding subparagraph 1., as a matter of law,
433 any decision involving the standard of care of a health care
434 profession regulated by any board within the Department of
435 Health is infused with overriding policy considerations that are
436 best left to the regulatory board that has jurisdiction over
437 that profession. When rejecting or modifying a recommended
438 finding of fact in standard-of-care cases, the appropriate board
439 within the Department of Health may reassess and resolve
440 conflicting evidence in a recommended order based on the record
441 in the case.

442 Section 4. Subsection (11) is added to section 120.65,
443 Florida Statutes, to read:

444 120.65 Administrative law judges.--

445 (11) The Division of Administrative Hearings shall
446 designate at least two administrative law judges who will
447 specifically preside over actions involving a health care
448 practitioner or profession as defined in s. 456.001. Each
449 designated administrative law judge shall be a member of The
450 Florida Bar in good standing and shall be a health care



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451 practitioner or have experience in health care. The Division of
 452 Administrative Hearings and the Department of Health shall work
 453 cooperatively to enhance the effectiveness of disciplinary
 454 actions involving a health care practitioner or profession as
 455 defined in s. 456.001.

456 Section 5. Subsection (1) of section 391.025, Florida
 457 Statutes, is amended to read:

458 391.025 Applicability and scope.--

459 (1) This act applies to health services provided to
 460 eligible individuals who are:

461 (a) Enrolled in the Medicaid program. ~~;~~

462 (b) Enrolled in the Florida Kidcare program. ~~;~~ ~~and~~

463 (c) Uninsured or underinsured, provided that they meet the
 464 financial eligibility requirements established in this act, and
 465 to the extent that resources are appropriated for their care. ~~;~~
 466 ~~and~~

467 (d) Infants who receive an award of compensation pursuant
 468 to s. 766.31(1).

469 Section 6. Paragraph (f) is added to subsection (2) of
 470 section 391.029, Florida Statutes, to read:

471 391.029 Program eligibility.--

472 (2) The following individuals are financially eligible for
 473 the program:

474 (f) An infant who receives an award of compensation
 475 pursuant to s. 766.31(1), provided the Florida Birth-Related
 476 Neurological Injury Compensation Association shall reimburse the
 477 Children's Medical Services Network the state's share of funding,
 478 which funding shall be used to obtain matching federal funds
 479 under Title XXI of the Social Security Act.

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481 The department may continue to serve certain children with
482 special health care needs who are 21 years of age or older and
483 who were receiving services from the program prior to April 1,
484 1998. Such children may be served by the department until July
485 1, 2000.

486 Section 7. Patient safety data privilege.--

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

488 (a) "Patient safety data" means reports made to patient
489 safety organizations, including all health care data,
490 interviews, memoranda, analyses, root cause analyses, products
491 of quality assurance or quality improvement processes,
492 corrective action plans, or information collected or created by
493 a health care facility licensed under chapter 395, Florida
494 Statutes, or a health care practitioner as defined in s.
495 456.001(4), Florida Statutes, as a result of an occurrence
496 related to the provision of health care services which
497 exacerbates an existing medical condition or could result in
498 injury, illness, or death.

499 (b) "Patient safety organization" means any organization,
500 group, or other entity that collects and analyzes patient safety
501 data for the purpose of improving patient safety and health care
502 outcomes and that is independent and not under the control of
503 the entity that reports patient safety data.

504 (2) Patient safety data shall not be subject to discovery
505 or introduction into evidence in any civil or administrative
506 action.

507 (3) Unless otherwise provided by law, a patient safety
508 organization shall promptly remove all patient-identifying
509 information after receipt of a complete patient safety data
510 report unless such organization is otherwise permitted by state



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511 or federal law to maintain such information. Patient safety
512 organizations shall maintain the confidentiality of all patient-
513 identifying information and may not disseminate such
514 information, except as permitted by state or federal law.

515 (4) The exchange of patient safety data among health care
516 facilities licensed under chapter 395, Florida Statutes, or
517 health care practitioners as defined in s. 456.001(4), Florida
518 Statutes, or patient safety organizations which does not
519 identify any patient shall not constitute a waiver of any
520 privilege established in this section.

521 (5) Reporting of patient safety data to patient safety
522 organizations does not abrogate obligations to make reports to
523 the Department of Health, the Agency for Health Care
524 Administration, or other state or federal regulatory agencies.

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

528 Section 8. Section 766.304, Florida Statutes, is amended
529 to read:

530 766.304 Administrative law judge to determine claims.--The
531 administrative law judge shall hear and determine all claims
532 filed pursuant to ss. 766.301-766.316 and shall exercise the
533 full power and authority granted to her or him in chapter 120,
534 as necessary, to carry out the purposes of such sections. The
535 administrative law judge has exclusive jurisdiction to determine
536 whether a claim filed under this act is compensable. No civil
537 action may be brought until the determinations under s. 766.309
538 have been made by the administrative law judge. If the
539 administrative law judge determines that the claimant is
540 entitled to compensation from the association, no civil action



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541 may be brought or continued in violation of the exclusiveness of
 542 remedy provisions of s. 766.303. If it is determined that a
 543 claim filed under this act is not compensable, neither the
 544 doctrine of collateral estoppel nor res judicata shall prohibit
 545 the claimant from pursuing any and all civil remedies available
 546 under common law and statutory law. The findings of fact and
 547 conclusions of law of the administrative law judge shall not be
 548 admissible in any subsequent proceeding; however, the sworn
 549 testimony of any person and the exhibits introduced into
 550 evidence in the administrative case are admissible as
 551 impeachment in any subsequent civil action only against a party
 552 to the administrative proceeding, subject to the Rules of
 553 Evidence. An award ~~action~~ may not be awarded or paid ~~brought~~
 554 under ss. 766.301-766.316 if the claimant recovers under a
 555 settlement or a final judgment is entered in a civil action. The
 556 division may adopt rules to promote the efficient administration
 557 of, and to minimize the cost associated with, the prosecution of
 558 claims.

559 Section 9. Section 766.305, Florida Statutes, is amended
 560 to read:

561 766.305 Filing of claims and responses; medical
 562 disciplinary review.--

563 (1) All claims filed for compensation under the plan shall
 564 commence by the claimant filing with the division a petition
 565 seeking compensation. Such petition shall include the following
 566 information:

567 (a) The name and address of the legal representative and
 568 the basis for her or his representation of the injured infant.

569 (b) The name and address of the injured infant.



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570 (c) The name and address of any physician providing
571 obstetrical services who was present at the birth and the name
572 and address of the hospital at which the birth occurred.

573 (d) A description of the disability for which the claim is
574 made.

575 (e) The time and place the injury occurred.

576 (f) A brief statement of the facts and circumstances
577 surrounding the injury and giving rise to the claim.

578 ~~(g) All available relevant medical records relating to the
579 birth-related neurological injury, and an identification of any
580 unavailable records known to the claimant and the reasons for
581 their unavailability.~~

582 ~~(h) Appropriate assessments, evaluations, and prognoses,
583 and such other records and documents as are reasonably necessary
584 for the determination of the amount of compensation to be paid
585 to, or on behalf of, the injured infant on account of the birth-
586 related neurological injury.~~

587 ~~(i) Documentation of expenses and services incurred to
588 date, which indicates any payment made for such expenses and
589 services, and by whom.~~

590 ~~(j) Documentation of any applicable private or
591 governmental source of services or reimbursement relative to the
592 impairments.~~

593 (2) The claimant shall furnish the division with as many
594 copies of the petition as required for service upon the
595 association, any physician and hospital named in the petition,
596 and the Division of Medical Quality Assurance, along with a \$15
597 filing fee payable to the Division of Administrative Hearings.
598 Upon receipt of the petition, the division shall immediately
599 serve the association, by service upon the agent designated to



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600 accept service on behalf of the association, by registered or
 601 certified mail, and shall mail copies of the petition, by
 602 registered or certified mail, to any physician, health care
 603 provider, and hospital named in the petition, and furnish a copy
 604 by regular mail to the Division of Medical Quality Assurance,
 605 and the Agency for Health Care Administration.

606 (3) The claimant shall furnish to the executive director of
 607 the Florida Birth-Related Neurological Injury Compensation
 608 Association one copy of the following information which shall be
 609 filed with the association within 10 days after the filing of the
 610 petition as set forth in s. 766.305(1):

611 (a) All available relevant medical records relating to the
 612 birth-related neurological injury and an identification of any
 613 unavailable records known to the claimant and the reasons for
 614 their unavailability.

615 (b) Appropriate assessments, evaluations, and prognoses and
 616 such other records and documents as are reasonably necessary for
 617 the determination of the amount of compensation to be paid to, or
 618 on behalf of, the injured infant on account of the birth-related
 619 neurological injury.

620 (c) Documentation of expenses and services incurred to
 621 date, which indicates any payment made for such expenses and
 622 services and by whom.

623 (d) Documentation of any applicable private or governmental
 624 source of services or reimbursement relative to the impairments.
 625 The information contained in paragraphs (a)-(d) is confidential
 626 and exempt pursuant to the provisions of s. 766.315(5)(b).

627 (4)-(3) The association shall have 45 days from the date of
 628 service of a complete claim, filed pursuant to subsections (1)
 629 and (2), in which to file a response to the petition and to



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630 submit relevant written information relating to the issue of
631 whether the injury alleged is a birth-related neurological
632 injury.

633 ~~(5)~~(4) Upon receipt of such petition, the Division of
634 Medical Quality Assurance shall review the information therein
635 and determine whether it involved conduct by a physician
636 licensed under chapter 458 or an osteopathic physician licensed
637 under chapter 459 that is subject to disciplinary action, in
638 which case the provisions of s. 456.073 shall apply.

639 ~~(6)~~(5) Upon receipt of such petition, the Agency for
640 Health Care Administration shall investigate the claim, and if
641 it determines that the injury resulted from, or was aggravated
642 by, a breach of duty on the part of a hospital in violation of
643 chapter 395, it shall take any such action consistent with its
644 disciplinary authority as may be appropriate.

645 ~~(7)~~(6) Any claim which the association determines to be
646 compensable may be accepted for compensation, provided that the
647 acceptance is approved by the administrative law judge to whom
648 the claim for compensation is assigned.

649 Section 10. Subsection (4) is added to section 766.309,
650 Florida Statutes, to read:

651 766.309 Determination of claims; presumption; findings of
652 administrative law judge binding on participants.--

653 (4) If it is in the interest of judicial economy or if
654 requested to by the claimant, the administrative law judge may
655 bifurcate the proceeding, addressing compensability and notice
656 pursuant to s. 766.316 first and addressing any award pursuant
657 to s. 766.31 in a separate proceeding. The administrative law
658 judge may issue a final order on compensability and notice which



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659 is subject to appeal under s. 766.311, prior to issuance of an
660 award pursuant to s. 766.31.

661 Section 11. Subsection (1) of section 766.31, Florida
662 Statutes, is amended to read:

663 766.31 Administrative law judge awards for birth-related
664 neurological injuries; notice of award.--

665 (1) Upon determining that an infant has sustained a birth-
666 related neurological injury and that obstetrical services were
667 delivered by a participating physician at the birth, the
668 administrative law judge shall make an award providing
669 compensation for the following items relative to such injury:

670 (a) Actual expenses for medically necessary and reasonable
671 medical and hospital, habilitative and training, family
672 residential or custodial care, professional residential, and
673 custodial care and service, for medically necessary drugs,
674 special equipment, and facilities, and for related travel.
675 However, such expenses shall not include:

676 1. Expenses for items or services that the infant has
677 received, or is entitled to receive, under the laws of any state
678 or the Federal Government, including Medicaid, except to the
679 extent such exclusion may be prohibited by federal law.

680 2. Expenses for items or services that the infant has
681 received, or is contractually entitled to receive, from any
682 prepaid health plan, health maintenance organization, or other
683 private insuring entity.

684 3. Expenses for which the infant has received
685 reimbursement, or for which the infant is entitled to receive
686 reimbursement, under the laws of any state or the Federal
687 Government, including Medicaid, except to the extent such
688 exclusion may be prohibited by federal law.



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689 4. Expenses for which the infant has received
690 reimbursement, or for which the infant is contractually entitled
691 to receive reimbursement, pursuant to the provisions of any
692 health or sickness insurance policy or other private insurance
693 program.

694

695 Expenses included under this paragraph shall be limited to
696 reasonable charges prevailing in the same community for similar
697 treatment of injured persons when such treatment is paid for by
698 the injured person.

699 (b)1. Periodic payments of an award to the parents or
700 legal guardians of the infant found to have sustained a birth-
701 related neurological injury, which award shall not exceed
702 \$100,000. However, at the discretion of the administrative law
703 judge, such award may be made in a lump sum.

704 2. A death benefit for the infant in an amount of \$10,000
705 ~~Payment for funeral expenses not to exceed \$1,500.~~

706 (c) Reasonable expenses incurred in connection with the
707 filing of a claim under ss. 766.301-766.316, including
708 reasonable attorney's fees, which shall be subject to the
709 approval and award of the administrative law judge. In
710 determining an award for attorney's fees, the administrative law
711 judge shall consider the following factors:

712 1. The time and labor required, the novelty and difficulty
713 of the questions involved, and the skill requisite to perform
714 the legal services properly.

715 2. The fee customarily charged in the locality for similar
716 legal services.

717 3. The time limitations imposed by the claimant or the
718 circumstances.



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719 4. The nature and length of the professional relationship
720 with the claimant.

721 5. The experience, reputation, and ability of the lawyer
722 or lawyers performing services.

723 6. The contingency or certainty of a fee.
724

725 If there is an award of benefits under the plan, the claimants
726 shall not be liable for any attorney's fees incurred in
727 connection with the filing of a claim under ss. 766.301-766.316
728 other than those fees awarded under this section.

729 Section 12. Subsection (4) and paragraph (a) of subsection
730 (5) of section 766.314, Florida Statutes, are amended to read:

731 766.314 Assessments; plan of operation.--

732 (4) The following persons and entities shall pay into the
733 association an initial assessment in accordance with the plan of
734 operation:

735 (a) On or before October 1, 1988, each hospital licensed
736 under chapter 395 shall pay an initial assessment of \$50 per
737 infant delivered in the hospital during the prior calendar year,
738 as reported to the Agency for Health Care Administration;
739 provided, however, that a hospital owned or operated by the
740 state or a county, special taxing district, or other political
741 subdivision of the state shall not be required to pay the
742 initial assessment or any assessment required by subsection (5).
743 The term "infant delivered" includes live births and not
744 stillbirths, but the term does not include infants delivered by
745 employees or agents of the board of trustees of a state
746 university ~~Regents~~ or those born in a teaching hospital as
747 defined in s. 408.07. The initial assessment and any assessment
748 imposed pursuant to subsection (5) may not include any infant



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749 born to a charity patient (as defined by rule of the Agency for
750 Health Care Administration) or born to a patient for whom the
751 hospital receives Medicaid reimbursement, if the sum of the
752 annual charges for charity patients plus the annual Medicaid
753 contractals of the hospital exceeds 10 percent of the total
754 annual gross operating revenues of the hospital. The hospital is
755 responsible for documenting, to the satisfaction of the
756 association, the exclusion of any birth from the computation of
757 the assessment. Upon demonstration of financial need by a
758 hospital, the association may provide for installment payments
759 of assessments.

760 (b)1. On or before October 15, 1988, all physicians
761 licensed pursuant to chapter 458 or chapter 459 as of October 1,
762 1988, other than participating physicians, shall be assessed an
763 initial assessment of \$250, which must be paid no later than
764 December 1, 1988.

765 2. Any such physician who becomes licensed after September
766 30, 1988, and before January 1, 1989, shall pay into the
767 association an initial assessment of \$250 upon licensure.

768 3. Any such physician who becomes licensed on or after
769 January 1, 1989, shall pay an initial assessment equal to the
770 most recent assessment made pursuant to this paragraph,
771 paragraph (5)(a), or paragraph (7)(b).

772 4. However, if the physician is a physician specified in
773 this subparagraph, the assessment is not applicable:

774 a. A resident physician, assistant resident physician, or
775 intern in an approved postgraduate training program, as defined
776 by the Board of Medicine or the Board of Osteopathic Medicine by
777 rule;



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778 b. A retired physician who has withdrawn from the practice
 779 of medicine but who maintains an active license as evidenced by
 780 an affidavit filed with the Department of Health. Prior to
 781 reentering the practice of medicine in this state, a retired
 782 physician as herein defined must notify the Board of Medicine or
 783 the Board of Osteopathic Medicine and pay the appropriate
 784 assessments pursuant to this section;

785 c. A physician who holds a limited license pursuant to s.
 786 458.317 and who is not being compensated for medical services;

787 d. A physician who is employed full time by the United
 788 States Department of Veterans Affairs and whose practice is
 789 confined to United States Department of Veterans Affairs
 790 hospitals; or

791 e. A physician who is a member of the Armed Forces of the
 792 United States and who meets the requirements of s. 456.024.

793 f. A physician who is employed full time by the State of
 794 Florida and whose practice is confined to state-owned
 795 correctional institutions, a county health department, or state-
 796 owned mental health or developmental services facilities, or who
 797 is employed full time by the Department of Health.

798 (c) On or before December 1, 1988, each physician licensed
 799 pursuant to chapter 458 or chapter 459 who wishes to participate
 800 in the Florida Birth-Related Neurological Injury Compensation
 801 Plan and who otherwise qualifies as a participating physician
 802 under ss. 766.301-766.316 shall pay an initial assessment of
 803 \$5,000. However, if the physician is either a resident
 804 physician, assistant resident physician, or intern in an
 805 approved postgraduate training program, as defined by the Board
 806 of Medicine or the Board of Osteopathic Medicine by rule, and is
 807 supervised in accordance with program requirements established



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808 by the Accreditation Council for Graduate Medical Education or
809 the American Osteopathic Association by a physician who is
810 participating in the plan, such resident physician, assistant
811 resident physician, or intern is deemed to be a participating
812 physician without the payment of the assessment. Participating
813 physicians also include any employee of the board of trustees of
814 a state university ~~Regents~~ who has paid the assessment required
815 by this paragraph and paragraph (5)(a), and any certified nurse
816 midwife supervised by such employee. Participating physicians
817 include any certified nurse midwife who has paid 50 percent of
818 the physician assessment required by this paragraph and
819 paragraph (5)(a) and who is supervised by a participating
820 physician who has paid the assessment required by this paragraph
821 and paragraph (5)(a). Supervision for nurse midwives shall
822 require that the supervising physician will be easily available
823 and have a prearranged plan of treatment for specified patient
824 problems which the supervised certified nurse midwife may carry
825 out in the absence of any complicating features. Any physician
826 who elects to participate in such plan on or after January 1,
827 1989, who was not a participating physician at the time of such
828 election to participate and who otherwise qualifies as a
829 participating physician under ss. 766.301-766.316 shall pay an
830 additional initial assessment equal to the most recent
831 assessment made pursuant to this paragraph, paragraph (5)(a), or
832 paragraph (7)(b).

833 (d) Any hospital located in any county with a gross
834 population in excess of 1.1 million as of January 1, 2003, as
835 determined by the Agency for Health Care Administration, pursuant
836 to the Health Care Responsibility Act, may elect to pay the fee
837 for the participating physician and the certified nurse midwife



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838 if the hospital first determines that the primary motivating
839 purpose for making such payment is to ensure coverage for the
840 hospital's patients under the provisions of ss. 766.301-766.316,
841 provided no hospital may restrict any participating physician or
842 certified nurse midwife, directly or indirectly, from being on
843 the staff of hospitals other than the staff of the hospital
844 making such payment. Each hospital shall file with the
845 association an affidavit setting forth specifically the reasons
846 why such hospital elected to make such payment on behalf of each
847 participating physician and certified nurse midwife. The payments
848 authorized pursuant to this paragraph shall be in addition to the
849 assessment set forth in paragraph (5)(a).

850 (5)(a) Beginning January 1, 1990, the persons and entities
851 listed in paragraphs (4)(b) and (c), except those persons or
852 entities who are specifically excluded from said provisions, as
853 of the date determined in accordance with the plan of operation,
854 taking into account persons licensed subsequent to the payment
855 of the initial assessment, shall pay an annual assessment in the
856 amount equal to the initial assessments provided in paragraphs
857 (4)(b) and (c). If the payment of such annual assessment by a
858 participating physician is not received by the association by
859 January 31 of any calendar year, the participating physician
860 shall only qualify as a participating physician for that
861 calendar year from the date the payment was received by the
862 association. On January 1, 1991, and on each January 1
863 thereafter, the association shall determine the amount of
864 additional assessments necessary pursuant to subsection (7), in
865 the manner required by the plan of operation, subject to any
866 increase determined to be necessary by the Department of
867 Insurance pursuant to paragraph (7)(b). On July 1, 1991, and on



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868 each July 1 thereafter, the persons and entities listed in
869 paragraphs (4)(b) and (c), except those persons or entities who
870 are specifically excluded from said provisions, shall pay the
871 additional assessments which were determined on January 1.
872 Beginning January 1, 1990, the entities listed in paragraph
873 (4)(a), including those licensed on or after October 1, 1988,
874 shall pay an annual assessment of \$50 per infant delivered
875 during the prior calendar year. The additional assessments which
876 were determined on January 1, 1991, pursuant to the provisions
877 of subsection (7) shall not be due and payable by the entities
878 listed in paragraph (4)(a) until July 1.

879 Section 13. Subsection (4) is added to section 391.035,
880 Florida Statutes, to read:

881 391.035 Provider qualifications.--

882 (4) A physician licensed under chapter 458 or chapter 459
883 who is approved by the department under this section shall be
884 deemed an agent of the department and shall be covered by state
885 liability protection in accordance with s. 768.28 when providing
886 health care services to participants in accordance with
887 department rules and guidelines and protocols of the Children's
888 Medical Services. When such health care services are provided
889 under contract with the department, the contract shall provide
890 for the indemnification of the state by the agent for any
891 liabilities incurred up to the limits set out in chapter 768.

892 Section 14. Section 395.0194, Florida Statutes, is created
893 to read:

894 395.0194 Licensed facilities; quality assurance
895 responsibilities of governing board.--

896 (1) A governing board's authority for the administration
897 of the hospital is not limited by the authority of its medical



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898 staff. Therefore, a governing board may reject or modify a
899 medical staff recommendation or may, if the medical staff has
900 failed to act, take action independent of the medical staff
901 concerning medical staff membership, clinical privileges, peer
902 review, patient safety, and quality assurance.

903 (2) To the extent a governing board seeks to modify a
904 medical staff recommendation, or where a medical staff has
905 failed to act within 75 days after a request from the governing
906 board to take action against, or with regard to, an individual
907 physician concerning medical staff membership, clinical
908 privileges, peer review, or quality assurance, a governing board
909 may take action independent of the actions of the medical staff.
910 If no existing bylaw provision exists and if, after any informal
911 interview, the governing board determines that corrective or
912 disciplinary action is necessary, it shall recommend such action
913 to a six-member joint conference committee composed of three
914 members of the governing board, to be appointed by the chair of
915 the governing board, and three members of the medical staff, to
916 be appointed by the chair or president of the medical staff. The
917 joint conference committee shall, within 15 days after the
918 governing board's decision, conduct a fair hearing in which the
919 physician is entitled to be represented by counsel, to be
920 afforded an opportunity to present oral and written argument in
921 response to the corrective or disciplinary action proposed, and
922 to comment upon and cross-examine witnesses and evidence against
923 such physician and notify the governing board that the joint
924 conference committee accepts, rejects, or cannot reach a
925 majority consensus concerning the governing board's
926 recommendation. If the joint conference committee's
927 recommendation is to accept the governing board's



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928 recommendation, the governing board's decision shall be final.
929 If the joint conference committee rejects the governing board's
930 recommendation and suggests an alternative corrective or
931 disciplinary action, or finds that no corrective or disciplinary
932 action is warranted, the governing board shall not unreasonably
933 reject the joint conference committee's recommendation. If the
934 joint conference committee cannot reach a majority consensus to
935 either accept or reject the governing board's action concerning
936 the fair hearing decision, the governing board's action shall be
937 final. The governing board shall give full and complete
938 consideration to the joint conference committee's
939 recommendations.

940 Section 15. Section 395.0197, Florida Statutes, is amended
941 to read:

942 395.0197 Internal risk management program.--

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

946 (a) The investigation and analysis of the frequency and
947 causes of general categories and specific types of adverse
948 incidents to patients.

949 (b) The development of appropriate measures to minimize
950 the risk of adverse incidents to patients, including, but not
951 limited to:

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

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

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



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958 areas and providing patient care, except those persons licensed
959 as health care practitioners who are required to complete
960 continuing education coursework pursuant to chapter 456 or the
961 respective practice act.

962 2. A prohibition, except when emergency circumstances
963 require otherwise, against a staff member of the licensed
964 facility attending a patient in the recovery room, unless the
965 staff member is authorized to attend the patient in the recovery
966 room and is in the company of at least one other person.

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

- 969 a. Live visual observation;
- 970 b. Electronic observation; or
- 971 c. Any other reasonable measure taken to ensure patient
972 protection and privacy.

973 3. A prohibition against an unlicensed person from
974 assisting or participating in any surgical procedure unless the
975 facility has authorized the person to do so following a
976 competency assessment, and such assistance or participation is
977 done under the direct and immediate supervision of a licensed
978 physician and is not otherwise an activity that may only be
979 performed by a licensed health care practitioner.

980 4. Development, implementation, and ongoing evaluation of
981 procedures, protocols, and systems to accurately identify
982 patients, planned procedures, and the correct site of the
983 planned procedure so as to minimize the performance of a
984 surgical procedure on the wrong patient, a wrong surgical
985 procedure, a wrong-site surgical procedure, or a surgical
986 procedure otherwise unrelated to the patient's diagnosis or
987 medical condition.



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

990 (d) The development and implementation of an incident
991 reporting system based upon the affirmative duty of all health
992 care providers and all agents and employees of the licensed
993 health care facility to report adverse incidents to the risk
994 manager, or to his or her designee, within 3 business days after
995 their occurrence.

996 (2) The internal risk management program is the
997 responsibility of the governing board of the health care
998 facility. Each licensed facility shall hire a risk manager,
999 licensed under s. 395.10974, who is responsible for
1000 implementation and oversight of such facility's internal risk
1001 management program as required by this section. A risk manager
1002 must not be made responsible for more than four internal risk
1003 management programs in separate licensed facilities, unless the
1004 facilities are under one corporate ownership or the risk
1005 management programs are in rural hospitals.

1006 (3) In addition to the programs mandated by this section,
1007 other innovative approaches intended to reduce the frequency and
1008 severity of medical malpractice and patient injury claims shall
1009 be encouraged and their implementation and operation
1010 facilitated. Such additional approaches may include extending
1011 internal risk management programs to health care providers'
1012 offices and the assuming of provider liability by a licensed
1013 health care facility for acts or omissions occurring within the
1014 licensed facility.

1015 (4) The agency shall adopt rules governing the
1016 establishment of internal risk management programs to meet the
1017 needs of individual licensed facilities. Each internal risk



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1018 management program shall include the use of incident reports to
 1019 be filed with an individual of responsibility who is competent
 1020 in risk management techniques in the employ of each licensed
 1021 facility, such as an insurance coordinator, or who is retained
 1022 by the licensed facility as a consultant. The individual
 1023 responsible for the risk management program shall have free
 1024 access to all medical records of the licensed facility. The
 1025 incident reports are part of the workpapers of the attorney
 1026 defending the licensed facility in litigation relating to the
 1027 licensed facility and are subject to discovery, but are not
 1028 admissible as evidence in court. A person filing an incident
 1029 report is not subject to civil suit by virtue of such incident
 1030 report. As a part of each internal risk management program, the
 1031 incident reports shall be used to develop categories of
 1032 incidents which identify problem areas. Once identified,
 1033 procedures shall be adjusted to correct the problem areas.

1034 (5) For purposes of reporting to the agency pursuant to
 1035 this section, the term "adverse incident" means an event over
 1036 which health care personnel could exercise control and which is
 1037 associated in whole or in part with medical intervention, rather
 1038 than the condition for which such intervention occurred, and
 1039 which:

- 1040 (a) Results in one of the following injuries:
- 1041 1. Death;
 - 1042 2. Brain or spinal damage;
 - 1043 3. Permanent disfigurement;
 - 1044 4. Fracture or dislocation of bones or joints;
 - 1045 5. A resulting limitation of neurological, physical, or
 - 1046 sensory function which continues after discharge from the
 - 1047 facility;



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1048 6. Any condition that required specialized medical
1049 attention or surgical intervention resulting from nonemergency
1050 medical intervention, other than an emergency medical condition,
1051 to which the patient has not given his or her informed consent;
1052 or

1053 7. Any condition that required the transfer of the
1054 patient, within or outside the facility, to a unit providing a
1055 more acute level of care due to the adverse incident, rather
1056 than the patient's condition prior to the adverse incident;

1057 (b) Was the performance of a surgical procedure on the
1058 wrong patient, a wrong surgical procedure, a wrong-site surgical
1059 procedure, or a surgical procedure otherwise unrelated to the
1060 patient's diagnosis or medical condition;

1061 (c) Required the surgical repair of damage resulting to a
1062 patient from a planned surgical procedure, where the damage was
1063 not a recognized specific risk, as disclosed to the patient and
1064 documented through the informed-consent process; or

1065 (d) Was a procedure to remove unplanned foreign objects
1066 remaining from a surgical procedure.

1067 (6)(a) Each licensed facility subject to this section
1068 shall submit an annual report to the agency summarizing the
1069 incident reports that have been filed in the facility for that
1070 year. The report shall include:

1071 1. The total number of adverse incidents.

1072 2. A listing, by category, of the types of operations,
1073 diagnostic or treatment procedures, or other actions causing the
1074 injuries, and the number of incidents occurring within each
1075 category.

1076 3. A listing, by category, of the types of injuries caused
1077 and the number of incidents occurring within each category.



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1078 4. A code number using the health care professional's
 1079 licensure number and a separate code number identifying all
 1080 other individuals directly involved in adverse incidents to
 1081 patients, the relationship of the individual to the licensed
 1082 facility, and the number of incidents in which each individual
 1083 has been directly involved. Each licensed facility shall
 1084 maintain names of the health care professionals and individuals
 1085 identified by code numbers for purposes of this section.

1086 5. A description of all malpractice claims filed against
 1087 the licensed facility, including the total number of pending and
 1088 closed claims and the nature of the incident which led to, the
 1089 persons involved in, and the status and disposition of each
 1090 claim.

1091 6. The name and judgments entered against each health care
 1092 practitioner for which the facility assumes liability pursuant
 1093 to subsection (3).

1094
 1095 Each report shall update status and disposition for all prior
 1096 reports.

1097 (b) The information reported to the agency pursuant to
 1098 paragraph (a) which relates to persons licensed under chapter
 1099 458, chapter 459, chapter 461, or chapter 466 shall be reviewed
 1100 by the agency. The agency shall determine whether any of the
 1101 incidents potentially involved conduct by a health care
 1102 professional who is subject to disciplinary action, in which
 1103 case the provisions of s. 456.073 shall apply.

1104 (c) The report submitted to the agency shall also contain
 1105 the name and license number of the risk manager of the licensed
 1106 facility, a copy of its policy and procedures which govern the
 1107 measures taken by the facility and its risk manager to reduce



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1108 the risk of injuries and adverse incidents, and the results of
 1109 such measures. The annual report is confidential and is not
 1110 available to the public pursuant to s. 119.07(1) or any other
 1111 law providing access to public records. The annual report is not
 1112 discoverable or admissible in any civil or administrative
 1113 action, except in disciplinary proceedings by the agency or the
 1114 appropriate regulatory board. The annual report is not available
 1115 to the public as part of the record of investigation for and
 1116 prosecution in disciplinary proceedings made available to the
 1117 public by the agency or the appropriate regulatory board.
 1118 However, the agency or the appropriate regulatory board shall
 1119 make available, upon written request by a health care
 1120 professional against whom probable cause has been found, any
 1121 such records which form the basis of the determination of
 1122 probable cause.

1123 ~~(7) The licensed facility shall notify the agency no later~~
 1124 ~~than 1 business day after the risk manager or his or her~~
 1125 ~~designee has received a report pursuant to paragraph (1)(d) and~~
 1126 ~~can determine within 1 business day that any of the following~~
 1127 ~~adverse incidents has occurred, whether occurring in the~~
 1128 ~~licensed facility or arising from health care prior to admission~~
 1129 ~~in the licensed facility:~~

1130 ~~(a) The death of a patient;~~

1131 ~~(b) Brain or spinal damage to a patient;~~

1132 ~~(c) The performance of a surgical procedure on the wrong~~
 1133 ~~patient;~~

1134 ~~(d) The performance of a wrong-site surgical procedure; or~~

1135 ~~(e) The performance of a wrong surgical procedure.~~

1136



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1137 ~~The notification must be made in writing and be provided by~~
1138 ~~facsimile device or overnight mail delivery. The notification~~
1139 ~~must include information regarding the identity of the affected~~
1140 ~~patient, the type of adverse incident, the initiation of an~~
1141 ~~investigation by the facility, and whether the events causing or~~
1142 ~~resulting in the adverse incident represent a potential risk to~~
1143 ~~other patients.~~

1144 (7)~~(8)~~ Any of the following adverse incidents, whether
1145 occurring in the licensed facility or arising from health care
1146 prior to admission in the licensed facility, shall be reported
1147 by the facility to the agency within 15 calendar days after its
1148 occurrence:

- 1149 (a) The death of a patient;
- 1150 (b) Brain or spinal damage to a patient;
- 1151 (c) The performance of a surgical procedure on the wrong
1152 patient;
- 1153 (d) The performance of a wrong-site surgical procedure;
- 1154 (e) The performance of a wrong surgical procedure;
- 1155 (f) The performance of a surgical procedure that is
1156 medically unnecessary or otherwise unrelated to the patient's
1157 diagnosis or medical condition;
- 1158 (g) The surgical repair of damage resulting to a patient
1159 from a planned surgical procedure, where the damage is not a
1160 recognized specific risk, as disclosed to the patient and
1161 documented through the informed-consent process; or
- 1162 (h) The performance of procedures to remove unplanned
1163 foreign objects remaining from a surgical procedure.

1164

1165 The agency may grant extensions to this reporting requirement
1166 for more than 15 days upon justification submitted in writing by



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1167 the facility administrator to the agency. The agency may require
1168 an additional, final report. These reports shall not be
1169 available to the public pursuant to s. 119.07(1) or any other
1170 law providing access to public records, nor be discoverable or
1171 admissible in any civil or administrative action, except in
1172 disciplinary proceedings by the agency or the appropriate
1173 regulatory board, nor shall they be available to the public as
1174 part of the record of investigation for and prosecution in
1175 disciplinary proceedings made available to the public by the
1176 agency or the appropriate regulatory board. However, the agency
1177 or the appropriate regulatory board shall make available, upon
1178 written request by a health care professional against whom
1179 probable cause has been found, any such records which form the
1180 basis of the determination of probable cause. The agency may
1181 investigate, as it deems appropriate, any such incident and
1182 prescribe measures that must or may be taken in response to the
1183 incident. The agency shall review each incident and determine
1184 whether it potentially involved conduct by the health care
1185 professional who is subject to disciplinary action, in which
1186 case the provisions of s. 456.073 shall apply.

1187 (8)~~(9)~~ The agency shall publish on the agency's website,
1188 no less than quarterly, a summary and trend analysis of adverse
1189 incident reports received pursuant to this section, which shall
1190 not include information that would identify the patient, the
1191 reporting facility, or the health care practitioners involved.
1192 The agency shall publish on the agency's website an annual
1193 summary and trend analysis of all adverse incident reports and
1194 malpractice claims information provided by facilities in their
1195 annual reports, which shall not include information that would
1196 identify the patient, the reporting facility, or the



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1197 practitioners involved. The purpose of the publication of the
1198 summary and trend analysis is to promote the rapid dissemination
1199 of information relating to adverse incidents and malpractice
1200 claims to assist in avoidance of similar incidents and reduce
1201 morbidity and mortality.

1202 (9)~~(10)~~ The internal risk manager of each licensed
1203 facility shall:

1204 (a) Investigate every allegation of sexual misconduct
1205 which is made against a member of the facility's personnel who
1206 has direct patient contact, when the allegation is that the
1207 sexual misconduct occurred at the facility or on the grounds of
1208 the facility.

1209 (b) Report every allegation of sexual misconduct to the
1210 administrator of the licensed facility.

1211 (c) Notify the family or guardian of the victim, if a
1212 minor, that an allegation of sexual misconduct has been made and
1213 that an investigation is being conducted.

1214 (d) Report to the Department of Health every allegation of
1215 sexual misconduct, as defined in chapter 456 and the respective
1216 practice act, by a licensed health care practitioner that
1217 involves a patient.

1218 (10)~~(11)~~ Any witness who witnessed or who possesses actual
1219 knowledge of the act that is the basis of an allegation of
1220 sexual abuse shall:

1221 (a) Notify the local police; and

1222 (b) Notify the hospital risk manager and the
1223 administrator.

1224

1225 For purposes of this subsection, "sexual abuse" means acts of a
1226 sexual nature committed for the sexual gratification of anyone



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1227 upon, or in the presence of, a vulnerable adult, without the
1228 vulnerable adult's informed consent, or a minor. "Sexual abuse"
1229 includes, but is not limited to, the acts defined in s.
1230 794.011(1)(h), fondling, exposure of a vulnerable adult's or
1231 minor's sexual organs, or the use of the vulnerable adult or
1232 minor to solicit for or engage in prostitution or sexual
1233 performance. "Sexual abuse" does not include any act intended
1234 for a valid medical purpose or any act which may reasonably be
1235 construed to be a normal caregiving action.

1236 ~~(11)(12)~~ A person who, with malice or with intent to
1237 discredit or harm a licensed facility or any person, makes a
1238 false allegation of sexual misconduct against a member of a
1239 licensed facility's personnel is guilty of a misdemeanor of the
1240 second degree, punishable as provided in s. 775.082 or s.
1241 775.083.

1242 (12) If appropriate, a licensed facility in which sexual
1243 abuse occurs must offer the victim of sexual abuse testing for
1244 sexually transmissible diseases and shall provide all such
1245 testing at no cost to the victim.

1246 (13) In addition to any penalty imposed pursuant to this
1247 section, the agency shall require a written plan of correction
1248 from the facility. For a single incident or series of isolated
1249 incidents that are nonwillful violations of the reporting
1250 requirements of this section, the agency shall first seek to
1251 obtain corrective action by the facility. If the correction is
1252 not demonstrated within the timeframe established by the agency
1253 or if there is a pattern of nonwillful violations of this
1254 section, the agency may impose an administrative fine, not to
1255 exceed \$5,000 for any violation of the reporting requirements of
1256 this section. The administrative fine for repeated nonwillful



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1257 violations shall not exceed \$10,000 for any violation. The
1258 administrative fine for each intentional and willful violation
1259 may not exceed \$25,000 per violation, per day. The fine for an
1260 intentional and willful violation of this section may not exceed
1261 \$250,000. In determining the amount of fine to be levied, the
1262 agency shall be guided by s. 395.1065(2)(b). ~~This subsection~~
1263 ~~does not apply to the notice requirements under subsection (7).~~

1264 (14) The agency shall have access to all licensed facility
1265 records necessary to carry out the provisions of this section.
1266 The records obtained by the agency under subsection (6),
1267 subsection (7) ~~(8)~~, or subsection (9) ~~(10)~~ are not available to
1268 the public under s. 119.07(1), nor shall they be discoverable or
1269 admissible in any civil or administrative action, except in
1270 disciplinary proceedings by the agency or the appropriate
1271 regulatory board, nor shall records obtained pursuant to s.
1272 456.071 be available to the public as part of the record of
1273 investigation for and prosecution in disciplinary proceedings
1274 made available to the public by the agency or the appropriate
1275 regulatory board. However, the agency or the appropriate
1276 regulatory board shall make available, upon written request by a
1277 health care professional against whom probable cause has been
1278 found, any such records which form the basis of the
1279 determination of probable cause, except that, with respect to
1280 medical review committee records, s. 766.101 controls.

1281 (15) The meetings of the committees and governing board of
1282 a licensed facility held solely for the purpose of achieving the
1283 objectives of risk management as provided by this section shall
1284 not be open to the public under the provisions of chapter 286.
1285 The records of such meetings are confidential and exempt from s.
1286 119.07(1), except as provided in subsection (14).



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1287 (16) The agency shall review, as part of its licensure
1288 inspection process, the internal risk management program at each
1289 licensed facility regulated by this section to determine whether
1290 the program meets standards established in statutes and rules,
1291 whether the program is being conducted in a manner designed to
1292 reduce adverse incidents, and whether the program is
1293 appropriately reporting incidents under this section.

1294 (17) There shall be no monetary liability on the part of,
1295 and no cause of action for damages shall arise against, any risk
1296 manager, licensed under s. 395.10974, for the implementation and
1297 oversight of the internal risk management program in a facility
1298 licensed under this chapter or chapter 390 as required by this
1299 section, for any act or proceeding undertaken or performed
1300 within the scope of the functions of such internal risk
1301 management program if the risk manager acts without intentional
1302 fraud.

1303 (18) A privilege against civil liability is hereby granted
1304 to any licensed risk manager or licensed facility with regard to
1305 information furnished pursuant to this chapter, unless the
1306 licensed risk manager or facility acted in bad faith or with
1307 malice in providing such information.

1308 (19) If the agency, through its receipt of any reports
1309 required under this section or through any investigation, has a
1310 reasonable belief that conduct by a staff member or employee of
1311 a licensed facility is grounds for disciplinary action by the
1312 appropriate regulatory board, the agency shall report this fact
1313 to such regulatory board.

1314 (20) It shall be unlawful for any person to coerce,
1315 intimidate, or preclude a risk manager from lawfully executing
1316 his or her reporting obligations pursuant to this chapter. Such



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1317 unlawful action shall be subject to civil monetary penalties not
 1318 to exceed \$10,000 per violation.

1319 Section 16. Section 395.0198, Florida Statutes, is
 1320 repealed.

1321 Section 17. Section 395.1012, Florida Statutes, is created
 1322 to read:

1323 395.1012 Patient safety.--

1324 (1) Each licensed facility shall adopt a patient safety
 1325 plan. A plan adopted to implement the requirements of 42 C.F.R.
 1326 s. 482.21 shall be deemed to comply with this requirement.

1327 (2) Each licensed facility shall appoint a patient safety
 1328 officer and a patient safety committee, which shall include at
 1329 least one person who is neither employed by nor practicing in
 1330 the facility, for the purpose of promoting the health and safety
 1331 of patients, reviewing and evaluating the quality of patient
 1332 safety measures used by the facility, and assisting in the
 1333 implementation of the facility patient safety plan.

1334 Section 18. Section 395.1051, Florida Statutes, is created
 1335 to read:

1336 395.1051 Duty to notify patients.--Every licensed facility
 1337 shall inform each patient, or an individual identified pursuant
 1338 to s. 765.401(1), in person about unanticipated outcomes of care
 1339 that result in serious harm to the patient. Notification of
 1340 outcomes of care that result in harm to the patient under this
 1341 section shall neither constitute an acknowledgement or admission
 1342 of liability, nor be introduced as evidence in any civil
 1343 lawsuit.

1344 Section 19. Section 415.1111, Florida Statutes, is amended
 1345 to read:

1346 415.1111 Civil actions.--A vulnerable adult who has been



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1347 abused, neglected, or exploited as specified in this chapter has
1348 a cause of action against any perpetrator and may recover actual
1349 and punitive damages for such abuse, neglect, or exploitation.
1350 The action may be brought by the vulnerable adult, or that
1351 person's guardian, by a person or organization acting on behalf
1352 of the vulnerable adult with the consent of that person or that
1353 person's guardian, or by the personal representative of the
1354 estate of a deceased victim without regard to whether the cause
1355 of death resulted from the abuse, neglect, or exploitation. The
1356 action may be brought in any court of competent jurisdiction to
1357 enforce such action and to recover actual and punitive damages
1358 for any deprivation of or infringement on the rights of a
1359 vulnerable adult. A party who prevails in any such action may be
1360 entitled to recover reasonable attorney's fees, costs of the
1361 action, and damages. The remedies provided in this section are
1362 in addition to and cumulative with other legal and
1363 administrative remedies available to a vulnerable adult.
1364 Notwithstanding the foregoing, any civil action for damages
1365 against any licensee or entity who establishes, controls,
1366 conducts, manages, or operates a facility licensed under part II
1367 of chapter 400 relating to its operation of the licensed
1368 facility shall be brought pursuant to s. 400.023, or against any
1369 licensee or entity who establishes, controls, conducts, manages,
1370 or operates a facility licensed under part III of chapter 400
1371 relating to its operation of the licensed facility shall be
1372 brought pursuant to s. 400.429. Notwithstanding the foregoing,
1373 any claim that qualifies as a claim for medical malpractice, as
1374 defined in s. 766.106(1)(a), against any licensee or entity who
1375 establishes, controls, conducts, manages, or operates a facility
1376 licensed under chapter 395 shall be brought pursuant to chapter



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1377 766. Such licensee or entity shall not be vicariously liable for
 1378 the acts or omissions of its employees or agents or any other
 1379 third party in an action brought under this section.

1380 Section 20. Section 408.932, Florida Statutes, is created
 1381 to read:

1382 408.932 Duty to notify patients.--Each facility licensed
 1383 by the Agency for Health Care Administration, except facilities
 1384 licensed pursuant to chapter 395, shall inform each patient or
 1385 the patient's representative in person about unanticipated
 1386 outcomes of care which result in serious harm to the patient.
 1387 Notification of outcomes of care which result in serious harm to
 1388 the patient under this section shall neither constitute an
 1389 acknowledgment or admission of liability nor be introduced as
 1390 evidence in any civil lawsuit.

1391 Section 21. Section 456.0575, Florida Statutes, is created
 1392 to read:

1393 456.0575 Duty to notify patients.--Every licensed health
 1394 care provider shall inform each patient or the patient's
 1395 representative in person about unanticipated outcomes of care
 1396 which result in serious harm to the patient. Notification of
 1397 outcomes of care which result in serious harm to the patient
 1398 under this section shall neither constitute an acknowledgment or
 1399 admission of liability nor be introduced as evidence in any
 1400 civil lawsuit.

1401 Section 22. Each board within the Department of Health
 1402 which has jurisdiction over health care practitioners who are
 1403 authorized to prescribe drugs may adopt by rule standards of
 1404 practice for practitioners who are under that board's
 1405 jurisdiction for the safe and ethical prescription of drugs to
 1406 patients via the Internet.



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1407 Section 23. Paragraph (a) of subsection (1) of section
1408 456.039, Florida Statutes, is amended to read:

1409 456.039 Designated health care professionals; information
1410 required for licensure.--

1411 (1) Each person who applies for initial licensure as a
1412 physician under chapter 458, chapter 459, chapter 460, or
1413 chapter 461, except a person applying for registration pursuant
1414 to ss. 458.345 and 459.021, must, at the time of application,
1415 and each physician who applies for license renewal under chapter
1416 458, chapter 459, chapter 460, or chapter 461, except a person
1417 registered pursuant to ss. 458.345 and 459.021, must, in
1418 conjunction with the renewal of such license and under
1419 procedures adopted by the Department of Health, and in addition
1420 to any other information that may be required from the
1421 applicant, furnish the following information to the Department
1422 of Health:

1423 (a)1. The name of each medical school that the applicant
1424 has attended, with the dates of attendance and the date of
1425 graduation, and a description of all graduate medical education
1426 completed by the applicant, excluding any coursework taken to
1427 satisfy medical licensure continuing education requirements.

1428 2. The name of each hospital at which the applicant has
1429 privileges.

1430 3. The address at which the applicant will primarily
1431 conduct his or her practice.

1432 4. Any certification that the applicant has received from
1433 a specialty board that is recognized by the board to which the
1434 applicant is applying.

1435 5. The year that the applicant began practicing medicine.

1436 6. Any appointment to the faculty of a medical school



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1437 which the applicant currently holds and an indication as to
1438 whether the applicant has had the responsibility for graduate
1439 medical education within the most recent 10 years.

1440 7. A description of any criminal offense of which the
1441 applicant has been found guilty, regardless of whether
1442 adjudication of guilt was withheld, or to which the applicant
1443 has pled guilty or nolo contendere. A criminal offense committed
1444 in another jurisdiction which would have been a felony or
1445 misdemeanor if committed in this state must be reported. If the
1446 applicant indicates that a criminal offense is under appeal and
1447 submits a copy of the notice for appeal of that criminal
1448 offense, the department must state that the criminal offense is
1449 under appeal if the criminal offense is reported in the
1450 applicant's profile. If the applicant indicates to the
1451 department that a criminal offense is under appeal, the
1452 applicant must, upon disposition of the appeal, submit to the
1453 department a copy of the final written order of disposition.

1454 8. A description of any final disciplinary action taken
1455 within the previous 10 years against the applicant by the agency
1456 regulating the profession that the applicant is or has been
1457 licensed to practice, whether in this state or in any other
1458 jurisdiction, by a specialty board that is recognized by the
1459 American Board of Medical Specialties, the American Osteopathic
1460 Association, or a similar national organization, or by a
1461 licensed hospital, health maintenance organization, prepaid
1462 health clinic, ambulatory surgical center, or nursing home.
1463 Disciplinary action includes resignation from or nonrenewal of
1464 medical staff membership or the restriction of privileges at a
1465 licensed hospital, health maintenance organization, prepaid
1466 health clinic, ambulatory surgical center, or nursing home taken



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1467 in lieu of or in settlement of a pending disciplinary case
 1468 related to competence or character. If the applicant indicates
 1469 that the disciplinary action is under appeal and submits a copy
 1470 of the document initiating an appeal of the disciplinary action,
 1471 the department must state that the disciplinary action is under
 1472 appeal if the disciplinary action is reported in the applicant's
 1473 profile.

1474 9. Relevant professional qualifications as defined by the
 1475 applicable board.

1476 Section 24. Subsection (3) is added to section 456.049,
 1477 Florida Statutes, to read:

1478 456.049 Health care practitioners; reports on professional
 1479 liability claims and actions.--

1480 (3) The department shall forward the information collected
 1481 under this section to the Office of Insurance Regulation.

1482 Section 25. Subsection (6) and paragraph (a) of subsection
 1483 (7) of section 456.057, Florida Statutes, are amended to read:

1484 456.057 Ownership and control of patient records; report
 1485 or copies of records to be furnished.--

1486 (6) Except in a medical negligence action or
 1487 administrative proceeding when a health care practitioner or
 1488 provider is or reasonably expects to be named as a defendant,
 1489 information disclosed to a health care practitioner by a patient
 1490 in the course of the care and treatment of such patient is
 1491 confidential and may be disclosed only to other health care
 1492 practitioners and providers involved in the care or treatment of
 1493 the patient, or if permitted by written authorization from the
 1494 patient, ~~or~~ compelled by subpoena at a deposition, evidentiary
 1495 hearing, or trial for which proper notice has been given, or
 1496 related to a medical negligence suit filed under chapter 766 in



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1497 which the patient has executed, as a condition of filing the
1498 suit, a medical release that allows a defendant health care
1499 practitioner who is considered to be a health care provider
1500 under chapter 766, or his or her legal representative, to
1501 conduct ex parte interviews with the claimant's treating
1502 physicians, which interviews must be limited to areas that are
1503 potentially relevant to the claimant's alleged injury or
1504 illness.

1505 (7)(a)1. The department may obtain patient records
1506 pursuant to a subpoena without written authorization from the
1507 patient if the department and the probable cause panel of the
1508 appropriate board, if any, find reasonable cause to believe that
1509 a health care practitioner has excessively or inappropriately
1510 prescribed any controlled substance specified in chapter 893 in
1511 violation of this chapter or any professional practice act or
1512 that a health care practitioner has practiced his or her
1513 profession below that level of care, skill, and treatment
1514 required as defined by this chapter or any professional practice
1515 act and also find that appropriate, reasonable attempts were
1516 made to obtain a patient release.

1517 2. The department may obtain patient records and insurance
1518 information pursuant to a subpoena without written authorization
1519 from the patient if the department and the probable cause panel
1520 of the appropriate board, if any, find reasonable cause to
1521 believe that a health care practitioner has provided inadequate
1522 medical care based on termination of insurance and also find
1523 that appropriate, reasonable attempts were made to obtain a
1524 patient release.

1525 3. The department may obtain patient records, billing
1526 records, insurance information, provider contracts, and all



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1527 attachments thereto pursuant to a subpoena without written
1528 authorization from the patient if the department and probable
1529 cause panel of the appropriate board, if any, find reasonable
1530 cause to believe that a health care practitioner has submitted a
1531 claim, statement, or bill using a billing code that would result
1532 in payment greater in amount than would be paid using a billing
1533 code that accurately describes the services performed, requested
1534 payment for services that were not performed by that health care
1535 practitioner, used information derived from a written report of
1536 an automobile accident generated pursuant to chapter 316 to
1537 solicit or obtain patients personally or through an agent
1538 regardless of whether the information is derived directly from
1539 the report or a summary of that report or from another person,
1540 solicited patients fraudulently, received a kickback as defined
1541 in s. 456.054, violated the patient brokering provisions of s.
1542 817.505, or presented or caused to be presented a false or
1543 fraudulent insurance claim within the meaning of s.
1544 817.234(1)(a), and also find that, within the meaning of s.
1545 817.234(1)(a), patient authorization cannot be obtained because
1546 the patient cannot be located or is deceased, incapacitated, or
1547 suspected of being a participant in the fraud or scheme, and if
1548 the subpoena is issued for specific and relevant records.

1549 4. Notwithstanding subparagraphs 1.-3., when the
1550 department investigates a professional liability claim or
1551 undertakes action pursuant to s. 456.049 or s. 627.912, the
1552 department may obtain patient records pursuant to a subpoena
1553 without written authorization from the patient if the patient
1554 refuses to cooperate or attempts to obtain a patient release and
1555 failure to obtain the patient records would be detrimental to
1556 the investigation.



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1557 Section 26. Subsection (4) is added to section 456.063,
 1558 Florida Statutes, to read:

1559 456.063 Sexual misconduct; disqualification for license,
 1560 certificate, or registration.--

1561 (4) Each board, or the department if there is no board,
 1562 may adopt rules to implement the requirements for reporting
 1563 allegations of sexual misconduct, including rules to determine
 1564 the sufficiency of the allegations.

1565 Section 27. Subsection (4) of section 456.072, Florida
 1566 Statutes, is amended, and subsection (7) is added to said
 1567 section, to read:

1568 456.072 Grounds for discipline; penalties; enforcement.--

1569 (4) In any ~~any addition to any other discipline imposed~~
 1570 ~~through~~ final order, or citation, entered on or after July 1,
 1571 2001, that imposes a penalty or other form of discipline
 1572 pursuant to this section or discipline imposed through final
 1573 order, or citation, entered on or after July 1, 2001, for a
 1574 violation of any practice act, the board, or the department when
 1575 there is no board, shall assess costs related to the
 1576 investigation and prosecution of the case, including costs
 1577 associated with an attorney's time. The amount of costs to be
 1578 assessed shall be determined by the board, or the department
 1579 when there is no board, following its consideration of an
 1580 affidavit of itemized costs and any written objections thereto.
 1581 In any case in which ~~where the board or the department imposes a~~
 1582 fine or assessment of costs imposed by the board or department
 1583 ~~and the fine or assessment~~ is not paid within a reasonable time,
 1584 such reasonable time to be prescribed in the rules of the board,
 1585 or the department when there is no board, or in the order
 1586 assessing such fines or costs, the department or the Department



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1587 of Legal Affairs may contract for the collection of, or bring a
1588 civil action to recover, the fine or assessment.

1589 (7) In any formal administrative hearing conducted under
1590 s. 120.57(1), the department shall establish grounds for the
1591 discipline of a licensee by the greater weight of the evidence.

1592 Section 28. Subsection (5) of section 456.073, Florida
1593 Statutes, is amended to read:

1594 456.073 Disciplinary proceedings.--Disciplinary
1595 proceedings for each board shall be within the jurisdiction of
1596 the department.

1597 (5)(a) A formal hearing before an administrative law judge
1598 from the Division of Administrative Hearings shall be held
1599 pursuant to chapter 120 if there are any disputed issues of
1600 material fact raised within 45 days after service of the
1601 administrative complaint. The administrative law judge shall
1602 issue a recommended order pursuant to chapter 120. If any party
1603 raises an issue of disputed fact during an informal hearing, the
1604 hearing shall be terminated and a formal hearing pursuant to
1605 chapter 120 shall be held.

1606 (b) Notwithstanding s. 120.569(2), the department shall
1607 notify the Division of Administrative Hearings within 45 days
1608 after receipt of a petition or request for a hearing that the
1609 department has determined requires a formal hearing before an
1610 administrative law judge.

1611 Section 29. Subsections (1) and (2) of section 456.077,
1612 Florida Statutes, are amended to read:

1613 456.077 Authority to issue citations.--

1614 (1) Notwithstanding s. 456.073, the board, or the
1615 department if there is no board, shall adopt rules to permit the
1616 issuance of citations. The citation shall be issued to the



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1617 subject and shall contain the subject's name and address, the
 1618 subject's license number if applicable, a brief factual
 1619 statement, the sections of the law allegedly violated, and the
 1620 penalty imposed. The citation must clearly state that the
 1621 subject may choose, in lieu of accepting the citation, to follow
 1622 the procedure under s. 456.073. If the subject disputes the
 1623 matter in the citation, the procedures set forth in s. 456.073
 1624 must be followed. However, if the subject does not dispute the
 1625 matter in the citation with the department within 30 days after
 1626 the citation is served, the citation becomes a public final
 1627 order and ~~does not constitute~~ ~~constitutes~~ discipline for a first
 1628 offense, but does constitute discipline for a second or
 1629 subsequent offense. The penalty shall be a fine or other
 1630 conditions as established by rule.

1631 (2) The board, or the department if there is no board,
 1632 shall adopt rules designating violations for which a citation
 1633 may be issued. Such rules shall designate as citation violations
 1634 those violations for which there is no substantial threat to the
 1635 public health, safety, and welfare or no violation of standard
 1636 of care involving injury to a patient. Violations for which a
 1637 citation may be issued shall include violations of continuing
 1638 education requirements; failure to timely pay required fees and
 1639 fines; failure to comply with the requirements of ss. 381.026
 1640 and 381.0261 regarding the dissemination of information
 1641 regarding patient rights; failure to comply with advertising
 1642 requirements; failure to timely update practitioner profile and
 1643 credentialing files; failure to display signs, licenses, and
 1644 permits; failure to have required reference books available; and
 1645 all other violations that do not pose a direct and serious
 1646 threat to the health and safety of the patient or involve a



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1647 violation of standard of care that has resulted in injury to a
 1648 patient.

1649 Section 30. Subsections (1) and (2) of section 456.078,
 1650 Florida Statutes, are amended to read:

1651 456.078 Mediation.--

1652 (1) Notwithstanding the provisions of s. 456.073, the
 1653 board, or the department when there is no board, shall adopt
 1654 rules to designate which violations of the applicable
 1655 professional practice act, including standard of care
 1656 violations, are appropriate for mediation. The board, or the
 1657 department when there is no board, shall ~~may~~ designate as
 1658 mediation offenses those complaints where harm caused by the
 1659 licensee is economic in nature, except any act or omission
 1660 involving intentional misconduct, ~~or~~ can be remedied by the
 1661 licensee, is not a standard of care violation involving any type
 1662 of injury to a patient, or does not result in an adverse
 1663 incident. For the purposes of this section, an "adverse
 1664 incident" means an event that results in:

1665 (a) The death of a patient;

1666 (b) Brain or spinal damage to a patient;

1667 (c) The performance of a surgical procedure on the wrong
 1668 patient;

1669 (d) The performance of a wrong-site surgical procedure;

1670 (e) The performance of a surgical procedure that is
 1671 medically unnecessary or otherwise unrelated to the patient's
 1672 diagnosis or medical condition;

1673 (f) The surgical repair of damage to a patient resulting
 1674 from a planned surgical procedure, which damage is not a
 1675 recognized specific risk as disclosed to the patient and
 1676 documented through the informed-consent process;



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1677 (g) The performance of a procedure to remove unplanned
1678 foreign objects remaining from a surgical procedure; or

1679 (h) The performance of any other surgical procedure that
1680 breached the standard of care.

1681 (2) After the department determines a complaint is legally
1682 sufficient and the alleged violations are defined as mediation
1683 offenses, the department or any agent of the department may
1684 conduct informal mediation to resolve the complaint. If the
1685 complainant and the subject of the complaint agree to a
1686 resolution of a complaint within 14 days after contact by the
1687 mediator, the mediator shall notify the department of the terms
1688 of the resolution. The department or board shall take no further
1689 action unless the complainant and the subject each fail to
1690 record with the department an acknowledgment of satisfaction of
1691 the terms of mediation within 60 days of the mediator's
1692 notification to the department. A successful mediation shall not
1693 constitute discipline. In the event the complainant and subject
1694 fail to reach settlement terms or to record the required
1695 acknowledgment, the department shall process the complaint
1696 according to the provisions of s. 456.073.

1697 Section 31. Subsection (9) is added to section 458.320,
1698 Florida Statutes, to read:

1699 458.320 Financial responsibility.--

1700 (9) Nothing in this section shall be construed as creating
1701 a civil cause of action against any hospital as a result of the
1702 failure of any physician with staff privileges to comply with
1703 the requirements of this section.

1704 Section 32. Subsection (9) of section 459.0085, Florida
1705 Statutes, is renumbered as subsection (10), and a new subsection
1706 (9) is added to said section to read:



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1707 459.0085 Financial responsibility.--

1708 (9) Nothing in this section shall be construed as creating
1709 a civil cause of action against any hospital as a result of the
1710 failure of any physician with staff privileges to comply with
1711 the requirements of this section.

1712 Section 33. Paragraph (t) of subsection (1) and
1713 subsections (3) and (6) of section 458.331, Florida Statutes,
1714 are amended to read:

1715 458.331 Grounds for disciplinary action; action by the
1716 board and department.--

1717 (1) The following acts constitute grounds for denial of a
1718 license or disciplinary action, as specified in s. 456.072(2):

1719 (t) Gross or repeated malpractice or the failure to
1720 practice medicine with that level of care, skill, and treatment
1721 which is recognized by a reasonably prudent similar physician as
1722 being acceptable under similar conditions and circumstances.

1723 The board shall give great weight to the provisions of s.

1724 766.102 when enforcing this paragraph. As used in this

1725 paragraph, "repeated malpractice" includes, but is not limited
1726 to, three or more claims for medical malpractice within the

1727 previous 5-year period resulting in indemnities being paid in

1728 excess of \$50,000 ~~\$25,000~~ each to the claimant in a judgment or
1729 settlement and which incidents involved negligent conduct by the

1730 physician. As used in this paragraph, "gross malpractice" or

1731 "the failure to practice medicine with that level of care,

1732 skill, and treatment which is recognized by a reasonably prudent
1733 similar physician as being acceptable under similar conditions

1734 and circumstances," shall not be construed so as to require more
1735 than one instance, event, or act. Nothing in this paragraph

1736 shall be construed to require that a physician be incompetent to



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1737 practice medicine in order to be disciplined pursuant to this
1738 paragraph.

1739 (3) In any administrative action against a physician ~~which~~
1740 ~~does not involve revocation or suspension of license~~, the
1741 division shall have the burden, by the greater weight of the
1742 evidence, to establish the existence of grounds for disciplinary
1743 action. ~~The division shall establish grounds for revocation or~~
1744 ~~suspension of license by clear and convincing evidence.~~

1745 (6) Upon the department's receipt from an insurer or self-
1746 insurer of a report of a closed claim against a physician
1747 pursuant to s. 627.912 or from a health care practitioner of a
1748 report pursuant to s. 456.049, or upon the receipt from a
1749 claimant of a presuit notice against a physician pursuant to s.
1750 766.106, the department shall review each report and determine
1751 whether it potentially involved conduct by a licensee that is
1752 subject to disciplinary action, in which case the provisions of
1753 s. 456.073 shall apply. However, if it is reported that a
1754 physician has had three or more claims with indemnities
1755 exceeding \$50,000 ~~\$25,000~~ each within the previous 5-year
1756 period, the department shall investigate the occurrences upon
1757 which the claims were based and determine if action by the
1758 department against the physician is warranted.

1759 Section 34. Paragraph (x) of subsection (1) and
1760 subsections (3) and (6) of section 459.015, Florida Statutes,
1761 are amended to read:

1762 459.015 Grounds for disciplinary action; action by the
1763 board and department.--

1764 (1) The following acts constitute grounds for denial of a
1765 license or disciplinary action, as specified in s. 456.072(2):

1766 (x) Gross or repeated malpractice or the failure to



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1767 practice osteopathic medicine with that level of care, skill,
 1768 and treatment which is recognized by a reasonably prudent
 1769 similar osteopathic physician as being acceptable under similar
 1770 conditions and circumstances. The board shall give great weight
 1771 to the provisions of s. 766.102 when enforcing this paragraph.
 1772 As used in this paragraph, "repeated malpractice" includes, but
 1773 is not limited to, three or more claims for medical malpractice
 1774 within the previous 5-year period resulting in indemnities being
 1775 paid in excess of \$50,000 ~~\$25,000~~ each to the claimant in a
 1776 judgment or settlement and which incidents involved negligent
 1777 conduct by the osteopathic physician. As used in this paragraph,
 1778 "gross malpractice" or "the failure to practice osteopathic
 1779 medicine with that level of care, skill, and treatment which is
 1780 recognized by a reasonably prudent similar osteopathic physician
 1781 as being acceptable under similar conditions and circumstances"
 1782 shall not be construed so as to require more than one instance,
 1783 event, or act. Nothing in this paragraph shall be construed to
 1784 require that an osteopathic physician be incompetent to practice
 1785 osteopathic medicine in order to be disciplined pursuant to this
 1786 paragraph. A recommended order by an administrative law judge or
 1787 a final order of the board finding a violation under this
 1788 paragraph shall specify whether the licensee was found to have
 1789 committed "gross malpractice," "repeated malpractice," or
 1790 "failure to practice osteopathic medicine with that level of
 1791 care, skill, and treatment which is recognized as being
 1792 acceptable under similar conditions and circumstances," or any
 1793 combination thereof, and any publication by the board shall so
 1794 specify.

1795 (3) In any administrative action against a physician ~~which~~
 1796 ~~does not involve revocation or suspension of license, the~~



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1797 division shall have the burden, by the greater weight of the
 1798 evidence, to establish the existence of grounds for disciplinary
 1799 action. ~~The division shall establish grounds for revocation or~~
 1800 ~~suspension of license by clear and convincing evidence.~~

1801 (6) Upon the department's receipt from an insurer or self-
 1802 insurer of a report of a closed claim against an osteopathic
 1803 physician pursuant to s. 627.912 or from a health care
 1804 practitioner of a report pursuant to s. 456.049, or upon the
 1805 receipt from a claimant of a presuit notice against an
 1806 osteopathic physician pursuant to s. 766.106, the department
 1807 shall review each report and determine whether it potentially
 1808 involved conduct by a licensee that is subject to disciplinary
 1809 action, in which case the provisions of s. 456.073 shall apply.
 1810 However, if it is reported that an osteopathic physician has had
 1811 three or more claims with indemnities exceeding \$50,000 ~~\$25,000~~
 1812 each within the previous 5-year period, the department shall
 1813 investigate the occurrences upon which the claims were based and
 1814 determine if action by the department against the osteopathic
 1815 physician is warranted.

1816 Section 35. Subsection (6) of section 460.413, Florida
 1817 Statutes, is amended to read:

1818 460.413 Grounds for disciplinary action; action by board
 1819 or department.--

1820 (6) In any administrative action against a chiropractic
 1821 physician ~~which does not involve revocation or suspension of~~
 1822 ~~license~~, the department shall have the burden, by the greater
 1823 weight of the evidence, to establish the existence of grounds
 1824 for disciplinary action. ~~The department shall establish grounds~~
 1825 ~~for revocation or suspension of license by clear and convincing~~
 1826 ~~evidence.~~



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1827 Section 36. Paragraph (s) of subsection (1) and paragraph
 1828 (a) of subsection (5) of section 461.013, Florida Statutes, are
 1829 amended to read:

1830 461.013 Grounds for disciplinary action; action by the
 1831 board; investigations by department.--

1832 (1) The following acts constitute grounds for denial of a
 1833 license or disciplinary action, as specified in s. 456.072(2):

1834 (s) Gross or repeated malpractice or the failure to
 1835 practice podiatric medicine at a level of care, skill, and
 1836 treatment which is recognized by a reasonably prudent podiatric
 1837 physician as being acceptable under similar conditions and
 1838 circumstances. The board shall give great weight to the
 1839 standards for malpractice in s. 766.102 in interpreting this
 1840 section. As used in this paragraph, "repeated malpractice"
 1841 includes, but is not limited to, three or more claims for
 1842 medical malpractice within the previous 5-year period resulting
 1843 in indemnities being paid in excess of \$50,000 ~~\$10,000~~ each to
 1844 the claimant in a judgment or settlement and which incidents
 1845 involved negligent conduct by the podiatric physicians. As used
 1846 in this paragraph, "gross malpractice" or "the failure to
 1847 practice podiatric medicine with the level of care, skill, and
 1848 treatment which is recognized by a reasonably prudent similar
 1849 podiatric physician as being acceptable under similar conditions
 1850 and circumstances" shall not be construed so as to require more
 1851 than one instance, event, or act.

1852 (5)(a) Upon the department's receipt from an insurer or
 1853 self-insurer of a report of a closed claim against a podiatric
 1854 physician pursuant to s. 627.912, or upon the receipt from a
 1855 claimant of a presuit notice against a podiatric physician
 1856 pursuant to s. 766.106, the department shall review each report



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1857 and determine whether it potentially involved conduct by a
 1858 licensee that is subject to disciplinary action, in which case
 1859 the provisions of s. 456.073 shall apply. However, if it is
 1860 reported that a podiatric physician has had three or more claims
 1861 with indemnities exceeding \$50,000 ~~\$25,000~~ each within the
 1862 previous 5-year period, the department shall investigate the
 1863 occurrences upon which the claims were based and determine if
 1864 action by the department against the podiatric physician is
 1865 warranted.

1866 Section 37. Paragraph (x) of subsection (1) of section
 1867 466.028, Florida Statutes, is amended to read:

1868 466.028 Grounds for disciplinary action; action by the
 1869 board.--

1870 (1) The following acts constitute grounds for denial of a
 1871 license or disciplinary action, as specified in s. 456.072(2):

1872 (x) Being guilty of incompetence or negligence by failing
 1873 to meet the minimum standards of performance in diagnosis and
 1874 treatment when measured against generally prevailing peer
 1875 performance, including, but not limited to, the undertaking of
 1876 diagnosis and treatment for which the dentist is not qualified
 1877 by training or experience or being guilty of dental malpractice.
 1878 For purposes of this paragraph, it shall be legally presumed
 1879 that a dentist is not guilty of incompetence or negligence by
 1880 declining to treat an individual if, in the dentist's
 1881 professional judgment, the dentist or a member of her or his
 1882 clinical staff is not qualified by training and experience, or
 1883 the dentist's treatment facility is not clinically satisfactory
 1884 or properly equipped to treat the unique characteristics and
 1885 health status of the dental patient, provided the dentist refers
 1886 the patient to a qualified dentist or facility for appropriate



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1887 treatment. As used in this paragraph, "dental malpractice"
 1888 includes, but is not limited to, three or more claims within the
 1889 previous 5-year period which resulted in indemnity being paid,
 1890 or any single indemnity paid in excess of \$25,000 ~~\$5,000~~ in a
 1891 judgment or settlement, as a result of negligent conduct on the
 1892 part of the dentist.

1893 Section 38. Section 624.155, Florida Statutes, is amended
 1894 to read:

1895 624.155 Civil remedy.--

1896 (1) Any person may bring a civil action against an insurer
 1897 when such person is damaged:

1898 (a) By a violation of any of the following provisions by
 1899 the insurer:

- 1900 1. Section 626.9541(1)(i), (o), or (x);
- 1901 2. Section 626.9551;
- 1902 3. Section 626.9705;
- 1903 4. Section 626.9706;
- 1904 5. Section 626.9707; or
- 1905 6. Section 627.7283.

1906 (b) By the commission of any of the following acts by the
 1907 insurer:

1908 1. Not attempting in good faith to settle claims when,
 1909 under all the circumstances, it could and should have done so,
 1910 had it acted fairly and honestly toward its insured and with due
 1911 regard for her or his interests;

1912 2. Making claims payments to insureds or beneficiaries not
 1913 accompanied by a statement setting forth the coverage under
 1914 which payments are being made; or

1915 3. Except as to liability coverages, failing to promptly
 1916 settle claims, when the obligation to settle a claim has become



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1917 reasonably clear, under one portion of the insurance policy
1918 coverage in order to influence settlements under other portions
1919 of the insurance policy coverage.

1920
1921 Notwithstanding the provisions of the above to the contrary, a
1922 person pursuing a remedy under this section need not prove that
1923 such act was committed or performed with such frequency as to
1924 indicate a general business practice.

1925 (2) In matters relating to professional liability
1926 insurance coverage for medical negligence, only the insured may
1927 bring a civil action against an insurer when such person is
1928 damaged:

1929 (a) By a violation of any of the following provisions by
1930 the insurer:

1931 1. Section 626.9541(1)(i), (o), or (x);

1932 2. Section 626.9551;

1933 3. Section 626.9705;

1934 4. Section 626.9706;

1935 5. Section 626.9707; or

1936 6. Section 627.7283.

1937 (b) By the commission of any of the following acts by the
1938 insurer:

1939 1. Not attempting in good faith to settle claims when,
1940 under all the circumstances, it could and should have done so,
1941 had it acted fairly and honestly toward its insured and with due
1942 regard for her or his interests, provided that in any action,
1943 whether under statute or common law, against a liability insurer
1944 for alleged failure to settle a claim against its insured:

1945 a. The duty of good faith and fairly and honestly dealing
1946 with its insured requires the insurer to provide a defense for



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1947 its insured to give the insured's interests consideration at
1948 least equal to its interests and the interests of all its
1949 policyholders in deciding whether to litigate or settle a claim.

1950 b. An insurer need not submit to demands for settlement
1951 within the policy limit simply because there is a possibility of
1952 an excess verdict. The insurer must have had a reasonable
1953 opportunity to settle the claim within the policy limits during
1954 the life of the claim.

1955 c. An insurer shall not be held in bad faith if it tenders
1956 its policy limits at least 120 days prior to trial in the
1957 underlying case giving rise to a bad faith claim.

1958 d. Factors to be considered in determining whether the
1959 insurer dealt with its insured in good faith include:

1960 (I) The insurer's willingness to negotiate with the
1961 claimant.

1962 (II) The insurer's proper investigation of the claim.

1963 (III) The insurer's consideration of the advice of its
1964 defense counsel.

1965 (IV) Whether the insurer informed the insured of the offer
1966 to settle within the limits of coverage, the right to retain
1967 personal counsel, and the risks of litigation.

1968 (V) Whether the insured denied liability or requested that
1969 the case be defended.

1970 (VI) Whether the claimant imposed any condition, other
1971 than tender of policy limits, as to settlement of the claim.

1972 e. In the event that an insurer is found to have breached
1973 its duty to settle on behalf of an insured, the insurer is
1974 responsible to pay on behalf of the insured as to such judgment
1975 only the applicable policy limits and amount of the excess
1976 judgment that the insured can demonstrate could have been



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1977 satisfied from the attachment or forced sale of property of the
 1978 insured, absent insurance coverage. The court shall enter
 1979 judgment against the insurer after conducting an inquiry to
 1980 ascertain the future value of the underlying excess judgment.
 1981 The inquiry shall include the use of expert testimony on the
 1982 issues of future income of the insured, accumulation of
 1983 attachable assets by the insured, and the probability of
 1984 collecting the underlying excess judgment from the insured
 1985 absent liability insurance coverage. The insured shall be deemed
 1986 not to have waived any exemption from forced sale or attachment
 1987 available to the insured or insured's spouse under state law,
 1988 federal law, or law applicable in the jurisdiction where the
 1989 property is located. This limitation shall not be construed to
 1990 limit rights or obligations of the insured or insurer other than
 1991 as specified herein.

1992 f. As to any judgment entered against an insured covered
 1993 by a liability insurance policy, the judgment debtor is hereby
 1994 granted an exemption under chapter 55, and from any liens or
 1995 execution of such judgment, in an amount equal to all sums that
 1996 have been paid on his or her behalf by a liability insurer. All
 1997 such sums shall be recorded by the judgment creditor in a manner
 1998 that reflects an equivalent partial or total satisfaction of the
 1999 judgment.

2000 g. Any judgment entered against a liability insurer and
 2001 any portion of a settlement designated as damage for breach of
 2002 this subparagraph shall be reported by the insurer to the Office
 2003 of Insurance Regulation and the office shall conduct such
 2004 investigation and impose such penalties as it determines to be
 2005 appropriate for any violation of the insurance code.

2006 2. Making claims payments to insureds or beneficiaries not



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2007 accompanied by a statement setting forth the coverage under
 2008 which payments are being made.

2010 An insured pursuing a remedy under this subsection need not
 2011 prove that such act was committed or performed with such
 2012 frequency as to indicate a general business practice. Nothing in
 2013 this subsection shall be construed to prohibit an insured from
 2014 assigning the cause of action to an injured third party claimant
 2015 for the insurer's failure to act fairly and honestly towards its
 2016 insured and with due regard for the insured's interest.

2017 (3)(2)(a) As a condition precedent to bringing an action
 2018 under this section, the department and the insurer must have
 2019 been given 60 days' written notice of the violation. If the
 2020 department returns a notice for lack of specificity, the 60-day
 2021 time period shall not begin until a proper notice is filed.

2022 (b) The notice shall be on a form provided by the
 2023 department and shall state with specificity the following
 2024 information, and such other information as the department may
 2025 require:

2026 1. The statutory provision, including the specific
 2027 language of the statute, which the insurer allegedly violated.

2028 2. The facts and circumstances giving rise to the
 2029 violation.

2030 3. The name of any individual involved in the violation.

2031 4. Reference to specific policy language that is relevant
 2032 to the violation, if any. If the person bringing the civil
 2033 action is a third party claimant, she or he shall not be
 2034 required to reference the specific policy language if the
 2035 insurer has not provided a copy of the policy to the third party
 2036 claimant pursuant to written request.



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2037 5. A statement that the notice is given in order to
2038 perfect the right to pursue the civil remedy authorized by this
2039 section.

2040 (c) Within 20 days of receipt of the notice, the
2041 department may return any notice that does not provide the
2042 specific information required by this section, and the
2043 department shall indicate the specific deficiencies contained in
2044 the notice. A determination by the department to return a notice
2045 for lack of specificity shall be exempt from the requirements of
2046 chapter 120.

2047 (d) No action shall lie if, within 60 days after filing
2048 notice, the damages are paid or the circumstances giving rise to
2049 the violation are corrected.

2050 (e) The insurer that is the recipient of a notice filed
2051 pursuant to this section shall report to the department on the
2052 disposition of the alleged violation.

2053 (f) The applicable statute of limitations for an action
2054 under this section shall be tolled for a period of 65 days by
2055 the mailing of the notice required by this subsection or the
2056 mailing of a subsequent notice required by this subsection.

2057 ~~(4)(3)~~ Upon adverse adjudication at trial or upon appeal,
2058 the insurer shall be liable for damages, together with court
2059 costs and reasonable attorney's fees incurred by the plaintiff;
2060 however, in any action under this section relating to
2061 professional liability insurance coverage for medical
2062 negligence, no award for attorney's fees shall be enhanced by a
2063 contingency risk multiplier.

2064 ~~(5)(4)~~ No punitive damages shall be awarded under this
2065 section unless the acts giving rise to the violation occur with



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2066 such frequency as to indicate a general business practice and
 2067 these acts are:

- 2068 (a) Willful, wanton, and malicious;
- 2069 (b) In reckless disregard for the rights of any insured;

2070 or

- 2071 (c) In reckless disregard for the rights of a beneficiary
 2072 under a life insurance contract.

2073
 2074 Any person who pursues a claim under this subsection shall post
 2075 in advance the costs of discovery. Such costs shall be awarded
 2076 to the insurer if no punitive damages are awarded to the
 2077 plaintiff.

2078 (6)~~(5)~~ This section shall not be construed to authorize a
 2079 class action suit against an insurer or a civil action against
 2080 the department, its employees, or the Insurance Commissioner, or
 2081 to create a cause of action when a health insurer refuses to pay
 2082 a claim for reimbursement on the ground that the charge for a
 2083 service was unreasonably high or that the service provided was
 2084 not medically necessary.

2085 (7)~~(6)~~ In the absence of expressed language to the
 2086 contrary, this section shall not be construed to authorize a
 2087 civil action or create a cause of action against an insurer or
 2088 its employees who, in good faith, release information about an
 2089 insured or an insurance policy to a law enforcement agency in
 2090 furtherance of an investigation of a criminal or fraudulent act
 2091 relating to a motor vehicle theft or a motor vehicle insurance
 2092 claim.

2093 (8)~~(7)~~ The civil remedy specified in this section does not
 2094 preempt any other remedy or cause of action provided for
 2095 pursuant to any other statute or pursuant to the common law of



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2096 this state. Any person may obtain a judgment under either the
2097 common-law remedy of bad faith or this statutory remedy, but
2098 shall not be entitled to a judgment under both remedies. This
2099 section shall not be construed to create a common-law cause of
2100 action. The damages recoverable pursuant to this section shall
2101 include those damages which are a reasonably foreseeable result
2102 of a specified violation of this section by the insurer and may
2103 include an award or judgment in an amount that exceeds the
2104 policy limits.

2105 Section 39. If any provision of the changes to s. 624.155,
2106 Florida Statutes, contained in this act or the application
2107 thereof to any person or circumstance is held invalid, the
2108 invalidity shall not affect other provisions or applications
2109 relating to the changes to s. 624.155, Florida Statutes,
2110 contained in this act, provided said provisions can be given
2111 effect without the invalid provision or application, and to this
2112 end, the provisions of this act and changes to s. 624.155,
2113 Florida Statutes, contained in this act are declared severable.

2114 Section 40. The amendments to s. 624.155, Florida
2115 Statutes, contained in this act shall apply to all actions where
2116 the presuit period contained in chapter 766 is not complete or
2117 where claimant has not demanded the limits of the insurance
2118 coverage, whichever is later.

2119 Section 41. Subsections (7), (8), and (9) are added to
2120 section 627.062, Florida Statutes, to read:

2121 627.062 Rate standards.--

2122 (7) Notwithstanding any other provision of this section,
2123 in matters relating to professional liability insurance coverage
2124 for medical negligence, any portion of a judgment entered as a
2125 result of a statutory or common-law bad faith action and any



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2126 portion of a judgment entered that awards punitive damages
2127 against an insurer may not be included in the insurer's rate
2128 base and may not be used to justify a rate or rate change. In
2129 matters relating to professional liability insurance coverage
2130 for medical negligence, any portion of a settlement entered as a
2131 result of a statutory or common-law bad faith action identified
2132 as such and any portion of a settlement wherein an insurer
2133 agrees to pay specific punitive damages may not be used to
2134 justify a rate or rate change. The portion of the taxable costs
2135 and attorney's fees that is identified as being related to the
2136 bad faith and punitive damages in these judgments and
2137 settlements may not be included in the insurer's rate base and
2138 may not be utilized to justify a rate or rate change.

2139 (8) Each insurer writing professional liability insurance
2140 coverage for medical negligence must make a rate filing under
2141 this section with the Office of Insurance Regulation at least
2142 once each calendar year.

2143 (9) Medical malpractice insurance companies shall submit a
2144 rate filing to the Office of Insurance Regulation no earlier
2145 than 30 days, but no later than 120 days, after the date upon
2146 which this act becomes law.

2147 Section 42. Subsection (10) of section 627.357, Florida
2148 Statutes, is amended to read:

2149 627.357 Medical malpractice self-insurance.--

2150 (10)(a) An application to form a self-insurance fund under
2151 this section must be filed with the Office of Insurance
2152 Regulation.

2153 (b) The Office of Insurance Regulation must ensure that
2154 self-insurance funds remain solvent and provide insurance
2155 coverage purchased by participants. The Financial Services



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2156 Commission may adopt rules pursuant to ss. 120.536(1) and 120.54
 2157 to implement this subsection ~~A self-insurance fund may not be~~
 2158 ~~formed under this section after October 1, 1992.~~

2159 Section 43. Subsection (1) of section 627.4147, Florida
 2160 Statutes, is amended to read:

2161 627.4147 Medical malpractice insurance contracts.--

2162 (1) In addition to any other requirements imposed by law,
 2163 each self-insurance policy as authorized under s. 627.357 or
 2164 insurance policy providing coverage for claims arising out of
 2165 the rendering of, or the failure to render, medical care or
 2166 services, including those of the Florida Medical Malpractice
 2167 Joint Underwriting Association, shall include:

2168 (a) A clause requiring the insured to cooperate fully in
 2169 the review process prescribed under s. 766.106 if a notice of
 2170 intent to file a claim for medical malpractice is made against
 2171 the insured.

2172 ~~(b)1. Except as provided in subparagraph 2., a clause~~
 2173 ~~authorizing the insurer or self-insurer to determine, to make,~~
 2174 ~~and to conclude, without the permission of the insured, any~~
 2175 ~~offer of admission of liability and for arbitration pursuant to~~
 2176 ~~s. 766.106, settlement offer, or offer of judgment, if the offer~~
 2177 ~~is within the policy limits. It is against public policy for any~~
 2178 ~~insurance or self-insurance policy to contain a clause giving~~
 2179 ~~the insured the exclusive right to veto any offer for admission~~
 2180 ~~of liability and for arbitration made pursuant to s. 766.106,~~
 2181 ~~settlement offer, or offer of judgment, when such offer is~~
 2182 ~~within the policy limits. However, any offer of admission of~~
 2183 ~~liability, settlement offer, or offer of judgment made by an~~
 2184 ~~insurer or self-insurer shall be made in good faith and in the~~
 2185 ~~best interests of the insured.~~



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2186 ~~2.a. With respect to dentists licensed under chapter 466,~~
2187 ~~a clause clearly stating whether or not the insured has the~~
2188 ~~exclusive right to veto any offer of admission of liability and~~
2189 ~~for arbitration pursuant to s. 766.106, settlement offer, or~~
2190 ~~offer of judgment if the offer is within policy limits. An~~
2191 ~~insurer or self-insurer shall not make or conclude, without the~~
2192 ~~permission of the insured, any offer of admission of liability~~
2193 ~~and for arbitration pursuant to s. 766.106, settlement offer, or~~
2194 ~~offer of judgment, if such offer is outside the policy limits.~~
2195 ~~However, any offer for admission of liability and for~~
2196 ~~arbitration made under s. 766.106, settlement offer, or offer of~~
2197 ~~judgment made by an insurer or self-insurer shall be made in~~
2198 ~~good faith and in the best interest of the insured.~~

2199 ~~b. If the policy contains a clause stating the insured~~
2200 ~~does not have the exclusive right to veto any offer or admission~~
2201 ~~of liability and for arbitration made pursuant to s. 766.106,~~
2202 ~~settlement offer or offer of judgment, the insurer or self-~~
2203 ~~insurer shall provide to the insured or the insured's legal~~
2204 ~~representative by certified mail, return receipt requested, a~~
2205 ~~copy of the final offer of admission of liability and for~~
2206 ~~arbitration made pursuant to s. 766.106, settlement offer or~~
2207 ~~offer of judgment and at the same time such offer is provided to~~
2208 ~~the claimant. A copy of any final agreement reached between the~~
2209 ~~insurer and claimant shall also be provided to the insurer or~~
2210 ~~his or her legal representative by certified mail, return~~
2211 ~~receipt requested not more than 10 days after affecting such~~
2212 ~~agreement.~~

2213 (b)(e) A clause requiring the insurer or self-insurer to
2214 notify the insured no less than 60 days prior to the effective
2215 date of cancellation of the policy or contract and, in the event



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2216 of a determination by the insurer or self-insurer not to renew
 2217 the policy or contract, to notify the insured no less than 60
 2218 days prior to the end of the policy or contract period. If
 2219 cancellation or nonrenewal is due to nonpayment or loss of
 2220 license, 10 days' notice is required.

2221 Section 44. Subsections (1) and (4) and paragraph (n) of
 2222 subsection (2) of section 627.912, Florida Statutes, are amended
 2223 to read:

2224 627.912 Professional liability claims and actions; reports
 2225 by insurers.--

2226 (1)(a) Each self-insurer authorized under s. 627.357 and
 2227 each insurer or joint underwriting association providing
 2228 professional liability insurance to a practitioner of medicine
 2229 licensed under chapter 458, to a practitioner of osteopathic
 2230 medicine licensed under chapter 459, to a podiatric physician
 2231 licensed under chapter 461, to a dentist licensed under chapter
 2232 466, to a hospital licensed under chapter 395, to a crisis
 2233 stabilization unit licensed under part IV of chapter 394, to a
 2234 health maintenance organization certificated under part I of
 2235 chapter 641, to clinics included in chapter 390, to an
 2236 ambulatory surgical center as defined in s. 395.002, or to a
 2237 member of The Florida Bar shall report in duplicate to the
 2238 Department of Insurance any claim or action for damages for
 2239 personal injuries claimed to have been caused by error,
 2240 omission, or negligence in the performance of such insured's
 2241 professional services or based on a claimed performance of
 2242 professional services without consent, if the claim resulted in:

2243 1.~~(a)~~ A final judgment in any amount.

2244 2.~~(b)~~ A settlement in any amount.

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2246 Reports shall be filed with the department.

2247 (b) In addition to the requirements of paragraph (a), if
 2248 the insured party is licensed under chapter 395, chapter 458,
 2249 chapter 459, chapter 461, or chapter 466, the insurer shall
 2250 report in duplicate to the Office of Insurance Regulation any
 2251 other disposition of the claim, including, but not limited to, a
 2252 dismissal. If the insured is licensed under chapter 458, chapter
 2253 459, or chapter 461, any claim that resulted in a final judgment
 2254 or settlement in the amount of \$50,000 or more shall be reported
 2255 to the Department of Health no later than 30 days following the
 2256 occurrence of that event. If the insured is licensed under
 2257 chapter 466, any claim that resulted in a final judgment or
 2258 settlement in the amount of \$25,000 or more shall be reported to
 2259 the Department of Health no later than 30 days following the
 2260 occurrence of that event and, if the insured party is licensed
 2261 under chapter 458, chapter 459, chapter 461, or chapter 466,
 2262 with the Department of Health, no later than 30 days following
 2263 the occurrence of any event listed in paragraph (a) or paragraph
 2264 (b). The Department of Health shall review each report and
 2265 determine whether any of the incidents that resulted in the
 2266 claim potentially involved conduct by the licensee that is
 2267 subject to disciplinary action, in which case the provisions of
 2268 s. 456.073 shall apply. The Department of Health, as part of the
 2269 annual report required by s. 456.026, shall publish annual
 2270 statistics, without identifying licensees, on the reports it
 2271 receives, including final action taken on such reports by the
 2272 Department of Health or the appropriate regulatory board.

2273 (2) The reports required by subsection (1) shall contain:

2274 (n) Any other information required by the department to
 2275 analyze and evaluate the nature, causes, location, cost, and



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2276 damages involved in professional liability cases. The Financial
2277 Services Commission shall adopt by rule requirements for
2278 additional information to assist the Office of Insurance
2279 Regulation in its analysis and evaluation of the nature, causes,
2280 location, cost, and damages involved in professional liability
2281 cases reported by insurers under this section.

2282 (4) There shall be no liability on the part of, and no
2283 cause of action of any nature shall arise against, any insurer
2284 reporting hereunder or its agents or employees or the department
2285 or its employees for any action taken by them under this
2286 section. The department shall ~~may~~ impose a fine of \$250 per day
2287 per case, but not to exceed a total of \$10,000 ~~\$1,000~~ per case,
2288 against an insurer that violates the requirements of this
2289 section. This subsection applies to claims accruing on or after
2290 October 1, 1997.

2291 Section 45. Section 627.41493, Florida Statutes, is
2292 created to read:

2293 627.41493 Insurance rates.--

2294 (1) On or before July 1, 2003, an insurer providing
2295 professional liability insurance coverage for medical negligence
2296 shall make a rate filing effective no later than October 1,
2297 2003, reducing rates for professional liability coverage for
2298 medical negligence to the rate in effect on April 1, 2003,
2299 reduced by an aggregate factor of 20 percent to reflect the
2300 impact this act will have on reducing the cost of claims.
2301 Nothing in this subsection shall require an insurer to provide
2302 the 20 percent reduction in rates equally among all policies and
2303 risk classifications. Insurers must demonstrate to the Office of
2304 Insurance Regulation using generally accepted actuarial
2305 techniques that any rate reductions by policy limits and risk



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2306 classifications are in accordance with s. 627.062 and will
2307 result in an aggregate rate reduction of 20 percent.
2308 Alternatively, for professional liability insurance coverage for
2309 medical negligence with policy limits of \$250,000 per claim and
2310 annual aggregate limits of \$750,000, an insurer shall make a
2311 rate filing effective no later than October 1, 2003, reducing
2312 rates to the rate in effect on April 1, 2003 reduced by a factor
2313 of 20 percent and an comparable factor for other limits of
2314 coverage to reflect the impact of the provisions of this act.

2315 (2) Any insurer or rating organization which contends that
2316 the rate provided for in subsection (1) is excessive,
2317 inadequate, unfairly discriminatory, or too low to allow a
2318 reasonable rate of return shall separately state in its filing
2319 the rate it contends is appropriate and shall state with
2320 specificity the factors or data which it contends should be
2321 considered in order to produce such appropriate rate. The
2322 insurer or rating organization shall be permitted to use all of
2323 the generally accepted actuarial techniques as provided in s.
2324 627.062 in making any filing pursuant to this subsection. The
2325 Office of Insurance Regulation shall review each filing and
2326 approve or disapprove it pursuant to the provisions of s.
2327 627.062. Such filings shall be deemed approved on November 1,
2328 2003, unless by such date the department has issued a notice of
2329 intent to disapprove the filing. Each insurer or rating
2330 organization shall include in the filing the expected impact on
2331 losses, expenses, and rates of the provision contained in this
2332 act. If any measure contained in this act is held
2333 unconstitutional by a court of competent jurisdiction, the
2334 office shall permit an adjustment of rates under this section to
2335 reflect the impact of such holding on such rates, so as to



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2336 ensure that the rates are not excessive, inadequate, unfairly
2337 discriminatory, or too low to allow a reasonable rate of return.
2338 The expected rate impact of any specific measure contained in
2339 the act shall be held in abeyance during the review of such
2340 measure's constitutionality in any proceeding by a court of
2341 competent jurisdiction.

2342 Section 46. Section 627.9121, Florida Statutes, is created
2343 to read:

2344 627.9121 Required reporting of claims; penalties.--Each
2345 entity that makes payment under a policy of insurance, self-
2346 insurance, or otherwise in settlement, partial settlement, or
2347 satisfaction of a judgment in a medical malpractice action or
2348 claim that is required to report information to the National
2349 Practitioner Data Bank under 42 U.S.C. s. 11131 must also report
2350 the same information to the Office of Insurance Regulation. The
2351 office shall include such information in the data that it
2352 compiles under s. 627.912. The office must compile and review
2353 the data collected pursuant to this section and must assess an
2354 administrative fine on any entity that fails to fully comply
2355 with such reporting requirements.

2356 Section 47. Subsections (12), (13), and (18) of section
2357 641.19, Florida Statutes, are amended to read:

2358 641.19 Definitions.--As used in this part, the term:

2359 (12) "Health maintenance contract" means any contract
2360 entered into by a health maintenance organization with a
2361 subscriber or group of subscribers to provide coverage for
2362 comprehensive health care services in exchange for a prepaid per
2363 capita or prepaid aggregate fixed sum.

2364 (13) "Health maintenance organization" means any
2365 organization authorized under this part which:



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2366 (a) Provides, through arrangements with other persons,
 2367 emergency care, inpatient hospital services, physician care
 2368 including care provided by physicians licensed under chapters
 2369 458, 459, 460, and 461, ambulatory diagnostic treatment, and
 2370 preventive health care services.†

2371 (b) Provides, ~~either directly or~~ through arrangements with
 2372 other persons, health care services to persons enrolled with
 2373 such organization, on a prepaid per capita or prepaid aggregate
 2374 fixed-sum basis.†

2375 (c) Provides, ~~either directly or~~ through arrangements with
 2376 other persons, comprehensive health care services which
 2377 subscribers are entitled to receive pursuant to a contract.†

2378 (d) Provides physician services, by physicians licensed
 2379 under chapters 458, 459, 460, and 461, directly through
 2380 physicians who are either employees or partners of such
 2381 organization or under arrangements with a physician or any group
 2382 of physicians.† ~~and~~

2383 (e) If offering services through a managed care system,
 2384 then the managed care system must be a system in which a primary
 2385 physician licensed under chapter 458 or chapter 459 and chapters
 2386 460 and 461 is designated for each subscriber upon request of a
 2387 subscriber requesting service by a physician licensed under any
 2388 of those chapters, and is responsible for coordinating the
 2389 health care of the subscriber of the respectively requested
 2390 service and for referring the subscriber to other providers of
 2391 the same discipline when necessary. Each female subscriber may
 2392 select as her primary physician an obstetrician/gynecologist who
 2393 has agreed to serve as a primary physician and is in the health
 2394 maintenance organization's provider network.



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2395 (f) The fact that a health maintenance organization
 2396 arranges for the provision of health care services under this
 2397 chapter does not create an actual agency, apparent agency, or
 2398 employer-employee relationship between a health care provider
 2399 and a health maintenance organization for purposes of vicarious
 2400 liability for the medical negligence of a health care provider.

2401 (18) "Subscriber" means an entity or individual who has
 2402 contracted, or on whose behalf a contract has been entered into,
 2403 with a health maintenance organization for health care coverage
 2404 ~~services~~ or other persons who also receive health care coverage
 2405 ~~services~~ as a result of the contract.

2406 Section 48. Subsection (3) of section 641.51, Florida
 2407 Statutes, is amended to read:

2408 641.51 Quality assurance program; second medical opinion
 2409 requirement.--

2410 (3) The health maintenance organization shall not have the
 2411 right to control the professional judgment of a physician
 2412 licensed under chapter 458, chapter 459, chapter 460, or chapter
 2413 461 concerning the proper course of treatment of a subscriber
 2414 ~~shall not be subject to modification by the organization or its~~
 2415 ~~board of directors, officers, or administrators, unless the~~
 2416 ~~course of treatment prescribed is inconsistent with the~~
 2417 ~~prevailing standards of medical practice in the community.~~

2418 However, this subsection shall not be considered to restrict a
 2419 utilization management program established by an organization,
 2420 or to affect an organization's decision as to payment for
 2421 covered services. A health maintenance organization shall not be
 2422 vicariously liable for the medical negligence of a health care
 2423 provider, whether such claim is alleged under a theory of
 2424 employer-employee, actual agency, or apparent agency.



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2425 Section 49. Subsection (2) of section 766.102, Florida
 2426 Statutes, is amended to read:

2427 766.102 Medical negligence; standards of recovery.--

2428 (2)(a) If the health care provider whose negligence is
 2429 claimed to have created the cause of action is not certified by
 2430 the appropriate American board as being a specialist, is not
 2431 trained and experienced in a medical specialty, or does not hold
 2432 himself or herself out as a specialist, a "similar health care
 2433 provider" is one who:

2434 1. Is licensed by the appropriate regulatory agency of
 2435 this state.~~;~~

2436 2. Is trained and experienced in the same discipline or
 2437 school of practice.~~;~~~~and~~

2438 3. Practices in the same or similar medical community.

2439 4. Has, during the 5 years immediately preceding the date
 2440 of the occurrence that is the basis for the action, engaged in
 2441 any combination of the following:

2442 a. Active clinical practice;

2443 b. Instruction of students in an accredited health
 2444 professional school or accredited residency program in the same
 2445 health profession as the health care provider against whom or on
 2446 whose behalf the testimony is offered; or

2447 c. A clinical research program that is affiliated with an
 2448 accredited medical school or teaching hospital in the same
 2449 health profession as the health care provider against whom or on
 2450 whose behalf the testimony is offered.

2451 (b) If the health care provider whose negligence is
 2452 claimed to have created the cause of action is certified by the
 2453 appropriate American board as a specialist, is trained and
 2454 experienced in a medical specialty, or holds himself or herself



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2455 out as a specialist, a "similar health care provider" is one
2456 who:

2457 1. Is trained and experienced in the same specialty; ~~and~~
2458 2. Is certified by the appropriate American board in the
2459 same specialty.

2460 3. Has, during the 5 years immediately preceding the date
2461 of the occurrence that is the basis for the action, engaged in
2462 any combination of the following:

2463 a. Active clinical practice in the same specialty or a
2464 similar specialty that includes the evaluation, diagnosis, or
2465 treatment of the medical condition or procedure that is the
2466 subject of the action;

2467 b. Instruction of students in an accredited health
2468 professional school or accredited residency program in the same
2469 health profession and the same or similar specialty as the
2470 health care provider against whom or on whose behalf the
2471 testimony is offered; or

2472 c. A clinical research program that is affiliated with an
2473 accredited medical school or teaching hospital and that is in
2474 the same health profession and the same or similar specialty as
2475 the health care provider against whom or on whose behalf the
2476 testimony is offered and that is in the general practice of
2477 medicine.

2478
2479 However, if any health care provider described in this paragraph
2480 is providing treatment or diagnosis for a condition which is not
2481 within his or her specialty, a specialist trained in the
2482 treatment or diagnosis for that condition shall be considered a
2483 "similar health care provider."



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2484 ~~(c) The purpose of this subsection is to establish a~~
2485 ~~relative standard of care for various categories and~~
2486 ~~classifications of health care providers. Any health care~~
2487 ~~provider may testify as an expert in any action if he or she:~~

2488 ~~1. Is a similar health care provider pursuant to paragraph~~
2489 ~~(a) or paragraph (b); or~~

2490 ~~2. Is not a similar health care provider pursuant to~~
2491 ~~paragraph (a) or paragraph (b) but, to the satisfaction of the~~
2492 ~~court, possesses sufficient training, experience, and knowledge~~
2493 ~~as a result of practice or teaching in the specialty of the~~
2494 ~~defendant or practice or teaching in a related field of~~
2495 ~~medicine, so as to be able to provide such expert testimony as~~
2496 ~~to the prevailing professional standard of care in a given field~~
2497 ~~of medicine. Such training, experience, or knowledge must be as~~
2498 ~~a result of the active involvement in the practice or teaching~~
2499 ~~of medicine within the 5-year period before the incident giving~~
2500 ~~rise to the claim.~~

2501 Section 50. Subsection (1) of section 766.104, Florida
2502 Statutes, is amended to read:

2503 766.104 Pleading in medical negligence cases; claim for
2504 punitive damages; authorization for release of records for
2505 investigation.--

2506 (1) No action shall be filed for personal injury or
2507 wrongful death arising out of medical negligence, whether in
2508 tort or in contract, unless the attorney filing the action has
2509 made a reasonable investigation as permitted by the
2510 circumstances to determine that there are grounds for a good
2511 faith belief that there has been negligence in the care or
2512 treatment of the claimant. The complaint or initial pleading
2513 shall contain a certificate of counsel that such reasonable



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2514 investigation gave rise to a good faith belief that grounds
 2515 exist for an action against each named defendant. For purposes
 2516 of this section, good faith may be shown to exist if the
 2517 claimant or his or her counsel has received a written opinion,
 2518 which shall ~~not~~ be subject to discovery by an opposing party, of
 2519 an expert as defined in s. 766.102 that there appears to be
 2520 evidence of medical negligence. If the court determines that
 2521 such certificate of counsel was not made in good faith and that
 2522 no justiciable issue was presented against a health care
 2523 provider that fully cooperated in providing informal discovery,
 2524 the court shall award attorney's fees and taxable costs against
 2525 claimant's counsel, and shall submit the matter to The Florida
 2526 Bar for disciplinary review of the attorney.

2527 Section 51. Paragraph (a) of subsection (7) of section
 2528 766.106, Florida Statutes, is amended, and subsection (13) is
 2529 added to said section, to read:

2530 766.106 Notice before filing action for medical
 2531 malpractice; presuit screening period; offers for admission of
 2532 liability and for arbitration; informal discovery; review.--

2533 (7) Informal discovery may be used by a party to obtain
 2534 unsworn statements, the production of documents or things, and
 2535 physical and mental examinations, as follows:

2536 (a) *Unsworn statements.*--Any party may require other
 2537 parties to appear for the taking of an unsworn statement. Such
 2538 statements may be used only for the purpose of presuit screening
 2539 and are not discoverable or admissible in any civil action for
 2540 any purpose by any party. However, the statements and opinions
 2541 of the expert required by s. 766.203 are subject to discovery
 2542 and are admissible in any civil action for any purpose by any
 2543 party. A party desiring to take the unsworn statement of any



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2544 party must give reasonable notice in writing to all parties. The
2545 notice must state the time and place for taking the statement
2546 and the name and address of the party to be examined. Unless
2547 otherwise impractical, the examination of any party must be done
2548 at the same time by all other parties. Any party may be
2549 represented by counsel at the taking of an unsworn statement. An
2550 unsworn statement may be recorded electronically,
2551 stenographically, or on videotape. The taking of unsworn
2552 statements is subject to the provisions of the Florida Rules of
2553 Civil Procedure and may be terminated for abuses.

2554 (13) If an injured prospective claimant serves a notice of
2555 intent to initiate litigation or files suit under this chapter,
2556 the claimant must execute a medical information release that
2557 allows a defendant or his or her legal representative to conduct
2558 ex parte interviews with the claimant's treating physicians,
2559 which interviews must be limited to those areas that are
2560 potentially relevant to the claimant's alleged injury or
2561 illness.

2562 Section 52. Subsection (11) of section 766.1115, Florida
2563 Statutes, is amended to read:

2564 766.1115 Health care providers; creation of agency
2565 relationship with governmental contractors.--

2566 (11) APPLICABILITY.--This section applies to incidents
2567 occurring on or after April 17, 1992. This section does not
2568 apply to any health care contract entered into by the Department
2569 of Corrections which is subject to s. 768.28(10)(a). This
2570 section does not apply to any affiliation agreement or contract
2571 to provide comprehensive health care services entered into by a
2572 medical school to provide patient services to patients of public
2573 hospitals that is subject to s. 768.28(10)(e). Nothing in this



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2574 section in any way reduces or limits the rights of the state or
 2575 any of its agencies or subdivisions to any benefit currently
 2576 provided under s. 768.28.

2577 Section 53. Subsections (3), (5), (7), and (8) of section
 2578 766.202, Florida Statutes, are amended to read:

2579 766.202 Definitions; ss. 766.201-766.212.--As used in ss.
 2580 766.201-766.212, the term:

2581 (3) "Economic damages" means financial losses that ~~which~~
 2582 would not have occurred but for the injury giving rise to the
 2583 cause of action, including, but not limited to, past and future
 2584 medical expenses and 80 percent of wage loss and loss of earning
 2585 capacity, to the extent the claimant is entitled to recover such
 2586 damages under general law, including the Wrongful Death Act.

2587 (5) "Medical expert" means a person duly and regularly
 2588 engaged in the practice of his or her profession who holds a
 2589 health care professional degree from a university or college and
 2590 who meets the requirements of an expert witness as set forth in
 2591 s. 766.102 ~~has had special professional training and experience~~
 2592 ~~or one possessed of special health care knowledge or skill about~~
 2593 ~~the subject upon which he or she is called to testify or provide~~
 2594 ~~an opinion.~~

2595 (7) "Noneconomic damages" means nonfinancial losses which
 2596 would not have occurred but for the injury giving rise to the
 2597 cause of action, including pain and suffering, inconvenience,
 2598 physical impairment, mental anguish, disfigurement, loss of
 2599 capacity for enjoyment of life, and other nonfinancial losses,
 2600 to the extent the claimant is entitled to recover such damages
 2601 under general law, including the Wrongful Death Act.

2602 (8) "Periodic payment" means provision for the structuring
 2603 of future economic and future noneconomic damages payments, in



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2604 whole or in part, over a period of time, as follows:

2605 (a) A specific finding must be made of the dollar amount
2606 of periodic payments which will compensate for these future
2607 damages after offset for collateral sources and after having
2608 been reduced to present value ~~shall be made~~. A periodic payment
2609 must be structured to last as long as the claimant lives or the
2610 condition of the claimant for which the award was made persists,
2611 whichever may be shorter, but without regard for the number of
2612 years for which future damages are awarded. The total dollar
2613 amount of the periodic payments shall equal the dollar amount of
2614 all such future damages before any reduction to present value.

2615 (b) A defendant that elects to make periodic payments of
2616 either or both future economic or future noneconomic losses may
2617 contractually obligate a company that is authorized to do
2618 business in this state and rated by A.M. Best Company as A+ or
2619 higher to make those periodic payments on its behalf. Upon a
2620 joint petition by the defendant and the company that is
2621 contractually obligated to make the periodic payments, the court
2622 shall discharge the defendant from any further obligations to
2623 the claimant for those future economic and future noneconomic
2624 damages that are to be paid by that company by periodic
2625 payments.

2626 (c) A bond or security may not be required of any
2627 defendant or company that is obligated to make periodic payments
2628 pursuant to this section; however, if, upon petition by a
2629 claimant who is receiving periodic payments pursuant to this
2630 section, the court finds that there is substantial, competent
2631 evidence that the defendant that is responsible for the periodic
2632 payments cannot adequately ensure full and continuous payments
2633 thereof or that the company that is obligated to make the



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2634 payments has been rated by A.M. Best Company as B+ or lower, and
2635 that doing so is in the best interest of the claimant, the court
2636 may require the defendant or the company that is obligated to
2637 make the periodic payments to provide such additional financial
2638 security as the court determines to be reasonable under the
2639 circumstances.

2640 (d) The provision for the periodic payments must specify
2641 the recipient or recipients of the payments, the address to
2642 which the payments are to be delivered, and the amount and
2643 intervals of the payments; however, in any one year, any payment
2644 or payments may not exceed the amount intended by the trier of
2645 fact to be awarded that year, offset for collateral sources. A
2646 periodic payment may not be accelerated, deferred, increased, or
2647 decreased, except by court order based upon the mutual consent
2648 and agreement of the claimant, the defendant, whether or not
2649 discharged, and the company that is obligated to make the
2650 periodic payments, if any; nor may the claimant sell, mortgage,
2651 encumber, or anticipate the periodic payments or any part
2652 thereof, by assignment or otherwise. The defendant shall be
2653 required to post a bond or security or otherwise to assure full
2654 payment of these damages awarded. A bond is not adequate unless
2655 it is written by a company authorized to do business in this
2656 state and is rated A+ by Best's. If the defendant is unable to
2657 adequately assure full payment of the damages, all damages,
2658 reduced to present value, shall be paid to the claimant in a
2659 lump sum. No bond may be canceled or be subject to cancellation
2660 unless at least 60 days' advance written notice is filed with
2661 the court and the claimant. Upon termination of periodic
2662 payments, the security, or so much as remains, shall be returned
2663 to the defendant.



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2664 ~~(c) The provision for payment of future damages by~~
2665 ~~periodic payments shall specify the recipient or recipients of~~
2666 ~~the payments, the dollar amounts of the payments, the interval~~
2667 ~~between payments, and the number of payments or the period of~~
2668 ~~time over which payments shall be made.~~

2669 Section 54. Subsection (7) of section 766.207, Florida
2670 Statutes, is amended to read:

2671 766.207 Voluntary binding arbitration of medical
2672 negligence claims.--

2673 (7) Arbitration pursuant to this section shall preclude
2674 recourse to any other remedy by the claimant against any
2675 participating defendant, and shall be undertaken with the
2676 understanding that damages shall be awarded as provided by
2677 general law, including the Wrongful Death Act, subject to the
2678 following limitations:

2679 (a) Net economic damages shall be awardable, including,
2680 but not limited to, past and future medical expenses and 80
2681 percent of wage loss and loss of earning capacity, offset by any
2682 collateral source payments.

2683 (b) Noneconomic damages shall be limited to a maximum of
2684 \$250,000 per incident, and shall be calculated on a percentage
2685 basis with respect to capacity to enjoy life, so that a finding
2686 that the claimant's injuries resulted in a 50-percent reduction
2687 in his or her capacity to enjoy life would warrant an award of
2688 not more than \$125,000 noneconomic damages. Regardless of the
2689 number of individual claimants or defendants, the total
2690 noneconomic damages that may be awarded for all claims arising
2691 out of the same incident, including claims under the Wrongful
2692 Death Act, shall be limited to a maximum of \$250,000.

2693 (c) Damages for future economic and future noneconomic



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2694 losses shall be awarded to be paid by periodic payments pursuant
2695 to s. 766.202(8) and shall be offset by future collateral source
2696 payments.

2697 (d) Punitive damages shall not be awarded.

2698 (e) The defendant shall be responsible for the payment of
2699 interest on all accrued damages with respect to which interest
2700 would be awarded at trial.

2701 (f) The defendant shall pay the claimant's reasonable
2702 attorney's fees and costs, as determined by the arbitration
2703 panel, but in no event more than 15 percent of the award,
2704 reduced to present value.

2705 (g) The defendant shall pay all the costs of the
2706 arbitration proceeding and the fees of all the arbitrators other
2707 than the administrative law judge.

2708 (h) Each defendant who submits to arbitration under this
2709 section shall be jointly and severally liable for all damages
2710 assessed pursuant to this section.

2711 (i) The defendant's obligation to pay the claimant's
2712 damages shall be for the purpose of arbitration under this
2713 section only. A defendant's or claimant's offer to arbitrate
2714 shall not be used in evidence or in argument during any
2715 subsequent litigation of the claim following the rejection
2716 thereof.

2717 (j) The fact of making or accepting an offer to arbitrate
2718 shall not be admissible as evidence of liability in any
2719 collateral or subsequent proceeding on the claim.

2720 (k) Any offer by a claimant to arbitrate must be made to
2721 each defendant against whom the claimant has made a claim. Any
2722 offer by a defendant to arbitrate must be made to each claimant
2723 who has joined in the notice of intent to initiate litigation,



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2724 as provided in s. 766.106. A defendant who rejects a claimant's
2725 offer to arbitrate shall be subject to the provisions of s.
2726 766.209(3). A claimant who rejects a defendant's offer to
2727 arbitrate shall be subject to the provisions of s. 766.209(4).

2728 (1) The hearing shall be conducted by all of the
2729 arbitrators, but a majority may determine any question of fact
2730 and render a final decision. The chief arbitrator shall decide
2731 all evidentiary matters.

2732

2733 The provisions of this subsection shall not preclude settlement
2734 at any time by mutual agreement of the parties.

2735 Section 55. Paragraph (a) of subsection (4) of section
2736 766.209, Florida Statutes, is amended to read:

2737 766.209 Effects of failure to offer or accept voluntary
2738 binding arbitration.--

2739 (4) If the claimant rejects a defendant's offer to enter
2740 voluntary binding arbitration:

2741 (a) The damages awardable at trial shall be limited to net
2742 economic damages, plus noneconomic damages not to exceed
2743 \$350,000 per incident. Regardless of the number of individual
2744 claimants or defendants, the total noneconomic damages that may
2745 be awarded for all claims arising out of the same incident,
2746 including claims under the Wrongful Death Act, shall be limited
2747 to a maximum of \$350,000. The Legislature expressly finds that
2748 such conditional limit on noneconomic damages is warranted by
2749 the claimant's refusal to accept arbitration, and represents an
2750 appropriate balance between the interests of all patients who
2751 ultimately pay for medical negligence losses and the interests
2752 of those patients who are injured as a result of medical
2753 negligence.



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2754 Section 56. Section 766.213, Florida Statutes, is created
2755 to read:

2756 766.213 Periodic payment of damages upon death of
2757 claimant.--Any portion of a periodic payment made pursuant to a
2758 settlement or jury award or pursuant to mediation or arbitration
2759 which is attributable to medical expenses that have not yet been
2760 incurred shall terminate upon the death of the claimant. Any
2761 outstanding medical expenses incurred prior to the death of the
2762 claimant shall be paid from that portion of the periodic payment
2763 attributable to medical expenses.

2764 Section 57. Subsection (4) is added to section 766.309,
2765 Florida Statutes, to read:

2766 766.309 Determination of claims; presumption; findings of
2767 administrative law judge binding on participants.--

2768 (4) If the claim is determined to be compensable, and the
2769 claimants have the option of proceeding to circuit court either
2770 against a party who failed to give the notice required under s.
2771 766.316, or under the exception provided in s. 766.303(2) for
2772 bad faith or malicious purpose or willful and wanton disregard
2773 of human rights, safety, or property, then the claimants must
2774 elect either to:

2775 (a) Accept the benefits provided under the plan, and be
2776 barred from filing a civil action arising out of or related to a
2777 medical malpractice claim with respect to the birth-related
2778 neurological injury; or

2779 (b) Decline the benefits provided under the plan and
2780 proceed in circuit court. Such election shall be made within 60
2781 days from the date the order of the administrative law judge
2782 becomes final, including any appeal, and shall be binding on the
2783 claimants.



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2784 Section 58. Subsection (4) is added to section 768.041,
2785 Florida Statutes, to read:

2786 768.041 Release or covenant not to sue.--

2787 (4)(a) At trial pursuant to a suit filed under chapter
2788 766, or at trial pursuant to s. 766.209, if any defendant shows
2789 the court that the plaintiff, or his or her legal
2790 representative, has delivered a written release or covenant not
2791 to sue to any person in partial satisfaction of damages
2792 resulting from the same injury or injuries, the court shall set
2793 off this amount from the amount of any judgment to which the
2794 plaintiff would otherwise be entitled at the time of rendering
2795 judgment, regardless of whether the jury has allocated fault to
2796 the settling defendant at trial.

2797 (b) The amount of the setoff must include all sums received
2798 by the plaintiff, including economic and noneconomic damages,
2799 costs, and attorney's fees, and shall be applied against the
2800 total damages, after reduction for any comparative negligence of
2801 the plaintiff, rather than against the apportioned damages
2802 caused by a particular defendant.

2803 (c) A defendant entering into a settlement agreement with
2804 a plaintiff may assign any right of contribution arising under
2805 section 768.31, as a consequence of having paid more than his or
2806 her proportionate share of the entire liability.

2807 Section 59. Subsection (2) of section 768.13, Florida
2808 Statutes, is amended to read:

2809 768.13 Good Samaritan Act; immunity from civil
2810 liability.--

2811 (2)(a) Any person, including those licensed to practice
2812 medicine, who gratuitously and in good faith renders emergency
2813 care or treatment either in direct response to emergency



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2814 situations related to and arising out of a public health
2815 emergency declared pursuant to s. 381.00315, a state of
2816 emergency which has been declared pursuant to s. 252.36 or at
2817 the scene of an emergency outside of a hospital, doctor's
2818 office, or other place having proper medical equipment, without
2819 objection of the injured victim or victims thereof, shall not be
2820 held liable for any civil damages as a result of such care or
2821 treatment or as a result of any act or failure to act in
2822 providing or arranging further medical treatment where the
2823 person acts as an ordinary reasonably prudent person would have
2824 acted under the same or similar circumstances.

2825 (b)1. Any health care provider, including a hospital
2826 licensed under chapter 395, providing emergency services
2827 pursuant to obligations imposed by 42 U.S.C. s. 1395dd, s.
2828 395.401, s. 395.1041, or s. 401.45 ~~any employee of such hospital~~
2829 ~~working in a clinical area within the facility and providing~~
2830 ~~patient care, and any person licensed to practice medicine who~~
2831 ~~in good faith renders medical care or treatment necessitated by~~
2832 ~~a sudden, unexpected situation or occurrence resulting in a~~
2833 ~~serious medical condition demanding immediate medical attention,~~
2834 ~~for which the patient enters the hospital through its emergency~~
2835 ~~room or trauma center, or necessitated by a public health~~
2836 ~~emergency declared pursuant to s. 381.00315 shall not be held~~
2837 ~~liable for any civil damages as a result of such medical care or~~
2838 ~~treatment unless such damages result from providing, or failing~~
2839 ~~to provide, medical care or treatment under circumstances~~
2840 ~~demonstrating a reckless disregard for the consequences so as to~~
2841 ~~affect the life or health of another. A health care provider~~
2842 under this paragraph does not include a licensed health care
2843 practitioner who is providing emergency services to a person



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2844 with whom the practitioner has an established provider-patient
 2845 relationship outside of the emergency room setting.

2846 2. The immunity provided by this paragraph applies ~~does~~
 2847 ~~not apply~~ to damages as a result of any act or omission of
 2848 providing medical care or treatment, including diagnosis:

2849 a. Which occurs prior to the time ~~after~~ the patient is
 2850 stabilized and is capable of receiving medical treatment as a
 2851 nonemergency patient, unless surgery is required as a result of
 2852 the emergency within a reasonable time after the patient is
 2853 stabilized, in which case the immunity provided by this
 2854 paragraph applies to any act or omission of providing medical
 2855 care or treatment which occurs prior to the stabilization of the
 2856 patient following the surgery. ~~;~~ ~~or~~

2857 b. Which is related ~~Unrelated~~ to the original medical
 2858 emergency.

2859 3. For purposes of this paragraph, "reckless disregard" as
 2860 it applies to a given health care provider rendering emergency
 2861 medical services shall be such conduct that ~~which~~ a health care
 2862 provider knew or should have known, at the time such services
 2863 were rendered, created an unreasonable risk of injury so as to
 2864 affect the life or health of another, and such risk was
 2865 substantially greater than that which is necessary to make the
 2866 conduct negligent. ~~would be likely to result in injury so as to~~
 2867 ~~affect the life or health of another, taking into account the~~
 2868 ~~following to the extent they may be present;~~

2869 a. ~~The extent or serious nature of the circumstances~~
 2870 ~~prevailing.~~

2871 b. ~~The lack of time or ability to obtain appropriate~~
 2872 ~~consultation.~~

2873 c. ~~The lack of a prior patient-physician relationship.~~



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2874 ~~d. The inability to obtain an appropriate medical history~~
2875 ~~of the patient.~~

2876 ~~e. The time constraints imposed by coexisting emergencies.~~

2877 4. Every emergency care facility granted immunity under
2878 this paragraph shall accept and treat all emergency care
2879 patients within the operational capacity of such facility
2880 without regard to ability to pay, including patients transferred
2881 from another emergency care facility or other health care
2882 provider pursuant to Pub. L. No. 99-272, s. 9121. The failure of
2883 an emergency care facility to comply with this subparagraph
2884 constitutes grounds for the department to initiate disciplinary
2885 action against the facility pursuant to chapter 395.

2886 (c)1. Any health care practitioner as defined in s.
2887 456.001(4) who is in a hospital attending to a patient of his or
2888 her practice or for business or personal reasons unrelated to
2889 direct patient care, and who voluntarily responds to provide
2890 care or treatment to a patient with whom at that time the
2891 practitioner does not have a then-existing health care patient-
2892 physician relationship, and when such care or treatment is
2893 necessitated by a sudden or unexpected situation or by an
2894 occurrence that demands immediate medical attention, shall not
2895 be held liable for any civil damages as a result of any act or
2896 omission relative to that care or treatment, unless that care or
2897 treatment is proven to amount to conduct that is willful and
2898 wanton and would likely result in injury so as to affect the
2899 life or health of another.

2900 2. The immunity provided by this paragraph does not apply
2901 to damages as a result of any act or omission of providing
2902 medical care or treatment unrelated to the original situation
2903 that demanded immediate medical attention.



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2904 3. For purposes of this paragraph, the Legislature's
 2905 intent is to encourage health care practitioners to provide
 2906 necessary emergency care to all persons without fear of
 2907 litigation as described in this paragraph.

2908 ~~(c) Any person who is licensed to practice medicine, while~~
 2909 ~~acting as a staff member or with professional clinical~~
 2910 ~~privileges at a nonprofit medical facility, other than a~~
 2911 ~~hospital licensed under chapter 395, or while performing health~~
 2912 ~~screening services, shall not be held liable for any civil~~
 2913 ~~damages as a result of care or treatment provided gratuitously~~
 2914 ~~in such capacity as a result of any act or failure to act in~~
 2915 ~~such capacity in providing or arranging further medical~~
 2916 ~~treatment, if such person acts as a reasonably prudent person~~
 2917 ~~licensed to practice medicine would have acted under the same or~~
 2918 ~~similar circumstances.~~

2919 Section 60. Legislative findings and intent.--

2920 (1) EMERGENCY SERVICES AND CARE.--

2921 (a) The Legislature finds and declares it to be of vital
 2922 importance that emergency services and care be provided by
 2923 hospitals, physicians, and emergency medical services providers
 2924 to every person in need of such care.

2925 (b) The Legislature finds that emergency services and care
 2926 providers are critical elements in responding to disaster and
 2927 emergency situations that might affect our local communities,
 2928 state, and country.

2929 (c) The Legislature recognizes the importance of
 2930 maintaining a viable system of providing for the emergency
 2931 medical needs of the state's residents and visitors.

2932 (d) The Legislature and the Federal Government have
 2933 required such providers of emergency medical services and care



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2934 to provide emergency services and care to all persons who
 2935 present to hospitals seeking such care.

2936 (e) The Legislature finds that the Legislature has further
 2937 mandated that prehospital emergency medical treatment or
 2938 transport may not be denied by emergency medical services
 2939 providers to persons who have or are likely to have an emergency
 2940 medical condition.

2941 (f) Such governmental requirements have imposed a
 2942 unilateral obligation for emergency services and care providers
 2943 to provide services to all persons seeking emergency care
 2944 without ensuring payment or other consideration for provision of
 2945 such care.

2946 (g) The Legislature also recognizes that emergency
 2947 services and care providers provide a significant amount of
 2948 uncompensated emergency medical care in furtherance of such
 2949 governmental interest.

2950 (h) The Legislature finds that a significant proportion of
 2951 the residents of this state who are uninsured or are Medicaid or
 2952 Medicare recipients are unable to access needed health care
 2953 because health care providers fear the increased risk of medical
 2954 malpractice liability.

2955 (i) The Legislature finds that such patients, in order to
 2956 obtain medical care, are frequently forced to seek care through
 2957 providers of emergency medical services and care.

2958 (j) The Legislature finds that providers of emergency
 2959 medical services and care in this state have reported
 2960 significant problems with both the availability and
 2961 affordability of professional liability coverage.

2962 (k) The Legislature finds that medical malpractice
 2963 liability insurance premiums have increased dramatically, and a



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2964 number of insurers have ceased providing medical malpractice
 2965 insurance coverage for emergency medical services and care in
 2966 this state. This results in a functional unavailability of
 2967 medical malpractice insurance coverage for some providers of
 2968 emergency medical services and care.

2969 (1) The Legislature further finds that certain specialist
 2970 physicians have resigned from serving on hospital staffs or have
 2971 otherwise declined to provide on-call coverage to hospital
 2972 emergency departments due to increased medical malpractice
 2973 liability exposure created by treating such emergency department
 2974 patients.

2975 (m) It is the intent of the Legislature that hospitals,
 2976 emergency medical services providers, and physicians be able to
 2977 ensure that patients who might need emergency medical services
 2978 treatment or transportation or who present to hospitals for
 2979 emergency medical services and care have access to such needed
 2980 services.

2981 (2) PUBLIC HOSPITALS AND AFFILIATIONS WITH NOT-FOR-PROFIT
 2982 COLLEGES AND UNIVERSITIES WITH MEDICAL SCHOOLS AND OTHER HEALTH
 2983 CARE PRACTITIONER EDUCATIONAL PROGRAMS.--

2984 (a) The Legislature finds that access to quality,
 2985 affordable health care for all Floridians is a necessary goal
 2986 for the state and that public hospitals play an essential role
 2987 in providing access to comprehensive health care services.

2988 (b) The Legislature further finds that access to quality
 2989 health care at public hospitals is enhanced when public
 2990 hospitals affiliate and coordinate their common endeavors with
 2991 medical schools. These affiliations have proven to be an
 2992 integral part of the delivery of more efficient and economical
 2993 health care services to patients of public hospitals by offering



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2994 quality graduate medical education programs to resident
2995 physicians who provide patient services at public hospitals.
2996 These affiliations ensure continued access to quality
2997 comprehensive health care services for Floridians and,
2998 therefore, should be encouraged in order to maintain and expand
2999 such services.

3000 (c) The Legislature finds that when medical schools
3001 affiliate or enter into contracts with public hospitals to
3002 provide comprehensive health care services to patients of public
3003 hospitals, they greatly increase their exposure to claims
3004 arising out of alleged medical malpractice and other allegedly
3005 negligent acts because some colleges and universities and their
3006 medical schools and employees do not have the same level of
3007 protection against liability claims as governmental entities and
3008 their public employees providing the same patient services to
3009 the same public hospital patients.

3010 (d) The Legislature finds that the high cost of
3011 litigation, unequal liability exposure, and increased medical
3012 malpractice insurance premiums have adversely impacted the
3013 ability of some medical schools to permit their employees to
3014 provide patient services to patients of public hospitals. This
3015 finding is consistent with the report issued in April 2002 by
3016 the American Medical Association declaring Florida to be one of
3017 12 states in the midst of a medical liability insurance crisis.
3018 The crisis in the availability and affordability of medical
3019 malpractice insurance is a contributing factor in the reduction
3020 of access to quality health care in the state, which has
3021 declined significantly. In 1988, 33 hospitals were owned or
3022 operated by the state and local governments or established as
3023 taxing districts. In 1991, that number had dropped to 28. In



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3024 2001, only 18 such hospitals remained, seven of which are
3025 concentrated in one county. If corrective action is not taken,
3026 this health care crisis will lead to a continued reduction of
3027 patient services in public hospitals.

3028 (e) The Legislature finds that the public is better served
3029 and will benefit from corrective action to address the foregoing
3030 concerns. It is imperative that the Legislature further the
3031 public benefit by conferring sovereign immunity upon colleges
3032 and universities, their medical schools, and their employees
3033 when, pursuant to an affiliation agreement or a contract to
3034 provide comprehensive health care services, they provide patient
3035 services to patients of public hospitals.

3036 (f) It is the intent of the Legislature that colleges and
3037 universities that affiliate with public hospitals be granted
3038 sovereign immunity under s. 768.28, Florida Statutes, in the
3039 same manner and to the same extent as the state and its agencies
3040 and political subdivisions. It is also the intent of the
3041 Legislature that employees of colleges and universities that
3042 provide patient services to patients of a public hospital be
3043 immune from lawsuits in the same manner and to the same extent
3044 as employees and agents of the state and its agencies and
3045 political subdivisions and, further, that they shall not be held
3046 personally liable in tort or named as a party defendant in an
3047 action while performing patient services except as provided in
3048 s. 768.28(9)(a), Florida Statutes.

3049 Section 61. Paragraph (b) of subsection (9) of section
3050 768.28, Florida Statutes, is amended, and paragraph (e) is added
3051 to subsection (10) of said section, to read:

3052 768.28 Waiver of sovereign immunity in tort actions;
3053 recovery limits; limitation on attorney fees; statute of



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3054 limitations; exclusions; indemnification; risk management
 3055 programs.--
 3056 (9)
 3057 (b) As used in this subsection, the term:
 3058 1. "Employee" includes any volunteer firefighter.
 3059 2. "Officer, employee, or agent" includes, but is not
 3060 limited to, any employee of a medical school or other health
 3061 care practitioner training program in a college or university
 3062 that enters into an affiliation agreement or contract to allow
 3063 its employees to provide patient services to patients treated at
 3064 a public statutory teaching hospital or other health care
 3065 facility owned by a governmental entity or at other locations
 3066 under contract with a governmental entity to provide patient
 3067 services to patients at such facility pursuant to paragraph
 3068 (10)(e); any faculty member or other health care professional,
 3069 practitioner, or ancillary caregiver or employee of a college or
 3070 university or its medical school that enters into an affiliation
 3071 agreement or a contract to provide comprehensive health care
 3072 services with a public hospital or its governmental owner, and
 3073 who provides patient services to patients of a public hospital
 3074 pursuant to paragraph (10)(e); any health care provider when
 3075 providing services pursuant to s. 766.1115; ~~any~~ any member of the
 3076 Florida Health Services Corps, as defined in s. 381.0302, who
 3077 provides uncompensated care to medically indigent persons
 3078 referred by the Department of Health; ~~and~~ any public defender
 3079 or her or his employee or agent, including, among others, an
 3080 assistant public defender and an investigator; and any emergency
 3081 health care provider acting pursuant to obligations imposed by
 3082 ss. 395.1041, 395.401, and 401.45. Except for persons or
 3083 entities that are otherwise covered under this section,



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3084 emergency health care providers shall be considered agents of
3085 the State of Florida, Department of Health, and shall indemnify
3086 the state for the reasonable costs of defense and indemnity
3087 payments, if any, up to the liability limits set forth in this
3088 chapter. For purposes of this subsection, the term "emergency
3089 health care providers" includes all persons and entities covered
3090 under or providing services pursuant obligations imposed by ss.
3091 395.1041, 395.401, and 401.45. Such emergency health care
3092 providers shall include an emergency medical services provider
3093 licensed under chapter 401 and persons operating as employees or
3094 agents of such emergency medical services provider; a hospital
3095 licensed under chapter 395 and persons operating as employees or
3096 agents of such hospital; a physician or dentist licensed under
3097 chapter 458, chapter 459, chapter 460, chapter 461, or chapter
3098 466; a physician assistant licensed under chapter 458 or chapter
3099 459; an emergency medical technician or paramedic certified
3100 under chapter 401; a registered nurse, nurse midwife, licensed
3101 practical nurse, or advanced registered nurse practitioner
3102 licensed or registered under part I of chapter 464; a midwife
3103 licensed under chapter 467; a health care professional
3104 association and its employees or agents or a corporate medical
3105 group and its employees or agents; any student or medical
3106 resident who is enrolled in an accredited program or licensed
3107 program that prepares the student for licensure or certification
3108 in any one of the professions listed in this subsection; the
3109 program that prepares the student for licensure or
3110 certification; any entity responsible for training of the
3111 student or medical resident; and any other person or entity that
3112 is providing services pursuant to obligations imposed by s.
3113 395.1041 or s. 401.45. For purposes of this subsection,



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3114 "emergency medical services" means ambulance assessment,
3115 treatment, or transport services provided pursuant to
3116 obligations imposed by s. 395.1041 or s. 401.45; all screening,
3117 examination, and evaluation by a physician, hospital, or other
3118 person or entity acting pursuant to obligations imposed by s.
3119 395.1041; and the care, treatment, surgery, or other medical
3120 services provided, whether as an outpatient or inpatient, to
3121 relieve or eliminate the emergency medical condition, including
3122 all medical services to eliminate the likelihood that the
3123 emergency medical condition will deteriorate or recur without
3124 further medical attention within a reasonable period of time.

3125 (10)

3126 (e) Any not-for-profit college or university with a
3127 medical, dental, or nursing school, or any other academic
3128 program of medical education that is accredited by any
3129 association, agency, council, commission, or accrediting body
3130 recognized by the state as a condition for licensure of its
3131 graduates, that has entered into an affiliation agreement or a
3132 contract to allow its faculty, its health care professionals,
3133 practitioners, and ancillary caregivers, and its employees to
3134 provide patient services to hospital patients treated at a
3135 public hospital shall, along with the employees of such medical
3136 or other school or program, be deemed agents of the governmental
3137 entity responsible for the public hospital for purposes of this
3138 section and shall be immune from liability for torts in the same
3139 manner and to the same extent as the state and its agencies and
3140 subdivisions while providing patient services. For the purpose
3141 of this paragraph, "public hospital" means a statutory teaching
3142 hospital or any other health care facility owned or used by the
3143 state or by a county, municipality, public authority, special



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3144 taxing district with health care responsibilities, or other
 3145 local governmental entity or at other locations under contract
 3146 with the governmental entity. For the purpose of this paragraph,
 3147 "patient services" includes comprehensive health care services
 3148 as defined in s. 641.19, including related administrative
 3149 services to patients of a public hospital and the supervision of
 3150 interns, residents, and fellows providing patient services to
 3151 patients of a public hospital and access to participation in
 3152 medical research protocols. No such employee or agent of a
 3153 college or university or their medical schools or other health
 3154 care practitioner educational schools or programs shall be
 3155 personally liable in tort or named as a party defendant in any
 3156 action arising from the provision of services to patients in a
 3157 public hospital, except as provided in s. 768.28(9)(a).

3158 Section 62. Section 768.77, Florida Statutes, is amended
 3159 to read:

3160 768.77 Itemized verdict.--

3161 (1) Except as provided in subsection (2), in any action to
 3162 which this part applies in which the trier of fact determines
 3163 that liability exists on the part of the defendant, the trier of
 3164 fact shall, as a part of the verdict, itemize the amounts to be
 3165 awarded to the claimant into the following categories of
 3166 damages:

3167 (a)(1) Amounts intended to compensate the claimant for
 3168 economic losses.‡

3169 (b)(2) Amounts intended to compensate the claimant for
 3170 noneconomic losses.‡ ~~and~~

3171 (c)(3) Amounts awarded to the claimant for punitive
 3172 damages, if applicable.



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3173 (2) In any action for damages based on personal injury or
 3174 wrongful death arising out of medical malpractice, whether in
 3175 tort or contract, to which this part applies in which the trier
 3176 of fact determines that liability exists on the part of the
 3177 defendant, the trier of fact shall, as a part of the verdict,
 3178 itemize the amounts to be awarded to the claimant into the
 3179 following categories of damages:

3180 (a) Amounts intended to compensate the claimant for:

- 3181 1. Past economic losses.
- 3182 2. Future economic losses, not reduced to present value,
 3183 and the number of years or part thereof which the award is
 3184 intended to cover.

3185 (b) Amounts intended to compensate the claimant for:

- 3186 1. Past noneconomic losses.
- 3187 2. Future noneconomic losses, not reduced to present
 3188 value, and the number of years or part thereof which the award
 3189 is intended to cover.

3190 (c) Amounts awarded to the claimant for punitive damages,
 3191 if applicable.

3192 Section 63. Section 766.1067, Florida Statutes, is created
 3193 to read:

3194 766.1067 Mandatory mediation after suit is filed.--Within
 3195 120 days after suit being filed, unless such period is extended
 3196 by mutual agreement of all parties, all parties shall attend in-
 3197 person mandatory mediation in accordance with s. 44.102 if
 3198 binding arbitration under s. 766.106 or s. 766.207 has not been
 3199 agreed to by the parties. The Florida Rules of Civil Procedure
 3200 shall apply to mediation held pursuant to this section.

3201 Section 64. Section 766.118, Florida Statutes, is created
 3202 to read:



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3203 766.118 Determination of noneconomic damages.--With
3204 respect to a cause of action for personal injury or wrongful
3205 death resulting from medical negligence, including actions
3206 pursuant to s. 766.209, damages recoverable for noneconomic
3207 losses to compensate for pain and suffering, inconvenience,
3208 physical impairment, mental anguish, disfigurement, loss of
3209 capacity for enjoyment of life, and all other noneconomic
3210 damages shall not exceed \$250,000, regardless of the number of
3211 claimants or defendants involved in the action.

3212 Section 65. Paragraph (a) of subsection (1) and subsection
3213 (2) of section 768.78, Florida Statutes, are amended to read:

3214 768.78 Alternative methods of payment of damage awards.--

3215 (1)(a) In any action to which this part applies in which
3216 the court determines that an award to compensate the claimant
3217 includes future economic losses which exceed \$250,000, payment
3218 of amounts intended to compensate the claimant for these losses
3219 shall be made by one of the following means, unless an
3220 alternative method of payment of damages is provided in this
3221 section:

3222 1. The defendant may make a lump-sum payment for all
3223 damages so assessed, with future economic losses and expenses
3224 reduced to present value; or

3225 2. Subject to the provisions of this subsection, the court
3226 shall, at the request of either party, unless the court
3227 determines that manifest injustice would result to any party,
3228 enter a judgment ordering future economic damages, as itemized
3229 pursuant to s. 768.77(1)(a), in excess of \$250,000 to be paid in
3230 whole or in part by periodic payments rather than by a lump-sum
3231 payment.



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3232 (2)(a) In any action for damages based on personal injury
3233 or wrongful death arising out of medical malpractice, whether in
3234 tort or contract, in which the trier of fact makes an award to
3235 compensate the claimant for future economic or future
3236 noneconomic losses, payment of amounts intended to compensate
3237 the claimant for these future losses shall be made by one of the
3238 following means:

3239 1. The defendant may elect to make a lump-sum payment for
3240 the all damages so assessed, with future economic or future
3241 noneconomic losses, or both, after offset for collateral sources
3242 and after having been ~~and expenses~~ reduced to present value by
3243 the court based upon competent, substantial evidence presented
3244 to it by the parties; or

3245 2. The defendant, if determined by the court to be
3246 financially capable or adequately insured, may elect to use
3247 periodic payments to satisfy in whole or in part the assessed
3248 future economic and future noneconomic losses awarded by the
3249 trier of fact after offset for collateral sources for so long as
3250 the claimant lives or the condition for which the award was made
3251 persists, whichever period may be shorter, but without regard
3252 for the number of years awarded by the trier of fact. The court
3253 shall review and, unless clearly unresponsive to the future
3254 needs of the claimant, approve the amounts and schedule of the
3255 periodic payments proposed by the defendant. Upon motion of the
3256 defendant, whether or not discharged from any obligation to make
3257 the payments pursuant to paragraph (b), and the establishment by
3258 substantial, competent evidence of either the death of the
3259 claimant or that the condition for which the award was made no
3260 longer persists, the court shall enter an order terminating the
3261 periodic payments effective as of the date of the death of the



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3262 claimant or the date the condition for which the award was made
3263 no longer persisted ~~The court shall, at the request of either~~
3264 ~~party, enter a judgment ordering future economic damages, as~~
3265 ~~itemized pursuant to s. 768.77, to be paid by periodic payments~~
3266 ~~rather than lump sum.~~

3267 (b) A defendant who elects to make periodic payments of
3268 future economic or future noneconomic losses, or both, may
3269 contractually obligate a company that is authorized to do
3270 business in this state and rated by A.M. Best Company as A+ or
3271 higher to make those periodic payments on its behalf. Upon a
3272 joint petition by the defendant and the company that is
3273 contractually obligated to make the periodic payments, the court
3274 shall discharge the defendant from any further obligations to
3275 the claimant for those future economic and future noneconomic
3276 damages that are to be paid by that company by periodic
3277 payments.

3278 (c) Upon notice of a defendant's election to make periodic
3279 payments pursuant to this section, the claimant may request that
3280 the court modify the periodic payments to reasonably provide for
3281 attorney's fees; however, a court may not make any such
3282 modification that would increase the amount the defendant would
3283 have been obligated to pay had no such adjustment been made.

3284 (d) A bond or security may not be required of any
3285 defendant or company that is obligated to make periodic payments
3286 pursuant to this section; however, if, upon petition by a
3287 claimant who is receiving periodic payments pursuant to this
3288 section, the court finds that there is substantial, competent
3289 evidence that the defendant who is responsible for the periodic
3290 payments cannot adequately ensure full and continuous payments
3291 thereof or that the company that is obligated to make the



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3292 payments has been rated by A.M. Best Company as B+ or lower, and
3293 that doing so is in the best interest of the claimant, the court
3294 may require the defendant or the company that is obligated to
3295 make the periodic payments to provide such additional financial
3296 security as the court determines to be reasonable under the
3297 circumstances.

3298 (e) The provision for the periodic payments must specify
3299 the recipient or recipients of the payments, the address to
3300 which the payments are to be delivered, and the amount and
3301 intervals of the payments; however, in any one year any payment
3302 or payments may not exceed the amount intended by the trier of
3303 fact to be awarded each year, offset for collateral sources. A
3304 periodic payment may not be accelerated, deferred, increased, or
3305 decreased, except by court order based upon the mutual consent
3306 and agreement of the claimant, the defendant, whether or not
3307 discharged, and the company that is obligated to make the
3308 periodic payments, if any; nor may the claimant sell, mortgage,
3309 encumber, or anticipate the periodic payments, or any part
3310 thereof, by assignment or otherwise.

3311 (f) For purposes of this section, the term "periodic
3312 payment" means the payment of money or delivery of other
3313 property to the claimant at regular intervals.

3314 (g) It is the intent of the Legislature to authorize and
3315 encourage the payment of awards for future economic and future
3316 noneconomic losses by periodic payments to meet the continuing
3317 needs of the patient while eliminating the misdirection of such
3318 funds for purposes not intended by the trier of fact.

3319 ~~(b) For purposes of this subsection, "periodic payment"~~
3320 ~~means provision for the spreading of future economic damage~~



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3321 ~~payments, in whole or in part, over a period of time, as~~
 3322 ~~follows:~~

3323 ~~1. A specific finding of the dollar amount of periodic~~
 3324 ~~payments which will compensate for these future damages after~~
 3325 ~~offset for collateral sources shall be made. The total dollar~~
 3326 ~~amount of the periodic payments shall equal the dollar amount of~~
 3327 ~~all such future damages before any reduction to present value.~~

3328 ~~2. The defendant shall be required to post a bond or~~
 3329 ~~security or otherwise to assure full payment of these damages~~
 3330 ~~awarded. A bond is not adequate unless it is written by a~~
 3331 ~~company authorized to do business in this state and is rated A+~~
 3332 ~~by Best's. If the defendant is unable to adequately assure full~~
 3333 ~~payment of the damages, all damages, reduced to present value,~~
 3334 ~~shall be paid to the claimant in a lump sum. No bond may be~~
 3335 ~~canceled or be subject to cancellation unless at least 60 days'~~
 3336 ~~advance written notice is filed with the court and the claimant.~~
 3337 ~~Upon termination of periodic payments, the security, or so much~~
 3338 ~~as remains, shall be returned to the defendant.~~

3339 ~~3. The provision for payment of future damages by periodic~~
 3340 ~~payments shall specify the recipient or recipients of the~~
 3341 ~~payments, the dollar amounts of the payments, the interval~~
 3342 ~~between payments, and the number of payments or the period of~~
 3343 ~~time over which payments shall be made.~~

3344 Section 66. Subsection (1) of section 766.112, Florida
 3345 Statutes, is amended to read:

3346 766.112 Comparative fault.--

3347 (1) Notwithstanding any provision of ~~anything in~~ law to
 3348 the contrary, in an action for damages for personal injury or
 3349 wrongful death arising out of medical malpractice, whether in
 3350 contract or tort, ~~when an apportionment of damages pursuant to~~



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3351 ~~this section is attributed to a teaching hospital as defined in~~
 3352 ~~s. 408.07,~~ the court shall enter judgment ~~against the teaching~~
 3353 ~~hospital~~ on the basis of each ~~such~~ party's percentage of fault
 3354 and not on the basis of the doctrine of joint and several
 3355 liability.

3356 Section 67. Subsection (5) of section 768.81, Florida
 3357 Statutes, is amended to read:

3358 768.81 Comparative fault.--

3359 (5) Notwithstanding any provision of ~~anything in~~ law to
 3360 the contrary, in an action for damages for personal injury or
 3361 wrongful death arising out of medical malpractice, whether in
 3362 contract or tort, ~~when an apportionment of damages pursuant to~~
 3363 ~~this section is attributed to a teaching hospital as defined in~~
 3364 ~~s. 408.07,~~ the court shall enter judgment ~~against the teaching~~
 3365 ~~hospital~~ on the basis of each ~~such~~ party's percentage of fault
 3366 and not on the basis of the doctrine of joint and several
 3367 liability.

3368 Section 68. Section 1004.08, Florida Statutes, is created
 3369 to read:

3370 1004.08 Patient safety instructional requirements.--Every
 3371 public school, college, and university that offers degrees in
 3372 medicine, nursing, and allied health shall include in the
 3373 curricula applicable to such degrees material on patient safety,
 3374 including patient safety improvement. Materials shall include,
 3375 but need not be limited to, effective communication and
 3376 teamwork; epidemiology of patient injuries and medical errors;
 3377 vigilance, attention, and fatigue; checklists and inspections;
 3378 automation and technological and computer support; psychological
 3379 factors in human error; and reporting systems.



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3380 Section 69. Section 1005.07, Florida Statutes, is created
3381 to read:

3382 1005.07 Patient safety instructional requirements.--Every
3383 nonpublic school, college, and university that offers degrees in
3384 medicine, nursing, and allied health shall include in the
3385 curricula applicable to such degrees material on patient safety,
3386 including patient safety improvement. Materials shall include,
3387 but need not be limited to, effective communication and
3388 teamwork; epidemiology of patient injuries and medical errors;
3389 vigilance, attention, and fatigue; checklists and inspections;
3390 automation and technological and computer support; psychological
3391 factors in human error; and reporting systems.

3392 Section 70. (1) The Department of Health shall study and
3393 report to the Legislature as to whether medical review panels
3394 should be included as part of the presuit process in medical
3395 malpractice litigation. Medical review panels review a medical
3396 malpractice case during the presuit process and make judgments
3397 on the merits of the case based on established standards of care
3398 with the intent of reducing the number of frivolous claims. The
3399 panel's report could be used as admissible evidence at trial or
3400 for other purposes. The department's report should address:

3401 (a) Historical use of medical review panels and similar
3402 pretrial programs in this state, including the mediation panels
3403 created by chapter 75-9, Laws of Florida.

3404 (b) Constitutional issues relating to the use of medical
3405 review panels.

3406 (c) The use of medical review panels or similar programs
3407 in other states.

3408 (d) Whether medical review panels or similar panels should
3409 be created for use during the presuit process.



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3410 (e) Other recommendations and information that the
3411 department deems appropriate.

3412 (f) In submitting its report with respect to paragraphs
3413 (a)-(c), the department should identify at a minimum:

3414 1. The percentage of medical malpractice claims submitted
3415 to the panels during the time period the panels were in
3416 existence.

3417 2. The percentage of claims that were settled while the
3418 panels were in existence and the percentage of claims that were
3419 settled in the 3 years prior to the establishment of such panels
3420 or, for each panel which no longer exists, 3 years after the
3421 dissolution of such panels.

3422 3. In those state where panels have been discontinued,
3423 whether additional safeguards have been implemented to avoid the
3424 filing of frivolous lawsuits and what those additional
3425 safeguards are.

3426 4. How the rates for medical malpractice insurance in
3427 states utilizing such panels compares with the rates in states
3428 not utilizing such panels.

3429 5. Whether, and to what extent, a finding by a panel is
3430 subject to review and the burden of proof required to overcome a
3431 finding by the panel.

3432 (2) If the department finds that medical review panels or
3433 a similar structure should be created in this state, it shall
3434 include draft legislation to implement its recommendations in
3435 its report.

3436 (3) The department shall submit its report to the Speaker
3437 of the House of Representatives and the President of the Senate
3438 no later than December 31, 2003.



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3439 Section 71. The Agency for Health Care Administration is
3440 directed to study the types of information the public would find
3441 relevant in the selection of hospitals and physicians. The
3442 agency shall review and recommend appropriate methods of
3443 collection, analysis, and dissemination of that information. The
3444 agency shall complete its study and report its findings and
3445 recommendations to the Speaker of the House of Representatives
3446 and the President of the Senate by January 15, 2004.

3447 Section 72. The Office of Program Policy Analysis and
3448 Government Accountability shall complete a study of the
3449 eligibility requirements for a birth to be covered under the
3450 Florida Birth-Related Neurological Injury Compensation
3451 Association and submit a report to the Speaker of the House of
3452 Representatives and the President of the Senate by January 1,
3453 2004, recommending whether or not the statutory criteria for a
3454 claim to qualify for referral to the Florida Birth-Related
3455 Neurological Injury Compensation Association under s. 766.302,
3456 Florida Statutes, should be modified.

3457 Section 73. The Office of Program Policy Analysis and
3458 Government Accountability and the Office of the Auditor General
3459 must jointly conduct an audit of the Department of Health's
3460 health care practitioner disciplinary process and closed claims
3461 that are filed with the department under s. 627.912, Florida
3462 Statutes. The Office of Program Policy Analysis and Government
3463 Accountability and the Office of the Auditor General shall
3464 submit a report to the Speaker of the House of Representatives
3465 and the President of the Senate by January 1, 2004.

3466 Section 74. Comprehensive study and report on the creation
3467 of a Patient Safety Authority.--



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3468 (1) The Agency for Health Care Administration, in
3469 consultation with the Department of Health, is directed to study
3470 the need for, and the implementation requirements of,
3471 establishing a Patient Safety Authority. The authority would be
3472 responsible for performing activities and functions designed to
3473 improve patient safety and the quality of care delivered by
3474 health care facilities and health care practitioners.

3475 (2) In undertaking its study, the agency shall examine and
3476 evaluate a Patient Safety Authority that would, either directly
3477 or by contract:

3478 (a) Analyze information concerning adverse incidents
3479 reported to the Agency for Health Care Administration pursuant
3480 to s. 395.0197, Florida Statutes, for the purpose of
3481 recommending changes in practices and procedures that may be
3482 implemented by health care practitioners and health care
3483 facilities to prevent future adverse incidents.

3484 (b) Collect, analyze, and evaluate patient safety data
3485 submitted voluntarily by a health care practitioner or health
3486 care facility. The authority would communicate to health care
3487 practitioners and health care facilities changes in practices
3488 and procedures that may be implemented for the purpose of
3489 improving patient safety and preventing future patient safety
3490 events from resulting in serious injury or death. At a minimum,
3491 the authority would:

3492 1. Be designed and operated by an individual or entity
3493 with demonstrated expertise in health care quality data and
3494 systems analysis, health information management, systems
3495 thinking and analysis, human factors analysis, and
3496 identification of latent and active errors.



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3497 2. Include procedures for ensuring its confidentiality,
3498 timeliness, and independence.

3499 (c) Foster the development of a statewide electronic
3500 infrastructure, which would be implemented in phases over a
3501 multiyear period, that is designed to improve patient care and
3502 the delivery and quality of health care services by health care
3503 facilities and practitioners. The electronic infrastructure
3504 would be a secure platform for communication and the sharing of
3505 clinical and other data, such as business data, among providers
3506 and between patients and providers. The electronic
3507 infrastructure would include a core electronic medical record.
3508 Health care providers would have access to individual electronic
3509 medical records, subject to the consent of the individual. The
3510 right, if any, of other entities, including health insurers and
3511 researchers, to access the records would need further
3512 examination and evaluation by the agency.

3513 (d) Foster the use of computerized physician medication
3514 ordering systems by hospitals that do not have such systems and
3515 develop protocols for these systems.

3516 (e) Implement paragraphs (c) and (d) as a demonstration
3517 project for Medicaid recipients.

3518 (f) Identify best practices and share this information
3519 with health care providers.

3520 (g) Engage in other activities that improve health care
3521 quality, improve the diagnosis and treatment of diseases and
3522 medical conditions, increase the efficiency of the delivery of
3523 health care services, increase administrative efficiency, and
3524 increase access to quality health care services.

3525 (3) The agency shall also consider ways in which a Patient
3526 Safety Authority would be able to facilitate the development of



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3527 no-fault demonstration projects as means to reduce and prevent
3528 medical errors and promote patient safety.

3529 (4) The agency shall seek information and advice from and
3530 consult with hospitals, physicians, other health care providers,
3531 attorneys, consumers, and individuals involved with and
3532 knowledgeable about patient safety and quality-of-care
3533 initiatives.

3534 (5) In evaluating the need for, and the operation of, a
3535 Patient Safety Authority, the agency shall determine the costs
3536 of implementing and administering an authority and suggest
3537 funding sources and mechanisms.

3538 (6) The agency shall complete its study and issue a report
3539 to the Speaker of the House of Representatives and the President
3540 of the Senate by February 1, 2004. In its report, the agency
3541 shall include specific findings, recommendations, and proposed
3542 legislation.

3543 Section 75. (1) The Medical Injury Nonjudicial
3544 Compensation Study Commission is created. The commission shall
3545 be composed of 12 voting members, four of whom are appointed by
3546 the Governor, four of whom are appointed by the President of the
3547 Senate, and four of whom are appointed by the Speaker of the
3548 House of Representatives. In addition, the Attorney General or
3549 his or her designee shall serve as an ex officio nonvoting
3550 member of the commission. The Governor's appointments must
3551 include at least one appointment from each of the following
3552 groups: physicians, hospitals, attorneys, and consumers. The
3553 President of the Senate and the Speaker of the House of
3554 Representatives shall each select one appointee from each of the
3555 groups listed and, in addition, shall appoint two members from
3556 their respective chambers of the Legislature to serve on the



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3557 commission as ex officio nonvoting members. Appointments under
3558 this subsection shall be made within 60 days after this act
3559 becomes law, and the first meeting of the commission shall be
3560 held no later than 60 days thereafter. The chair of the
3561 commission shall be elected from the voting members by the
3562 majority of the membership at its first meeting. Any vacancy
3563 occurring in the membership of the commission shall be filled in
3564 the same manner as the original appointment.

3565 (2) Each voting member of the commission is entitled to
3566 one vote, and action of the commission requires a two-thirds
3567 vote of the members present. However, action of the commission
3568 may be taken only at a meeting at which a majority of the voting
3569 members of the commission are present.

3570 (3)(a) The commission shall recommend statutory changes
3571 needed to accomplish the following:

3572 1. Implementation of the "provider-based early payment"
3573 model for medical injury compensation recommended by the
3574 Institute of Medicine of the National Academy of Sciences and
3575 contained in the report entitled "Fostering Rapid Advances in
3576 Health Care."

3577 2. Implementation of the "statewide administrative
3578 resolution" model for medical injury compensation recommended by
3579 the Institute of Medicine of the National Academy of Sciences
3580 and contained in the report entitled "Fostering Rapid Advances
3581 in Health Care."

3582 3. Implementation of a nonjudicial compensation model for
3583 medical injuries in a teaching hospital or public hospital
3584 covered under sovereign immunity.

3585 4. Implementation of any other nonjudicial compensation
3586 model for medical injuries that the commission deems



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3587 appropriate.

3588 (b) Contingency fees for attorneys should be eliminated
3589 from the claims bill process in these models, if the claims bill
3590 process is used.

3591 (c) In determining what changes in law are needed to
3592 implement nonjudicial compensation programs for medical injuries
3593 that result from avoidable errors, the following should be
3594 considered:

3595 1. How avoidable errors would be determined.

3596 2. How patients would be immediately compensated for
3597 injuries according to schedules that calculate economic and
3598 noneconomic damages.

3599 3. How the tort system should be revised.

3600 4. How exceptions to the nonjudicial system would be
3601 created to give persons access to the tort system for injuries
3602 due to intentional harm or due to reckless disregard for
3603 practicing within the standard of care.

3604 5. How individuals and organizations who implement a
3605 nonjudicial program would be protected from legal liability.

3606 6. How health insurers and others who pay the costs
3607 incurred by patients who have suffered compensable injuries
3608 would be protected from lawsuits.

3609 7. How appropriate communications such as mediated
3610 discussions between health care providers and patients following
3611 the occurrence of an avoidable injury would be protected so that
3612 they do not increase a provider's financial liability or legal
3613 liability.

3614 8. How oversight mechanisms would be established to ensure
3615 that avoidable injuries are detected and disclosed.

3616 9. How other necessary elements of a nonjudicial



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3617 compensation program would be implemented.

3618 (4) The commission may hold public hearings as it deems
3619 necessary.

3620 (5) The commission shall, by February 1, 2004, provide to
3621 the President of the Senate, the Speaker of the House of
3622 Representatives, and the Governor an interim report of its
3623 recommendations. A final written report shall be provided to the
3624 same officers by June 30, 2004, with findings and
3625 recommendations for all the issues identified in subsection (3),
3626 including recommendations for any needed statutory changes.

3627 (6) The commission may establish and appoint any necessary
3628 technical advisory committees. Commission members, and the
3629 members of any technical advisory committees that are appointed,
3630 shall not receive remuneration for their services, but are
3631 entitled to be reimbursed by the Department of Legal Affairs for
3632 travel or per diem expenses in accordance with chapter 112,
3633 Florida Statutes. Public officers and employees shall be
3634 reimbursed by their respective agencies in accordance with
3635 chapter 112, Florida Statutes.

3636 (7) The commission may select an executive director, who
3637 shall report to the commission and serve at its pleasure, and
3638 may hire staff needed to accomplish the goals of this section.
3639 The commission may hire consultants for the analysis of specific
3640 issues.

3641 (8) Each commission member may receive per diem and
3642 expenses for travel, as provided in s. 112.061, Florida
3643 Statutes, while carrying out official business of the
3644 commission.

3645 (9) The commission shall continue in existence until its
3646 objectives are achieved, but not later than June 30, 2004.



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3647 Section 76. If any provision of this act or the
3648 application thereof to any person or circumstance is held
3649 invalid, the invalidity does not affect other provisions or
3650 applications of the act which can be given effect without the
3651 invalid provision or application, and to this end the provisions
3652 of this act are declared severable.

3653 Section 77. If any law amended by this act was also
3654 amended by a law enacted at the 2003 Regular Session of the
3655 Legislature or at the 2003 Special Session A of the Legislature,
3656 such laws shall be construed as if they had been enacted at the
3657 same session of the Legislature, and full effect shall be given
3658 to each if possible.

3659 Section 78. This act shall take effect upon becoming a law
3660 and, except as otherwise provided in this act, shall apply to
3661 all actions filed after the effective date of the act.