

By Senator Jones

13-2724D-03

1                                   A bill to be entitled  
2           An act relating to medical incidents; providing  
3           legislative findings; creating s. 395.0056,  
4           F.S.; requiring the Agency for Health Care  
5           Administration to review complaints submitted  
6           if the defendant is a hospital; amending s.  
7           395.0191, F.S.; deleting a requirement that  
8           persons act in good faith to avoid liability or  
9           discipline for their actions regarding the  
10          awarding of staff membership or clinical  
11          privileges; amending s. 395.0197, F.S.,  
12          relating to internal risk management programs;  
13          requiring a system for notifying patients that  
14          they are the subject of an adverse incident;  
15          requiring that an appropriately trained person  
16          give notice; requiring licensed facilities to  
17          annually report certain information about  
18          health care practitioners for whom they assume  
19          liability; requiring the Agency for Health Care  
20          Administration and the Department of Health to  
21          annually publish statistics about licensed  
22          facilities that assume liability for health  
23          care practitioners; repealing the requirement  
24          that licensed facilities notify the agency  
25          within 1 business day of the occurrence of  
26          certain adverse incidents; repealing s.  
27          395.0198, F.S., which provides a public records  
28          exemption for adverse incident notifications;  
29          creating s. 395.1012, F.S.; requiring  
30          facilities to adopt a patient safety plan;  
31          providing requirements for a patient safety

1 plan; requiring facilities to appoint a patient  
2 safety officer and a patient safety committee  
3 and providing duties for the patient safety  
4 officer and committee; creating s. 395.1051,  
5 F.S.; requiring certain facilities to notify  
6 patients about adverse incidents under  
7 specified conditions; creating s. 456.0575,  
8 F.S.; requiring licensed health care  
9 practitioners to notify patients about adverse  
10 incidents under certain conditions; providing  
11 civil immunity for certain participants in  
12 quality improvement processes; defining the  
13 terms "patient safety data" and "patient safety  
14 organization"; providing for use of patient  
15 safety data by a patient safety organization;  
16 providing limitations on use of patient safety  
17 data; providing for protection of  
18 patient-identifying information; providing for  
19 determination of whether the privilege applies  
20 as asserted; providing that an employer may not  
21 take retaliatory action against an employee who  
22 makes a good-faith report concerning patient  
23 safety data; amending s. 456.013, F.S.;  
24 requiring, as a condition of licensure and  
25 license renewal, that physicians and physician  
26 assistants complete continuing education  
27 relating to misdiagnosed conditions as part of  
28 a continuing education course on prevention of  
29 medical errors; amending s. 456.025, F.S.;  
30 eliminating certain restrictions on the setting  
31 of licensure renewal fees for health care

1 practitioners; amending s. 456.039, F.S.;

2 revising requirements for the information

3 furnished to the Department of Health for

4 licensure purposes; amending s. 456.041, F.S.,

5 relating to practitioner profiles; requiring

6 the Department of Health to compile certain

7 specified information in a practitioner

8 profile; establishing a timeframe within which

9 certain health care practitioners must report

10 specified information; providing for

11 disciplinary action and a fine for untimely

12 submissions; deleting provisions that provide

13 that a profile need not indicate whether a

14 criminal history check was performed to

15 corroborate information in the profile;

16 authorizing the department or regulatory board

17 to investigate any information received;

18 requiring the department to provide an

19 easy-to-read narrative explanation concerning

20 final disciplinary action taken against a

21 practitioner; requiring a hyperlink to each

22 final order on the department's website which

23 provides information about disciplinary

24 actions; requiring the department to provide a

25 hyperlink to certain comparison reports

26 pertaining to claims experience; requiring the

27 department to include the date that a reported

28 disciplinary action was taken by a licensed

29 facility and a characterization of the

30 practitioner's conduct that resulted in the

31 action; deleting provisions requiring the

1 department to consult with a regulatory board  
2 before including certain information in a  
3 health care practitioner's profile; providing a  
4 penalty for failure to comply with the  
5 timeframe for verifying and correcting a  
6 practitioner profile; requiring the department  
7 to add a statement to a practitioner profile  
8 when the profile information has not been  
9 verified by the practitioner; requiring the  
10 department to provide, in the practitioner  
11 profile, an explanation of disciplinary action  
12 taken and the reason for sanctions imposed;  
13 requiring the department to include a hyperlink  
14 to a practitioner's website when requested;  
15 providing that practitioners licensed under ch.  
16 458 or ch. 459, F.S., shall have claim  
17 information concerning an indemnity payment  
18 greater than a specified amount posted in the  
19 practitioner profile; amending s. 456.042,  
20 F.S.; providing for the update of practitioner  
21 profiles; designating a timeframe within which  
22 a practitioner must submit new information to  
23 update his or her profile; amending s. 456.049,  
24 F.S., relating to practitioner reports on  
25 professional liability claims and actions;  
26 revising requirements for a practitioner to  
27 report claims or actions for medical  
28 malpractice; amending s. 456.051, F.S.;  
29 establishing the responsibility of the  
30 Department of Health to provide reports of  
31 professional liability actions and

1 bankruptcies; requiring the department to  
2 include such reports in a practitioner's  
3 profile within a specified period; amending s.  
4 456.057, F.S.; allowing the department to  
5 obtain patient records by subpoena without the  
6 patient's written authorization, in specified  
7 circumstances; amending s. 456.072, F.S.;  
8 providing for determining the amount of any  
9 costs to be assessed in a disciplinary  
10 proceeding; amending s. 456.073, F.S.;  
11 authorizing the Department of Health to  
12 investigate certain paid claims made on behalf  
13 of practitioners licensed under ch. 458 or ch.  
14 459, F.S.; amending procedures for certain  
15 disciplinary proceedings; providing a deadline  
16 for raising issues of material fact; providing  
17 a deadline relating to notice of receipt of a  
18 request for a formal hearing; excepting gross  
19 or repeated malpractice and standard-of-care  
20 violations from the 6-year limitation on  
21 investigation or filing of an administrative  
22 complaint; amending s. 456.077, F.S.; providing  
23 a presumption related to an undisputed  
24 citation; revising requirements under which the  
25 Department of Health may issue citations as an  
26 alternative to disciplinary procedures against  
27 certain licensed health care practitioners;  
28 amending s. 456.078, F.S.; revising standards  
29 for determining which violations of the  
30 applicable professional practice act are  
31 appropriate for mediation; amending s. 458.320,

1 F.S., relating to financial responsibility  
2 requirements for medical physicians; requiring  
3 maintenance of financial responsibility as a  
4 condition of licensure of medical physicians;  
5 providing for payment of any outstanding  
6 judgments or settlements pending at the time a  
7 physician is suspended by the Department of  
8 Health; requiring the department to suspend the  
9 license of a medical physician who has not  
10 paid, up to the amounts required by any  
11 applicable financial responsibility provision,  
12 any outstanding judgment, arbitration award,  
13 other order, or settlement; amending s.  
14 459.0085, F.S., relating to financial  
15 responsibility requirements for osteopathic  
16 physicians; requiring maintenance of financial  
17 responsibility as a condition of licensure of  
18 osteopathic physicians; providing for payment  
19 of any outstanding judgments or settlements  
20 pending at the time an osteopathic physician is  
21 suspended by the Department of Health;  
22 requiring that the department suspend the  
23 license of an osteopathic physician who has not  
24 paid, up to the amounts required by any  
25 applicable financial responsibility provision,  
26 any outstanding judgment, arbitration award,  
27 other order, or settlement; amending s.  
28 458.331, F.S., relating to grounds for  
29 disciplinary action against a physician;  
30 redefining the term "repeated malpractice";  
31 revising the minimum amount of a claim against

1 a licensee which will trigger a departmental  
2 investigation; requiring that administrative  
3 orders issued by an administrative law judge or  
4 board for certain practice violations by  
5 physicians specify certain information;  
6 creating s. 458.3311, F.S.; establishing  
7 emergency procedures for disciplinary actions;  
8 amending s. 459.015, F.S., relating to grounds  
9 for disciplinary action against an osteopathic  
10 physician; redefining the term "repeated  
11 malpractice"; amending conditions that  
12 necessitate a departmental investigation of an  
13 osteopathic physician; revising the minimum  
14 amount of a claim against a licensee which will  
15 trigger a departmental investigation; creating  
16 s. 459.0151, F.S.; establishing emergency  
17 procedures for disciplinary actions; amending  
18 s. 461.013, F.S., relating to grounds for  
19 disciplinary action against a podiatric  
20 physician; redefining the term "repeated  
21 malpractice"; amending the minimum amount of a  
22 claim against such a physician which will  
23 trigger a departmental investigation; requiring  
24 that administrative orders issued by an  
25 administrative law judge or board for certain  
26 practice violations by physicians specify  
27 certain information; creating s. 461.0131,  
28 F.S.; establishing emergency procedures for  
29 disciplinary actions; amending s. 466.028,  
30 F.S., relating to grounds for disciplinary  
31 action against a dentist or a dental hygienist;

1 redefining the term "dental malpractice";  
2 revising the minimum amount of a claim against  
3 a dentist which will trigger a departmental  
4 investigation; requiring that the Division of  
5 Administrative Hearings designate  
6 administrative law judges who have special  
7 qualifications for hearings involving certain  
8 health care practitioners; creating ss. 1004.08  
9 and 1005.07, F.S.; requiring schools, colleges,  
10 and universities to include material on patient  
11 safety in their curricula if the institution  
12 awards specified degrees; directing the Agency  
13 for Health Care Administration to conduct or  
14 contract for a study to determine what  
15 information to provide to the public comparing  
16 hospitals, based on inpatient quality  
17 indicators developed by the federal Agency for  
18 Healthcare Research and Quality; requiring the  
19 Agency for Health Care Administration to  
20 conduct a study on patient safety; requiring a  
21 report and submission of findings to the  
22 Legislature; requiring the Office of Program  
23 Policy Analysis and Government Accountability  
24 and the Office of the Auditor General to  
25 conduct an audit of the health care  
26 practitioner disciplinary process and closed  
27 claims and report to the Legislature; creating  
28 a workgroup to study the health care  
29 practitioner disciplinary process; providing  
30 for workgroup membership; providing that the  
31 workgroup deliver its report by January 1,



1           2004; amending s. 624.462, F.S.; authorizing  
2           health care providers to form a commercial  
3           self-insurance fund; amending s. 627.062, F.S.;  
4           prohibiting the submission of medical  
5           malpractice insurance rate filings to  
6           arbitration; providing additional requirements  
7           for medical malpractice insurance rate filings;  
8           providing that portions of judgments and  
9           settlements entered against a medical  
10          malpractice insurer for bad-faith actions or  
11          for punitive damages against the insurer, as  
12          well as related taxable costs and attorney's  
13          fees, may not be included in an insurer's base  
14          rate; providing for review of rate filings by  
15          the Office of Insurance Regulation for  
16          excessive, inadequate, or unfairly  
17          discriminatory rates; requiring insurers to  
18          apply a discount based on the health care  
19          provider's loss experience; requiring the  
20          Office of Insurance Regulation to calculate a  
21          presumed factor that reflects the impact of  
22          medical malpractice legislation on rates;  
23          requiring insurers to make a rate filing  
24          reflecting such presumed factor; allowing for  
25          deviations; requiring that rates remain in  
26          effect until new rate filings are approved;  
27          requiring that the Office of Program Policy  
28          Analysis and Government Accountability study  
29          the feasibility of authorizing the Office of  
30          the Public Counsel to represent the public in  
31          medical malpractice rate hearings; amending s.

1           627.357, F.S.; providing guidelines for the  
2           formation and regulation of certain  
3           self-insurance funds; amending s. 627.4147,  
4           F.S.; revising certain notification criteria  
5           for medical and osteopathic physicians;  
6           requiring prior notification of a rate  
7           increase; creating s. 627.41495, F.S.;  
8           providing for notice to policyholders of  
9           certain medical malpractice rate filings;  
10          amending s. 627.912, F.S.; revising  
11          requirements for the medical malpractice closed  
12          claim reports that must be filed with the  
13          Office of Insurance Regulation; applying such  
14          requirements to additional persons and  
15          entities; providing for access by the  
16          Department of Health to such reports; providing  
17          for the imposition of a fine or disciplinary  
18          action for failing to report; requiring that  
19          reports obtain additional information;  
20          authorizing the Financial Services Commission  
21          to adopt rules; requiring that the Office of  
22          Insurance Regulation prepare summaries of  
23          closed claim reports of prior years and prepare  
24          an annual report and analysis of closed claim  
25          and insurer financial reports; amending s.  
26          641.19, F.S.; revising definitions; providing  
27          that health care providers providing services  
28          pursuant to coverage provided under a health  
29          maintenance organization contract are not  
30          employees or agents of the health maintenance  
31          organization; providing exceptions; amending s.

1           641.51, F.S.; proscribing a health maintenance  
2           organization's right to control the  
3           professional judgment of a physician; providing  
4           that a health maintenance organization shall  
5           not be vicariously liable for the medical  
6           negligence of a health care provider; providing  
7           exceptions; amending s. 766.102, F.S; revising  
8           requirements for health care providers who  
9           offer corroborating medical expert opinion and  
10          expert testimony in medical negligence actions;  
11          prohibiting contingency fees for an expert  
12          witness; requiring certification that an expert  
13          witness not previously have been found guilty  
14          of fraud or perjury; amending s. 766.106, F.S.;  
15          specifying sanctions for failure to cooperate  
16          with presuit investigations; requiring the  
17          execution of medical release to allow taking of  
18          unsworn statements from claimant's treating  
19          physicians; imposing limits on use of such  
20          statements; deleting provisions relating to  
21          voluntary arbitration in conflict with s.  
22          766.207, F.S.; revising requirements for  
23          presuit notice and for an insurer's or  
24          self-insurer's response to a claim; requiring  
25          that a claimant provide the Agency for Health  
26          Care Administration with a copy of the  
27          complaint alleging medical negligence against  
28          licensed facilities; requiring that the agency  
29          review such complaints for licensure  
30          noncompliance; permitting written questions  
31          during informal discovery; amending s. 766.108,

1 F.S.; providing for mandatory mediation;  
2 amending ss. 766.1115, 766.112, 766.113,  
3 766.201, 766.303, 768.21, F.S.; revising  
4 references to "medical malpractice" to "medical  
5 negligence"; amending s. 766.113, F.S.;  
6 requiring that a specific statement be included  
7 in all medical negligence settlement  
8 agreements; creating s. 766.118, F.S.; limiting  
9 noneconomic damages in medical negligence  
10 actions; providing legislative findings and  
11 intent regarding provision of emergency medical  
12 services and care; creating s. 766.1185, F.S.;  
13 providing that an action for bad faith may not  
14 be brought against a medical malpractice  
15 insurer if such insurer offers to pay policy  
16 limits and meets other specified conditions of  
17 settlement within a specified time period;  
18 providing for factors to be considered in  
19 determining whether a medical malpractice  
20 insurer has acted in bad faith; providing for  
21 the delivery of a copy of an amended witness  
22 list to the insurer of a defendant health care  
23 provider; providing a limitation on the amount  
24 of damages which may be awarded to certain  
25 third parties in actions alleging bad faith by  
26 a medical malpractice insurer; amending s.  
27 766.202, F.S.; redefining the terms "economic  
28 damages," "medical expert," and "noneconomic  
29 damages"; defining the term "health care  
30 provider"; creating s. 766.2021, F.S.;  
31 providing a limitation on damages against

1 insurers, prepaid limited health service  
2 organizations, health maintenance  
3 organizations, or prepaid health clinics for  
4 medical negligence of contracted health care  
5 providers; requiring actions against such  
6 entities to be brought pursuant to ch. 766,  
7 F.S.; amending s. 766.203, F.S.; providing for  
8 discovery of presuit medical expert opinion;  
9 amending s. 766.206, F.S.; providing for  
10 dismissal of a claim under certain  
11 circumstances; requiring the court to make  
12 certain reports concerning a medical expert who  
13 fails to meet qualifications; amending s.  
14 766.207, F.S.; providing for the applicability  
15 of the Wrongful Death Act and general law to  
16 arbitration awards; amending s. 766.209, F.S.;  
17 revising applicable damages available in  
18 voluntary binding arbitration relating to  
19 claims of medical negligence; creating s.  
20 768.0981, F.S.; providing a limitation on  
21 damages arising from vicarious liability for  
22 insurers, prepaid limited health service  
23 organizations, health maintenance  
24 organizations, and prepaid health clinics for  
25 actions of a health care provider; amending s.  
26 768.13, F.S.; revising guidelines for immunity  
27 from liability under the "Good Samaritan Act";  
28 amending s. 768.28, F.S.; providing that health  
29 care practitioners furnishing medical services  
30 to student athletes for intercollegiate  
31 athletics under specified circumstances will be

1 considered agents of a state university board  
2 of trustees; amending s. 768.77, F.S.;  
3 prescribing a method for itemization of  
4 specific categories of damages awarded in  
5 medical malpractice actions; preserving  
6 sovereign immunity and the abrogation of  
7 certain joint and several liability; amending  
8 s. 1006.20, F.S.; requiring completion of a  
9 uniform participation physical evaluation and  
10 history form incorporating recommendations of  
11 the American Heart Association; deleting  
12 revisions to procedures for students' physical  
13 examinations; requiring the Department of  
14 Health to study the efficacy and  
15 constitutionality of medical review panels;  
16 requiring a report; amending s. 391.025, F.S.;  
17 adding infants receiving compensation awards as  
18 eligible for Children's Medical Services health  
19 services; amending s. 391.029, F.S.; providing  
20 financial eligibility criteria for Children's  
21 Medical Services; amending s. 766.304, F.S.;  
22 limiting the use of civil actions when  
23 claimants accept awards from the Florida  
24 Birth-Related Neurological Injury Compensation  
25 Plan; amending s. 766.305, F.S.; deleting a  
26 requirement for provision of certain  
27 information in a petition filed with the  
28 Florida Birth-Related Neurological Injury  
29 Compensation Plan; providing for service of  
30 copies of such petition to certain  
31 participants; requiring that a claimant provide

1 the Florida Birth-Related Neurological Injury  
2 Compensation Association with certain  
3 information within 10 days after filing such  
4 petition; amending s. 766.309, F.S.; allowing  
5 for claims against the association to be  
6 bifurcated; amending s. 766.31, F.S.; providing  
7 for a death benefit for an infant in the amount  
8 of \$10,000; limiting liability of the claimant  
9 for expenses and attorney's fees; amending s.  
10 766.314, F.S.; revising obsolete terms;  
11 providing procedures by which hospitals in  
12 certain counties may pay the annual fees for  
13 participating physicians and nurse midwives;  
14 providing for annually assessing participating  
15 physicians; requiring that the Office of  
16 Program Policy Analysis and Government  
17 Accountability study and report to the  
18 Legislature on requirements for coverage by the  
19 Florida Birth-Related Neurological Injury  
20 Compensation Association; providing  
21 appropriations and authorizing positions;  
22 providing for construction of the act in pari  
23 materia with laws enacted during the 2003  
24 Regular Session or a 2003 special session of  
25 the Legislature; providing for severability;  
26 providing effective dates.

27  
28 Be It Enacted by the Legislature of the State of Florida:

29  
30 Section 1. Findings.--

31

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

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

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

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

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

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

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

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



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

4           (10) The Legislature finds that the Governor's Select  
5 Task Force on Healthcare Professional Liability Insurance has  
6 established that a medical malpractice crisis exists in the  
7 State of Florida which can be alleviated by the adoption of  
8 comprehensive legislatively enacted reforms.

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

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

15           (13) The Legislature finds that ensuring the  
16 availability of affordable professional liability insurance  
17 for physicians is an overwhelming public necessity.

18           (14) The Legislature finds, based upon the findings  
19 and recommendations of the Governor's Select Task Force on  
20 Healthcare Professional Liability Insurance, the findings and  
21 recommendations of various study groups throughout the nation,  
22 and the experience of other states, that the overwhelming  
23 public necessities of making quality health care available to  
24 the citizens of this state, of ensuring that physicians  
25 continue to practice in Florida, and of ensuring that those  
26 physicians have the opportunity to purchase affordable  
27 professional liability insurance cannot be met unless a cap on  
28 noneconomic damages is imposed.

29           (15) The Legislature finds that the high cost of  
30 medical malpractice claims can be substantially alleviated by  
31

1 imposing a limitation on noneconomic damages in medical  
2 malpractice actions.

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

7 (17) The Legislature finds that the provisions of this  
8 act are naturally and logically connected to each other and to  
9 the purpose of making quality health care available to the  
10 citizens of Florida.

11 (18) The Legislature finds that each of the provisions  
12 of this act is necessary to alleviate the crisis relating to  
13 medical malpractice insurance.

14 Section 2. Section 395.0056, Florida Statutes, is  
15 created to read:

16 395.0056 Litigation notice requirement.--Upon receipt  
17 of a copy of a complaint filed against a hospital as a  
18 defendant in a medical malpractice action as required by s.  
19 766.106(2), the agency shall:

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

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

27 Section 3. Subsection (7) of section 395.0191, Florida  
28 Statutes, is amended to read:

29 395.0191 Staff membership and clinical privileges.--

30 (7) There shall be no monetary liability on the part  
31 of, and no cause of action for injunctive relief or damages

1 shall arise against, any licensed facility, its governing  
2 board or governing board members, medical staff, or  
3 disciplinary board or against its agents, investigators,  
4 witnesses, or employees, or against any other person, for any  
5 action arising out of or related to carrying out the  
6 provisions of this section, absent ~~taken in good faith and~~  
7 ~~without intentional fraud in carrying out the provisions of~~  
8 ~~this section.~~

9 Section 4. Subsections (1), (3), (7), (8), (9), (10),  
10 (11), (12), (13), (14), and (15) of section 395.0197, Florida  
11 Statutes, are amended to read:

12 395.0197 Internal risk management program.--

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

17 (a) The investigation and analysis of the frequency  
18 and causes of general categories and specific types of adverse  
19 incidents to patients.

20 (b) The development of appropriate measures to  
21 minimize the risk of adverse incidents to patients, including,  
22 but not limited to:

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

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

27 b. At least 1 hour of such education and training  
28 annually for all personnel of the licensed facility working in  
29 clinical areas and providing patient care, except those  
30 persons licensed as health care practitioners who are required  
31

1 to complete continuing education coursework pursuant to  
2 chapter 456 or the respective practice act.

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

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

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

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

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

31

1           (d) A system for informing a patient or an individual  
2 identified pursuant to s. 765.401(1) that the patient was the  
3 subject of an adverse incident, as defined in subsection (5).  
4 Such notice shall be given by an appropriately trained person  
5 designated by the licensed facility as soon as practicable to  
6 allow the patient an opportunity to minimize damage or injury.

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

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

30           ~~(7) The licensed facility shall notify the agency no~~  
31 ~~later than 1 business day after the risk manager or his or her~~

1 ~~designee has received a report pursuant to paragraph (1)(d)~~  
2 ~~and can determine within 1 business day that any of the~~  
3 ~~following adverse incidents has occurred, whether occurring in~~  
4 ~~the licensed facility or arising from health care prior to~~  
5 ~~admission in the licensed facility:~~

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

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

8 ~~(c) The performance of a surgical procedure on the~~  
9 ~~wrong patient;~~

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

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

13  
14 ~~The notification must be made in writing and be provided by~~  
15 ~~facsimile device or overnight mail delivery. The notification~~  
16 ~~must include information regarding the identity of the~~  
17 ~~affected patient, the type of adverse incident, the initiation~~  
18 ~~of an investigation by the facility, and whether the events~~  
19 ~~causing or resulting in the adverse incident represent a~~  
20 ~~potential risk to other patients.~~

21 (7)(8) Any of the following adverse incidents, whether  
22 occurring in the licensed facility or arising from health care  
23 prior to admission in the licensed facility, shall be reported  
24 by the facility to the agency within 15 calendar days after  
25 its occurrence:

26 (a) The death of a patient;

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

28 (c) The performance of a surgical procedure on the  
29 wrong patient;

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

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

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

5 (g) The surgical repair of damage resulting to a  
6 patient from a planned surgical procedure, where the damage is  
7 not a recognized specific risk, as disclosed to the patient  
8 and documented through the informed-consent process; or

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

11

12 The agency may grant extensions to this reporting requirement  
13 for more than 15 days upon justification submitted in writing  
14 by the facility administrator to the agency. The agency may  
15 require an additional, final report. These reports shall not  
16 be available to the public pursuant to s. 119.07(1) or any  
17 other law providing access to public records, nor be  
18 discoverable or admissible in any civil or administrative  
19 action, except in disciplinary proceedings by the agency or  
20 the appropriate regulatory board, nor shall they be available  
21 to the public as part of the record of investigation for and  
22 prosecution in disciplinary proceedings made available to the  
23 public by the agency or the appropriate regulatory board.

24 However, the agency or the appropriate regulatory board shall  
25 make available, upon written request by a health care  
26 professional against whom probable cause has been found, any  
27 such records which form the basis of the determination of  
28 probable cause. The agency may investigate, as it deems  
29 appropriate, any such incident and prescribe measures that  
30 must or may be taken in response to the incident. The agency  
31 shall review each incident and determine whether it

1 potentially involved conduct by the health care professional  
2 who is subject to disciplinary action, in which case the  
3 provisions of s. 456.073 shall apply.

4 (8)~~(9)~~ The agency shall publish on the agency's  
5 website, no less than quarterly, a summary and trend analysis  
6 of adverse incident reports received pursuant to this section,  
7 which shall not include information that would identify the  
8 patient, the reporting facility, or the health care  
9 practitioners involved. The agency shall publish on the  
10 agency's website an annual summary and trend analysis of all  
11 adverse incident reports and malpractice claims information  
12 provided by facilities in their annual reports, which shall  
13 not include information that would identify the patient, the  
14 reporting facility, or the practitioners involved. The  
15 purpose of the publication of the summary and trend analysis  
16 is to promote the rapid dissemination of information relating  
17 to adverse incidents and malpractice claims to assist in  
18 avoidance of similar incidents and reduce morbidity and  
19 mortality.

20 (9)~~(10)~~ The internal risk manager of each licensed  
21 facility shall:

22 (a) Investigate every allegation of sexual misconduct  
23 which is made against a member of the facility's personnel who  
24 has direct patient contact, when the allegation is that the  
25 sexual misconduct occurred at the facility or on the grounds  
26 of the facility.

27 (b) Report every allegation of sexual misconduct to  
28 the administrator of the licensed facility.

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



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

5 (10)~~(11)~~ Any witness who witnessed or who possesses  
6 actual knowledge of the act that is the basis of an allegation  
7 of sexual abuse shall:

8 (a) Notify the local police; and

9 (b) Notify the hospital risk manager and the  
10 administrator.

11  
12 For purposes of this subsection, "sexual abuse" means acts of  
13 a sexual nature committed for the sexual gratification of  
14 anyone upon, or in the presence of, a vulnerable adult,  
15 without the vulnerable adult's informed consent, or a minor.  
16 "Sexual abuse" includes, but is not limited to, the acts  
17 defined in s. 794.011(1)(h), fondling, exposure of a  
18 vulnerable adult's or minor's sexual organs, or the use of the  
19 vulnerable adult or minor to solicit for or engage in  
20 prostitution or sexual performance. "Sexual abuse" does not  
21 include any act intended for a valid medical purpose or any  
22 act which may reasonably be construed to be a normal  
23 caregiving action.

24 (11)~~(12)~~ A person who, with malice or with intent to  
25 discredit or harm a licensed facility or any person, makes a  
26 false allegation of sexual misconduct against a member of a  
27 licensed facility's personnel is guilty of a misdemeanor of  
28 the second degree, punishable as provided in s. 775.082 or s.  
29 775.083.

30 (12)~~(13)~~ In addition to any penalty imposed pursuant  
31 to this section, the agency shall require a written plan of

1 correction from the facility. For a single incident or series  
2 of isolated incidents that are nonwillful violations of the  
3 reporting requirements of this section, the agency shall first  
4 seek to obtain corrective action by the facility. If the  
5 correction is not demonstrated within the timeframe  
6 established by the agency or if there is a pattern of  
7 nonwillful violations of this section, the agency may impose  
8 an administrative fine, not to exceed \$5,000 for any violation  
9 of the reporting requirements of this section. The  
10 administrative fine for repeated nonwillful violations shall  
11 not exceed \$10,000 for any violation. The administrative fine  
12 for each intentional and willful violation may not exceed  
13 \$25,000 per violation, per day. The fine for an intentional  
14 and willful violation of this section may not exceed \$250,000.  
15 In determining the amount of fine to be levied, the agency  
16 shall be guided by s. 395.1065(2)(b). ~~This subsection does not  
17 apply to the notice requirements under subsection (7).~~

18 (13)~~(14)~~ The agency shall have access to all licensed  
19 facility records necessary to carry out the provisions of this  
20 section. The records obtained by the agency under subsection  
21 (6), subsection(7)~~(8)~~, or subsection(9)~~(10)~~ are not  
22 available to the public under s. 119.07(1), nor shall they be  
23 discoverable or admissible in any civil or administrative  
24 action, except in disciplinary proceedings by the agency or  
25 the appropriate regulatory board, nor shall records obtained  
26 pursuant to s. 456.071 be available to the public as part of  
27 the record of investigation for and prosecution in  
28 disciplinary proceedings made available to the public by the  
29 agency or the appropriate regulatory board. However, the  
30 agency or the appropriate regulatory board shall make  
31 available, upon written request by a health care professional

1 against whom probable cause has been found, any such records  
2 which form the basis of the determination of probable cause,  
3 except that, with respect to medical review committee records,  
4 s. 766.101 controls.

5 ~~(14)~~(15) The meetings of the committees and governing  
6 board of a licensed facility held solely for the purpose of  
7 achieving the objectives of risk management as provided by  
8 this section shall not be open to the public under the  
9 provisions of chapter 286. The records of such meetings are  
10 confidential and exempt from s. 119.07(1), except as provided  
11 in subsection~~(13)~~(14).

12 Section 5. Section 395.0198, Florida Statutes, is  
13 repealed.

14 Section 6. Section 395.1012, Florida Statutes, is  
15 created to read:

16 395.1012 Patient safety.--

17 (1) Each licensed facility must adopt a patient safety  
18 plan. A plan adopted to implement the requirements of 42  
19 C.F.R. part 482.21 shall be deemed to comply with this  
20 requirement.

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

29 Section 7. Section 395.1051, Florida Statutes, is  
30 created to read:

31

1           395.1051 Duty to notify patients.--An appropriately  
2 trained person designated by each licensed facility shall  
3 inform each patient, or an individual identified pursuant to  
4 s. 765.401(1), in person about adverse incidents that result  
5 in serious harm to the patient. Notification of outcomes of  
6 care that result in harm to the patient under this section  
7 shall not constitute an acknowledgement or admission of  
8 liability, nor can it be introduced as evidence.

9           Section 8. Section 456.0575, Florida Statutes, is  
10 created to read:

11           456.0575 Duty to notify patients.--Every licensed  
12 health care practitioner shall inform each patient, or an  
13 individual identified pursuant to s. 765.401(1), in person  
14 about adverse incidents that result in serious harm to the  
15 patient. Notification of outcomes of care that result in harm  
16 to the patient under this section shall not constitute an  
17 acknowledgement of admission of liability, nor can such  
18 notifications be introduced as evidence.

19           Section 9. Civil immunity for members of or  
20 consultants to certain boards, committees, or other  
21 entities.--

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

1           (a) The duration of patient stays in health care  
2 facilities;

3           (b) The professional services furnished with respect  
4 to the medical, dental, psychological, podiatric,  
5 chiropractic, or optometric necessity for such services;

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

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

9           (e) The competency and qualifications for professional  
10 staff privileges;

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

13           (g) Patient safety, including entering into contracts  
14 with patient safety organizations.

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

24           Section 10. Patient safety data privilege.--

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

26           (a) "Patient safety data" means reports made to  
27 patient safety organizations, including all health care data,  
28 interviews, memoranda, analyses, root cause analyses, products  
29 of quality assurance or quality improvement processes,  
30 corrective action plans, or information collected or created  
31 by a health care facility licensed under chapter 395, Florida

1 Statutes, or a health care practitioner as defined in section  
2 456.001(4), Florida Statutes, as a result of an occurrence  
3 related to the provision of health care services which  
4 exacerbates an existing medical condition or could result in  
5 injury, illness, or death.

6 (b) "Patient safety organization" means any  
7 organization, group, or other entity that collects and  
8 analyzes patient safety data for the purpose of improving  
9 patient safety and health care outcomes and that is  
10 independent and not under the control of the entity that  
11 reports patient safety data.

12 (2) Patient safety data shall not be subject to  
13 discovery or introduction into evidence in any civil or  
14 administrative action. However, information, documents, or  
15 records otherwise available from original sources are not  
16 immune from discovery or use in any civil or administrative  
17 action merely because they were also collected, analyzed, or  
18 presented to a patient safety organization. Any person who  
19 testifies before a patient safety organization or who is a  
20 member of such a group may not be prevented from testifying as  
21 to matters within his or her knowledge, but he or she may not  
22 be asked about his or her testimony before a patient safety  
23 organization or the opinions formed by him or her as a result  
24 of the hearings.

25 (3) Unless otherwise provided by law, a patient safety  
26 organization shall promptly remove all patient-identifying  
27 information after receipt of a complete patient safety data  
28 report unless such organization is otherwise permitted by  
29 state or federal law to maintain such information. Patient  
30 safety organizations shall maintain the confidentiality of all  
31

1 patient-identifying information and may not disseminate such  
2 information, except as permitted by state or federal law.

3 (4) The exchange of patient safety data among health  
4 care facilities licensed under chapter 395, Florida Statutes,  
5 or health care practitioners as defined in section 456.001(4),  
6 Florida Statutes, or patient safety organizations which does  
7 not identify any patient shall not constitute a waiver of any  
8 privilege established in this section.

9 (5) Reports of patient safety data to patient safety  
10 organizations do not abrogate obligations to make reports to  
11 the Department of Health, the Agency for Health Care  
12 Administration, or other state or federal regulatory agencies.

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

16 Section 11. Subsection (7) of section 456.013, Florida  
17 Statutes, is amended to read:

18 456.013 Department; general licensing provisions.--

19 (7) The boards, or the department when there is no  
20 board, shall require the completion of a 2-hour course  
21 relating to prevention of medical errors as part of the  
22 licensure and renewal process. The 2-hour course shall count  
23 towards the total number of continuing education hours  
24 required for the profession. The course shall be approved by  
25 the board or department, as appropriate, and shall include a  
26 study of root-cause analysis, error reduction and prevention,  
27 and patient safety. In addition, the course approved by the  
28 Board of Medicine and the Board of Osteopathic Medicine shall  
29 include information relating to the five most misdiagnosed  
30 conditions during the previous biennium, as determined by the  
31 board. If the course is being offered by a facility licensed

1 pursuant to chapter 395 for its employees, the board may  
2 approve up to 1 hour of the 2-hour course to be specifically  
3 related to error reduction and prevention methods used in that  
4 facility.

5 Section 12. Subsection (1) of section 456.025, Florida  
6 Statutes, is amended to read:

7 456.025 Fees; receipts; disposition.--

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

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

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

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

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

28 (e) Shall be similar to fees imposed on similar  
29 licensure types;

30 ~~(f) Shall not be more than 10 percent greater than the~~  
31 ~~fee imposed for the previous biennium.~~



1           ~~(f)~~(g) Shall not be more than 10 percent greater than  
2 the actual cost to regulate that profession for the previous  
3 biennium; and

4           ~~(g)~~(h) Shall be subject to challenge pursuant to  
5 chapter 120.

6           Section 13. Paragraph (a) of subsection (1) of section  
7 456.039, Florida Statutes, is amended to read:

8           456.039 Designated health care professionals;  
9 information required for licensure.--

10           (1) Each person who applies for initial licensure as a  
11 physician under chapter 458, chapter 459, chapter 460, or  
12 chapter 461, except a person applying for registration  
13 pursuant to ss. 458.345 and 459.021, must, at the time of  
14 application, and each physician who applies for license  
15 renewal under chapter 458, chapter 459, chapter 460, or  
16 chapter 461, except a person registered pursuant to ss.  
17 458.345 and 459.021, must, in conjunction with the renewal of  
18 such license and under procedures adopted by the Department of  
19 Health, and in addition to any other information that may be  
20 required from the applicant, furnish the following information  
21 to the Department of Health:

22           (a)1. The name of each medical school that the  
23 applicant has attended, with the dates of attendance and the  
24 date of graduation, and a description of all graduate medical  
25 education completed by the applicant, excluding any coursework  
26 taken to satisfy medical licensure continuing education  
27 requirements.

28           2. The name of each hospital at which the applicant  
29 has privileges.

30           3. The address at which the applicant will primarily  
31 conduct his or her practice.

1           4. Any certification that the applicant has received  
2 from a specialty board that is recognized by the board to  
3 which the applicant is applying.

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

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

10          7. A description of any criminal offense of which the  
11 applicant has been found guilty, regardless of whether  
12 adjudication of guilt was withheld, or to which the applicant  
13 has pled guilty or nolo contendere. A criminal offense  
14 committed in another jurisdiction which would have been a  
15 felony or misdemeanor if committed in this state must be  
16 reported. If the applicant indicates that a criminal offense  
17 is under appeal and submits a copy of the notice for appeal of  
18 that criminal offense, the department must state that the  
19 criminal offense is under appeal if the criminal offense is  
20 reported in the applicant's profile. If the applicant  
21 indicates to the department that a criminal offense is under  
22 appeal, the applicant must, upon disposition of the appeal,  
23 submit to the department a copy of the final written order of  
24 disposition.

25          8. A description of any final disciplinary action  
26 taken within the previous 10 years against the applicant by  
27 the agency regulating the profession that the applicant is or  
28 has been licensed to practice, whether in this state or in any  
29 other jurisdiction, by a specialty board that is recognized by  
30 the American Board of Medical Specialties, the American  
31 Osteopathic Association, or a similar national organization,

1 or by a licensed hospital, health maintenance organization,  
2 prepaid health clinic, ambulatory surgical center, or nursing  
3 home. Disciplinary action includes resignation from or  
4 nonrenewal of medical staff membership or the restriction of  
5 privileges at a licensed hospital, health maintenance  
6 organization, prepaid health clinic, ambulatory surgical  
7 center, or nursing home taken in lieu of or in settlement of a  
8 pending disciplinary case related to competence or character.  
9 If the applicant indicates that the disciplinary action is  
10 under appeal and submits a copy of the document initiating an  
11 appeal of the disciplinary action, the department must state  
12 that the disciplinary action is under appeal if the  
13 disciplinary action is reported in the applicant's profile.

14 9. Relevant professional qualifications as defined by  
15 the applicable board.

16 Section 14. Section 456.041, Florida Statutes, is  
17 amended to read:

18 456.041 Practitioner profile; creation.--

19 (1)(a) ~~Beginning July 1, 1999,~~The Department of  
20 Health shall compile the information submitted pursuant to s.  
21 456.039 into a practitioner profile of the applicant  
22 submitting the information, except that the Department of  
23 Health shall ~~may~~ develop a format to compile uniformly any  
24 information submitted under s. 456.039(4)(b). Beginning July  
25 1, 2001, the Department of Health may compile the information  
26 submitted pursuant to s. 456.0391 into a practitioner profile  
27 of the applicant submitting the information.

28 (b) Within 30 calendar days after receiving an update  
29 of information required for the practitioner's profile, the  
30 department shall update the practitioner's profile in  
31 accordance with the requirements of subsection (7).

1           (2) On the profile published under subsection (1), the  
2 department shall indicate if the information provided under s.  
3 456.039(1)(a)7. or s. 456.0391(1)(a)7. is or is not  
4 corroborated by a criminal history check conducted according  
5 to this subsection. ~~If the information provided under s.~~  
6 ~~456.039(1)(a)7. or s. 456.0391(1)(a)7. is corroborated by the~~  
7 ~~criminal history check, the fact that the criminal history~~  
8 ~~check was performed need not be indicated on the profile.~~The  
9 department, or the board having regulatory authority over the  
10 practitioner acting on behalf of the department, shall  
11 investigate any information received by the department or the  
12 board ~~when it has reasonable grounds to believe that the~~  
13 ~~practitioner has violated any law that relates to the~~  
14 ~~practitioner's practice.~~

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

31

1           (4) The Department of Health shall include, with  
2 respect to a practitioner licensed under chapter 458 or  
3 chapter 459, a statement of how the practitioner has elected  
4 to comply with the financial responsibility requirements of s.  
5 458.320 or s. 459.0085. The department shall include, with  
6 respect to practitioners subject to s. 456.048, a statement of  
7 how the practitioner has elected to comply with the financial  
8 responsibility requirements of that section. The department  
9 shall include, with respect to practitioners licensed under  
10 ~~chapter 458, chapter 459, or~~ chapter 461, information relating  
11 to liability actions which has been reported under s. 456.049  
12 or s. 627.912 within the previous 10 years for any paid claim  
13 that exceeds \$5,000. The department shall include, with  
14 respect to practitioners licensed under chapter 458 or chapter  
15 459, information relating to liability actions which has been  
16 reported under ss. 456.049 and 627.912 within the previous 10  
17 years for any paid claim that exceeds \$100,000.Such claims  
18 information shall be reported in the context of comparing an  
19 individual practitioner's claims to the experience of other  
20 practitioners within the same specialty, or profession if the  
21 practitioner is not a specialist, ~~to the extent such~~  
22 ~~information is available to the Department of Health.~~ The  
23 department must provide a hyperlink in such practitioner's  
24 profile to all such comparison reports.If information  
25 relating to a liability action is included in a practitioner's  
26 practitioner profile, the profile must also include the  
27 following statement: "Settlement of a claim may occur for a  
28 variety of reasons that do not necessarily reflect negatively  
29 on the professional competence or conduct of the practitioner.  
30 A payment in settlement of a medical malpractice action or  
31

1 claim should not be construed as creating a presumption that  
2 medical malpractice has occurred."

3 (5) The Department of Health shall ~~may not~~ include the  
4 date of a hospital or ambulatory surgical center disciplinary  
5 action taken by a licensed hospital or an ambulatory surgical  
6 center, in accordance with the requirements of s. 395.0193, in  
7 the practitioner profile. The department shall state whether  
8 the action related to professional competence and whether it  
9 related to the delivery of services to a patient.

10 (6) The Department of Health may include in the  
11 practitioner's practitioner profile any other information that  
12 is a public record of any governmental entity and that relates  
13 to a practitioner's ability to competently practice his or her  
14 profession. ~~However, the department must consult with the~~  
15 ~~board having regulatory authority over the practitioner before~~  
16 ~~such information is included in his or her profile.~~

17 (7) Upon the completion of a practitioner profile  
18 under this section, the Department of Health shall furnish the  
19 practitioner who is the subject of the profile a copy of it  
20 for review and verification. The practitioner has a period of  
21 30 days in which to review and verify the contents of the  
22 profile and to correct any factual inaccuracies in it. The  
23 Department of Health shall make the profile available to the  
24 public at the end of the 30-day period regardless of whether  
25 the practitioner has provided verification of the profile  
26 content. A practitioner shall be subject to a fine of up to  
27 \$100 per day for failure to verify the profile contents and to  
28 correct any factual errors in his or her profile within the  
29 30-day period.The department shall make the profiles  
30 available to the public through the World Wide Web and other  
31 commonly used means of distribution. The department must

1 include the following statement, in boldface type, in each  
2 profile that has not been reviewed by the practitioner to  
3 which it applies: "The practitioner has not verified the  
4 information contained in this profile."

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

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

12 (10)(8) Making a practitioner profile available to the  
13 public under this section does not constitute agency action  
14 for which a hearing under s. 120.57 may be sought.

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

17 456.042 Practitioner profiles; update.--A practitioner  
18 must submit updates of required information within 15 days  
19 after the final activity that renders such information a fact.  
20 The Department of Health shall update each practitioner's  
21 practitioner profile periodically. An updated profile is  
22 subject to the same requirements as an original profile with  
23 ~~respect to the period within which the practitioner may review~~  
24 ~~the profile for the purpose of correcting factual~~  
25 ~~inaccuracies.~~

26 Section 16. Section 456.049, Florida Statutes, is  
27 amended to read:

28 456.049 Health care practitioners; reports on  
29 professional liability claims and actions.--

30 ~~(1)~~ Any practitioner of medicine licensed pursuant to  
31 the provisions of chapter 458, practitioner of osteopathic

1 medicine licensed pursuant to the provisions of chapter 459,  
2 podiatric physician licensed pursuant to the provisions of  
3 chapter 461, or dentist licensed pursuant to the provisions of  
4 chapter 466 shall report to the Office of Insurance Regulation  
5 ~~department~~ any claim or action for damages for personal injury  
6 alleged to have been caused by error, omission, or negligence  
7 in the performance of such licensee's professional services or  
8 based on a claimed performance of professional services  
9 without consent pursuant to ~~if the claim was not covered by an~~  
10 ~~insurer required to report under s. 627.912.~~ and the claim  
11 ~~resulted in:~~

12       ~~(a) A final judgment in any amount.~~

13       ~~(b) A settlement in any amount.~~

14       ~~(c) A final disposition not resulting in payment on~~  
15 ~~behalf of the licensee.~~

16

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

20       ~~(2) Reports shall contain:~~

21       ~~(a) The name and address of the licensee.~~

22       ~~(b) The date of the occurrence which created the~~  
23 ~~claim.~~

24       ~~(c) The date the claim was reported to the licensee.~~

25       ~~(d) The name and address of the injured person. This~~  
26 ~~information is confidential and exempt from s. 119.07(1) and~~  
27 ~~shall not be disclosed by the department without the injured~~  
28 ~~person's consent. This information may be used by the~~  
29 ~~department for purposes of identifying multiple or duplicate~~  
30 ~~claims arising out of the same occurrence.~~

31       ~~(e) The date of suit, if filed.~~



- 1           ~~(f) The injured person's age and sex.~~
- 2           ~~(g) The total number and names of all defendants~~  
3 ~~involved in the claim.~~
- 4           ~~(h) The date and amount of judgment or settlement, if~~  
5 ~~any, including the itemization of the verdict, together with a~~  
6 ~~copy of the settlement or judgment.~~
- 7           ~~(i) In the case of a settlement, such information as~~  
8 ~~the department may require with regard to the injured person's~~  
9 ~~incurred and anticipated medical expense, wage loss, and other~~  
10 ~~expenses.~~
- 11           ~~(j) The loss adjustment expense paid to defense~~  
12 ~~counsel, and all other allocated loss adjustment expense paid.~~
- 13           ~~(k) The date and reason for final disposition, if no~~  
14 ~~judgment or settlement.~~
- 15           ~~(l) A summary of the occurrence which created the~~  
16 ~~claim, which shall include:~~
- 17                 ~~1. The name of the institution, if any, and the~~  
18 ~~location within such institution, at which the injury~~  
19 ~~occurred.~~
- 20                 ~~2. The final diagnosis for which treatment was sought~~  
21 ~~or rendered, including the patient's actual condition.~~
- 22                 ~~3. A description of the misdiagnosis made, if any, of~~  
23 ~~the patient's actual condition.~~
- 24                 ~~4. The operation or the diagnostic or treatment~~  
25 ~~procedure causing the injury.~~
- 26                 ~~5. A description of the principal injury giving rise~~  
27 ~~to the claim.~~
- 28                 ~~6. The safety management steps that have been taken by~~  
29 ~~the licensee to make similar occurrences or injuries less~~  
30 ~~likely in the future.~~
- 31

1           ~~(m) Any other information required by the department~~  
2 ~~to analyze and evaluate the nature, causes, location, cost,~~  
3 ~~and damages involved in professional liability cases.~~

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

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

9           (1) The report of a claim or action for damages for  
10 personal injury which is required to be provided to the  
11 Department of Health under s. 456.049 or s. 627.912 is public  
12 information except for the name of the claimant or injured  
13 person, which remains confidential as provided in ss.  
14 456.049(2)(d) and 627.912(2)(e). The Department of Health  
15 shall, upon request, make such report available to any person.  
16 The department shall make such report available as a part of  
17 the practitioner's profile within 30 calendar days after  
18 receipt.

19           (2) Any information in the possession of the  
20 Department of Health which relates to a bankruptcy proceeding  
21 by a practitioner of medicine licensed under chapter 458, a  
22 practitioner of osteopathic medicine licensed under chapter  
23 459, a podiatric physician licensed under chapter 461, or a  
24 dentist licensed under chapter 466 is public information. The  
25 Department of Health shall, upon request, make such  
26 information available to any person. The department shall make  
27 such report available as a part of the practitioner's profile  
28 within 30 calendar days after receipt.

29           Section 18. Paragraph (a) of subsection (7) of section  
30 456.057, Florida Statutes, is amended to read:

31

1           456.057 Ownership and control of patient records;  
2 report or copies of records to be furnished.--

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

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

23           3. The department may obtain patient records, billing  
24 records, insurance information, provider contracts, and all  
25 attachments thereto pursuant to a subpoena without written  
26 authorization from the patient if the department and probable  
27 cause panel of the appropriate board, if any, find reasonable  
28 cause to believe that a health care practitioner has submitted  
29 a claim, statement, or bill using a billing code that would  
30 result in payment greater in amount than would be paid using a  
31 billing code that accurately describes the services performed,

1 requested payment for services that were not performed by that  
2 health care practitioner, used information derived from a  
3 written report of an automobile accident generated pursuant to  
4 chapter 316 to solicit or obtain patients personally or  
5 through an agent regardless of whether the information is  
6 derived directly from the report or a summary of that report  
7 or from another person, solicited patients fraudulently,  
8 received a kickback as defined in s. 456.054, violated the  
9 patient brokering provisions of s. 817.505, or presented or  
10 caused to be presented a false or fraudulent insurance claim  
11 within the meaning of s. 817.234(1)(a), and also find that,  
12 within the meaning of s. 817.234(1)(a), patient authorization  
13 cannot be obtained because the patient cannot be located or is  
14 deceased, incapacitated, or suspected of being a participant  
15 in the fraud or scheme, and if the subpoena is issued for  
16 specific and relevant records.

17 4. Notwithstanding subparagraphs 1.-3., when the  
18 department investigates a professional liability claim or  
19 undertakes action pursuant to s. 456.049 or s. 627.912, the  
20 department may obtain patient records pursuant to a subpoena  
21 without written authorization from the patient if the patient  
22 refuses to cooperate or if the department attempts to obtain a  
23 patient release and the failure to obtain the patient records  
24 would be detrimental to the investigation.

25 Section 19. Subsection (4) of section 456.072, Florida  
26 Statutes, as amended by section 6 of chapter 2003-411, Laws of  
27 Florida, is amended to read:

28 456.072 Grounds for discipline; penalties;  
29 enforcement.--

30 (4) In addition to any other discipline imposed  
31 through final order, or citation, entered on or after July 1,

1 2001, pursuant to this section or discipline imposed through  
2 final order, or citation, entered on or after July 1, 2001,  
3 for a violation of any practice act, the board, or the  
4 department when there is no board, shall assess costs related  
5 to the investigation and prosecution of the case. Such costs  
6 related to the investigation and prosecution include, but are  
7 not limited to, salaries and benefits of personnel, costs  
8 related to the time spent by the attorney and other personnel  
9 working on the case, and any other expenses incurred by the  
10 department for the case. The board, or the department when  
11 there in no board, shall determine the amount of costs to be  
12 assessed after its consideration of an affidavit of itemized  
13 costs and any written objections thereto.In any case where  
14 the board or the department imposes a fine or assessment and  
15 the fine or assessment is not paid within a reasonable time,  
16 such reasonable time to be prescribed in the rules of the  
17 board, or the department when there is no board, or in the  
18 order assessing such fines or costs, the department or the  
19 Department of Legal Affairs may contract for the collection  
20 of, or bring a civil action to recover, the fine or  
21 assessment.

22 Section 20. Subsections (1) and (5) of section  
23 456.073, Florida Statutes, as amended by section 1 of chapter  
24 2003-27, Laws of Florida, are amended to read:

25 456.073 Disciplinary proceedings.--Disciplinary  
26 proceedings for each board shall be within the jurisdiction of  
27 the department.

28 (1) The department, for the boards under its  
29 jurisdiction, shall cause to be investigated any complaint  
30 that is filed before it if the complaint is in writing, signed  
31 by the complainant, and legally sufficient. A complaint filed

1 by a state prisoner against a health care practitioner  
2 employed by or otherwise providing health care services within  
3 a facility of the Department of Corrections is not legally  
4 sufficient unless there is a showing that the prisoner  
5 complainant has exhausted all available administrative  
6 remedies within the state correctional system before filing  
7 the complaint. However, if the Department of Health determines  
8 after a preliminary inquiry of a state prisoner's complaint  
9 that the practitioner may present a serious threat to the  
10 health and safety of any individual who is not a state  
11 prisoner, the Department of Health may determine legal  
12 sufficiency and proceed with discipline. The Department of  
13 Health shall be notified within 15 days after the Department  
14 of Corrections disciplines or allows a health care  
15 practitioner to resign for an offense related to the practice  
16 of his or her profession. A complaint is legally sufficient if  
17 it contains ultimate facts that show that a violation of this  
18 chapter, of any of the practice acts relating to the  
19 professions regulated by the department, or of any rule  
20 adopted by the department or a regulatory board in the  
21 department has occurred. In order to determine legal  
22 sufficiency, the department may require supporting information  
23 or documentation. The department may investigate, and the  
24 department or the appropriate board may take appropriate final  
25 action on, a complaint even though the original complainant  
26 withdraws it or otherwise indicates a desire not to cause the  
27 complaint to be investigated or prosecuted to completion. The  
28 department may investigate an anonymous complaint if the  
29 complaint is in writing and is legally sufficient, if the  
30 alleged violation of law or rules is substantial, and if the  
31 department has reason to believe, after preliminary inquiry,

1 that the violations alleged in the complaint are true. The  
2 department may investigate a complaint made by a confidential  
3 informant if the complaint is legally sufficient, if the  
4 alleged violation of law or rule is substantial, and if the  
5 department has reason to believe, after preliminary inquiry,  
6 that the allegations of the complainant are true. The  
7 department may initiate an investigation if it has reasonable  
8 cause to believe that a licensee or a group of licensees has  
9 violated a Florida statute, a rule of the department, or a  
10 rule of a board. Notwithstanding subsection (13), the  
11 department may investigate information filed pursuant to s.  
12 456.041(4) relating to liability actions with respect to  
13 practitioners licensed under chapter 458 or chapter 459 which  
14 have been reported under s. 456.049 or s. 627.912 within the  
15 previous 6 years for any paid claim that exceeds \$50,000.  
16 Except as provided in ss. 458.331(9), 459.015(9), 460.413(5),  
17 and 461.013(6), when an investigation of any subject is  
18 undertaken, the department shall promptly furnish to the  
19 subject or the subject's attorney a copy of the complaint or  
20 document that resulted in the initiation of the investigation.  
21 The subject may submit a written response to the information  
22 contained in such complaint or document within 20 days after  
23 service to the subject of the complaint or document. The  
24 subject's written response shall be considered by the probable  
25 cause panel. The right to respond does not prohibit the  
26 issuance of a summary emergency order if necessary to protect  
27 the public. However, if the secretary, or the secretary's  
28 designee, and the chair of the respective board or the chair  
29 of its probable cause panel agree in writing that such  
30 notification would be detrimental to the investigation, the  
31 department may withhold notification. The department may

1 conduct an investigation without notification to any subject  
2 if the act under investigation is a criminal offense.

3 (5) A formal hearing before an administrative law  
4 judge from the Division of Administrative Hearings shall be  
5 held pursuant to chapter 120 if there are any disputed issues  
6 of material fact. The determination of whether or not a  
7 licensee has violated the laws and rules regulating the  
8 profession, including a determination of the reasonable  
9 standard of care, is a conclusion of law to be determined by  
10 the board, or department when there is no board, and is not a  
11 finding of fact to be determined by an administrative law  
12 judge.The administrative law judge shall issue a recommended  
13 order pursuant to chapter 120. Notwithstanding s. 120.569(2),  
14 the department shall notify the division within 45 days after  
15 receipt of a petition or request for a formal hearing.~~If any~~  
16 ~~party raises an issue of disputed fact during an informal~~  
17 ~~hearing, the hearing shall be terminated and a formal hearing~~  
18 ~~pursuant to chapter 120 shall be held.~~

19 Section 21. Subsections (1) and (2) of section  
20 456.077, Florida Statutes, are amended to read:

21 456.077 Authority to issue citations.--

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



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

8 (2) The board, or the department if there is no board,  
9 shall adopt rules designating violations for which a citation  
10 may be issued. Such rules shall designate as citation  
11 violations those violations for which there is no substantial  
12 threat to the public health, safety, and welfare or no  
13 violation of standard of care involving injury to a patient.  
14 Violations for which a citation may be issued shall include  
15 violations of continuing education requirements; failure to  
16 timely pay required fees and fines; failure to comply with the  
17 requirements of ss. 381.026 and 381.0261 regarding the  
18 dissemination of information regarding patient rights; failure  
19 to comply with advertising requirements; failure to timely  
20 update practitioner profile and credentialing files; failure  
21 to display signs, licenses, and permits; failure to have  
22 required reference books available; and all other violations  
23 that do not pose a direct and serious threat to the health and  
24 safety of the patient or involve a violation of standard of  
25 care that has resulted in injury to a patient.

26 Section 22. Section 456.078, Florida Statutes, is  
27 amended to read:

28 456.078 Mediation.--

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

1 professional practice act are appropriate for mediation. The  
2 board, or the department when there is no board, shall ~~may~~  
3 designate as mediation offenses those complaints where harm  
4 caused by the licensee:

5 (a) Is economic in nature except any act or omission  
6 involving intentional misconduct; or

7 (b) Can be remedied by the licensee; or

8 (c) Is not a standard of care violation involving any  
9 type of injury to a patient; or

10 (d) Does not result in an adverse incident.

11 (2) For the purposes of this section, an "adverse  
12 incident" means an event that results in:

13 (a) The death of a patient;

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

15 (c) The performance of a surgical procedure on the  
16 wrong patient;

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

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

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

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

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

30 (3)(2) After the department determines a complaint is  
31 legally sufficient and the alleged violations are defined as

1 mediation offenses, the department or any agent of the  
2 department may conduct informal mediation to resolve the  
3 complaint. If the complainant and the subject of the complaint  
4 agree to a resolution of a complaint within 14 days after  
5 contact by the mediator, the mediator shall notify the  
6 department of the terms of the resolution. The department or  
7 board shall take no further action unless the complainant and  
8 the subject each fail to record with the department an  
9 acknowledgment of satisfaction of the terms of mediation  
10 within 60 days of the mediator's notification to the  
11 department. A successful mediation shall not constitute  
12 discipline.In the event the complainant and subject fail to  
13 reach settlement terms or to record the required  
14 acknowledgment, the department shall process the complaint  
15 according to the provisions of s. 456.073.

16 (4)~~(3)~~ Conduct or statements made during mediation are  
17 inadmissible in any proceeding pursuant to s. 456.073.  
18 Further, any information relating to the mediation of a case  
19 shall be subject to the confidentiality provisions of s.  
20 456.073.

21 (5)~~(4)~~ No licensee shall go through the mediation  
22 process more than three times without approval of the  
23 department. The department may consider the subject and dates  
24 of the earlier complaints in rendering its decision. Such  
25 decision shall not be considered a final agency action for  
26 purposes of chapter 120.

27 (6)~~(5)~~ Any board created on or after January 1, 1995,  
28 shall have 6 months to adopt rules designating which  
29 violations are appropriate for mediation, after which time the  
30 department shall have exclusive authority to adopt rules

31

1 pursuant to this section. A board shall have continuing  
2 authority to amend its rules adopted pursuant to this section.

3 Section 23. Effective upon this act becoming a law and  
4 applying to claims accruing on or after that date, section  
5 458.320, Florida Statutes, is amended to read:

6 458.320 Financial responsibility.--

7 (1) As a condition of licensing and maintaining an  
8 active license,and prior to the issuance or renewal of an  
9 active license or reactivation of an inactive license for the  
10 practice of medicine, an applicant must ~~shall~~ by one of the  
11 following methods demonstrate to the satisfaction of the board  
12 and the department financial responsibility to pay claims and  
13 costs ancillary thereto arising out of the rendering of, or  
14 the failure to render, medical care or services:

15 (a) Establishing and maintaining an escrow account  
16 consisting of cash or assets eligible for deposit in  
17 accordance with s. 625.52 in the per claim amounts specified  
18 in paragraph (b). The required escrow amount set forth in this  
19 paragraph may not be used for litigation costs or attorney's  
20 fees for the defense of any medical malpractice claim.

21 (b) Obtaining and maintaining professional liability  
22 coverage in an amount not less than \$100,000 per claim, with a  
23 minimum annual aggregate of not less than \$300,000, from an  
24 authorized insurer as defined under s. 624.09, from a surplus  
25 lines insurer as defined under s. 626.914(2), from a risk  
26 retention group as defined under s. 627.942, from the Joint  
27 Underwriting Association established under s. 627.351(4), or  
28 through a plan of self-insurance as provided in s. 627.357.  
29 The required coverage amount set forth in this paragraph may  
30 not be used for litigation costs or attorney's fees for the  
31 defense of any medical malpractice claim.

1           (c) Obtaining and maintaining an unexpired,  
2 irrevocable letter of credit, established pursuant to chapter  
3 675, in an amount not less than \$100,000 per claim, with a  
4 minimum aggregate availability of credit of not less than  
5 \$300,000. The letter of credit must ~~shall~~ be payable to the  
6 physician as beneficiary upon presentment of a final judgment  
7 indicating liability and awarding damages to be paid by the  
8 physician or upon presentment of a settlement agreement signed  
9 by all parties to such agreement when such final judgment or  
10 settlement is a result of a claim arising out of the rendering  
11 of, or the failure to render, medical care and services. The  
12 letter of credit may not be used for litigation costs or  
13 attorney's fees for the defense of any medical malpractice  
14 claim. ~~The~~ ~~Such~~ letter of credit must ~~shall~~ be nonassignable  
15 and nontransferable. Such letter of credit must ~~shall~~ be  
16 issued by any bank or savings association organized and  
17 existing under the laws of this state or any bank or savings  
18 association organized under the laws of the United States  
19 which ~~that~~ has its principal place of business in this state  
20 or has a branch office that ~~which~~ is authorized under the laws  
21 of this state or of the United States to receive deposits in  
22 this state.

23           (2) Physicians who perform surgery in an ambulatory  
24 surgical center licensed under chapter 395 and, as a  
25 continuing condition of hospital staff privileges, physicians  
26 who have ~~with~~ staff privileges must ~~shall~~ ~~also be required to~~  
27 establish financial responsibility by one of the following  
28 methods:

29           (a) Establishing and maintaining an escrow account  
30 consisting of cash or assets eligible for deposit in  
31 accordance with s. 625.52 in the per claim amounts specified

1 in paragraph (b). The required escrow amount set forth in this  
2 paragraph may not be used for litigation costs or attorney's  
3 fees for the defense of any medical malpractice claim.

4 (b) Obtaining and maintaining professional liability  
5 coverage in an amount not less than \$250,000 per claim, with a  
6 minimum annual aggregate of not less than \$750,000 from an  
7 authorized insurer as defined under s. 624.09, from a surplus  
8 lines insurer as defined under s. 626.914(2), from a risk  
9 retention group as defined under s. 627.942, from the Joint  
10 Underwriting Association established under s. 627.351(4),  
11 through a plan of self-insurance as provided in s. 627.357, or  
12 through a plan of self-insurance which meets the conditions  
13 specified for satisfying financial responsibility in s.  
14 766.110. The required coverage amount set forth in this  
15 paragraph may not be used for litigation costs or attorney's  
16 fees for the defense of any medical malpractice claim.

17 (c) Obtaining and maintaining an unexpired irrevocable  
18 letter of credit, established pursuant to chapter 675, in an  
19 amount not less than \$250,000 per claim, with a minimum  
20 aggregate availability of credit of not less than \$750,000.  
21 The letter of credit must ~~shall~~ be payable to the physician as  
22 beneficiary upon presentment of a final judgment indicating  
23 liability and awarding damages to be paid by the physician or  
24 upon presentment of a settlement agreement signed by all  
25 parties to such agreement when such final judgment or  
26 settlement is a result of a claim arising out of the rendering  
27 of, or the failure to render, medical care and services. The  
28 letter of credit may not be used for litigation costs or  
29 attorney's fees for the defense of any medical malpractice  
30 claim. The ~~Such~~ letter of credit must ~~shall~~ be nonassignable  
31 and nontransferable. The ~~Such~~ letter of credit must ~~shall~~ be

1 issued by any bank or savings association organized and  
2 existing under the laws of this state or any bank or savings  
3 association organized under the laws of the United States  
4 which ~~that~~ has its principal place of business in this state  
5 or has a branch office that ~~which~~ is authorized under the laws  
6 of this state or of the United States to receive deposits in  
7 this state.

8  
9 This subsection shall be inclusive of the coverage in  
10 subsection (1).

11 (3)(a) ~~The financial responsibility requirements of~~  
12 ~~subsections (1) and (2) shall apply to claims for incidents~~  
13 ~~that occur on or after January 1, 1987, or the initial date of~~  
14 ~~licensure in this state, whichever is later.~~

15 ~~(b)~~ Meeting the financial responsibility requirements  
16 of this section or the criteria for any exemption from such  
17 requirements must ~~shall~~ be established at the time of issuance  
18 or renewal of a license ~~on or after January 1, 1987.~~

19 ~~(b)(c)~~ Any person may, at any time, submit to the  
20 department a request for an advisory opinion regarding such  
21 person's qualifications for exemption.

22 (4)(a) Each insurer, self-insurer, risk retention  
23 group, or Joint Underwriting Association must ~~shall~~ promptly  
24 notify the department of cancellation or nonrenewal of  
25 insurance required by this section. Unless the physician  
26 demonstrates that he or she is otherwise in compliance with  
27 the requirements of this section, the department shall suspend  
28 the license of the physician pursuant to ss. 120.569 and  
29 120.57 and notify all health care facilities licensed under  
30 chapter 395 of such action. Any suspension under this  
31 subsection remains ~~shall remain~~ in effect until the physician

1 demonstrates compliance with the requirements of this section.  
2 If any judgments or settlements are pending at the time of  
3 suspension, those judgments or settlements must be paid in  
4 accordance with this section unless otherwise mutually agreed  
5 to in writing by the parties. This paragraph does not abrogate  
6 a judgment debtor's obligation to satisfy the entire amount of  
7 any judgment, ~~except that a license suspended under paragraph~~  
8 ~~(5)(g) shall not be reinstated until the physician~~  
9 ~~demonstrates compliance with the requirements of that~~  
10 ~~provision.~~

11 (b) If financial responsibility requirements are met  
12 by maintaining an escrow account or letter of credit as  
13 provided in this section, upon the entry of an adverse final  
14 judgment arising from a medical malpractice arbitration award,  
15 from a claim of medical malpractice either in contract or  
16 tort, or from noncompliance with the terms of a settlement  
17 agreement arising from a claim of medical malpractice either  
18 in contract or tort, the licensee shall pay the entire amount  
19 of the judgment together with all accrued interest, or the  
20 amount maintained in the escrow account or provided in the  
21 letter of credit as required by this section, whichever is  
22 less, within 60 days after the date such judgment became final  
23 and subject to execution, unless otherwise mutually agreed to  
24 in writing by the parties. If timely payment is not made by  
25 the physician, the department shall suspend the license of the  
26 physician pursuant to procedures set forth in subparagraphs  
27 (5)(g)3., 4., and 5. Nothing in this paragraph shall abrogate  
28 a judgment debtor's obligation to satisfy the entire amount of  
29 any judgment.

30 (5) The requirements of subsections (1), (2), and (3)  
31 do ~~shall~~ not apply to:



1           (a) Any person licensed under this chapter who  
2 practices medicine exclusively as an officer, employee, or  
3 agent of the Federal Government or of the state or its  
4 agencies or its subdivisions. For the purposes of this  
5 subsection, an agent of the state, its agencies, or its  
6 subdivisions is a person who is eligible for coverage under  
7 any self-insurance or insurance program authorized by the  
8 provisions of s. 768.28(15).

9           (b) Any person whose license has become inactive under  
10 this chapter and who is not practicing medicine in this state.  
11 Any person applying for reactivation of a license must show  
12 either that such licensee maintained tail insurance coverage  
13 which provided liability coverage for incidents that occurred  
14 on or after January 1, 1987, or the initial date of licensure  
15 in this state, whichever is later, and incidents that occurred  
16 before the date on which the license became inactive; or such  
17 licensee must submit an affidavit stating that such licensee  
18 has no unsatisfied medical malpractice judgments or  
19 settlements at the time of application for reactivation.

20           (c) Any person holding a limited license pursuant to  
21 s. 458.317 and practicing under the scope of such limited  
22 license.

23           (d) Any person licensed or certified under this  
24 chapter who practices only in conjunction with his or her  
25 teaching duties at an accredited medical school or in its main  
26 teaching hospitals. Such person may engage in the practice of  
27 medicine to the extent that such practice is incidental to and  
28 a necessary part of duties in connection with the teaching  
29 position in the medical school.

30           (e) Any person holding an active license under this  
31 chapter who is not practicing medicine in this state. If such

1 person initiates or resumes any practice of medicine in this  
2 state, he or she must notify the department of such activity  
3 and fulfill the financial responsibility requirements of this  
4 section before resuming the practice of medicine in this  
5 state.

6 (f) Any person holding an active license under this  
7 chapter who meets all of the following criteria:

8 1. The licensee has held an active license to practice  
9 in this state or another state or some combination thereof for  
10 more than 15 years.

11 2. The licensee has either retired from the practice  
12 of medicine or maintains a part-time practice of no more than  
13 1,000 patient contact hours per year.

14 3. The licensee has had no more than two claims for  
15 medical malpractice resulting in an indemnity exceeding  
16 \$25,000 within the previous 5-year period.

17 4. The licensee has not been convicted of, or pled  
18 guilty or nolo contendere to, any criminal violation specified  
19 in this chapter or the medical practice act of any other  
20 state.

21 5. The licensee has not been subject within the last  
22 10 years of practice to license revocation or suspension for  
23 any period of time; probation for a period of 3 years or  
24 longer; or a fine of \$500 or more for a violation of this  
25 chapter or the medical practice act of another jurisdiction.  
26 The regulatory agency's acceptance of a physician's  
27 relinquishment of a license, stipulation, consent order, or  
28 other settlement, offered in response to or in anticipation of  
29 the filing of administrative charges against the physician's  
30 license, constitutes ~~shall be construed as~~ action against the  
31 physician's license for the purposes of this paragraph.

1           6. The licensee has submitted a form supplying  
2 necessary information as required by the department and an  
3 affidavit affirming compliance with ~~the provisions of this~~  
4 paragraph.

5           7. The licensee must ~~shall~~ submit biennially to the  
6 department certification stating compliance with the  
7 provisions of this paragraph. The licensee must ~~shall~~, upon  
8 request, demonstrate to the department information verifying  
9 compliance with this paragraph.

10  
11 A licensee who meets the requirements of this paragraph must  
12 ~~shall be required either to~~ post notice in the form of a sign  
13 prominently displayed in the reception area and clearly  
14 noticeable by all patients or provide a written statement to  
15 any person to whom medical services are being provided. The  
16 ~~Such~~ sign or statement must read as follows ~~shall state~~ that:  
17 "Under Florida law, physicians are generally required to carry  
18 medical malpractice insurance or otherwise demonstrate  
19 financial responsibility to cover potential claims for medical  
20 malpractice. However, certain part-time physicians who meet  
21 state requirements are exempt from the financial  
22 responsibility law. YOUR DOCTOR MEETS THESE REQUIREMENTS AND  
23 HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This  
24 notice is provided pursuant to Florida law."

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

27           1. Upon the entry of an adverse final judgment arising  
28 from a medical malpractice arbitration award, from a claim of  
29 medical malpractice either in contract or tort, or from  
30 noncompliance with the terms of a settlement agreement arising  
31 from a claim of medical malpractice either in contract or

1 | tort, the licensee shall pay the judgment creditor the lesser  
2 | of the entire amount of the judgment with all accrued interest  
3 | or either \$100,000, if the physician is licensed pursuant to  
4 | this chapter but does not maintain hospital staff privileges,  
5 | or \$250,000, if the physician is licensed pursuant to this  
6 | chapter and maintains hospital staff privileges, within 60  
7 | days after the date such judgment became final and subject to  
8 | execution, unless otherwise mutually agreed to in writing by  
9 | the parties. Such adverse final judgment shall include any  
10 | cross-claim, counterclaim, or claim for indemnity or  
11 | contribution arising from the claim of medical malpractice.  
12 | Upon notification of the existence of an unsatisfied judgment  
13 | or payment pursuant to this subparagraph, the department shall  
14 | notify the licensee by certified mail that he or she shall be  
15 | subject to disciplinary action unless, within 30 days from the  
16 | date of mailing, he or she either:

17 |         a. Shows proof that the unsatisfied judgment has been  
18 | paid in the amount specified in this subparagraph; or

19 |         b. Furnishes the department with a copy of a timely  
20 | filed notice of appeal and either:

21 |                 (I) A copy of a supersedeas bond properly posted in  
22 | the amount required by law; or

23 |                 (II) An order from a court of competent jurisdiction  
24 | staying execution on the final judgment pending disposition of  
25 | the appeal.

26 |         2. The Department of Health shall issue an emergency  
27 | order suspending the license of any licensee who, after 30  
28 | days following receipt of a notice from the Department of  
29 | Health, has failed to: satisfy a medical malpractice claim  
30 | against him or her; furnish the Department of Health a copy of  
31 | a timely filed notice of appeal; furnish the Department of

1 Health a copy of a supersedeas bond properly posted in the  
2 amount required by law; or furnish the Department of Health an  
3 order from a court of competent jurisdiction staying execution  
4 on the final judgment pending disposition of the appeal.

5 3. Upon the next meeting of the probable cause panel  
6 of the board following 30 days after the date of mailing the  
7 notice of disciplinary action to the licensee, the panel shall  
8 make a determination of whether probable cause exists to take  
9 disciplinary action against the licensee pursuant to  
10 subparagraph 1.

11 4. If the board determines that the factual  
12 requirements of subparagraph 1. are met, it shall take  
13 disciplinary action as it deems appropriate against the  
14 licensee. Such disciplinary action shall include, at a  
15 minimum, probation of the license with the restriction that  
16 the licensee must make payments to the judgment creditor on a  
17 schedule determined by the board to be reasonable and within  
18 the financial capability of the physician. Notwithstanding any  
19 other disciplinary penalty imposed, the disciplinary penalty  
20 may include suspension of the license for a period not to  
21 exceed 5 years. In the event that an agreement to satisfy a  
22 judgment has been met, the board shall remove any restriction  
23 on the license.

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

26  
27 A licensee who meets the requirements of this paragraph shall  
28 be required either to post notice in the form of a sign  
29 prominently displayed in the reception area and clearly  
30 noticeable by all patients or to provide a written statement  
31 to any person to whom medical services are being provided.

1 Such sign or statement shall state: "Under Florida law,  
2 physicians are generally required to carry medical malpractice  
3 insurance or otherwise demonstrate financial responsibility to  
4 cover potential claims for medical malpractice. YOUR DOCTOR  
5 HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This  
6 is permitted under Florida law subject to certain conditions.  
7 Florida law imposes penalties against noninsured physicians  
8 who fail to satisfy adverse judgments arising from claims of  
9 medical malpractice. This notice is provided pursuant to  
10 Florida law."

11 (6) Any deceptive, untrue, or fraudulent  
12 representation by the licensee with respect to any provision  
13 of this section shall result in permanent disqualification  
14 from any exemption to mandated financial responsibility as  
15 provided in this section and shall constitute grounds for  
16 disciplinary action under s. 458.331.

17 (7) Any licensee who relies on any exemption from the  
18 financial responsibility requirement shall notify the  
19 department, in writing, of any change of circumstance  
20 regarding his or her qualifications for such exemption and  
21 shall demonstrate that he or she is in compliance with the  
22 requirements of this section.

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

1 payment is received by the department or a payment schedule  
2 has been agreed upon by the physician and the claimant and  
3 presented to the department. This subsection does not apply to  
4 a physician who has met the financial responsibility  
5 requirements in paragraphs (1)(b) and (2)(b).

6 (9)~~(8)~~ The board shall adopt rules to implement the  
7 provisions of this section.

8 Section 24. Effective upon this act becoming a law and  
9 applying to claims accruing on or after that date, section  
10 459.0085, Florida Statutes, is amended to read:

11 459.0085 Financial responsibility.--

12 (1) As a condition of licensing and maintaining an  
13 active license, and prior to the issuance or renewal of an  
14 active license or reactivation of an inactive license for the  
15 practice of osteopathic medicine, an applicant must ~~shall~~ by  
16 one of the following methods demonstrate to the satisfaction  
17 of the board and the department financial responsibility to  
18 pay claims and costs ancillary thereto arising out of the  
19 rendering of, or the failure to render, medical care or  
20 services:

21 (a) Establishing and maintaining an escrow account  
22 consisting of cash or assets eligible for deposit in  
23 accordance with s. 625.52 in the per-claim amounts specified  
24 in paragraph (b). The required escrow amount set forth in this  
25 paragraph may not be used for litigation costs or attorney's  
26 fees for the defense of any medical malpractice claim.

27 (b) Obtaining and maintaining professional liability  
28 coverage in an amount not less than \$100,000 per claim, with a  
29 minimum annual aggregate of not less than \$300,000, from an  
30 authorized insurer as defined under s. 624.09, from a surplus  
31 lines insurer as defined under s. 626.914(2), from a risk

1 retention group as defined under s. 627.942, from the Joint  
2 Underwriting Association established under s. 627.351(4), or  
3 through a plan of self-insurance as provided in s. 627.357.  
4 The required coverage amount set forth in this paragraph may  
5 not be used for litigation costs or attorney's fees for the  
6 defense of any medical malpractice claim.

7 (c) Obtaining and maintaining an unexpired,  
8 irrevocable letter of credit, established pursuant to chapter  
9 675, in an amount not less than \$100,000 per claim, with a  
10 minimum aggregate availability of credit of not less than  
11 \$300,000. The letter of credit must ~~shall~~ be payable to the  
12 osteopathic physician as beneficiary upon presentment of a  
13 final judgment indicating liability and awarding damages to be  
14 paid by the osteopathic physician or upon presentment of a  
15 settlement agreement signed by all parties to such agreement  
16 when such final judgment or settlement is a result of a claim  
17 arising out of the rendering of, or the failure to render,  
18 medical care and services. The letter of credit may not be  
19 used for litigation costs or attorney's fees for the defense  
20 of any medical malpractice claim. The ~~Such~~ letter of credit  
21 must ~~shall~~ be nonassignable and nontransferable. Such letter  
22 of credit must ~~shall~~ be issued by any bank or savings  
23 association organized and existing under the laws of this  
24 state or any bank or savings association organized under the  
25 laws of the United States which ~~that~~ has its principal place  
26 of business in this state or has a branch office that ~~which~~ is  
27 authorized under the laws of this state or of the United  
28 States to receive deposits in this state.

29 (2) Osteopathic physicians who perform surgery in an  
30 ambulatory surgical center licensed under chapter 395 and, as  
31 a continuing condition of hospital staff privileges,



1 osteopathic physicians who have ~~with~~ staff privileges must  
2 ~~shall also be required to~~ establish financial responsibility  
3 by one of the following methods:

4 (a) Establishing and maintaining an escrow account  
5 consisting of cash or assets eligible for deposit in  
6 accordance with s. 625.52 in the per-claim amounts specified  
7 in paragraph (b). The required escrow amount set forth in this  
8 paragraph may not be used for litigation costs or attorney's  
9 fees for the defense of any medical malpractice claim.

10 (b) Obtaining and maintaining professional liability  
11 coverage in an amount not less than \$250,000 per claim, with a  
12 minimum annual aggregate of not less than \$750,000 from an  
13 authorized insurer as defined under s. 624.09, from a surplus  
14 lines insurer as defined under s. 626.914(2), from a risk  
15 retention group as defined under s. 627.942, from the Joint  
16 Underwriting Association established under s. 627.351(4),  
17 through a plan of self-insurance as provided in s. 627.357, or  
18 through a plan of self-insurance that ~~which~~ meets the  
19 conditions specified for satisfying financial responsibility  
20 in s. 766.110. The required coverage amount set forth in this  
21 paragraph may not be used for litigation costs or attorney's  
22 fees for the defense of any medical malpractice claim.

23 (c) Obtaining and maintaining an unexpired,  
24 irrevocable letter of credit, established pursuant to chapter  
25 675, in an amount not less than \$250,000 per claim, with a  
26 minimum aggregate availability of credit of not less than  
27 \$750,000. The letter of credit must ~~shall~~ be payable to the  
28 osteopathic physician as beneficiary upon presentment of a  
29 final judgment indicating liability and awarding damages to be  
30 paid by the osteopathic physician or upon presentment of a  
31 settlement agreement signed by all parties to such agreement

1 when such final judgment or settlement is a result of a claim  
2 arising out of the rendering of, or the failure to render,  
3 medical care and services. The letter of credit may not be  
4 used for litigation costs or attorney's fees for the defense  
5 of any medical malpractice claim. The ~~Such~~ letter of credit  
6 must ~~shall~~ be nonassignable and nontransferable. The ~~Such~~  
7 letter of credit ~~must shall~~ be issued by any bank or savings  
8 association organized and existing under the laws of this  
9 state or any bank or savings association organized under the  
10 laws of the United States ~~which that~~ has its principal place  
11 of business in this state or has a branch office ~~that which~~ is  
12 authorized under the laws of this state or of the United  
13 States to receive deposits in this state.

14  
15 This subsection shall be inclusive of the coverage in  
16 subsection (1).

17 ~~(3)(a) The financial responsibility requirements of~~  
18 ~~subsections (1) and (2) shall apply to claims for incidents~~  
19 ~~that occur on or after January 1, 1987, or the initial date of~~  
20 ~~licensure in this state, whichever is later.~~

21 ~~(b)~~ Meeting the financial responsibility requirements  
22 of this section or the criteria for any exemption from such  
23 requirements must ~~shall~~ be established at the time of issuance  
24 or renewal of a license ~~on or after January 1, 1987.~~

25 ~~(b)(c)~~ Any person may, at any time, submit to the  
26 department a request for an advisory opinion regarding such  
27 person's qualifications for exemption.

28 (4)(a) Each insurer, self-insurer, risk retention  
29 group, or joint underwriting association must ~~shall~~ promptly  
30 notify the department of cancellation or nonrenewal of  
31 insurance required by this section. Unless the osteopathic

1 physician demonstrates that he or she is otherwise in  
2 compliance with the requirements of this section, the  
3 department shall suspend the license of the osteopathic  
4 physician pursuant to ss. 120.569 and 120.57 and notify all  
5 health care facilities licensed under chapter 395, part IV of  
6 chapter 394, or part I of chapter 641 of such action. Any  
7 suspension under this subsection remains ~~shall remain~~ in  
8 effect until the osteopathic physician demonstrates compliance  
9 with the requirements of this section. If any judgments or  
10 settlements are pending at the time of suspension, those  
11 judgments or settlements must be paid in accordance with this  
12 section unless otherwise mutually agreed to in writing by the  
13 parties. This paragraph does not abrogate a judgment debtor's  
14 obligation to satisfy the entire amount of any judgment ~~except~~  
15 ~~that a license suspended under paragraph (5)(g) shall not be~~  
16 ~~reinstated until the osteopathic physician demonstrates~~  
17 ~~compliance with the requirements of that provision.~~

18 (b) If financial responsibility requirements are met  
19 by maintaining an escrow account or letter of credit as  
20 provided in this section, upon the entry of an adverse final  
21 judgment arising from a medical malpractice arbitration award,  
22 from a claim of medical malpractice either in contract or  
23 tort, or from noncompliance with the terms of a settlement  
24 agreement arising from a claim of medical malpractice either  
25 in contract or tort, the licensee shall pay the entire amount  
26 of the judgment together with all accrued interest or the  
27 amount maintained in the escrow account or provided in the  
28 letter of credit as required by this section, whichever is  
29 less, within 60 days after the date such judgment became final  
30 and subject to execution, unless otherwise mutually agreed to  
31 in writing by the parties. If timely payment is not made by

1 the osteopathic physician, the department shall suspend the  
2 license of the osteopathic physician pursuant to procedures  
3 set forth in subparagraphs (5)(g)3., 4., and 5. Nothing in  
4 this paragraph shall abrogate a judgment debtor's obligation  
5 to satisfy the entire amount of any judgment.

6 (5) The requirements of subsections (1), (2), and (3)  
7 do ~~shall~~ not apply to:

8 (a) Any person licensed under this chapter who  
9 practices medicine exclusively as an officer, employee, or  
10 agent of the Federal Government or of the state or its  
11 agencies or its subdivisions. For the purposes of this  
12 subsection, an agent of the state, its agencies, or its  
13 subdivisions is a person who is eligible for coverage under  
14 any self-insurance or insurance program authorized by the  
15 provisions of s. 768.28(15).

16 (b) Any person whose license has become inactive under  
17 this chapter and who is not practicing medicine in this state.  
18 Any person applying for reactivation of a license must show  
19 either that such licensee maintained tail insurance coverage  
20 that ~~which~~ provided liability coverage for incidents that  
21 occurred on or after January 1, 1987, or the initial date of  
22 licensure in this state, whichever is later, and incidents  
23 that occurred before the date on which the license became  
24 inactive; or such licensee must submit an affidavit stating  
25 that such licensee has no unsatisfied medical malpractice  
26 judgments or settlements at the time of application for  
27 reactivation.

28 (c) Any person holding a limited license pursuant to  
29 s. 459.0075 and practicing under the scope of such limited  
30 license.

31

1 (d) Any person licensed or certified under this  
2 chapter who practices only in conjunction with his or her  
3 teaching duties at a college of osteopathic medicine. Such  
4 person may engage in the practice of osteopathic medicine to  
5 the extent that such practice is incidental to and a necessary  
6 part of duties in connection with the teaching position in the  
7 college of osteopathic medicine.

8 (e) Any person holding an active license under this  
9 chapter who is not practicing osteopathic medicine in this  
10 state. If such person initiates or resumes any practice of  
11 osteopathic medicine in this state, he or she must notify the  
12 department of such activity and fulfill the financial  
13 responsibility requirements of this section before resuming  
14 the practice of osteopathic medicine in this state.

15 (f) Any person holding an active license under this  
16 chapter who meets all of the following criteria:

17 1. The licensee has held an active license to practice  
18 in this state or another state or some combination thereof for  
19 more than 15 years.

20 2. The licensee has either retired from the practice  
21 of osteopathic medicine or maintains a part-time practice of  
22 osteopathic medicine of no more than 1,000 patient contact  
23 hours per year.

24 3. The licensee has had no more than two claims for  
25 medical malpractice resulting in an indemnity exceeding  
26 \$25,000 within the previous 5-year period.

27 4. The licensee has not been convicted of, or pled  
28 guilty or nolo contendere to, any criminal violation specified  
29 in this chapter or the practice act of any other state.

30 5. The licensee has not been subject within the last  
31 10 years of practice to license revocation or suspension for

1 any period of time, probation for a period of 3 years or  
2 longer, or a fine of \$500 or more for a violation of this  
3 chapter or the medical practice act of another jurisdiction.  
4 The regulatory agency's acceptance of an osteopathic  
5 physician's relinquishment of a license, stipulation, consent  
6 order, or other settlement, offered in response to or in  
7 anticipation of the filing of administrative charges against  
8 the osteopathic physician's license, constitutes ~~shall be~~  
9 ~~construed as~~ action against the physician's license for the  
10 purposes of this paragraph.

11 6. The licensee has submitted a form supplying  
12 necessary information as required by the department and an  
13 affidavit affirming compliance with ~~the provisions of~~ this  
14 paragraph.

15 7. The licensee must ~~shall~~ submit biennially to the  
16 department a certification stating compliance with ~~the~~  
17 ~~provisions of~~ this paragraph. The licensee must ~~shall~~, upon  
18 request, demonstrate to the department information verifying  
19 compliance with this paragraph.

20  
21 A licensee who meets the requirements of this paragraph must  
22 ~~shall be required either to~~ post notice in the form of a sign  
23 prominently displayed in the reception area and clearly  
24 noticeable by all patients or ~~to~~ provide a written statement  
25 to any person to whom medical services are being provided. The  
26 ~~Such~~ sign or statement must read as follows ~~shall state that:~~  
27 "Under Florida law, osteopathic physicians are generally  
28 required to carry medical malpractice insurance or otherwise  
29 demonstrate financial responsibility to cover potential claims  
30 for medical malpractice. However, certain part-time  
31 osteopathic physicians who meet state requirements are exempt

1 from the financial responsibility law. YOUR OSTEOPATHIC  
2 PHYSICIAN MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO  
3 CARRY MEDICAL MALPRACTICE INSURANCE. This notice is provided  
4 pursuant to Florida law."

5 (g) Any person holding an active license under this  
6 chapter who agrees to meet all of the following criteria.

7 1. Upon the entry of an adverse final judgment arising  
8 from a medical malpractice arbitration award, from a claim of  
9 medical malpractice either in contract or tort, or from  
10 noncompliance with the terms of a settlement agreement arising  
11 from a claim of medical malpractice either in contract or  
12 tort, the licensee shall pay the judgment creditor the lesser  
13 of the entire amount of the judgment with all accrued interest  
14 or either \$100,000, if the osteopathic physician is licensed  
15 pursuant to this chapter but does not maintain hospital staff  
16 privileges, or \$250,000, if the osteopathic physician is  
17 licensed pursuant to this chapter and maintains hospital staff  
18 privileges, within 60 days after the date such judgment became  
19 final and subject to execution, unless otherwise mutually  
20 agreed to in writing by the parties. Such adverse final  
21 judgment shall include any cross-claim, counterclaim, or claim  
22 for indemnity or contribution arising from the claim of  
23 medical malpractice. Upon notification of the existence of an  
24 unsatisfied judgment or payment pursuant to this subparagraph,  
25 the department shall notify the licensee by certified mail  
26 that he or she shall be subject to disciplinary action unless,  
27 within 30 days from the date of mailing, the licensee either:  
28 a. Shows proof that the unsatisfied judgment has been  
29 paid in the amount specified in this subparagraph; or  
30 b. Furnishes the department with a copy of a timely  
31 filed notice of appeal and either:

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

3 (II) An order from a court of competent jurisdiction  
4 staying execution on the final judgment, pending disposition  
5 of the appeal.

6 2. The Department of Health shall issue an emergency  
7 order suspending the license of any licensee who, after 30  
8 days following receipt of a notice from the Department of  
9 Health, has failed to: satisfy a medical malpractice claim  
10 against him or her; furnish the Department of Health a copy of  
11 a timely filed notice of appeal; furnish the Department of  
12 Health a copy of a supersedeas bond properly posted in the  
13 amount required by law; or furnish the Department of Health an  
14 order from a court of competent jurisdiction staying execution  
15 on the final judgment pending disposition of the appeal.

16 3. Upon the next meeting of the probable cause panel  
17 of the board following 30 days after the date of mailing the  
18 notice of disciplinary action to the licensee, the panel shall  
19 make a determination of whether probable cause exists to take  
20 disciplinary action against the licensee pursuant to  
21 subparagraph 1.

22 4. If the board determines that the factual  
23 requirements of subparagraph 1. are met, it shall take  
24 disciplinary action as it deems appropriate against the  
25 licensee. Such disciplinary action shall include, at a  
26 minimum, probation of the license with the restriction that  
27 the licensee must make payments to the judgment creditor on a  
28 schedule determined by the board to be reasonable and within  
29 the financial capability of the osteopathic physician.  
30 Notwithstanding any other disciplinary penalty imposed, the  
31 disciplinary penalty may include suspension of the license for



1 a period not to exceed 5 years. In the event that an  
2 agreement to satisfy a judgment has been met, the board shall  
3 remove any restriction on the license.

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

6  
7 A licensee who meets the requirements of this paragraph shall  
8 be required either to post notice in the form of a sign  
9 prominently displayed in the reception area and clearly  
10 noticeable by all patients or to provide a written statement  
11 to any person to whom medical services are being provided.  
12 Such sign or statement shall state: "Under Florida law,  
13 osteopathic physicians are generally required to carry medical  
14 malpractice insurance or otherwise demonstrate financial  
15 responsibility to cover potential claims for medical  
16 malpractice. YOUR OSTEOPATHIC PHYSICIAN HAS DECIDED NOT TO  
17 CARRY MEDICAL MALPRACTICE INSURANCE. This is permitted under  
18 Florida law subject to certain conditions. Florida law  
19 imposes strict penalties against noninsured osteopathic  
20 physicians who fail to satisfy adverse judgments arising from  
21 claims of medical malpractice. This notice is provided  
22 pursuant to Florida law."

23 (6) Any deceptive, untrue, or fraudulent  
24 representation by the licensee with respect to any provision  
25 of this section shall result in permanent disqualification  
26 from any exemption to mandated financial responsibility as  
27 provided in this section and shall constitute grounds for  
28 disciplinary action under s. 459.015.

29 (7) Any licensee who relies on any exemption from the  
30 financial responsibility requirement shall notify the  
31 department in writing of any change of circumstance regarding

1 his or her qualifications for such exemption and shall  
2 demonstrate that he or she is in compliance with the  
3 requirements of this section.

4 (8) If a physician is either a resident physician,  
5 assistant resident physician, or intern in an approved  
6 postgraduate training program, as defined by the board's  
7 rules, and is supervised by a physician who is participating  
8 in the Florida Birth-Related Neurological Injury Compensation  
9 Plan, such resident physician, assistant resident physician,  
10 or intern is deemed to be a participating physician without  
11 the payment of the assessment set forth in s. 766.314(4).

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

27 (10)~~(9)~~ The board shall adopt rules to implement the  
28 provisions of this section.

29 Section 25. Paragraph (t) of subsection (1) and  
30 subsection (6) of section 458.331, Florida Statutes, are  
31 amended to read:

1           458.331 Grounds for disciplinary action; action by the  
2 board and department.--

3           (1) The following acts constitute grounds for denial  
4 of a license or disciplinary action, as specified in s.  
5 456.072(2):

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

1 similar conditions and circumstances," or any combination  
2 thereof, and any publication by the board must so specify.

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

17 Section 26. Section 458.3311, Florida Statutes, is  
18 created to read:

19 458.3311 Emergency procedures for disciplinary  
20 action.--Notwithstanding any other provision of law to the  
21 contrary, no later than 30 days after a third report of a  
22 professional liability claim against a licensed physician has  
23 been submitted, within a 60-month period, as required by ss.  
24 456.049 and 627.912, the Department of Health shall initiate  
25 an emergency investigation and the Board of Medicine shall  
26 conduct an emergency probable cause hearing to determine  
27 whether the physician should be disciplined for a violation of  
28 s. 458.331(1)(t) or any other relevant provision of law.

29 Section 27. Paragraph (x) of subsection (1) and  
30 subsection (6) of section 459.015, Florida Statutes, are  
31 amended to read:

1           459.015 Grounds for disciplinary action; action by the  
2 board and department.--

3           (1) The following acts constitute grounds for denial  
4 of a license or disciplinary action, as specified in s.  
5 456.072(2):

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

1 medicine with that level of care, skill, and treatment which  
2 is recognized as being acceptable under similar conditions and  
3 circumstances," or any combination thereof, and any  
4 publication by the board shall so specify.

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

20 Section 28. Section 459.0151, Florida Statutes, is  
21 created to read:

22 459.0151 Emergency procedures for disciplinary  
23 action.--Notwithstanding any other provision of law to the  
24 contrary, no later than 30 days after a third report of a  
25 professional liability claim against a licensed osteopathic  
26 physician has been submitted, within a 60-month period, as  
27 required by ss. 456.049 and 627.912, the Department of Health  
28 shall initiate an emergency investigation and the Board of  
29 Osteopathic Medicine shall conduct an emergency probable cause  
30 hearing to determine whether the physician should be

31

1 disciplined for a violation of s. 459.015(1)(x) or any other  
2 relevant provision of law.

3 Section 29. Paragraph (s) of subsection (1) and  
4 paragraph (a) of subsection (5) of section 461.013, Florida  
5 Statutes, are amended to read:

6 461.013 Grounds for disciplinary action; action by the  
7 board; investigations by department.--

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

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

1 licensee was found to have committed "gross malpractice,"  
2 "repeated malpractice," or "failure to practice podiatric  
3 medicine with that level of care, skill, and treatment which  
4 is recognized as being acceptable under similar conditions and  
5 circumstances," or any combination thereof, and any  
6 publication by the board must so specify.

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

21 Section 30. Section 461.0131, Florida Statutes, is  
22 created to read:

23 461.0131 Emergency procedures for disciplinary  
24 action.--Notwithstanding any other provision of law to the  
25 contrary, no later than 30 days after a third report of a  
26 professional liability claim against a licensed podiatric  
27 physician has been submitted, within a 60-month period, as  
28 required by ss. 456.049 and 627.912, the Department of Health  
29 shall initiate an emergency investigation and the Board of  
30 Podiatric Medicine shall conduct an emergency probable cause  
31 hearing to determine whether the physician should be



1 disciplined for a violation of s. 461.013(1)(s) or any other  
2 relevant provision of law.

3 Section 31. Paragraph (x) of subsection (1) of section  
4 466.028, Florida Statutes, is amended to read:

5 466.028 Grounds for disciplinary action; action by the  
6 board.--

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

10 (x) Being guilty of incompetence or negligence by  
11 failing to meet the minimum standards of performance in  
12 diagnosis and treatment when measured against generally  
13 prevailing peer performance, including, but not limited to,  
14 the undertaking of diagnosis and treatment for which the  
15 dentist is not qualified by training or experience or being  
16 guilty of dental malpractice. For purposes of this paragraph,  
17 it shall be legally presumed that a dentist is not guilty of  
18 incompetence or negligence by declining to treat an individual  
19 if, in the dentist's professional judgment, the dentist or a  
20 member of her or his clinical staff is not qualified by  
21 training and experience, or the dentist's treatment facility  
22 is not clinically satisfactory or properly equipped to treat  
23 the unique characteristics and health status of the dental  
24 patient, provided the dentist refers the patient to a  
25 qualified dentist or facility for appropriate treatment. As  
26 used in this paragraph, "dental malpractice" includes, but is  
27 not limited to, three or more claims within the previous  
28 5-year period which resulted in indemnity being paid, or any  
29 single indemnity paid in excess of ~~\$5,000~~ \$25,000 in a  
30 judgment or settlement, as a result of negligent conduct on  
31 the part of the dentist.

1           Section 32. The Division of Administrative Hearings  
2 shall designate at least two administrative law judges who  
3 shall specifically preside over actions involving the  
4 Department of Health or boards within the Department of  
5 Health. Each designated administrative law judge must be a  
6 member of The Florida Bar in good standing and must have  
7 legal, managerial, or clinical experience in issues related to  
8 health care or have attained board certification in health  
9 care law from The Florida Bar.

10           Section 33. Section 1004.08, Florida Statutes, is  
11 created to read:

12           1004.08 Patient safety instructional  
13 requirements.--Each public school, college, and university  
14 that offers degrees in medicine, nursing, or allied health  
15 shall include in the curricula applicable to such degrees  
16 material on patient safety, including patient safety  
17 improvement. Materials shall include, but need not be limited  
18 to, effective communication and teamwork; epidemiology of  
19 patient injuries and medical errors; medical injuries;  
20 vigilance, attention, and fatigue; checklists and inspections;  
21 automation, technological, and computer support; psychological  
22 factors in human error; and reporting systems.

23           Section 34. Section 1005.07, Florida Statutes, is  
24 created to read:

25           1005.07 Patient safety instructional  
26 requirements.--Each private school, college, and university  
27 that offers degrees in medicine, nursing, and allied health  
28 shall include in the curricula applicable to such degrees  
29 material on patient safety, including patient safety  
30 improvement. Materials shall include, but need not be limited  
31 to, effective communication and teamwork; epidemiology of

1 patient injuries and medical errors; medical injuries;  
2 vigilance, attention, and fatigue; checklists and inspections;  
3 automation, technological, and computer support; psychological  
4 factors in human error; and reporting systems.

5 Section 35. (1) The Agency for Health Care  
6 Administration shall conduct or contract for a study to  
7 determine what information is most feasible to provide to the  
8 public comparing state-licensed hospitals on certain inpatient  
9 quality indicators developed by the federal Agency for  
10 Healthcare Research and Quality. Such indicators shall be  
11 designed to identify information about specific procedures  
12 performed in hospitals for which there is strong evidence of a  
13 link to quality of care. The Agency for Health Care  
14 Administration or the study contractor shall refer to the  
15 hospital quality reports published in New York and Texas as  
16 guides during the evaluation.

17 (2) The following concepts shall be specifically  
18 addressed in the study report:

19 (a) Whether hospital discharge data about services can  
20 be translated into understandable and meaningful information  
21 for the public.

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

24 1. Inpatient mortality for medical conditions;

25 2. Inpatient mortality for procedures;

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

28 4. Volume of procedures for which there is evidence  
29 that a higher volume of procedures is associated with lower  
30 mortality.

31

1           (c) Whether there are quality indicators that are  
2 particularly useful relative to the state's unique  
3 demographics.

4           (d) Whether all hospitals should be included in the  
5 comparison.

6           (e) The criteria for comparison.

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

9           (g) Identification of several websites to which such a  
10 report should be published to achieve the broadest  
11 dissemination of the information.

12           (3) The Agency for Health Care Administration shall  
13 consider the input of all interested parties, including  
14 hospitals, physicians, consumer organizations, and patients,  
15 and submit the final report to the Governor and the presiding  
16 officers of the Legislature by January 1, 2004.

17           Section 36. Comprehensive study and report on the  
18 establishment of a Patient Safety Authority.--

19           (1) The Agency for Health Care Administration, in  
20 consultation with the Department of Health and existing  
21 patient safety centers in the state universities, is directed  
22 to study the implementation requirements of establishing a  
23 statewide Patient Safety Authority. The authority would be  
24 responsible for performing activities and functions designed  
25 to improve patient safety and the quality of care delivered by  
26 health care facilities and health care practitioners.

27           (2) In undertaking the study, the agency shall examine  
28 and evaluate a Patient Safety Authority that would, either  
29 directly, by contract, or through a consortium of  
30 university-based patient safety centers:

31

1           (a) Analyze patient safety data and quality and  
2 patient safety indicators, including information concerning  
3 adverse incidents reported to the Agency for Health Care  
4 Administration pursuant to section 395.0197, Florida Statutes,  
5 for the purpose of recommending changes in practices and  
6 procedures which may be implemented by health care  
7 practitioners and health care facilities to improve health  
8 care quality and prevent future adverse incidents.

9           (b) Collect, analyze, and evaluate patient safety data  
10 submitted voluntarily by a health care practitioner or health  
11 care facility. The authority would communicate to health care  
12 practitioners and health care facilities changes in practices  
13 and procedures which may be implemented for the purpose of  
14 improving patient safety and preventing future patient safety  
15 events from resulting in serious injury or death.

16           (c) Foster the development of a statewide electronic  
17 infrastructure that may be implemented in phases over a  
18 multiyear period and that is designed to improve patient care  
19 and the delivery and quality of health care services by health  
20 care facilities and practitioners. The electronic  
21 infrastructure shall be a secure platform for communication  
22 and the sharing of clinical and other data, such as business  
23 data, among providers and between patients and providers. The  
24 electronic infrastructure would include a core electronic  
25 medical record. Health care providers shall have access to  
26 individual electronic medical records, subject to the consent  
27 of the individual. The right, if any, of other entities,  
28 including health insurers and researchers, to access the  
29 records must be examined and evaluated by the agency.

30           (d) As a statewide goal of reducing the occurrence of  
31 medication errors, inventory hospitals to determine the

1 current status of implementation of computerized physician  
2 order entry systems, barcode point of care systems, or other  
3 technological patient safety systems and recommend a plan for  
4 expediting implementation statewide or, in hospitals where the  
5 agency determines that implementation of such systems is not  
6 practicable, alternative methods to reduce medication errors.  
7 The agency shall identify in its plan any barriers to  
8 statewide implementation and shall include recommendations to  
9 the Legislature of statutory changes that may be necessary to  
10 eliminate those barriers.

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

13 (f) Assess the patient safety culture at volunteering  
14 hospitals and recommend methods to improve the working  
15 environment as it relates to patient safety at these  
16 hospitals.

17 (g) Develop core competencies in patient safety that  
18 can be incorporated into the curriculums in Florida's schools  
19 of medicine, nursing, and allied health.

20 (h) Provide continuing medical education regarding  
21 patient safety to practicing physicians, nurses, and other  
22 health care providers.

23 (i) Engage in other activities that improve health  
24 care quality, improve the diagnosis and treatment of diseases  
25 and medical conditions, increase the efficiency of the  
26 delivery of health care services, increase administrative  
27 efficiency, and increase access to quality health care  
28 services.

29 (3) The agency shall also consider ways in which a  
30 Patient Safety Authority could facilitate the development of  
31

1 no-fault demonstration projects as a means of reducing and  
2 preventing medical errors and promoting patient safety.

3 (4) The agency shall seek information and advice from  
4 and consult with hospitals, physicians, other health care  
5 providers, attorneys, consumers, and individuals involved with  
6 and knowledgeable about patient safety and quality-of-care  
7 initiatives.

8 (5) In evaluating the operation of a Patient Safety  
9 Authority, the agency shall determine the costs of  
10 implementing and administering an authority and suggest  
11 funding sources and mechanisms. At a minimum, the entity  
12 should:

13 1. Be designed and operated by an individual or entity  
14 with demonstrated expertise in health care quality data and  
15 systems analysis, health information management, systems  
16 thinking and analysis, human factors analysis, and  
17 identification of latent and active errors.

18 2. Include procedures for ensuring its  
19 confidentiality, timeliness, and independence.

20 (6) The agency shall complete its study and issue a  
21 report to the Legislature by February 1, 2004. In its report,  
22 the agency shall include specific findings, recommendations,  
23 and proposed legislation.

24 Section 37. The Office of Program Policy Analysis and  
25 Government Accountability and the Office of the Auditor  
26 General must jointly conduct an audit of the Department of  
27 Health's health care practitioner disciplinary process and  
28 closed claims that are filed with the department under section  
29 627.912, Florida Statutes. The Office of Program Policy  
30 Analysis and Government Accountability and the Office of the  
31

1 Auditor General shall submit a report to the Legislature by  
2 January 1, 2005.

3           Section 38. No later than September 1, 2003, the  
4 Department of Health shall convene a workgroup to study the  
5 current healthcare practitioner disciplinary process. The  
6 workgroup shall include a representative of the Administrative  
7 Law section of The Florida Bar, a representative of the Health  
8 Law section of The Florida Bar, a representative of the  
9 Florida Medical Association, a representative of the Florida  
10 Osteopathic Medical Association, a representative of the  
11 Florida Dental Association, a member of the Florida Board of  
12 Medicine who has served on the probable cause panel, a member  
13 of the Board of Osteopathic Medicine who has served on the  
14 probable cause panel, and a member of the Board of Dentistry  
15 who has served on the probable cause panel. The workgroup  
16 shall also include one consumer member of the Board of  
17 Medicine. The Department of Health shall present the findings  
18 and recommendations to the Governor, the President of the  
19 Senate, and the Speaker of the House of Representatives no  
20 later than January 1, 2004. Each sponsoring organization shall  
21 assume the costs of its representative.

22           Section 39. Subsections (2) and (3) of section  
23 624.462, Florida Statutes, are amended to read:

24           624.462 Commercial self-insurance funds.--

25           (2) As used in ss. 624.460-624.488, "commercial  
26 self-insurance fund" or "fund" means a group of members,  
27 operating individually and collectively through a trust or  
28 corporation, that must be:

29           (a) Established by:

30           1. A not-for-profit trade association, industry  
31 association, or professional association of employers or



1 professionals which has a constitution or bylaws, which is  
2 incorporated under the laws of this state, and which has been  
3 organized for purposes other than that of obtaining or  
4 providing insurance and operated in good faith for a  
5 continuous period of 1 year;

6         2. A self-insurance trust fund organized pursuant to  
7 s. 627.357 and maintained in good faith for a continuous  
8 period of 1 year for purposes other than that of obtaining or  
9 providing insurance pursuant to this section. Each member of  
10 a commercial self-insurance trust fund established pursuant to  
11 this subsection must maintain membership in the self-insurance  
12 trust fund organized pursuant to s. 627.357; ~~or~~

13         3. A group of 10 or more health care providers, as  
14 defined in s. 627.351(4)(h), for purposes of providing medical  
15 malpractice coverage; or

16         ~~4.3.~~ A not-for-profit group comprised of no less than  
17 10 condominium associations as defined in s. 718.103(2), which  
18 is incorporated under the laws of this state, which restricts  
19 its membership to condominium associations only, and which has  
20 been organized and maintained in good faith for a continuous  
21 period of 1 year for purposes other than that of obtaining or  
22 providing insurance.

23         (b)1. In the case of funds established pursuant to  
24 subparagraph (a)2. or subparagraph (a)4.~~subparagraph (a)3.~~,  
25 operated pursuant to a trust agreement by a board of trustees  
26 which shall have complete fiscal control over the fund and  
27 which shall be responsible for all operations of the fund.  
28 The majority of the trustees shall be owners, partners,  
29 officers, directors, or employees of one or more members of  
30 the fund. The trustees shall have the authority to approve  
31 applications of members for participation in the fund and to

1 contract with an authorized administrator or servicing company  
2 to administer the day-to-day affairs of the fund.

3 2. In the case of funds established pursuant to  
4 subparagraph (a)1. or subparagraph (a)3., operated pursuant to  
5 a trust agreement by a board of trustees or as a corporation  
6 by a board of directors which board shall:

7 a. Be responsible to members of the fund or  
8 beneficiaries of the trust or policyholders of the  
9 corporation;

10 b. Appoint independent certified public accountants,  
11 legal counsel, actuaries, and investment advisers as needed;

12 c. Approve payment of dividends to members;

13 d. Approve changes in corporate structure; and

14 e. Have the authority to contract with an  
15 administrator authorized under s. 626.88 to administer the  
16 day-to-day affairs of the fund including, but not limited to,  
17 marketing, underwriting, billing, collection, claims  
18 administration, safety and loss prevention, reinsurance,  
19 policy issuance, accounting, regulatory reporting, and general  
20 administration. The fees or compensation for services under  
21 such contract shall be comparable to the costs for similar  
22 services incurred by insurers writing the same lines of  
23 insurance, or where available such expenses as filed by  
24 boards, bureaus, and associations designated by insurers to  
25 file such data. A majority of the trustees or directors shall  
26 be owners, partners, officers, directors, or employees of one  
27 or more members of the fund.

28 (3) Each member of a commercial self-insurance trust  
29 fund established pursuant to this section, except a fund  
30 established pursuant to subparagraph (2)(a)3., must maintain  
31 membership in the association or self-insurance trust fund

1 established under s. 627.357. Membership in a not-for-profit  
2 trade association, industry association, or professional  
3 association of employers or professionals for the purpose of  
4 obtaining or providing insurance shall be in accordance with  
5 the constitution or bylaws of the association, and the dues,  
6 fees, or other costs of membership shall not be different for  
7 members obtaining insurance from the commercial self-insurance  
8 fund. The association shall not be liable for any actions of  
9 the fund nor shall it have any responsibility for establishing  
10 or enforcing any policy of the commercial self-insurance fund.  
11 Fees, services, and other aspects of the relationship between  
12 the association and the fund shall be subject to contractual  
13 agreement.

14 Section 40. Paragraph (a) of subsection (6) of section  
15 627.062, Florida Statutes, as amended by section 1064 of  
16 chapter 2003-261, Laws of Florida, is amended, and subsections  
17 (7) and (8) are added to that section, to read:

18 627.062 Rate standards.--

19 (6)(a) After any action with respect to a rate filing  
20 that constitutes agency action for purposes of the  
21 Administrative Procedure Act, except for a rate filing for  
22 medical malpractice, an insurer may, in lieu of demanding a  
23 hearing under s. 120.57, require arbitration of the rate  
24 filing. Arbitration shall be conducted by a board of  
25 arbitrators consisting of an arbitrator selected by the  
26 department, an arbitrator selected by the insurer, and an  
27 arbitrator selected jointly by the other two arbitrators. Each  
28 arbitrator must be certified by the American Arbitration  
29 Association. A decision is valid only upon the affirmative  
30 vote of at least two of the arbitrators. No arbitrator may be  
31 an employee of any insurance regulator or regulatory body or

1 of any insurer, regardless of whether or not the employing  
2 insurer does business in this state. The department and the  
3 insurer must treat the decision of the arbitrators as the  
4 final approval of a rate filing. Costs of arbitration shall be  
5 paid by the insurer.

6 (7)(a) The provisions of this subsection apply only  
7 with respect to rates for medical malpractice insurance and  
8 shall control to the extent of any conflict with other  
9 provisions of this section.

10 (b) Any portion of a judgment entered or settlement  
11 paid as a result of a statutory or common law, bad-faith  
12 action and any portion of a judgment entered which awards  
13 punitive damages against an insurer may not be included in the  
14 insurer's rate base, and shall not be used to justify a rate  
15 or rate change. Any common law bad-faith action identified as  
16 such, any portion of a settlement entered as a result of a  
17 statutory or common law action, or any portion of a settlement  
18 wherein an insurer agrees to pay specific punitive damages may  
19 not be used to justify a rate or rate change. The portion of  
20 the taxable costs and attorney's fees which is identified as  
21 being related to the bad faith and punitive damages in these  
22 judgments and settlements may not be included in the insurer's  
23 rate base and may not be utilized to justify a rate or rate  
24 change.

25 (c) Upon reviewing a rate filing and determining  
26 whether the rate is excessive, inadequate, or unfairly  
27 discriminatory, the office shall consider, in accordance with  
28 generally accepted and reasonable actuarial techniques, past  
29 and present prospective loss experience, either using loss  
30 experience solely for this state or giving greater credibility

31

1 to this state's loss data after applying actuarially sound  
2 methods of assigning credibility to such data.

3 (d) Rates shall be deemed excessive if, among other  
4 standards established by this section, the rate structure  
5 provides for replenishment of reserves or surpluses from  
6 premiums when the replenishment is attributable to investment  
7 losses.

8 (e) The insurer must apply a discount or surcharge  
9 based on the health care provider's loss experience or shall  
10 establish an alternative method giving due consideration to  
11 the provider's loss experience. The insurer must include in  
12 the filing a copy of the surcharge or discount schedule or a  
13 description of the alternative method used, and must provide a  
14 copy of such schedule or description, as approved by the  
15 office, to policyholders at the time of renewal and to  
16 prospective policyholders at the time of application for  
17 coverage.

18 (f) Each medical malpractice insurer must make a rate  
19 filing under this section, sworn to by at least two executive  
20 officers of the insurer, at least once each calendar year.

21 (8)(a)1. No later than 60 days after the effective  
22 date of medical malpractice legislation enacted during the  
23 2003 Special Session D of the Florida Legislature, the office  
24 shall calculate a presumed factor that reflects the impact  
25 that the changes contained in such legislation will have on  
26 rates for medical malpractice insurance and shall issue a  
27 notice informing all insurers writing medical malpractice  
28 coverage of such presumed factor. In determining the presumed  
29 factor, the office shall use generally accepted actuarial  
30 techniques and standards provided in this section in  
31 determining the expected impact on losses, expenses, and

1 investment income of the insurer. To the extent that the  
2 operation of a provision of medical malpractice legislation  
3 enacted during the 2003 Special Session D of the Florida  
4 Legislature is stayed pending a constitutional challenge, the  
5 impact of that provision shall not be included in the  
6 calculation of a presumed factor under this subparagraph.

7       2. No later than 60 days after the office issues its  
8 notice of the presumed rate change factor under subparagraph  
9 1., each insurer writing medical malpractice coverage in this  
10 state shall submit to the office a rate filing for medical  
11 malpractice insurance, which will take effect no later than  
12 January 1, 2004, and apply retroactively to policies issued or  
13 renewed on or after the effective date of medical malpractice  
14 legislation enacted during the 2003 Special Session D of the  
15 Florida Legislature. Except as authorized under paragraph (b),  
16 the filing shall reflect an overall rate reduction at least as  
17 great as the presumed factor determined under subparagraph 1.  
18 With respect to policies issued on or after the effective date  
19 of such legislation and prior to the effective date of the  
20 rate filing required by this subsection, the office shall  
21 order the insurer to make a refund of the amount that was  
22 charged in excess of the rate that is approved.

23       (b) Any insurer or rating organization that contends  
24 that the rate provided for in paragraph (a) is excessive,  
25 inadequate, or unfairly discriminatory shall separately state  
26 in its filing the rate it contends is appropriate and shall  
27 state with specificity the factors or data that it contends  
28 should be considered in order to produce such appropriate  
29 rate. The insurer or rating organization shall be permitted to  
30 use all of the generally accepted actuarial techniques  
31 provided in this section in making any filing pursuant to this

1 subsection. The office shall review each such exception and  
2 approve or disapprove it prior to use. It shall be the  
3 insurer's burden to actuarially justify any deviations from  
4 the rates required to be filed under paragraph (a). The  
5 insurer making a filing under this paragraph shall include in  
6 the filing the expected impact of medical malpractice  
7 legislation enacted during the 2003 Special Session D of the  
8 Florida Legislature on losses, expenses, and rates.

9 (c) If any provision of medical malpractice  
10 legislation enacted during the 2003 Special Session D of the  
11 Florida Legislature is held invalid by a court of competent  
12 jurisdiction, the office shall permit an adjustment of all  
13 medical malpractice rates filed under this section to reflect  
14 the impact of such holding on such rates so as to ensure that  
15 the rates are not excessive, inadequate, or unfairly  
16 discriminatory.

17 (d) Rates approved on or before July 1, 2003, for  
18 medical malpractice insurance shall remain in effect until the  
19 effective date of a new rate filing approved under this  
20 subsection.

21 (e) The calculation and notice by the office of the  
22 presumed factor pursuant to paragraph (a) is not an order or  
23 rule that is subject to chapter 120. If the office enters into  
24 a contract with an independent consultant to assist the office  
25 in calculating the presumed factor, such contract shall not be  
26 subject to the competitive solicitation requirements of s.  
27 287.057.

28 Section 41. The Office of Program Policy Analysis and  
29 Government Accountability shall study the feasibility and  
30 merits of authorizing the Public Counsel to examine insurance  
31 rate filings for medical malpractice submitted to the Office

1 of Insurance Regulation, to make recommendations to the office  
2 regarding such rate filings, and to represent the public in  
3 any hearing related to such rate filings. The study must  
4 include an evaluation of the effectiveness of the current  
5 authority of the Office of the Insurance Consumer Advocate to  
6 perform such functions and comparable functions exercised in  
7 other states.

8           Section 42. Subsections (6) and (10) of section  
9 627.357, Florida Statutes, as amended by section 1107 of  
10 chapter 2003-261, Laws of Florida, are amended to read:

11           627.357 Medical malpractice self-insurance.--

12           (6) The commission shall adopt rules to implement this  
13 section, including rules that ensure that a trust fund remains  
14 solvent and maintains a sufficient reserve to cover contingent  
15 liabilities under subsection (7) in the event of its  
16 dissolution.

17           ~~(10) A self-insurance fund may not be formed under~~  
18 ~~this section after October 1, 1992.~~

19           Section 43. Effective October 1, 2003, section  
20 627.4147, Florida Statutes, is amended to read:

21           627.4147 Medical malpractice insurance contracts.--

22           (1) In addition to any other requirements imposed by  
23 law, each self-insurance policy as authorized under s. 627.357  
24 or s. 624.462 or insurance policy providing coverage for  
25 claims arising out of the rendering of, or the failure to  
26 render, medical care or services, including those of the  
27 Florida Medical Malpractice Joint Underwriting Association,  
28 shall include:

29           (a) A clause requiring the insured to cooperate fully  
30 in the review process prescribed under s. 766.106 if a notice  
31



1 of intent to file a claim for medical malpractice is made  
2 against the insured.

3 (b)1. Except as provided in subparagraph 2., a clause  
4 authorizing the insurer or self-insurer to determine, to make,  
5 and to conclude, without the permission of the insured, any  
6 offer of admission of liability and for arbitration pursuant  
7 to s. 766.106, settlement offer, or offer of judgment, if the  
8 offer is within the policy limits. It is against public policy  
9 for any insurance or self-insurance policy to contain a clause  
10 giving the insured the exclusive right to veto any offer for  
11 admission of liability and for arbitration made pursuant to s.  
12 766.106, settlement offer, or offer of judgment, when such  
13 offer is within the policy limits. However, any offer of  
14 admission of liability, settlement offer, or offer of judgment  
15 made by an insurer or self-insurer shall be made in good faith  
16 and in the best interests of the insured.

17 2.a. With respect to dentists licensed under chapter  
18 466, a clause clearly stating whether or not the insured has  
19 the exclusive right to veto any offer of admission of  
20 liability and for arbitration pursuant to s. 766.106,  
21 settlement offer, or offer of judgment if the offer is within  
22 policy limits. An insurer or self-insurer shall not make or  
23 conclude, without the permission of the insured, any offer of  
24 admission of liability and for arbitration pursuant to s.  
25 766.106, settlement offer, or offer of judgment, if such offer  
26 is outside the policy limits. However, any offer for admission  
27 of liability and for arbitration made under s. 766.106,  
28 settlement offer, or offer of judgment made by an insurer or  
29 self-insurer shall be made in good faith and in the best  
30 interest of the insured.

31

1           b. If the policy contains a clause stating the insured  
2 does not have the exclusive right to veto any offer or  
3 admission of liability and for arbitration made pursuant to s.  
4 766.106, settlement offer or offer of judgment, the insurer or  
5 self-insurer shall provide to the insured or the insured's  
6 legal representative by certified mail, return receipt  
7 requested, a copy of the final offer of admission of liability  
8 and for arbitration made pursuant to s. 766.106, settlement  
9 offer or offer of judgment and at the same time such offer is  
10 provided to the claimant. A copy of any final agreement  
11 reached between the insurer and claimant shall also be  
12 provided to the insurer or his or her legal representative by  
13 certified mail, return receipt requested not more than 10 days  
14 after affecting such agreement.

15           (c) A clause requiring the insurer or self-insurer to  
16 notify the insured no less than 90 ~~60~~ days prior to the  
17 effective date of cancellation of the policy or contract and,  
18 in the event of a determination by the insurer or self-insurer  
19 not to renew the policy or contract, to notify the insured no  
20 less than 90 ~~60~~ days prior to the end of the policy or  
21 contract period. If cancellation or nonrenewal is due to  
22 nonpayment or loss of license, 10 days' notice is required.

23           (d) A clause requiring the insurer or self-insurer to  
24 notify the insured no less than 60 days prior to the effective  
25 date of a rate increase. The provisions of s. 627.4133 shall  
26 apply to such notice and to the failure of the insurer to  
27 provide such notice to the extent not in conflict with this  
28 section.

29           (2) Each insurer covered by this section may require  
30 the insured to be a member in good standing, i.e., not subject  
31 to expulsion or suspension, of a duly recognized state or

1 local professional society of health care providers which  
2 maintains a medical review committee. No professional society  
3 shall expel or suspend a member solely because he or she  
4 participates in a health maintenance organization licensed  
5 under part I of chapter 641.

6 (3) This section shall apply to all policies issued or  
7 renewed after October 1, 2003 ~~1985~~.

8 Section 44. Section 627.41495, Florida Statutes, is  
9 created to read:

10 627.41495 Public notice of medical malpractice rate  
11 filings.--

12 (1) Upon the filing of a proposed rate change by a  
13 medical malpractice insurer or self-insurance fund, which  
14 filing would result in an average statewide increase of 25  
15 percent or more, pursuant to standards determined by the  
16 office, the insurer or self-insurance fund shall mail notice  
17 of such filing to each of its policyholders or members.

18 (2) The rate filing shall be available for public  
19 inspection.

20 Section 45. Section 627.912, Florida Statutes, as  
21 amended by section 1226 of chapter 2003-261, Laws of Florida,  
22 is amended to read:

23 627.912 Professional liability claims and actions;  
24 reports by insurers and health care providers; annual report  
25 by office.--

26 (1)(a) Each self-insurer authorized under s. 627.357  
27 and each commercial self-insurance fund authorized under s.  
28 624.462, authorized insurer, surplus lines insurer, risk  
29 retention group, and ~~or~~ joint underwriting association  
30 providing professional liability insurance to a practitioner  
31 of medicine licensed under chapter 458, to a practitioner of

1 osteopathic medicine licensed under chapter 459, to a  
2 podiatric physician licensed under chapter 461, to a dentist  
3 licensed under chapter 466, to a hospital licensed under  
4 chapter 395, to a crisis stabilization unit licensed under  
5 part IV of chapter 394, to a health maintenance organization  
6 certificated under part I of chapter 641, to clinics included  
7 in chapter 390, or to an ambulatory surgical center as defined  
8 in s. 395.002, and each insurer providing professional  
9 liability insurance or to a member of The Florida Bar shall  
10 report ~~in duplicate~~ to the office any claim or action for  
11 damages for personal injuries claimed to have been caused by  
12 error, omission, or negligence in the performance of such  
13 insured's professional services or based on a claimed  
14 performance of professional services without consent, if the  
15 claim resulted in:

- 16       1.(a) A final judgment in any amount.  
17       2.(b) A settlement in any amount.  
18       3. A final disposition of a medical malpractice claim  
19 resulting in no indemnity payment on behalf of the insured.  
20       (b) Each health care practitioner and health care  
21 facility listed in paragraph (a) must report any claim or  
22 action for damages as described in paragraph (a), if the claim  
23 is not otherwise required to be reported by an insurer or  
24 other insuring entity.

25  
26 Reports under this subsection shall be filed with the office  
27 ~~and, if the insured party is licensed under chapter 458,~~  
28 ~~chapter 459, chapter 461, or chapter 466, with the Department~~  
29 ~~of Health, no later than 30 days following the occurrence of~~  
30 ~~any event listed in paragraph (a) or paragraph (b). The~~  
31 ~~Department of Health shall review each report and determine~~

1 ~~whether any of the incidents that resulted in the claim~~  
2 ~~potentially involved conduct by the licensee that is subject~~  
3 ~~to disciplinary action, in which case the provisions of s.~~  
4 ~~456.073 shall apply. The Department of Health, as part of the~~  
5 ~~annual report required by s. 456.026, shall publish annual~~  
6 ~~statistics, without identifying licensees, on the reports it~~  
7 ~~receives, including final action taken on such reports by the~~  
8 ~~Department of Health or the appropriate regulatory board.~~

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

11 (a) The name, address, health care provider  
12 professional license number, and specialty coverage of the  
13 insured.

14 (b) The insured's policy number.

15 (c) The date of the occurrence which created the  
16 claim.

17 (d) The date the claim was reported to the insurer or  
18 self-insurer.

19 (e) The name and address of the injured person. This  
20 information is confidential and exempt from the provisions of  
21 s. 119.07(1), and must not be disclosed by the office without  
22 the injured person's consent, except for disclosure by the  
23 office to the Department of Health. This information may be  
24 used by the office for purposes of identifying multiple or  
25 duplicate claims arising out of the same occurrence.

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

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

28 (h) The total number, and names, and health care  
29 provider professional license numbers of all defendants  
30 involved in the claim.

31

1 (i) The date and amount of judgment or settlement, if  
2 any, including the itemization of the verdict, ~~together with a~~  
3 ~~copy of the settlement or judgment.~~

4 (j) In the case of a settlement, such information as  
5 the office may require with regard to the injured person's  
6 incurred and anticipated medical expense, wage loss, and other  
7 expenses.

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

10 (l) The date and reason for final disposition, if no  
11 judgment or settlement.

12 (m) A summary of the occurrence which created the  
13 claim, which shall include:

14 1. The name of the institution, if any, and the  
15 location within the institution at which the injury occurred.

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

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

20 4. The operation, diagnostic, or treatment procedure  
21 causing the injury.

22 5. A description of the principal injury giving rise  
23 to the claim.

24 6. The safety management steps that have been taken by  
25 the insured to make similar occurrences or injuries less  
26 likely in the future.

27 (n) Any other information required by the commission,  
28 by rule, office to assist the office in its analysis and  
29 evaluation of ~~analyze and evaluate~~ the nature, causes,  
30 location, cost, and damages involved in professional liability  
31 cases.

1           (3) ~~Upon request by the Department of Health, The~~  
2 office shall provide the Department of Health with electronic  
3 access to all ~~any~~ information received under this section  
4 related to persons licensed under chapter 458, chapter 459,  
5 chapter 461, or chapter 466. The Department of Health shall  
6 review each report and determine whether any of the incidents  
7 that resulted in the claim potentially involved conduct by the  
8 licensee that is subject to disciplinary action, in which case  
9 the provisions of s. 456.073 shall apply. ~~For purposes of~~  
10 ~~safety management, the office shall annually provide the~~  
11 ~~Department of Health with copies of the reports in cases~~  
12 ~~resulting in an indemnity being paid to the claimants.~~

13           (4) There shall be no liability on the part of, and no  
14 cause of action of any nature shall arise against, any person  
15 or entity ~~insurer~~ reporting hereunder or its agents or  
16 employees or the office or its employees for any action taken  
17 by them under this section. The office shall ~~may~~ impose a  
18 fine of \$250 per day per case, but not to exceed a total of  
19 \$10,000 ~~\$1,000~~ per case, against an insurer, commercial  
20 self-insurance fund, medical malpractice self-insurance fund,  
21 or risk retention group that violates the requirements of this  
22 section, except that the office may impose a fine of \$250 per  
23 day per case, not to exceed a total of \$1,000 per case,  
24 against an insurer providing professional liability insurance  
25 to a member of The Florida Bar, which insurer violates the  
26 provisions of this section. If a healthcare practitioner or  
27 health care facility violates the requirements of this  
28 section, it shall be considered a violation of the chapter or  
29 act under which the practitioner or facility is licensed and  
30 shall be grounds for a fine or disciplinary action as such  
31

1 other violations of the chapter or act.~~This subsection~~  
2 ~~applies to claims accruing on or after October 1, 1997.~~

3 (5) Any self-insurance program established under s.  
4 1004.24 shall report ~~in duplicate~~ to the office any claim or  
5 action for damages for personal injuries claimed to have been  
6 caused by error, omission, or negligence in the performance of  
7 professional services provided by the state university board  
8 of trustees through an employee or agent of the state  
9 university board of trustees, including practitioners of  
10 medicine licensed under chapter 458, practitioners of  
11 osteopathic medicine licensed under chapter 459, podiatric  
12 physicians licensed under chapter 461, and dentists licensed  
13 under chapter 466, or based on a claimed performance of  
14 professional services without consent if the claim resulted in  
15 a final judgment in any amount, or a settlement in any amount.  
16 The reports required by this subsection shall contain the  
17 information required by subsection (3) and the name, address,  
18 and specialty of the employee or agent of the state university  
19 board of trustees whose performance or professional services  
20 is alleged in the claim or action to have caused personal  
21 injury.

22 (6)(a) The office shall prepare statistical summaries  
23 of the closed claims reports for medical malpractice filed  
24 pursuant to this section, for each year that such reports have  
25 been filed, and make such summaries and closed claim reports  
26 available on the Internet by July 1, 2005.

27 (b) The office shall prepare an annual report by  
28 October 1 of each year, beginning in 2004, which shall be  
29 available on the Internet, which summarizes and analyzes the  
30 closed claim reports for medical malpractice filed pursuant to  
31 this section and the annual financial reports filed by



1 insurers writing medical malpractice insurance in this state.  
2 The report must include an analysis of closed claim reports of  
3 prior years, in order to show trends in the frequency and  
4 amount of claims payments, the itemization of economic and  
5 noneconomic damages, the nature of the errant conduct, and  
6 such other information as the office determines is  
7 illustrative of the trends in closed claims. The report must  
8 also analyze the state of the medical malpractice insurance  
9 market in Florida, including an analysis of the financial  
10 reports of those insurers with a combined market share of at  
11 least 80 percent of the net written premium in the state for  
12 medical malpractice for the prior calendar year, including a  
13 loss ratio analysis for medical malpractice written in Florida  
14 and a profitability analysis of each such insurer. The report  
15 shall compare the ratios for medical malpractice in Florida  
16 compared to other states, based on financial reports filed  
17 with the National Association of Insurance Commissioners and  
18 such other information as the office deems relevant.

19 (c) The annual report shall also include a summary of  
20 the rate filings for medical malpractice which have been  
21 approved by the office for the prior calendar year, including  
22 an analysis of the trend of direct and incurred losses as  
23 compared to prior years.

24 (7) The commission may adopt rules requiring persons  
25 and entities required to report pursuant to this section to  
26 also report data related to the frequency and severity of open  
27 claims for the reporting period, amounts reserved for incurred  
28 claims, changes in reserves from the previous reporting  
29 period, and other information considered relevant to the  
30 ability of the office to monitor losses and claims development  
31 in the Florida medical malpractice insurance market.

1           Section 46. Subsections (11), (12), and (17) of  
2 section 641.19, Florida Statutes, as amended by section 1555  
3 of chapter 2003-261, Laws of Florida, are amended to read:

4           641.19 Definitions.--As used in this part, the term:

5           (11) "Health maintenance contract" means any contract  
6 entered into by a health maintenance organization with a  
7 subscriber or group of subscribers to provide coverage for  
8 comprehensive health care services in exchange for a prepaid  
9 per capita or prepaid aggregate fixed sum.

10           (12) "Health maintenance organization" means any  
11 organization authorized under this part which:

12           (a) Provides, through arrangements with other persons,  
13 emergency care, inpatient hospital services, physician care  
14 including care provided by physicians licensed under chapters  
15 458, 459, 460, and 461, ambulatory diagnostic treatment, and  
16 preventive health care services.†

17           (b) Provides, either directly or through arrangements  
18 with other persons, health care services to persons enrolled  
19 with such organization, on a prepaid per capita or prepaid  
20 aggregate fixed-sum basis.†

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

24           (d) Provides physician services, by physicians  
25 licensed under chapters 458, 459, 460, and 461, directly  
26 through physicians who are either employees or partners of  
27 such organization or under arrangements with a physician or  
28 any group of physicians.†~~and~~

29           (e) If offering services through a managed care  
30 system, has ~~then the managed care system must be~~ a system in  
31 which a primary physician licensed under chapter 458, ~~or~~

1 chapter 459, chapter ~~and chapters~~ 460, or chapter ~~and~~ 461 is  
2 designated for each subscriber upon request of a subscriber  
3 requesting service by a physician licensed under any of those  
4 chapters, and is responsible for coordinating the health care  
5 of the subscriber of the respectively requested service and  
6 for referring the subscriber to other providers of the same  
7 discipline when necessary. Each female subscriber may select  
8 as her primary physician an obstetrician/gynecologist who has  
9 agreed to serve as a primary physician and is in the health  
10 maintenance organization's provider network.

11

12 Except in cases in which the health care provider is an  
13 employee of the health maintenance organization, the fact that  
14 the health maintenance organization arranges for the provision  
15 of health care services under this chapter does not create an  
16 actual agency, apparent agency, or employer-employee  
17 relationship between the health care provider and the health  
18 maintenance organization for purposes of vicarious liability  
19 for the medical negligence of the health care provider.

20 (17) "Subscriber" means an entity or individual who  
21 has contracted, or on whose behalf a contract has been entered  
22 into, with a health maintenance organization for health care  
23 coverage services ~~services~~ or other persons who also receive health  
24 care coverage services ~~services~~ as a result of the contract.

25 Section 47. Subsection (3) of section 641.51, Florida  
26 Statutes, is amended to read:

27 641.51 Quality assurance program; second medical  
28 opinion requirement.--

29 (3) The health maintenance organization shall not have  
30 the right to control the professional judgment of a physician  
31 licensed under chapter 458, chapter 459, chapter 460, or

1 chapter 461 concerning the proper course of treatment of a  
2 subscriber ~~shall not be subject to modification by the~~  
3 ~~organization or its board of directors, officers, or~~  
4 ~~administrators, unless the course of treatment prescribed is~~  
5 ~~inconsistent with the prevailing standards of medical practice~~  
6 ~~in the community.~~ However, this subsection shall not be  
7 considered to restrict a utilization management program  
8 established by an organization or to affect an organization's  
9 decision as to payment for covered services. Except in cases  
10 in which the health care provider is an employee of the health  
11 maintenance organization, the health maintenance organization  
12 shall not be vicariously liable for the medical negligence of  
13 the health care provider, whether such claim is alleged under  
14 a theory of actual agency, apparent agency, or  
15 employer-employee relationship.

16 Section 48. Section 766.102, Florida Statutes, is  
17 amended to read:

18 766.102 Medical negligence; standards of recovery;  
19 expert witness.--

20 (1) In any action for recovery of damages based on the  
21 death or personal injury of any person in which it is alleged  
22 that such death or injury resulted from the negligence of a  
23 health care provider as defined in s. 766.202(4)~~s.~~  
24 ~~768.50(2)(b)~~, the claimant shall have the burden of proving by  
25 the greater weight of evidence that the alleged actions of the  
26 health care provider represented a breach of the prevailing  
27 professional standard of care for that health care provider.  
28 The prevailing professional standard of care for a given  
29 health care provider shall be that level of care, skill, and  
30 treatment which, in light of all relevant surrounding  
31

1 circumstances, is recognized as acceptable and appropriate by  
2 reasonably prudent similar health care providers.

3 ~~(2)(a) If the health care provider whose negligence is~~  
4 ~~claimed to have created the cause of action is not certified~~  
5 ~~by the appropriate American board as being a specialist, is~~  
6 ~~not trained and experienced in a medical specialty, or does~~  
7 ~~not hold himself or herself out as a specialist, a "similar~~  
8 ~~health care provider" is one who:~~

9 ~~1. Is licensed by the appropriate regulatory agency of~~  
10 ~~this state;~~

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

13 ~~3. Practices in the same or similar medical community.~~

14 ~~(b) If the health care provider whose negligence is~~  
15 ~~claimed to have created the cause of action is certified by~~  
16 ~~the appropriate American board as a specialist, is trained and~~  
17 ~~experienced in a medical specialty, or holds himself or~~  
18 ~~herself out as a specialist, a "similar health care provider"~~  
19 ~~is one who:~~

20 ~~1. Is trained and experienced in the same specialty;~~  
21 ~~and~~

22 ~~2. Is certified by the appropriate American board in~~  
23 ~~the same specialty.~~

24  
25 ~~However, if any health care provider described in this~~  
26 ~~paragraph is providing treatment or diagnosis for a condition~~  
27 ~~which is not within his or her specialty, a specialist trained~~  
28 ~~in the treatment or diagnosis for that condition shall be~~  
29 ~~considered a "similar health care provider."~~

30 ~~(c) The purpose of this subsection is to establish a~~  
31 ~~relative standard of care for various categories and~~

1 ~~classifications of health care providers. Any health care~~  
2 ~~provider may testify as an expert in any action if he or she:~~

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

5 ~~2. Is not a similar health care provider pursuant to~~  
6 ~~paragraph (a) or paragraph (b) but, to the satisfaction of the~~  
7 ~~court, possesses sufficient training, experience, and~~  
8 ~~knowledge as a result of practice or teaching in the specialty~~  
9 ~~of the defendant or practice or teaching in a related field of~~  
10 ~~medicine, so as to be able to provide such expert testimony as~~  
11 ~~to the prevailing professional standard of care in a given~~  
12 ~~field of medicine. Such training, experience, or knowledge~~  
13 ~~must be as a result of the active involvement in the practice~~  
14 ~~or teaching of medicine within the 5-year period before the~~  
15 ~~incident giving rise to the claim.~~

16 (2)(3)(a) If the injury is claimed to have resulted  
17 from the negligent affirmative medical intervention of the  
18 health care provider, the claimant must, in order to prove a  
19 breach of the prevailing professional standard of care, show  
20 that the injury was not within the necessary or reasonably  
21 foreseeable results of the surgical, medicinal, or diagnostic  
22 procedure constituting the medical intervention, if the  
23 intervention from which the injury is alleged to have resulted  
24 was carried out in accordance with the prevailing professional  
25 standard of care by a reasonably prudent similar health care  
26 provider.

27 (b) The provisions of this subsection shall apply only  
28 when the medical intervention was undertaken with the informed  
29 consent of the patient in compliance with the provisions of s.  
30 766.103.

31

1           ~~(3)(4)~~ The existence of a medical injury shall not  
2 create any inference or presumption of negligence against a  
3 health care provider, and the claimant must maintain the  
4 burden of proving that an injury was proximately caused by a  
5 breach of the prevailing professional standard of care by the  
6 health care provider. However, the discovery of the presence  
7 of a foreign body, such as a sponge, clamp, forceps, surgical  
8 needle, or other paraphernalia commonly used in surgical,  
9 examination, or diagnostic procedures, shall be prima facie  
10 evidence of negligence on the part of the health care  
11 provider.

12           ~~(4)(5)~~ The Legislature is cognizant of the changing  
13 trends and techniques for the delivery of health care in this  
14 state and the discretion that is inherent in the diagnosis,  
15 care, and treatment of patients by different health care  
16 providers. The failure of a health care provider to order,  
17 perform, or administer supplemental diagnostic tests shall not  
18 be actionable if the health care provider acted in good faith  
19 and with due regard for the prevailing professional standard  
20 of care.

21           (5) A person may not give expert testimony concerning  
22 the prevailing professional standard of care unless that  
23 person is a licensed health care provider and meets the  
24 following criteria:

25           (a) If the health care provider against whom or on  
26 whose behalf the testimony is offered is a specialist, the  
27 expert witness must:

28           1. Specialize in the same specialty as the health care  
29 provider against whom or on whose behalf the testimony is  
30 offered; or specialize in a similar specialty that includes  
31 the evaluation, diagnosis, or treatment of the medical

1 condition that is the subject of the claim and have prior  
2 experience treating similar patients; and

3 2. Have devoted professional time during the 3 years  
4 immediately preceding the date of the occurrence that is the  
5 basis for the action to:

6 a. The active clinical practice of, or consulting with  
7 respect to, the same or similar specialty that includes the  
8 evaluation, diagnosis, or treatment of the medical condition  
9 that is the subject of the claim and have prior experience  
10 treating similar patients;

11 b. Instruction of students in an accredited health  
12 professional school or accredited residency or clinical  
13 research program in the same or similar specialty; or

14 c. A clinical research program that is affiliated with  
15 an accredited health professional school or accredited  
16 residency or clinical research program in the same or similar  
17 speciality.

18 (b) If the health care provider against whom or on  
19 whose behalf the testimony is offered is a general  
20 practitioner, the expert witness must have devoted  
21 professional time during the 5 years immediately preceding the  
22 date of the occurrence that is the basis for the action to:

23 1. The active clinical practice or consultation as a  
24 general practitioner;

25 2. The instruction of students in an accredited health  
26 professional school or accredited residency program in the  
27 general practice of medicine; or

28 3. A clinical research program that is affiliated with  
29 an accredited medical school or teaching hospital and that is  
30 in the general practice of medicine.

31



1           (c) If the health care provider against whom or on  
2 whose behalf the testimony is offered is a health care  
3 provider other than a specialist or a general practitioner,  
4 the expert witness must have devoted professional time during  
5 the 3 years immediately preceding the date of the occurrence  
6 that is the basis for the action to:

7           1. The active clinical practice of, or consulting with  
8 respect to, the same or similar health profession as the  
9 health care provider against whom or on whose behalf the  
10 testimony is offered;

11           2. The instruction of students in an accredited health  
12 professional school or accredited residency program in the  
13 same or similar health profession in which the health care  
14 provider against whom or on whose behalf the testimony is  
15 offered; or

16           3. A clinical research program that is affiliated with  
17 an accredited medical school or teaching hospital and that is  
18 in the same or similar health profession as the health care  
19 provider against whom or on whose behalf the testimony is  
20 offered.

21           (6) A physician licensed under chapter 458 or chapter  
22 459 who qualifies as an expert witness under subsection (5)  
23 and who, by reason of active clinical practice or instruction  
24 of students, has knowledge of the applicable standard of care  
25 for nurses, nurse practitioners, certified registered nurse  
26 anesthetists, certified registered nurse midwives, physician  
27 assistants, or other medical support staff may give expert  
28 testimony in a medical negligence action with respect to the  
29 standard of care of such medical support staff.

30           (7) Notwithstanding subsection (5), in a medical  
31 negligence action against a hospital, a health care facility,

1 or medical facility, a person may give expert testimony on the  
2 appropriate standard of care as to administrative and other  
3 nonclinical issues if the person has substantial knowledge, by  
4 virtue of his or her training and experience, concerning the  
5 standard of care among hospitals, health care facilities, or  
6 medical facilities of the same type as the hospital, health  
7 care facility, or medical facility whose acts or omissions are  
8 the subject of the testimony and which are located in the same  
9 or similar communities at the time of the alleged act giving  
10 rise to the cause of action.

11 (8) If a health care provider described in subsection  
12 (5), subsection (6), or subsection (7) is providing  
13 evaluation, treatment, or diagnosis for a condition that is  
14 not within his or her specialty, a specialist trained in the  
15 evaluation, treatment, or diagnosis for that condition shall  
16 be considered a similar health care provider.

17 (9)~~(6)~~(a) In any action for damages involving a claim  
18 of negligence against a physician licensed under chapter 458,  
19 osteopathic physician licensed under chapter 459, podiatric  
20 physician licensed under chapter 461, or chiropractic  
21 physician licensed under chapter 460 providing emergency  
22 medical services in a hospital emergency department, the court  
23 shall admit expert medical testimony only from physicians,  
24 osteopathic physicians, podiatric physicians, and chiropractic  
25 physicians who have had substantial professional experience  
26 within the preceding 5 years while assigned to provide  
27 emergency medical services in a hospital emergency department.

28 (b) For the purposes of this subsection:

29 1. The term "emergency medical services" means those  
30 medical services required for the immediate diagnosis and  
31 treatment of medical conditions which, if not immediately

1 diagnosed and treated, could lead to serious physical or  
2 mental disability or death.

3           2. "Substantial professional experience" shall be  
4 determined by the custom and practice of the manner in which  
5 emergency medical coverage is provided in hospital emergency  
6 departments in the same or similar localities where the  
7 alleged negligence occurred.

8           (10) In any action alleging medical negligence, an  
9 expert witness may not testify on a contingency fee basis.

10           (11) Any attorney who proffers a person as an expert  
11 witness pursuant to this section must certify that such person  
12 has not been found guilty of fraud or perjury in any  
13 jurisdiction.

14           (12) This section does not limit the power of the  
15 trial court to disqualify or qualify an expert witness on  
16 grounds other than the qualifications in this section.

17           Section 49. Section 766.106, Florida Statutes, is  
18 amended to read:

19           766.106 Notice before filing action for medical  
20 negligence ~~malpractice~~; presuit screening period; offers for  
21 admission of liability and for arbitration; informal  
22 discovery; review.--

23           (1) DEFINITIONS.--As used in this section, the term:

24           (a) "Claim for medical negligence ~~malpractice~~" or  
25 "claim for medical malpractice" means a claim, arising out of  
26 the rendering of, or the failure to render, medical care or  
27 services.

28           (b) "Self-insurer" means any self-insurer authorized  
29 under s. 627.357 or any uninsured prospective defendant.

30           (c) "Insurer" includes the Joint Underwriting  
31 Association.

1           (2) PRESUIT NOTICE.--  
2           (a) After completion of presuit investigation pursuant  
3 to s. 766.203(2)~~s. 766.203~~ and prior to filing a complaint  
4 ~~claim~~ for medical negligence malpractice, a claimant shall  
5 notify each prospective defendant by certified mail, return  
6 receipt requested, of intent to initiate litigation for  
7 medical negligence malpractice. Notice to each prospective  
8 defendant must include, if available, a list of all known  
9 health care providers seen by the claimant for the injuries  
10 complained of subsequent to the alleged act of negligence, all  
11 known health care providers during the 2-year period prior to  
12 the alleged act of negligence who treated or evaluated the  
13 claimant, and copies of all of the medical records relied upon  
14 by the expert in signing the affidavit. The requirement of  
15 providing the list of known health care providers may not  
16 serve as grounds for imposing sanctions for failure to provide  
17 presuit discovery.  
18           (b) Following the initiation of a suit alleging  
19 medical negligence malpractice with a court of competent  
20 jurisdiction, and service of the complaint upon a defendant,  
21 the claimant shall provide a copy of the complaint to the  
22 Department of Health and, if the complaint involves a facility  
23 licensed under chapter 395, the Agency for Health Care  
24 Administration. The requirement of providing the complaint to  
25 the Department of Health or the Agency for Health Care  
26 Administration does not impair the claimant's legal rights or  
27 ability to seek relief for his or her claim. The Department of  
28 Health or the Agency for Health Care Administration shall  
29 review each incident that is the subject of the complaint and  
30 determine whether it involved conduct by a licensee which is  
31 potentially subject to disciplinary action, in which case, for

1 a licensed health care practitioner,the provisions of s.  
2 456.073 apply and, for a licensed facility, the provisions of  
3 part I of chapter 395 apply.

4 (3) PRESUIT INVESTIGATION BY PROSPECTIVE DEFENDANT.--

5 (a) No suit may be filed for a period of 90 days after  
6 notice is mailed to any prospective defendant. During the  
7 90-day period, the prospective defendant or the defendant's  
8 insurer or self-insurer shall conduct a review as provided in  
9 s. 766.203(3)to determine the liability of the defendant.

10 Each insurer or self-insurer shall have a procedure for the  
11 prompt investigation, review, and evaluation of claims during  
12 the 90-day period. This procedure shall include one or more  
13 of the following:

14 1. Internal review by a duly qualified claims  
15 adjuster;

16 2. Creation of a panel comprised of an attorney  
17 knowledgeable in the prosecution or defense of medical  
18 negligence ~~malpractice~~ actions, a health care provider trained  
19 in the same or similar medical specialty as the prospective  
20 defendant, and a duly qualified claims adjuster;

21 3. A contractual agreement with a state or local  
22 professional society of health care providers, which maintains  
23 a medical review committee;

24 4. Any other similar procedure which fairly and  
25 promptly evaluates the pending claim.

26  
27 Each insurer or self-insurer shall investigate the claim in  
28 good faith, and both the claimant and prospective defendant  
29 shall cooperate with the insurer in good faith. If the  
30 insurer requires, a claimant shall appear before a pretrial  
31 screening panel or before a medical review committee and shall

1 submit to a physical examination, if required. Unreasonable  
2 failure of any party to comply with this section justifies  
3 dismissal of claims or defenses. There shall be no civil  
4 liability for participation in a pretrial screening procedure  
5 if done without intentional fraud.

6 (b) At or before the end of the 90 days, the  
7 prospective defendant or the prospective defendant's insurer  
8 or self-insurer shall provide the claimant with a response:

- 9 1. Rejecting the claim;
- 10 2. Making a settlement offer; or
- 11 3. Making an offer to arbitrate in which liability is  
12 deemed admitted and arbitration will be held only ~~of admission~~  
13 ~~of liability and for arbitration~~ on the issue of damages. This  
14 offer may be made contingent upon a limit of general damages.

15 (c) The response shall be delivered to the claimant if  
16 not represented by counsel or to the claimant's attorney, by  
17 certified mail, return receipt requested. Failure of the  
18 prospective defendant or insurer or self-insurer to reply to  
19 the notice within 90 days after receipt shall be deemed a  
20 final rejection of the claim for purposes of this section.

21 (d) Within 30 days of receipt of a response by a  
22 prospective defendant, insurer, or self-insurer to a claimant  
23 represented by an attorney, the attorney shall advise the  
24 claimant in writing of the response, including:

- 25 1. The exact nature of the response under paragraph  
26 (b).
- 27 2. The exact terms of any settlement offer, or  
28 admission of liability and offer of arbitration on damages.
- 29 3. The legal and financial consequences of acceptance  
30 or rejection of any settlement offer, or admission of  
31 liability, including the provisions of this section.

1           4. An evaluation of the time and likelihood of  
2 ultimate success at trial on the merits of the claimant's  
3 action.

4           5. An estimation of the costs and attorney's fees of  
5 proceeding through trial.

6           (4) SERVICE OF PRESUIT NOTICE AND TOLLING.--The notice  
7 of intent to initiate litigation shall be served within the  
8 time limits set forth in s. 95.11. However, during the 90-day  
9 period, the statute of limitations is tolled as to all  
10 potential defendants. Upon stipulation by the parties, the  
11 90-day period may be extended and the statute of limitations  
12 is tolled during any such extension. Upon receiving notice of  
13 termination of negotiations in an extended period, the  
14 claimant shall have 60 days or the remainder of the period of  
15 the statute of limitations, whichever is greater, within which  
16 to file suit.

17           (5) DISCOVERY AND ADMISSIBILITY.--No statement,  
18 discussion, written document, report, or other work product  
19 generated by the presuit screening process is discoverable or  
20 admissible in any civil action for any purpose by the opposing  
21 party. All participants, including, but not limited to,  
22 physicians, investigators, witnesses, and employees or  
23 associates of the defendant, are immune from civil liability  
24 arising from participation in the presuit screening process.

25           (6) INFORMAL DISCOVERY.--

26           (a) Upon receipt by a prospective defendant of a  
27 notice of claim, the parties shall make discoverable  
28 information available without formal discovery. Failure to do  
29 so is grounds for dismissal of claims or defenses ultimately  
30 asserted.

31

1           ~~(b)(7)~~ Informal discovery may be used by a party to  
2 obtain unsworn statements, the production of documents or  
3 things, and physical and mental examinations, as follows:

4           1.(a) Unsworn statements.--Any party may require other  
5 parties to appear for the taking of an unsworn statement. Such  
6 statements may be used only for the purpose of presuit  
7 screening and are not discoverable or admissible in any civil  
8 action for any purpose by any party. A party desiring to take  
9 the unsworn statement of any party must give reasonable notice  
10 in writing to all parties. The notice must state the time and  
11 place for taking the statement and the name and address of the  
12 party to be examined. Unless otherwise impractical, the  
13 examination of any party must be done at the same time by all  
14 other parties. Any party may be represented by counsel at the  
15 taking of an unsworn statement. An unsworn statement may be  
16 recorded electronically, stenographically, or on videotape.  
17 The taking of unsworn statements is subject to the provisions  
18 of the Florida Rules of Civil Procedure and may be terminated  
19 for abuses.

20           2.(b) Documents or things.--Any party may request  
21 discovery of documents or things. The documents or things  
22 must be produced, at the expense of the requesting party,  
23 within 20 days after the date of receipt of the request. A  
24 party is required to produce discoverable documents or things  
25 within that party's possession or control. Medical records  
26 shall be produced as provided in s.766.204.

27           3.(c) Physical and mental examinations.--A prospective  
28 defendant may require an injured ~~prospective~~ claimant to  
29 appear for examination by an appropriate health care provider.  
30 The prospective defendant shall give reasonable notice in  
31 writing to all parties as to the time and place for



1 examination. Unless otherwise impractical, a ~~prospective~~  
2 claimant is required to submit to only one examination on  
3 behalf of all potential defendants. The practicality of a  
4 single examination must be determined by the nature of the  
5 ~~potential~~ claimant's condition, as it relates to the liability  
6 of each prospective ~~potential~~ defendant. Such examination  
7 report is available to the parties and their attorneys upon  
8 payment of the reasonable cost of reproduction and may be used  
9 only for the purpose of presuit screening. Otherwise, such  
10 examination report is confidential and exempt from the  
11 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
12 Constitution.

13 4. Written questions.--Any party may request answers  
14 to written questions, the number of which may not exceed 30,  
15 including subparts. A response must be made within 20 days  
16 after receipt of the questions.

17 5. Medical information release.--The claimant must  
18 execute a medical information release that allows a  
19 prospective defendant or his or her legal representative to  
20 take unsworn statements of the claimant's treating physicians.  
21 The statements must be limited to those areas that are  
22 potentially relevant to the claim of personal injury or  
23 wrongful death. Subject to the procedural requirements of  
24 subparagraph 1., a prospective defendant may take unsworn  
25 statements from a claimant's treating physicians. Reasonable  
26 notice and opportunity to be heard must be given to the  
27 claimant or the claimant's legal representative. The claimant  
28 or claimant's legal representative has the right to attend the  
29 taking of such unsworn statements.

30 (c)(8) Each request for and notice concerning informal  
31 presuit discovery pursuant to this section must be in writing,

1 and a copy thereof must be sent to all parties. Such a  
2 request or notice must bear a certificate of service  
3 identifying the name and address of the person to whom the  
4 request or notice is served, the date of the request or  
5 notice, and the manner of service thereof.

6 (d)~~(9)~~ Copies of any documents produced in response to  
7 the request of any party must be served upon all other  
8 parties. The party serving the documents or his or her  
9 attorney shall identify, in a notice accompanying the  
10 documents, the name and address of the parties to whom the  
11 documents were served, the date of service, the manner of  
12 service, and the identity of the document served.

13 (7) SANCTIONS.--Failure to cooperate on the part of  
14 any party during the presuit investigation may be grounds to  
15 strike any claim made, or defense raised, by such party in  
16 suit.

17 ~~(10) If a prospective defendant makes an offer to~~  
18 ~~admit liability and for arbitration on the issue of damages,~~  
19 ~~the claimant has 50 days from the date of receipt of the offer~~  
20 ~~to accept or reject it. The claimant shall respond in writing~~  
21 ~~to the insurer or self-insurer by certified mail, return~~  
22 ~~receipt requested. If the claimant rejects the offer, he or~~  
23 ~~she may then file suit. Acceptance of the offer of admission~~  
24 ~~of liability and for arbitration waives recourse to any other~~  
25 ~~remedy by the parties, and the claimant's written acceptance~~  
26 ~~of the offer shall so state.~~

27 ~~(a) If rejected, the offer to admit liability and for~~  
28 ~~arbitration on damages is not admissible in any subsequent~~  
29 ~~litigation. Upon rejection of the offer to admit liability~~  
30 ~~and for arbitration, the claimant has 60 days or the remainder~~  
31

1 ~~of the period of the statute of limitations, whichever period~~  
2 ~~is greater, in which to file suit.~~

3 ~~(b) If the offer to admit liability and for~~  
4 ~~arbitration on damages is accepted, the parties have 30 days~~  
5 ~~from the date of acceptance to settle the amount of damages.~~  
6 ~~If the parties have not reached agreement after 30 days, they~~  
7 ~~shall proceed to binding arbitration to determine the amount~~  
8 ~~of damages as follows:~~

9 ~~1. Each party shall identify his or her arbitrator to~~  
10 ~~the opposing party not later than 35 days after the date of~~  
11 ~~acceptance.~~

12 ~~2. The two arbitrators shall, within 1 week after they~~  
13 ~~are notified of their appointment, agree upon a third~~  
14 ~~arbitrator. If they cannot agree on a third arbitrator,~~  
15 ~~selection of the third arbitrator shall be in accordance with~~  
16 ~~chapter 682.~~

17 ~~3. Not later than 30 days after the selection of a~~  
18 ~~third arbitrator, the parties shall file written arguments~~  
19 ~~with each arbitrator and with each other indicating total~~  
20 ~~damages.~~

21 ~~4. Unless otherwise determined by the arbitration~~  
22 ~~panel, within 10 days after the receipt of such arguments,~~  
23 ~~unless the parties have agreed to a settlement, there shall be~~  
24 ~~a 1-day hearing, at which formal rules of evidence and the~~  
25 ~~rules of civil procedure shall not apply, during which each~~  
26 ~~party shall present evidence as to damages. Each party shall~~  
27 ~~identify the total dollar amount which he or she feels should~~  
28 ~~be awarded.~~

29 ~~5. No later than 2 weeks after the hearing, the~~  
30 ~~arbitrators shall notify the parties of their determination of~~

31

1 ~~the total award. The court shall have jurisdiction to enforce~~  
2 ~~any award or agreement for periodic payment of future damages.~~

3 ~~(11) If there is more than one prospective defendant,~~  
4 ~~the claimant shall provide the notice of claim and follow the~~  
5 ~~procedures in this section for each defendant. If an offer to~~  
6 ~~admit liability and for arbitration is accepted, the~~  
7 ~~procedures shall be initiated separately for each defendant,~~  
8 ~~unless multiple offers are made by more than one prospective~~  
9 ~~defendant and are accepted and the parties agree to~~  
10 ~~consolidated arbitration. Any agreement for consolidated~~  
11 ~~arbitration shall be filed with the court. No offer by any~~  
12 ~~prospective defendant to admit liability and for arbitration~~  
13 ~~is admissible in any civil action.~~

14 ~~(12) To the extent not inconsistent with this part,~~  
15 ~~the provisions of chapter 682, the Florida Arbitration Code,~~  
16 ~~shall be applicable to such proceedings.~~

17 Section 50. Section 766.108, Florida Statutes, is  
18 amended to read:

19 766.108 Mandatory mediation and mandatory settlement  
20 conference in medical negligence malpractice actions.--

21 (1) Within 120 days after the suit is filed, unless  
22 such period is extended by mutual agreement of all parties,  
23 all parties shall attend in-person mandatory mediation in  
24 accordance with s. 44.102 if binding arbitration under s.  
25 766.207 has not been agreed to by the parties. The Florida  
26 Rules of Civil Procedure shall apply to mediation held  
27 pursuant to this section.

28 (2)(a)(1) In any action for damages based on personal  
29 injury or wrongful death arising out of medical malpractice,  
30 whether in tort or contract, the court shall require a  
31

1 settlement conference at least 3 weeks before the date set for  
2 trial.

3 (b)~~(2)~~ Attorneys who will conduct the trial, parties,  
4 and persons with authority to settle shall attend the  
5 settlement conference held before the court unless excused by  
6 the court for good cause.

7 Section 51. Subsection (2) of section 766.1115,  
8 Florida Statutes, as amended by section 1900 of chapter  
9 2003-261, Laws of Florida, is amended to read:

10 766.1115 Health care providers; creation of agency  
11 relationship with governmental contractors.--

12 (2) FINDINGS AND INTENT.--The Legislature finds that a  
13 significant proportion of the residents of this state who are  
14 uninsured or Medicaid recipients are unable to access needed  
15 health care because health care providers fear the increased  
16 risk of medical negligence ~~malpractice~~ liability. It is the  
17 intent of the Legislature that access to medical care for  
18 indigent residents be improved by providing governmental  
19 protection to health care providers who offer free quality  
20 medical services to underserved populations of the state.  
21 Therefore, it is the intent of the Legislature to ensure that  
22 health care professionals who contract to provide such  
23 services as agents of the state are provided sovereign  
24 immunity.

25 Section 52. Section 766.112, Florida Statutes, is  
26 amended to read:

27 766.112 Comparative fault.--

28 (1) Notwithstanding anything in law to the contrary,  
29 in an action for damages for personal injury or wrongful death  
30 arising out of medical negligence ~~malpractice~~, whether in  
31 contract or tort, when an apportionment of damages pursuant to

1 this section is attributed to a teaching hospital as defined  
2 in s. 408.07, the court shall enter judgment against the  
3 teaching hospital on the basis of such party's percentage of  
4 fault and not on the basis of the doctrine of joint and  
5 several liability.

6 (2) In an action for damages for personal injury or  
7 wrongful death arising out of medical negligence ~~malpractice~~,  
8 whether in contract or tort, when an apportionment of damages  
9 pursuant to s. 768.81 is attributed to a board of trustees of  
10 a state university, the court shall enter judgment against the  
11 board of trustees on the basis of the board's percentage of  
12 fault and not on the basis of the doctrine of joint and  
13 several liability. The sole remedy available to a claimant to  
14 collect a judgment or settlement against a board of trustees,  
15 subject to the provisions of this subsection, shall be  
16 pursuant to s. 768.28.

17 Section 53. Section 766.113, Florida Statutes, is  
18 amended to read:

19 766.113 Settlement agreements; prohibition on  
20 restricting disclosure to Division of Medical Quality  
21 Assurance.--

22 (1) Each final settlement agreement relating to  
23 medical negligence shall include the following statement: "The  
24 decision to settle a case may reflect the economic  
25 practicalities pertaining to the cost of litigation and is  
26 not, alone, an admission that the insured failed to meet the  
27 required standard of care applicable to the patient's  
28 treatment. The decision to settle a case may be made by the  
29 insurance company without consulting its client for input,  
30 unless otherwise provided by the insurance policy."

31

1           (2) A settlement agreement involving a claim for  
2 medical negligence ~~malpractice~~ shall not prohibit any party to  
3 the agreement from discussing with or reporting to the  
4 Division of Medical Quality Assurance the events giving rise  
5 to the claim.

6           Section 54. Section 766.118, Florida Statutes, is  
7 created to read:

8           766.118 Determination of noneconomic damages.--

9           (1) DEFINITIONS.--As used in this section, the term:

10           (a) "Catastrophic injury" means a permanent impairment  
11 constituted by:

12           1. Spinal cord injury involving severe paralysis of an  
13 arm, a leg, or the trunk;

14           2. Amputation of an arm, a hand, a foot, or a leg  
15 involving the effective loss of use of that appendage;

16           3. Severe brain or closed-head injury as evidenced by:

17           a. Severe sensory or motor disturbances;

18           b. Severe communication disturbances;

19           c. Severe complex integrated disturbances of cerebral  
20 function;

21           d. Severe episodic neurological disorders; or

22           e. Other severe brain and closed-head injury

23 conditions at least as severe in nature as any condition  
24 provided in sub-subparagraphs a.-d.;

25           4. Second-degree or third-degree burns of 25 percent  
26 or more of the total body surface or third-degree burns of 5  
27 percent or more to the face and hands;

28           5. Blindness, defined as a complete and total loss of  
29 vision; or

30           6. Loss of reproductive organs which results in an  
31 inability to procreate.

1           (b) "Noneconomic damages" means noneconomic damages as  
2 defined in s. 766.202(8).

3           (c) "Practitioner" means any person licensed under  
4 chapter 458, chapter 459, chapter 460, chapter 461, chapter  
5 462, chapter 463, chapter 466, chapter 467, or chapter 486 or  
6 certified under s. 464.012. "Practitioner" also means any  
7 association, corporation, firm, partnership, or other business  
8 entity under which such practitioner practices or any employee  
9 of such practitioner or entity acting in the scope of his or  
10 her employment. For the purpose of determining the limitations  
11 on noneconomic damages set forth in this section, the term  
12 "practitioner" includes any person or entity for whom a  
13 practitioner is vicariously liable and, except as provided in  
14 this section, any person or entity whose liability is based  
15 solely on such person or entity being vicariously liable for  
16 the actions of a practitioner.

17           (2) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE  
18 OF PRACTITIONERS.--

19           (a) With respect to a cause of action for personal  
20 injury or wrongful death arising from medical negligence of  
21 practitioners, regardless of the number of such practitioner  
22 defendants, noneconomic damages shall not exceed \$500,000 per  
23 claimant. No practitioner shall be liable for more than  
24 \$500,000 in noneconomic damages, regardless of the number of  
25 claimants.

26           (b) Notwithstanding paragraph (a), if the negligence  
27 resulted in a permanent vegetative state or death, the total  
28 noneconomic damages recoverable from all practitioners,  
29 regardless of the number of claimants, under this paragraph  
30 shall not exceed \$1 million. In cases that do not involve  
31 death or permanent vegetative state, the patient injured by



1 medical negligence may recover noneconomic damages not to  
2 exceed \$1 million if:

3 1. The trial court determines that a manifest  
4 injustice would occur unless increased noneconomic damages are  
5 awarded, based on a finding that because of the special  
6 circumstances of the case, the noneconomic harm sustained by  
7 the injured patient was particularly severe; and

8 2. The trier of fact determines that the defendant's  
9 negligence caused a catastrophic injury to the patient.

10 (c) The total noneconomic damages recoverable by all  
11 claimants from all practitioner defendants under this  
12 subsection shall not exceed \$1 million in the aggregate.

13 (3) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE  
14 OF NONPRACTITIONER DEFENDANTS.--

15 (a) With respect to a cause of action for personal  
16 injury or wrongful death arising from medical negligence of  
17 nonpractitioners, regardless of the number of such  
18 nonpractitioner defendants, noneconomic damages shall not  
19 exceed \$750,000 per claimant.

20 (b) Notwithstanding paragraph (a), if the negligence  
21 resulted in a permanent vegetative state or death, the total  
22 noneconomic damages recoverable by such claimant from all  
23 nonpractitioner defendants under this paragraph shall not  
24 exceed \$1.5 million. The patient injured by medical negligence  
25 of a nonpractitioner defendant may recover noneconomic damages  
26 not to exceed \$1.5 million if:

27 1. The trial court determines that a manifest  
28 injustice would occur unless increased noneconomic damages are  
29 awarded, based on a finding that because of the special  
30 circumstances of the case, the noneconomic harm sustained by  
31 the injured patient was particularly severe; and

1           2. The trier of fact determines that the defendant's  
2 negligence caused a catastrophic injury to the patient.

3           (c) Nonpractitioner defendants are subject to the cap  
4 on noneconomic damages provided in this subsection regardless  
5 of the theory of liability, including vicarious liability.

6           (d) The total noneconomic damages recoverable by all  
7 claimants from all nonpractitioner defendants under this  
8 subsection shall not exceed \$1.5 million in the aggregate.

9           (4) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE  
10 OF PRACTITIONERS PROVIDING EMERGENCY SERVICES AND

11 CARE.--Notwithstanding subsections (2) and (3), with respect  
12 to a cause of action for personal injury or wrongful death  
13 arising from medical negligence of practitioners providing  
14 emergency services and care, as defined in s. 395.002(10), or  
15 providing services as provided in s. 401.265 to persons with  
16 whom the practitioner does not have a then-existing health  
17 care patient-practitioner relationship for that medical  
18 condition:

19           (a) Regardless of the number of such practitioner  
20 defendants, noneconomic damages shall not exceed \$150,000 per  
21 claimant.

22           (b) Notwithstanding paragraph (a), the total  
23 noneconomic damages recoverable by all claimants from all such  
24 practitioners shall not exceed \$300,000.

25           (5) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE  
26 OF NONPRACTITIONER DEFENDANTS PROVIDING EMERGENCY SERVICES AND

27 CARE.--Notwithstanding subsections (2) and (3), with respect  
28 to a cause of action for personal injury or wrongful death  
29 arising from medical negligence of defendants other than  
30 practitioners providing emergency services and care pursuant  
31 to obligations imposed by ss. 395.1041 and 401.45 to persons

1 with whom the practitioner does not have a then-existing  
2 health care patient-practitioner relationship for that medical  
3 condition:

4 (a) Regardless of the number of such nonpractitioner  
5 defendants, noneconomic damages shall not exceed \$750,000 per  
6 claimant.

7 (b) Notwithstanding paragraph (a), the total  
8 noneconomic damages recoverable by all claimants from all such  
9 nonpractitioner defendants shall not exceed \$1.5 million.

10 (c) Nonpractitioner defendants may receive a full  
11 setoff for payments made by practitioner defendants.

12 (6) SETOFF.--In any case in which the jury verdict for  
13 noneconomic damages exceeds the limits established by this  
14 section, the trial court shall reduce the award for  
15 noneconomic damages within the same category of defendants in  
16 accordance with this section after making any reduction for  
17 comparative fault as required by s. 768.81 but before  
18 application of a setoff in accordance with ss. 46.015 and  
19 768.041. In the event of a prior settlement or settlements  
20 involving one or more defendants subject to the limitations of  
21 the same subsection applicable to a defendant remaining at  
22 trial, the court shall make such reductions within the same  
23 category of defendants as are necessary to ensure that the  
24 total amount of noneconomic damages recovered by the claimant  
25 does not exceed the aggregate limit established by the  
26 applicable subsection. This subsection is not intended to  
27 change current law relating to the setoff of economic damages.

28 (7) ACTIONS GOVERNED BY SOVEREIGN IMMUNITY LAW.--This  
29 section shall not apply to actions governed by s. 768.28.

30 Section 55. The Legislature finds and declares it to  
31 be of vital importance that emergency services and care be

1 provided by hospitals, physicians, and emergency medical  
2 services providers to every person in need of such care. The  
3 Legislature finds that providers of emergency medical services  
4 and care are critical elements in responding to disaster and  
5 emergency situations that might affect our local communities,  
6 state, and country. The Legislature recognizes the importance  
7 of maintaining a viable system of providing for the emergency  
8 medical needs of residents of this state and visitors to this  
9 state. The Legislature and the Federal Government have  
10 required such providers of emergency medical services and care  
11 to provide emergency services and care to all persons who  
12 present themselves to hospitals seeking such care. The  
13 Legislature has further mandated that prehospital emergency  
14 medical treatment or transport may not be denied by emergency  
15 medical services providers to persons who have or are likely  
16 to have an emergency medical condition. Such governmental  
17 requirements have imposed a unilateral obligation for  
18 providers of emergency medical services and care to provide  
19 services to all persons seeking emergency care without  
20 ensuring payment or other consideration for provision of such  
21 care. The Legislature also recognizes that providers of  
22 emergency medical services and care provide a significant  
23 amount of uncompensated emergency medical care in furtherance  
24 of such governmental interest. A significant proportion of the  
25 residents of this state who are uninsured or are Medicaid or  
26 Medicare recipients are unable to access needed health care  
27 because health care providers fear the increased risk of  
28 medical malpractice liability. Such patients, in order to  
29 obtain medical care, are frequently forced to seek care  
30 through providers of emergency medical services and care.  
31 Providers of emergency medical services and care in this state

1 have reported significant problems with both the availability  
2 and affordability of professional liability coverage. Medical  
3 malpractice liability insurance premiums have increased  
4 dramatically and a number of insurers have ceased providing  
5 medical malpractice coverage for emergency medical services  
6 and care in this state. This results in a functional  
7 unavailability of malpractice coverage for some providers of  
8 emergency medical services and care. The Legislature further  
9 finds that certain specialist physicians have resigned from  
10 serving on hospital staffs or have otherwise declined to  
11 provide on-call coverage to hospital emergency departments due  
12 to increased medical malpractice liability exposure created by  
13 treating such emergency department patients. It is the intent  
14 of the Legislature that hospitals, emergency medical services  
15 providers, and physicians be able to ensure that patients who  
16 might need emergency medical services treatment or  
17 transportation or who present themselves to hospitals for  
18 emergency medical services and care have access to such needed  
19 services.

20 Section 56. Section 766.1185, Florida Statutes, is  
21 created to read:

22 766.1185 Bad faith actions.--In all actions for bad  
23 faith against a medical malpractice insurer relating to  
24 professional liability insurance coverage for medical  
25 negligence, and in determining whether the insurer could and  
26 should have settled the claim within the policy limits had it  
27 acted fairly and honestly towards its insured with due regard  
28 for her or his interest, whether under statute or common law:

29 (1)(a) An insurer shall not be held in bad faith for  
30 failure to pay its policy limits if it tenders its policy

31

1 limits and meets other reasonable conditions of settlement by  
2 the earlier of either:

3 1. The 210th day after service of the complaint in the  
4 medical negligence action upon the insured. The time period  
5 specified in this subparagraph shall be extended by an  
6 additional 60 days if the court in the bad-faith action finds  
7 that, at any time during such period and after the 150th day  
8 after service of the complaint, the claimant provided new  
9 information previously unavailable to the insurer relating to  
10 the identity or testimony of any material witnesses or the  
11 identity of any additional claimants or defendants, if such  
12 disclosure materially alters the risk to the insured of an  
13 excess judgment; or

14 2. The 60th day after the conclusion of all of the  
15 following:

16 a. Deposition of all claimants named in the complaint  
17 or amended complaint.

18 b. Deposition of all defendants named in the complaint  
19 or amended complaint, including, in the case of a corporate  
20 defendant, deposition of a designated representative.

21 c. Deposition of all of the claimants' expert  
22 witnesses.

23 d. The initial disclosure of witnesses and production  
24 of documents.

25 e. Mediation as provided in s. 766.108.

26 (b) Either party may request that the court enter an  
27 order finding that the other party has unnecessarily or  
28 inappropriately delayed any of the events specified in  
29 subparagraph (a)2. for dilatory purposes. If the court finds  
30 that the claimant was responsible for such dilatory practices,  
31 subparagraph (a)1. shall not apply to the insurer's tendering

1 of policy limits. If the court finds that the defendant or  
2 insurer was responsible for such dilatory practices,  
3 subparagraph (a)2. shall not apply to the insurer's tendering  
4 of policy limits.

5 (c) If any party to an action alleging medical  
6 negligence amends its witness list after service of the  
7 complaint in such action, that party shall provide a copy of  
8 the amended witness list to the insurer of the defendant  
9 health care provider.

10 (d) The fact that the insurer did not tender policy  
11 limits during the time periods specified in this paragraph is  
12 not presumptive evidence that the insurer acted in bad faith.

13 (2) When subsection (1) does not apply, the trier of  
14 fact, in determining whether an insurer has acted in bad  
15 faith, shall consider:

16 (a) The insurer's willingness to negotiate with the  
17 claimant in anticipation of settlement.

18 (b) The propriety of the insurer's methods of  
19 investigating and evaluating the claim.

20 (c) Whether the insurer timely informed the insured of  
21 every offer to settle within the limits of coverage, the right  
22 to retain personal counsel, and the risk of litigation.

23 (d) Whether the insured denied liability or requested  
24 that the case be defended after the insurer fully advised the  
25 insured as to the facts and risks.

26 (e) Whether the claimant imposed any condition, other  
27 than the tender of the policy limits, on the settlement of the  
28 claim which was not reasonably achievable.

29 (f) Whether the claimant provided relevant information  
30 to the insurer on a timely basis.

31

1       (g) Whether there were multiple claimants seeking, in  
2 the aggregate, compensation in excess of policy limits from  
3 the defendant or the defendant's insurer.

4       (h) Whether the insured misrepresented material facts  
5 to the insurer or made material omissions of fact to the  
6 insurer.

7       (i) In addition to the foregoing the court shall allow  
8 consideration of such additional factors as the court  
9 determines to be relevant.

10       (3) The provisions of s. 624.155 shall be applicable  
11 in all cases brought pursuant to that section unless  
12 specifically controlled by this section.

13       (4) An insurer that tenders policy limits shall be  
14 entitled to a release of its insured if the claimant accepts  
15 the tender.

16       Section 57. Paragraphs (c) and (d) of subsection (1)  
17 of section 766.201, Florida Statutes, are amended to read:

18       766.201 Legislative findings and intent.--

19       (1) The Legislature makes the following findings:

20       (c) The average cost of a medical negligence  
21 ~~malpractice~~ claim has escalated in the past decade to the  
22 point where it has become imperative to control such cost in  
23 the interests of the public need for quality medical services.

24       (d) The high cost of medical negligence ~~malpractice~~  
25 claims in the state can be substantially alleviated by  
26 requiring early determination of the merit of claims, by  
27 providing for early arbitration of claims, thereby reducing  
28 delay and attorney's fees, and by imposing reasonable  
29 limitations on damages, while preserving the right of either  
30 party to have its case heard by a jury.

31



1 Section 58. Section 766.202, Florida Statutes, is  
2 amended to read:

3 766.202 Definitions; ss. 766.201-766.212.--As used in  
4 ss. 766.201-766.212, the term:

5 (1) "Claimant" means any person who has a cause of  
6 action for damages based on personal injury or wrongful death  
7 arising from medical negligence.

8 (2) "Collateral sources" means any payments made to  
9 the claimant, or made on his or her behalf, by or pursuant to:

10 (a) The United States Social Security Act; any  
11 federal, state, or local income disability act; or any other  
12 public programs providing medical expenses, disability  
13 payments, or other similar benefits, except as prohibited by  
14 federal law.

15 (b) Any health, sickness, or income disability  
16 insurance; automobile accident insurance that provides health  
17 benefits or income disability coverage; and any other similar  
18 insurance benefits, except life insurance benefits available  
19 to the claimant, whether purchased by him or her or provided  
20 by others.

21 (c) Any contract or agreement of any group,  
22 organization, partnership, or corporation to provide, pay for,  
23 or reimburse the costs of hospital, medical, dental, or other  
24 health care services.

25 (d) Any contractual or voluntary wage continuation  
26 plan provided by employers or by any other system intended to  
27 provide wages during a period of disability.

28 (3) "Economic damages" means financial losses that  
29 ~~which~~ would not have occurred but for the injury giving rise  
30 to the cause of action, including, but not limited to, past  
31 and future medical expenses and 80 percent of wage loss and

1 | loss of earning capacity to the extent the claimant is  
2 | entitled to recover such damages under general law, including  
3 | the Wrongful Death Act.

4 |       (4) "Health care provider" means any hospital,  
5 | ambulatory surgical center, or mobile surgical facility as  
6 | defined and licensed under chapter 395; a birth center  
7 | licensed under chapter 383; any person licensed under chapter  
8 | 458, chapter 459, chapter 460, chapter 461, chapter 462,  
9 | chapter 463, part I of chapter 464, chapter 466, chapter 467  
10 | or chapter 486; a clinical lab licensed under chapter 483; a  
11 | health maintenance organization certificated under part I of  
12 | chapter 641; a blood bank; a plasma center; an industrial  
13 | clinic; a renal dialysis facility; or a professional  
14 | association partnership, corporation, joint venture, or other  
15 | association for professional activity by health care  
16 | providers.

17 |       ~~(5)~~~~(4)~~ "Investigation" means that an attorney has  
18 | reviewed the case against each and every potential defendant  
19 | and has consulted with a medical expert and has obtained a  
20 | written opinion from said expert.

21 |       ~~(6)~~~~(5)~~ "Medical expert" means a person duly and  
22 | regularly engaged in the practice of his or her profession who  
23 | holds a health care professional degree from a university or  
24 | college and who meets the requirements of an expert witness as  
25 | set forth in s. 766.102 ~~has had special professional training~~  
26 | ~~and experience or one possessed of special health care~~  
27 | ~~knowledge or skill about the subject upon which he or she is~~  
28 | ~~called to testify or provide an opinion.~~

29 |       ~~(7)~~~~(6)~~ "Medical negligence" means medical malpractice,  
30 | whether grounded in tort or in contract.

31 |

1           ~~(8)(7)~~ "Noneconomic damages" means nonfinancial losses  
2 that which would not have occurred but for the injury giving  
3 rise to the cause of action, including pain and suffering,  
4 inconvenience, physical impairment, mental anguish,  
5 disfigurement, loss of capacity for enjoyment of life, and  
6 other nonfinancial losses to the extent the claimant is  
7 entitled to recover such damages under general law, including  
8 the Wrongful Death Act.

9           ~~(9)(8)~~ "Periodic payment" means provision for the  
10 structuring of future economic damages payments, in whole or  
11 in part, over a period of time, as follows:

12           (a) A specific finding of the dollar amount of  
13 periodic payments which will compensate for these future  
14 damages after offset for collateral sources shall be made.  
15 The total dollar amount of the periodic payments shall equal  
16 the dollar amount of all such future damages before any  
17 reduction to present value.

18           (b) The defendant shall be required to post a bond or  
19 security or otherwise to assure full payment of these damages  
20 awarded. A bond is not adequate unless it is written by a  
21 company authorized to do business in this state and is rated  
22 A+ by Best's. If the defendant is unable to adequately assure  
23 full payment of the damages, all damages, reduced to present  
24 value, shall be paid to the claimant in a lump sum. No bond  
25 may be canceled or be subject to cancellation unless at least  
26 60 days' advance written notice is filed with the court and  
27 the claimant. Upon termination of periodic payments, the  
28 security, or so much as remains, shall be returned to the  
29 defendant.

30           (c) The provision for payment of future damages by  
31 periodic payments shall specify the recipient or recipients of

1 the payments, the dollar amounts of the payments, the interval  
2 between payments, and the number of payments or the period of  
3 time over which payments shall be made.

4 Section 59. Section 766.2021, Florida Statutes, is  
5 created to read:

6 766.2021 Limitation on damages against insurers,  
7 prepaid limited health service organizations, health  
8 maintenance organizations, or prepaid health clinics.--An  
9 entity licensed or certified under chapter 624, chapter 636,  
10 or chapter 641 shall not be liable for the medical negligence  
11 of a health care provider with whom the licensed or certified  
12 entity has entered into a contract in any amount greater than  
13 the amount of damages that may be imposed by law directly upon  
14 the health care provider, and any suits against such entity  
15 shall be subject to all provisions and requirements of  
16 evidence in this chapter and other requirements imposed by law  
17 in connection with suits against health care providers for  
18 medical negligence.

19 Section 60. Section 766.203, Florida Statutes, is  
20 amended to read:

21 766.203 Presuit investigation of medical negligence  
22 claims and defenses by prospective parties.--

23 (1) Application of presuit investigation.--Presuit  
24 investigation of medical negligence claims and defenses  
25 pursuant to this section and ss. 766.204-766.206 shall apply  
26 to all medical negligence, ~~including dental negligence,~~ claims  
27 and defenses. This shall include:

28 (a) Rights of action under s. 768.19 and defenses  
29 thereto.

30  
31

1 (b) Rights of action involving the state or its  
2 agencies or subdivisions, or the officers, employees, or  
3 agents thereof, pursuant to s. 768.28 and defenses thereto.

4 (2) Presuit investigation by claimant.--Prior to  
5 issuing notification of intent to initiate medical negligence  
6 ~~malpractice~~ litigation pursuant to s. 766.106, the claimant  
7 shall conduct an investigation to ascertain that there are  
8 reasonable grounds to believe that:

9 (a) Any named defendant in the litigation was  
10 negligent in the care or treatment of the claimant; and

11 (b) Such negligence resulted in injury to the  
12 claimant.

13  
14 Corroboration of reasonable grounds to initiate medical  
15 negligence litigation shall be provided by the claimant's  
16 submission of a verified written medical expert opinion from a  
17 medical expert as defined in s. 766.202(5), at the time the  
18 notice of intent to initiate litigation is mailed, which  
19 statement shall corroborate reasonable grounds to support the  
20 claim of medical negligence.

21 (3) Presuit investigation by prospective  
22 defendant.--Prior to issuing its response to the claimant's  
23 notice of intent to initiate litigation, during the time  
24 period for response authorized pursuant to s. 766.106, the  
25 prospective defendant or the defendant's insurer or  
26 self-insurer shall conduct an investigation as provided in s.  
27 766.106(3) to ascertain whether there are reasonable grounds  
28 to believe that:

29 (a) The defendant was negligent in the care or  
30 treatment of the claimant; and

1           (b) Such negligence resulted in injury to the  
2 claimant.

3  
4 Corroboration of lack of reasonable grounds for medical  
5 negligence litigation shall be provided with any response  
6 rejecting the claim by the defendant's submission of a  
7 verified written medical expert opinion from a medical expert  
8 as defined in s. 766.202(5), at the time the response  
9 rejecting the claim is mailed, which statement shall  
10 corroborate reasonable grounds for lack of negligent injury  
11 sufficient to support the response denying negligent injury.

12           (4) Presuit medical expert opinion.--The medical  
13 expert opinions and statements required by this section are  
14 subject to discovery. The opinions shall specify whether any  
15 previous opinion by the same medical expert has been  
16 disqualified and if so the name of the court and the case  
17 number in which the ruling was issued.

18           Section 61. Section 766.206, Florida Statutes, is  
19 amended to read:

20           766.206 Presuit investigation of medical negligence  
21 claims and defenses by court.--

22           (1) After the completion of presuit investigation by  
23 the parties pursuant to s. 766.203 and any ~~informal~~ discovery  
24 pursuant to s. 766.106, any party may file a motion in the  
25 circuit court requesting the court to determine whether the  
26 opposing party's claim or denial rests on a reasonable basis.

27           (2) If the court finds that the notice of intent to  
28 initiate litigation mailed by the claimant is not in  
29 compliance with the reasonable investigation requirements of  
30 ss. 766.201-766.212, including a review of the claim and a  
31 verified written medical expert opinion by an expert witness

1 as defined in s. 766.202,the court shall dismiss the claim,  
2 and the person who mailed such notice of intent, whether the  
3 claimant or the claimant's attorney, shall be personally  
4 liable for all attorney's fees and costs incurred during the  
5 investigation and evaluation of the claim, including the  
6 reasonable attorney's fees and costs of the defendant or the  
7 defendant's insurer.

8 (3) If the court finds that the response mailed by a  
9 defendant rejecting the claim is not in compliance with the  
10 reasonable investigation requirements of ss. 766.201-766.212,  
11 including a review of the claim and a verified written medical  
12 expert opinion by an expert witness as defined in s. 766.202,  
13 the court shall strike the defendant's ~~pleading.response,~~ and  
14 The person who mailed such response, whether the defendant,  
15 the defendant's insurer, or the defendant's attorney, shall be  
16 personally liable for all attorney's fees and costs incurred  
17 during the investigation and evaluation of the claim,  
18 including the reasonable attorney's fees and costs of the  
19 claimant.

20 (4) If the court finds that an attorney for the  
21 claimant mailed notice of intent to initiate litigation  
22 without reasonable investigation, or filed a medical  
23 negligence claim without first mailing such notice of intent  
24 which complies with the reasonable investigation requirements,  
25 or if the court finds that an attorney for a defendant mailed  
26 a response rejecting the claim without reasonable  
27 investigation, the court shall submit its finding in the  
28 matter to The Florida Bar for disciplinary review of the  
29 attorney. Any attorney so reported three or more times within  
30 a 5-year period shall be reported to a circuit grievance  
31 committee acting under the jurisdiction of the Supreme Court.

1 If such committee finds probable cause to believe that an  
2 attorney has violated this section, such committee shall  
3 forward to the Supreme Court a copy of its finding.

4 (5)(a) If the court finds that the corroborating  
5 written medical expert opinion attached to any notice of claim  
6 or intent or to any response rejecting a claim lacked  
7 reasonable investigation or that the medical expert submitting  
8 the opinion did not meet the expert witness qualifications as  
9 set forth in s. 766.202(5), the court shall report the medical  
10 expert issuing such corroborating opinion to the Division of  
11 Medical Quality Assurance or its designee. If such medical  
12 expert is not a resident of the state, the division shall  
13 forward such report to the disciplining authority of that  
14 medical expert.

15 (b) The court shall ~~may~~ refuse to consider the  
16 testimony or opinion attached to any notice of intent or to  
17 any response rejecting a claim of such an expert who has been  
18 disqualified three times pursuant to this section.

19 Section 62. Subsection (7) of section 766.207, Florida  
20 Statutes, is amended to read:

21 766.207 Voluntary binding arbitration of medical  
22 negligence claims.--

23 (7) Arbitration pursuant to this section shall  
24 preclude recourse to any other remedy by the claimant against  
25 any participating defendant, and shall be undertaken with the  
26 understanding that damages shall be awarded as provided by  
27 general law, including the Wrongful Death Act, subject to the  
28 following limitations:

29 (a) Net economic damages shall be awardable,  
30 including, but not limited to, past and future medical  
31



1 expenses and 80 percent of wage loss and loss of earning  
2 capacity, offset by any collateral source payments.

3 (b) Noneconomic damages shall be limited to a maximum  
4 of \$250,000 per incident, and shall be calculated on a  
5 percentage basis with respect to capacity to enjoy life, so  
6 that a finding that the claimant's injuries resulted in a  
7 50-percent reduction in his or her capacity to enjoy life  
8 would warrant an award of not more than \$125,000 noneconomic  
9 damages.

10 (c) Damages for future economic losses shall be  
11 awarded to be paid by periodic payments pursuant to s.  
12 766.202(9)~~s. 766.202(8)~~ and shall be offset by future  
13 collateral source payments.

14 (d) Punitive damages shall not be awarded.

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

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

22 (g) The defendant shall pay all the costs of the  
23 arbitration proceeding and the fees of all the arbitrators  
24 other than the administrative law judge.

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

28 (i) The defendant's obligation to pay the claimant's  
29 damages shall be for the purpose of arbitration under this  
30 section only. A defendant's or claimant's offer to arbitrate  
31 shall not be used in evidence or in argument during any

1 subsequent litigation of the claim following the rejection  
2 thereof.

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

6 (k) Any offer by a claimant to arbitrate must be made  
7 to each defendant against whom the claimant has made a claim.  
8 Any offer by a defendant to arbitrate must be made to each  
9 claimant who has joined in the notice of intent to initiate  
10 litigation, as provided in s. 766.106. A defendant who  
11 rejects a claimant's offer to arbitrate shall be subject to  
12 the provisions of s. 766.209(3). A claimant who rejects a  
13 defendant's offer to arbitrate shall be subject to the  
14 provisions of s. 766.209(4).

15 (l) The hearing shall be conducted by all of the  
16 arbitrators, but a majority may determine any question of fact  
17 and render a final decision. The chief arbitrator shall  
18 decide all evidentiary matters.

19  
20 The provisions of this subsection shall not preclude  
21 settlement at any time by mutual agreement of the parties.

22 Section 63. Paragraph (a) of subsection (3) of section  
23 766.209, Florida Statutes, is amended to read:

24 766.209 Effects of failure to offer or accept  
25 voluntary binding arbitration.--

26 (3) If the defendant refuses a claimant's offer of  
27 voluntary binding arbitration:

28 (a) The claim shall proceed to trial ~~without~~  
29 ~~limitation on damages~~, and the claimant, upon proving medical  
30 negligence, shall be entitled to recover damages subject to  
31 the limitations in s. 766.118, prejudgment interest, and

1 reasonable attorney's fees up to 25 percent of the award  
2 reduced to present value.

3 Section 64. Section 768.0981, Florida Statutes, is  
4 created to read:

5 768.0981 Limitation on actions against insurers,  
6 prepaid limited health service organizations, health  
7 maintenance organizations, or prepaid health clinics.--An  
8 entity licensed or certified under chapter 624, chapter 636,  
9 or chapter 641 shall not be liable for the medical negligence  
10 of a health care provider with whom the licensed or certified  
11 entity has entered into a contract, other than an employee of  
12 such licensed or certified entity, unless the licensed or  
13 certified entity expressly directs or exercises actual control  
14 over the specific conduct that caused injury.

15 Section 65. Subsection (2) of section 768.13, Florida  
16 Statutes, is amended to read:

17 768.13 Good Samaritan Act; immunity from civil  
18 liability.--

19 (2)(a) Any person, including those licensed to  
20 practice medicine, who gratuitously and in good faith renders  
21 emergency care or treatment either in direct response to  
22 emergency situations related to and arising out of a public  
23 health emergency declared pursuant to s. 381.00315, a state of  
24 emergency which has been declared pursuant to s. 252.36 or at  
25 the scene of an emergency outside of a hospital, doctor's  
26 office, or other place having proper medical equipment,  
27 without objection of the injured victim or victims thereof,  
28 shall not be held liable for any civil damages as a result of  
29 such care or treatment or as a result of any act or failure to  
30 act in providing or arranging further medical treatment where  
31

1 the person acts as an ordinary reasonably prudent person would  
2 have acted under the same or similar circumstances.

3 (b)1. Any health care provider, including a hospital  
4 licensed under chapter 395, providing emergency services  
5 pursuant to obligations imposed by 42 U.S.C. s. 1395dd, s.  
6 395.401, s. 395.1041, or s. 401.45 ~~any employee of such~~  
7 ~~hospital working in a clinical area within the facility and~~  
8 ~~providing patient care, and any person licensed to practice~~  
9 ~~medicine who in good faith renders medical care or treatment~~  
10 ~~necessitated by a sudden, unexpected situation or occurrence~~  
11 ~~resulting in a serious medical condition demanding immediate~~  
12 ~~medical attention, for which the patient enters the hospital~~  
13 ~~through its emergency room or trauma center, or necessitated~~  
14 ~~by a public health emergency declared pursuant to s. 381.00315~~  
15 shall not be held liable for any civil damages as a result of  
16 such medical care or treatment unless such damages result from  
17 providing, or failing to provide, medical care or treatment  
18 under circumstances demonstrating a reckless disregard for the  
19 consequences so as to affect the life or health of another.

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

23 a. Which occurs prior to the time ~~after~~ the patient is  
24 stabilized and is capable of receiving medical treatment as a  
25 nonemergency patient, unless surgery is required as a result  
26 of the emergency within a reasonable time after the patient is  
27 stabilized, in which case the immunity provided by this  
28 paragraph applies to any act or omission of providing medical  
29 care or treatment which occurs prior to the stabilization of  
30 the patient following the surgery. ~~† or~~

31

1           b. Which is related ~~Unrelated~~ to the original medical  
2 emergency.  
3           3. For purposes of this paragraph, "reckless  
4 disregard" as it applies to a given health care provider  
5 rendering emergency medical services shall be such conduct  
6 that ~~which~~ a health care provider knew or should have known,  
7 at the time such services were rendered, created an  
8 unreasonable risk of injury so as to affect the life or health  
9 of another, and such risk was substantially greater than that  
10 which is necessary to make the conduct negligent.~~would be~~  
11 ~~likely to result in injury so as to affect the life or health~~  
12 ~~of another, taking into account the following to the extent~~  
13 ~~they may be present:~~  
14           a. ~~The extent or serious nature of the circumstances~~  
15 ~~prevailing.~~  
16           b. ~~The lack of time or ability to obtain appropriate~~  
17 ~~consultation.~~  
18           c. ~~The lack of a prior patient physician relationship.~~  
19           d. ~~The inability to obtain an appropriate medical~~  
20 ~~history of the patient.~~  
21           e. ~~The time constraints imposed by coexisting~~  
22 ~~emergencies.~~  
23           4. Every emergency care facility granted immunity  
24 under this paragraph shall accept and treat all emergency care  
25 patients within the operational capacity of such facility  
26 without regard to ability to pay, including patients  
27 transferred from another emergency care facility or other  
28 health care provider pursuant to Pub. L. No. 99-272, s. 9121.  
29 The failure of an emergency care facility to comply with this  
30 subparagraph constitutes grounds for the department to  
31

1 initiate disciplinary action against the facility pursuant to  
2 chapter 395.

3 (c)1. Any health care practitioner as defined in s.  
4 456.001(4) who is in a hospital attending to a patient of his  
5 or her practice or for business or personal reasons unrelated  
6 to direct patient care, and who voluntarily responds to  
7 provide care or treatment to a patient with whom at that time  
8 the practitioner does not have a then-existing health care  
9 patient-practitioner relationship, and when such care or  
10 treatment is necessitated by a sudden or unexpected situation  
11 or by an occurrence that demands immediate medical attention,  
12 shall not be held liable for any civil damages as a result of  
13 any act or omission relative to that care or treatment, unless  
14 that care or treatment is proven to amount to conduct that is  
15 willful and wanton and would likely result in injury so as to  
16 affect the life or health of another.

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

21 3. For purposes of this paragraph, the Legislature's  
22 intent is to encourage health care practitioners to provide  
23 necessary emergency care to all persons without fear of  
24 litigation as described in this paragraph.

25 ~~(c) Any person who is licensed to practice medicine,~~  
26 ~~while acting as a staff member or with professional clinical~~  
27 ~~privileges at a nonprofit medical facility, other than a~~  
28 ~~hospital licensed under chapter 395, or while performing~~  
29 ~~health screening services, shall not be held liable for any~~  
30 ~~civil damages as a result of care or treatment provided~~  
31 ~~gratuitously in such capacity as a result of any act or~~

1 ~~failure to act in such capacity in providing or arranging~~  
2 ~~further medical treatment, if such person acts as a reasonably~~  
3 ~~prudent person licensed to practice medicine would have acted~~  
4 ~~under the same or similar circumstances.~~

5 Section 66. Subsection (8) of section 768.21, Florida  
6 Statutes, is amended to read:

7 768.21 Damages.--All potential beneficiaries of a  
8 recovery for wrongful death, including the decedent's estate,  
9 shall be identified in the complaint, and their relationships  
10 to the decedent shall be alleged. Damages may be awarded as  
11 follows:

12 (8) The damages specified in subsection (3) shall not  
13 be recoverable by adult children and the damages specified in  
14 subsection (4) shall not be recoverable by parents of an adult  
15 child with respect to claims for medical negligence  
16 ~~malpractice~~ as defined by s. 766.106(1).

17 Section 67. Present subsections (12) through (19) of  
18 section 768.28, Florida Statutes, as amended by section 9 of  
19 chapter 2003-159, Laws of Florida, by section 1903 of chapter  
20 2003-261, Laws of Florida, and by section 1 of chapter  
21 2003-290, Laws of Florida, are renumbered as subsections (13)  
22 through (20), respectively, and a new subsection (12) is added  
23 to that section to read:

24 768.28 Waiver of sovereign immunity in tort actions;  
25 recovery limits; limitation on attorney fees; statute of  
26 limitations; exclusions; indemnification; risk management  
27 programs.--

28 (12)(a) A health care practitioner, as defined in s.  
29 456.001(4), who has contractually agreed to act as an agent of  
30 a state university board of trustees to provide medical  
31 services to a student-athlete for participation in or as a

1 result of intercollegiate athletics, to include team  
2 practices, training, and competitions, shall be considered an  
3 agent of the respective state university board of trustees,  
4 for the purposes of this section, while acting within the  
5 scope of and pursuant to guidelines established in that  
6 contract. The contracts shall provide for the indemnification  
7 of the state by the agent for any liabilities incurred up to  
8 the limits set out in this chapter.

9 (b) This subsection shall not be construed as  
10 designating persons providing contracted health care services  
11 to athletes as employees or agents of a state university board  
12 of trustees for the purposes of chapter 440.

13 Section 68. Section 768.77, Florida Statutes, is  
14 amended to read:

15 768.77 Itemized verdict.--

16 (1) Except as provided in subsection (2), in any  
17 action to which this part applies in which the trier of fact  
18 determines that liability exists on the part of the defendant,  
19 the trier of fact shall, as a part of the verdict, itemize the  
20 amounts to be awarded to the claimant into the following  
21 categories of damages:

22 (a)(1) Amounts intended to compensate the claimant for  
23 economic losses;

24 (b)(2) Amounts intended to compensate the claimant for  
25 noneconomic losses; and

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

28 (2) In any action for damages based on personal injury  
29 or wrongful death arising out of medical malpractice, whether  
30 in tort or contract, to which this part applies in which the  
31 trier of fact determines that liability exists on the part of



1 the defendant, the trier of fact shall, as a part of the  
2 verdict, itemize the amounts to be awarded to the claimant  
3 into the following categories of damages:

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

5 1. Past economic losses; and

6 2. Future economic losses, not reduced to present  
7 value, and the number of years or part thereof which the award  
8 is intended to cover;

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

10 1. Past noneconomic losses; and

11 2. Future noneconomic losses and the number of years  
12 or part thereof which the award is intended to cover; and

13 (c) Amounts awarded to the claimant for punitive  
14 damages, if applicable.

15 Section 69. Nothing in this act constitutes a waiver  
16 of sovereign immunity under section 768.28, Florida Statutes,  
17 or contravenes the abrogation of joint and several liability  
18 contained in section 766.112, Florida Statutes.

19 Section 70. Paragraph (c) of subsection (2) of section  
20 1006.20, Florida Statutes, as amended by section 2 of chapter  
21 2003-129, Laws of Florida, is amended to read:

22 1006.20 Athletics in public K-12 schools.--

23 (2) ADOPTION OF BYLAWS.--

24 (c) The organization shall adopt bylaws that require  
25 all students participating in interscholastic athletic  
26 competition or who are candidates for an interscholastic  
27 athletic team to satisfactorily pass a medical evaluation each  
28 year prior to participating in interscholastic athletic  
29 competition or engaging in any practice, tryout, workout, or  
30 other physical activity associated with the student's  
31 candidacy for an interscholastic athletic team. Such medical

1 evaluation can only be administered by a practitioner licensed  
2 under the provisions of chapter 458, chapter 459, chapter 460,  
3 or s. 464.012, and in good standing with the practitioner's  
4 regulatory board. The bylaws shall establish requirements for  
5 eliciting a student's medical history and performing the  
6 medical evaluation required under this paragraph, which shall  
7 include a physical assessment of the student's physical  
8 capabilities to participate in interscholastic athletic  
9 competition as contained in a uniform preparticipation  
10 physical evaluation and history form. The evaluation form  
11 shall incorporate the recommendations of the American Heart  
12 Association for participation cardiovascular screening and  
13 shall provide a place for the signature of the practitioner  
14 performing the evaluation with an attestation that each  
15 examination procedure listed on the form was performed by the  
16 practitioner or by someone under the direct supervision of the  
17 practitioner. The form shall also contain a place for the  
18 practitioner to indicate if a referral to another practitioner  
19 was made in lieu of completion of a certain examination  
20 procedure. The form shall provide a place for the practitioner  
21 to whom the student was referred to complete the remaining  
22 sections and attest to that portion of the examination. The  
23 preparticipation physical evaluation form shall advise  
24 students to complete a cardiovascular assessment and shall  
25 include information concerning alternative cardiovascular  
26 evaluation and diagnostic tests. ~~Practitioners administering~~  
27 ~~medical evaluations pursuant to this subsection must, at a~~  
28 ~~minimum, solicit all information required by, and perform a~~  
29 ~~physical assessment according to, the uniform preparticipation~~  
30 ~~form referred to in this paragraph and must certify, based on~~  
31 ~~the information provided and the physical assessment, that the~~

1 ~~student is physically capable of participating in~~  
2 ~~interscholastic athletic competition. If the practitioner~~  
3 ~~determines that there are any abnormal findings in the~~  
4 ~~cardiovascular system, the student may not participate until a~~  
5 ~~further cardiovascular assessment, which may include an EKG,~~  
6 ~~is performed which indicates that the student is physically~~  
7 ~~capable of participating in interscholastic athletic~~  
8 ~~competition.~~ Results of such medical evaluation must be  
9 provided to the school. No student shall be eligible to  
10 participate in any interscholastic athletic competition or  
11 engage in any practice, tryout, workout, or other physical  
12 activity associated with the student's candidacy for an  
13 interscholastic athletic team until the results of the medical  
14 evaluation ~~clearing the student for participation~~ has been  
15 received and approved by the school.

16       Section 71. (1) The Department of Health shall study  
17 and report to the Legislature as to whether medical review  
18 panels should be included as part of the presuit process in  
19 medical malpractice litigation. Medical review panels review a  
20 medical malpractice case during the presuit process and make  
21 judgements on the merits of the case based on established  
22 standards of care with the intent of reducing the number of  
23 frivolous claims. The panel's report could be used as  
24 admissible evidence at trial or for other purposes.

25       (a) The department's report should address:  
26       1. Historical use of medical review panels and similar  
27 pretrial programs in this state, including the mediation  
28 panels created by chapter 75-9, Laws of Florida.  
29       2. Constitutional issues relating to the use of  
30 medical review panels.

31

1           3. The use of medical review panels or similar  
2 programs in other states.

3           4. Whether medical review panels or similar panels  
4 should be created for use during the presuit process.

5           5. Other recommendations and information that the  
6 department deems appropriate.

7           (b) In submitting its report with respect to  
8 subparagraphs (a)1.-3., the department should identify at a  
9 minimum:

10           1. The percentage of medical malpractice claims  
11 submitted to the panels during the time period the panels were  
12 in existence.

13           2. The percentage of claims that were settled while  
14 the panels were in existence and the percentage of claims that  
15 were settled in the 3 years prior to the establishment of such  
16 panels or, for each panel which no longer exists, 3 years  
17 after the dissolution of such panels.

18           3. In those states where panels have been  
19 discontinued, whether additional safeguards have been  
20 implemented to avoid the filing of frivolous lawsuits and what  
21 those additional safeguards are.

22           4. How the rates for medical malpractice insurance in  
23 states utilizing such panels compares with the rates in states  
24 not utilizing such panels.

25           5. Whether, and to what extent, a finding by a panel  
26 is subject to review and the burden of proof required to  
27 overcome a finding by the panel.

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

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

4           Section 72. Subsection (1) of section 391.025, Florida  
5 Statutes, as amended by section 409 of chapter 2003-261, Laws  
6 of Florida, is amended to read:

7           391.025 Applicability and scope.--

8           (1) This act applies to health services provided to  
9 eligible individuals who are:

10           (a)1. Enrolled in the Medicaid program;

11           2.(b) Enrolled in the Florida Kidcare program; and

12           3.(c) Uninsured or underinsured, provided that they  
13 meet the financial eligibility requirements established in  
14 this act, and to the extent that resources are appropriated  
15 for their care; or-

16           (b) Infants who receive an award of compensation under  
17 s. 766.31(1).

18           Section 73. Paragraph (f) is added to subsection (2)  
19 of section 391.029, Florida Statutes, to read:

20           391.029 Program eligibility.--

21           (2) The following individuals are financially eligible  
22 for the program:

23           (f) An infant who receives an award of compensation  
24 under s. 766.31(1). The Florida Birth-Related Neurological  
25 Injury Compensation Association shall reimburse the Children's  
26 Medical Services Network the state's share of funding, which  
27 must thereafter be used to obtain matching federal funds under  
28 Title XXI of the Social Security Act.

29  
30 The department may continue to serve certain children with  
31 special health care needs who are 21 years of age or older and

1 who were receiving services from the program prior to April 1,  
2 1998. Such children may be served by the department until  
3 July 1, 2000.

4 Section 74. Subsection (2) of section 766.303, Florida  
5 Statutes, is amended to read:

6 766.303 Florida Birth-Related Neurological Injury  
7 Compensation Plan; exclusiveness of remedy.--

8 (2) The rights and remedies granted by this plan on  
9 account of a birth-related neurological injury shall exclude  
10 all other rights and remedies of such infant, her or his  
11 personal representative, parents, dependents, and next of kin,  
12 at common law or otherwise, against any person or entity  
13 directly involved with the labor, delivery, or immediate  
14 postdelivery resuscitation during which such injury occurs,  
15 arising out of or related to a medical negligence ~~malpractice~~  
16 claim with respect to such injury; except that a civil action  
17 shall not be foreclosed where there is clear and convincing  
18 evidence of bad faith or malicious purpose or willful and  
19 wanton disregard of human rights, safety, or property,  
20 provided that such suit is filed prior to and in lieu of  
21 payment of an award under ss. 766.301-766.316. Such suit  
22 shall be filed before the award of the division becomes  
23 conclusive and binding as provided for in s. 766.311.

24 Section 75. Section 766.304, Florida Statutes, is  
25 amended to read:

26 766.304 Administrative law judge to determine  
27 claims.--The administrative law judge shall hear and determine  
28 all claims filed pursuant to ss. 766.301-766.316 and shall  
29 exercise the full power and authority granted to her or him in  
30 chapter 120, as necessary, to carry out the purposes of such  
31 sections. The administrative law judge has exclusive

1 jurisdiction to determine whether a claim filed under this act  
2 is compensable. No civil action may be brought until the  
3 determinations under s. 766.309 have been made by the  
4 administrative law judge. If the administrative law judge  
5 determines that the claimant is entitled to compensation from  
6 the association, or if the claimant accepts an award issued  
7 under s. 766.31, no civil action may be brought or continued  
8 in violation of the exclusiveness of remedy provisions of s.  
9 766.303. If it is determined that a claim filed under this act  
10 is not compensable, neither the doctrine of collateral  
11 estoppel nor res judicata shall prohibit the claimant from  
12 pursuing any and all civil remedies available under common law  
13 and statutory law. The findings of fact and conclusions of law  
14 of the administrative law judge shall not be admissible in any  
15 subsequent proceeding; however, the sworn testimony of any  
16 person and the exhibits introduced into evidence in the  
17 administrative case are admissible as impeachment in any  
18 subsequent civil action only against a party to the  
19 administrative proceeding, subject to the Rules of Evidence.  
20 An award ~~action~~ may not be made or paid ~~brought~~ under ss.  
21 766.301-766.316 if the claimant recovers under a settlement or  
22 a final judgment is entered in a civil action. The division  
23 may adopt rules to promote the efficient administration of,  
24 and to minimize the cost associated with, the prosecution of  
25 claims.

26 Section 76. Subsections (1) and (2) of section  
27 766.305, Florida Statutes, are amended, present subsections  
28 (3), (4), (5), and (6) of that section are redesignated as  
29 subsections (4), (5), (6), and (7), respectively, and a new  
30 subsection (3) is added to that section to read:

31

1           766.305 Filing of claims and responses; medical  
2 disciplinary review.--

3           (1) All claims filed for compensation under the plan  
4 shall commence by the claimant filing with the division a  
5 petition seeking compensation. Such petition shall include  
6 the following information:

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

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

11          (c) The name and address of any physician providing  
12 obstetrical services who was present at the birth and the name  
13 and address of the hospital at which the birth occurred.

14          (d) A description of the disability for which the  
15 claim is made.

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

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

19          ~~(g) All available relevant medical records relating to~~  
20 ~~the birth-related neurological injury, and an identification~~  
21 ~~of any unavailable records known to the claimant and the~~  
22 ~~reasons for their unavailability.~~

23          ~~(h) Appropriate assessments, evaluations, and~~  
24 ~~prognoses, and such other records and documents as are~~  
25 ~~reasonably necessary for the determination of the amount of~~  
26 ~~compensation to be paid to, or on behalf of, the injured~~  
27 ~~infant on account of the birth-related neurological injury.~~

28          ~~(i) Documentation of expenses and services incurred to~~  
29 ~~date, which indicates any payment made for such expenses and~~  
30 ~~services, and by whom.~~

31



1           ~~(j) Documentation of any applicable private or~~  
2 ~~governmental source of services or reimbursement relative to~~  
3 ~~the impairments.~~

4           (2) The claimant shall furnish the division with as  
5 many copies of the petition as required for service upon the  
6 association, any physician and hospital named in the petition,  
7 and the Division of Medical Quality Assurance, along with a  
8 \$15 filing fee payable to the Division of Administrative  
9 Hearings. Upon receipt of the petition, the division shall  
10 immediately serve the association, by service upon the agent  
11 designated to accept service on behalf of the association, by  
12 registered or certified mail, and shall mail copies of the  
13 petition, by registered or certified mail, to any physician,  
14 health care provider, and hospital named in the petition, and  
15 shall furnish a copy by regular mail to the Division of  
16 Medical Quality Assurance, and the Agency for Health Care  
17 Administration.

18           (3) The claimant shall furnish to the Florida  
19 Birth-Related Neurological Injury Compensation Association the  
20 following information, which must be filed with the  
21 association within 10 days after the filing of the petition as  
22 set forth in s. 766.305(1):

23           (a) All available relevant medical records relating to  
24 the birth-related neurological injury and a list identifying  
25 any unavailable records known to the claimant and the reasons  
26 for the records' unavailability.

27           (b) Appropriate assessments, evaluations, and  
28 prognoses and such other records and documents as are  
29 reasonably necessary for the determination of the amount of  
30 compensation to be paid to, or on behalf of, the injured  
31 infant on account of the birth-related neurological injury.

1           (c) Documentation of expenses and services incurred to  
2 date which identifies any payment made for such expenses and  
3 services and the payor.

4           (d) Documentation of any applicable private or  
5 governmental source of services or reimbursement relative to  
6 the impairments.

7  
8 The information required by (a)-(d) shall remain confidential  
9 and exempt under the provisions of s. 766.315(5)(b).

10           Section 77. Subsection (4) is added to section  
11 766.309, Florida Statutes, to read:

12           766.309 Determination of claims; presumption; findings  
13 of administrative law judge binding on participants.--

14           (4) If it is in the interest of judicial economy or if  
15 requested to by the claimant, the administrative law judge may  
16 bifurcate the proceeding addressing compensability and notice  
17 pursuant to s. 766.316 first, and addressing an award pursuant  
18 to s. 766.31, if any, in a separate proceeding. The  
19 administrative law judge may issue a final order on  
20 compensability and notice which is subject to appeal under s.  
21 766.311, prior to issuance of an award pursuant to s. 766.31.

22           Section 78. Subsection (1) of section 766.31, Florida  
23 Statutes, is amended to read:

24           766.31 Administrative law judge awards for  
25 birth-related neurological injuries; notice of award.--

26           (1) Upon determining that an infant has sustained a  
27 birth-related neurological injury and that obstetrical  
28 services were delivered by a participating physician at the  
29 birth, the administrative law judge shall make an award  
30 providing compensation for the following items relative to  
31 such injury:

1 (a) Actual expenses for medically necessary and  
2 reasonable medical and hospital, habilitative and training,  
3 family residential or custodial care, professional  
4 residential, and custodial care and service, for medically  
5 necessary drugs, special equipment, and facilities, and for  
6 related travel. However, such expenses shall not include:

7 1. Expenses for items or services that the infant has  
8 received, or is entitled to receive, under the laws of any  
9 state or the Federal Government, except to the extent such  
10 exclusion may be prohibited by federal law.

11 2. Expenses for items or services that the infant has  
12 received, or is contractually entitled to receive, from any  
13 prepaid health plan, health maintenance organization, or other  
14 private insuring entity.

15 3. Expenses for which the infant has received  
16 reimbursement, or for which the infant is entitled to receive  
17 reimbursement, under the laws of any state or the Federal  
18 Government, except to the extent such exclusion may be  
19 prohibited by federal law.

20 4. Expenses for which the infant has received  
21 reimbursement, or for which the infant is contractually  
22 entitled to receive reimbursement, pursuant to the provisions  
23 of any health or sickness insurance policy or other private  
24 insurance program.

25  
26 Expenses included under this paragraph shall be limited to  
27 reasonable charges prevailing in the same community for  
28 similar treatment of injured persons when such treatment is  
29 paid for by the injured person.

30 (b)1. Periodic payments of an award to the parents or  
31 legal guardians of the infant found to have sustained a

1 birth-related neurological injury, which award shall not  
2 exceed \$100,000. However, at the discretion of the  
3 administrative law judge, such award may be made in a lump  
4 sum.

5           2. Death benefit for the infant in an amount of  
6 \$10,000 ~~Payment for funeral expenses not to exceed \$1,500.~~

7           (c) Reasonable expenses incurred in connection with  
8 the filing of a claim under ss. 766.301-766.316, including  
9 reasonable attorney's fees, which shall be subject to the  
10 approval and award of the administrative law judge. In  
11 determining an award for attorney's fees, the administrative  
12 law judge shall consider the following factors:

13           1. The time and labor required, the novelty and  
14 difficulty of the questions involved, and the skill requisite  
15 to perform the legal services properly.

16           2. The fee customarily charged in the locality for  
17 similar legal services.

18           3. The time limitations imposed by the claimant or the  
19 circumstances.

20           4. The nature and length of the professional  
21 relationship with the claimant.

22           5. The experience, reputation, and ability of the  
23 lawyer or lawyers performing services.

24           6. The contingency or certainty of a fee.

25  
26 Should there be a final determination of compensability, and  
27 the claimants accept an award under this section, the  
28 claimants shall not be liable for any expenses, including  
29 attorney's fees, incurred in connection with the filing of a  
30 claim under ss. 766.301-766.316 other than those expenses  
31 awarded under this section.

1           Section 79. Paragraph (a) and paragraph (c) of  
2 subsection (4) of section 766.314, Florida Statutes, as  
3 amended by section 4 of chapter 2003-258, Laws of Florida, and  
4 by section 1901 of chapter 2003-261, Laws of Florida, are  
5 amended, paragraph (d) is added to that subsection, and  
6 paragraph (a) of subsection (5) of that section is amended to  
7 read:

8           766.314 Assessments; plan of operation.--

9           (4) The following persons and entities shall pay into  
10 the association an initial assessment in accordance with the  
11 plan of operation:

12           (a) On or before October 1, 1988, each hospital  
13 licensed under chapter 395 shall pay an initial assessment of  
14 \$50 per infant delivered in the hospital during the prior  
15 calendar year, as reported to the Agency for Health Care  
16 Administration; provided, however, that a hospital owned or  
17 operated by the state or a county, special taxing district, or  
18 other political subdivision of the state shall not be required  
19 to pay the initial assessment or any assessment required by  
20 subsection (5). The term "infant delivered" includes live  
21 births and not stillbirths, but the term does not include  
22 infants delivered by employees or agents of the board of  
23 trustees of a state university ~~Board of Regents~~ or those born  
24 in a teaching hospital as defined in s. 408.07. The initial  
25 assessment and any assessment imposed pursuant to subsection  
26 (5) may not include any infant born to a charity patient (as  
27 defined by rule of the Agency for Health Care Administration)  
28 or born to a patient for whom the hospital receives Medicaid  
29 reimbursement, if the sum of the annual charges for charity  
30 patients plus the annual Medicaid contractals of the hospital  
31 exceeds 10 percent of the total annual gross operating

1 revenues of the hospital. The hospital is responsible for  
2 documenting, to the satisfaction of the association, the  
3 exclusion of any birth from the computation of the assessment.  
4 Upon demonstration of financial need by a hospital, the  
5 association may provide for installment payments of  
6 assessments.

7 (c) On or before December 1, 1988, each physician  
8 licensed pursuant to chapter 458 or chapter 459 who wishes to  
9 participate in the Florida Birth-Related Neurological Injury  
10 Compensation Plan and who otherwise qualifies as a  
11 participating physician under ss. 766.301-766.316 shall pay an  
12 initial assessment of \$5,000. However, if the physician is  
13 either a resident physician, assistant resident physician, or  
14 intern in an approved postgraduate training program, as  
15 defined by the Board of Medicine or the Board of Osteopathic  
16 Medicine by rule, and is supervised in accordance with program  
17 requirements established by the Accreditation Council for  
18 Graduate Medical Education or the American Osteopathic  
19 Association by a physician who is participating in the plan,  
20 such resident physician, assistant resident physician, or  
21 intern is deemed to be a participating physician without the  
22 payment of the assessment. Participating physicians also  
23 include any employee of the board of trustees of a state  
24 university ~~Board of Regents~~ who has paid the assessment  
25 required by this paragraph and paragraph (5)(a), and any  
26 certified nurse midwife supervised by such employee.  
27 Participating physicians include any certified nurse midwife  
28 who has paid 50 percent of the physician assessment required  
29 by this paragraph and paragraph (5)(a) and who is supervised  
30 by a participating physician who has paid the assessment  
31 required by this paragraph and paragraph (5)(a). Supervision

1 for nurse midwives shall require that the supervising  
2 physician will be easily available and have a prearranged plan  
3 of treatment for specified patient problems which the  
4 supervised certified nurse midwife may carry out in the  
5 absence of any complicating features. Any physician who  
6 elects to participate in such plan on or after January 1,  
7 1989, who was not a participating physician at the time of  
8 such election to participate and who otherwise qualifies as a  
9 participating physician under ss. 766.301-766.316 shall pay an  
10 additional initial assessment equal to the most recent  
11 assessment made pursuant to this paragraph, paragraph (5)(a),  
12 or paragraph (7)(b).

13 (d) Any hospital located in a county with a population  
14 in excess of 1.1 million as of January 1, 2003, as determined  
15 by the Agency for Health Care Administration under the Health  
16 Care Responsibility Act, may elect to pay the fee for the  
17 participating physician and the certified nurse midwife if the  
18 hospital first determines that the primary motivating purpose  
19 for making such payment is to ensure coverage for the  
20 hospital's patients under the provisions of ss.  
21 766.301-766.316; however, no hospital may restrict any  
22 participating physician or nurse midwife, directly or  
23 indirectly, from being on the staff of hospitals other than  
24 the staff of the hospital making the payment. Each hospital  
25 shall file with the association an affidavit setting forth  
26 specifically the reasons why the hospital elected to make the  
27 payment on behalf of each participating physician and  
28 certified nurse midwife. The payments authorized under this  
29 paragraph shall be in addition to the assessment set forth in  
30 paragraph (5)(a).

31

1           (5)(a) Beginning January 1, 1990, the persons and  
2 entities listed in paragraphs (4)(b) and (c), except those  
3 persons or entities who are specifically excluded from said  
4 provisions, as of the date determined in accordance with the  
5 plan of operation, taking into account persons licensed  
6 subsequent to the payment of the initial assessment, shall pay  
7 an annual assessment in the amount equal to the initial  
8 assessments provided in paragraphs (4)(b) and (c). If payment  
9 of the annual assessment by a physician is received by the  
10 association by January 31 of any calendar year, the physician  
11 shall qualify as a participating physician for that entire  
12 calendar year. If the payment is received after January 31 of  
13 any calendar year, the physician shall qualify as a  
14 participating physician for that calendar year only from the  
15 date the payment was received by the association.On January  
16 1, 1991, and on each January 1 thereafter, the association  
17 shall determine the amount of additional assessments necessary  
18 pursuant to subsection (7), in the manner required by the plan  
19 of operation, subject to any increase determined to be  
20 necessary by the Department of Insurance pursuant to paragraph  
21 (7)(b). On July 1, 1991, and on each July 1 thereafter, the  
22 persons and entities listed in paragraphs (4)(b) and (c),  
23 except those persons or entities who are specifically excluded  
24 from said provisions, shall pay the additional assessments  
25 which were determined on January 1. Beginning January 1, 1990,  
26 the entities listed in paragraph (4)(a), including those  
27 licensed on or after October 1, 1988, shall pay an annual  
28 assessment of \$50 per infant delivered during the prior  
29 calendar year. The additional assessments which were  
30 determined on January 1, 1991, pursuant to the provisions of  
31



1 subsection (7) shall not be due and payable by the entities  
2 listed in paragraph (4)(a) until July 1.

3           Section 80. The Office of Program Policy Analysis and  
4 Government Accountability shall complete a study of the  
5 eligibility requirements for a birth to be covered under the  
6 Florida Birth-Related Neurological Injury Compensation  
7 Association and submit a report to the Legislature by January  
8 1, 2004, recommending whether or not the statutory criteria  
9 for a claim to qualify for referral to the Florida  
10 Birth-Related Neurological Injury Compensation Association  
11 under section 766.302, Florida Statutes, should be modified.

12           Section 81. The sum of \$687,786 is appropriated from  
13 the Medical Quality Assurance Trust Fund to the Department of  
14 Health, and seven positions are authorized, for the purpose of  
15 implementing this act during the 2003-2004 fiscal year. The  
16 sum of \$1,629,994 is appropriated from the Health Care Trust  
17 Fund to the Agency for Health Care Administration, and 11  
18 positions are authorized, for the purpose of implementing this  
19 act during the 2003-2004 fiscal year.

20           Section 82. The sum of \$1,450,000 is appropriated to  
21 the Insurance Regulatory Trust Fund in the Department of  
22 Financial Services to the Office of Insurance Regulation for  
23 the purpose of implementing this act during the 2003-2004  
24 fiscal year.

25           Section 83. The sum of \$850,000 in nonrecurring  
26 general revenue funds is appropriated to the Agency for Health  
27 Care Administration for the purpose of implementing patient  
28 safety initiatives during the 2003-2004 fiscal year.

29           Section 84. If any law that is amended by this act was  
30 also amended by a law enacted at the 2003 Regular Session or a  
31 2003 special session of the Legislature, such laws shall be

1 construed as if they had been enacted during the same session  
2 of the Legislature, and full effect should be given to each if  
3 that is possible.

4 Section 85. If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 invalidity does not affect other provisions or applications of  
7 the act which can be given effect without the invalid  
8 provision or application, and to this end the provisions of  
9 this act are severable.

10 Section 86. It is the intent of the Legislature to  
11 apply the provisions of this act to prior medical incidents,  
12 to the extent such application is not prohibited by the State  
13 Constitution or Federal Constitution, except that the changes  
14 to chapter 766, Florida Statutes, shall apply only to any  
15 medical incident for which a notice of intent to initiate  
16 litigation is mailed on or after the effective date of this  
17 act.

18 Section 87. Except as otherwise expressly provided in  
19 this act, this act shall take effect September 15, 2003.

20  
21 \*\*\*\*\*

22 SENATE SUMMARY

23 Revises and enacts a broad variety of laws relating to  
24 actions for medical negligence. Provides legislative  
25 findings and intent. Provides for notice of intent to  
26 file such actions and for arbitration or presuit  
27 screening of such claims and creates an Office of Presuit  
28 Screening Administration. Revises grounds for discipline  
29 of health care providers. Provides for inclusion of  
30 certain information in provider profiles. Revises  
31 financial responsibility requirements appertaining to  
health care providers. Revises guidelines for setting  
rates for medical malpractice insurance coverage.  
Provides for recalculation of rates based on the effect  
of malpractice legislation on rates. Revises guidelines  
under which an action may be brought against a carrier  
for actions in bad faith. (See bill for details.)