

By the Committee on Health, Aging, and Long-Term Care; and
Senator Jones

317-2731-03

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 ~~\$25,000~~\$50,000 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 any person or entity
14 whose liability is based solely on such person or entity being
15 vicariously liable for the actions of a practitioner.

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

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

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

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
26 The limitation provided by this subsection applies only to
27 noneconomic damages awarded as a result of any act or omission
28 of providing medical care or treatment, including diagnosis
29 that occurs prior to the time the patient is stabilized and is
30 capable of receiving medical treatment as a nonemergency
31 patient, unless surgery is required as a result of the

1 emergency within a reasonable time after the patient is
2 stabilized, in which case the limitation provided by this
3 subsection applies to any act or omission of providing medical
4 care or treatment which occurs prior to the stabilization of
5 the patient following the surgery.

6 (5) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE
7 OF NONPRACTITIONER DEFENDANTS PROVIDING EMERGENCY SERVICES AND
8 CARE.--Notwithstanding subsections (2) and (3), with respect
9 to a cause of action for personal injury or wrongful death
10 arising from medical negligence of defendants other than
11 practitioners providing emergency services and care pursuant
12 to obligations imposed by ss. 395.1041 and 401.45 to persons
13 with whom the practitioner does not have a then-existing
14 health care patient-practitioner relationship for that medical
15 condition:

16 (a) Regardless of the number of such nonpractitioner
17 defendants, noneconomic damages shall not exceed \$750,000 per
18 claimant.

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

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

24
25 The limitation provided by this subsection applies only to
26 noneconomic damages awarded as a result of any act or omission
27 of providing medical care or treatment, including diagnosis
28 that occurs prior to the time the patient is stabilized and is
29 capable of receiving medical treatment as a nonemergency
30 patient, unless surgery is required as a result of the
31 emergency within a reasonable time after the patient is

1 stabilized, in which case the limitation provided by this
2 subsection applies to any act or omission of providing medical
3 care or treatment which occurs prior to the stabilization of
4 the patient following the surgery.

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

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

23 Section 55. The Legislature finds and declares it to
24 be of vital importance that emergency services and care be
25 provided by hospitals, physicians, and emergency medical
26 services providers to every person in need of such care. The
27 Legislature finds that providers of emergency medical services
28 and care are critical elements in responding to disaster and
29 emergency situations that might affect our local communities,
30 state, and country. The Legislature recognizes the importance
31 of maintaining a viable system of providing for the emergency

1 medical needs of residents of this state and visitors to this
2 state. The Legislature and the Federal Government have
3 required such providers of emergency medical services and care
4 to provide emergency services and care to all persons who
5 present themselves to hospitals seeking such care. The
6 Legislature has further mandated that prehospital emergency
7 medical treatment or transport may not be denied by emergency
8 medical services providers to persons who have or are likely
9 to have an emergency medical condition. Such governmental
10 requirements have imposed a unilateral obligation for
11 providers of emergency medical services and care to provide
12 services to all persons seeking emergency care without
13 ensuring payment or other consideration for provision of such
14 care. The Legislature also recognizes that providers of
15 emergency medical services and care provide a significant
16 amount of uncompensated emergency medical care in furtherance
17 of such governmental interest. A significant proportion of the
18 residents of this state who are uninsured or are Medicaid or
19 Medicare recipients are unable to access needed health care
20 because health care providers fear the increased risk of
21 medical malpractice liability. Such patients, in order to
22 obtain medical care, are frequently forced to seek care
23 through providers of emergency medical services and care.
24 Providers of emergency medical services and care in this state
25 have reported significant problems with both the availability
26 and affordability of professional liability coverage. Medical
27 malpractice liability insurance premiums have increased
28 dramatically and a number of insurers have ceased providing
29 medical malpractice coverage for emergency medical services
30 and care in this state. This results in a functional
31 unavailability of malpractice coverage for some providers of

1 emergency medical services and care. The Legislature further
2 finds that certain specialist physicians have resigned from
3 serving on hospital staffs or have otherwise declined to
4 provide on-call coverage to hospital emergency departments due
5 to increased medical malpractice liability exposure created by
6 treating such emergency department patients. It is the intent
7 of the Legislature that hospitals, emergency medical services
8 providers, and physicians be able to ensure that patients who
9 might need emergency medical services treatment or
10 transportation or who present themselves to hospitals for
11 emergency medical services and care have access to such needed
12 services.

13 Section 56. Section 766.1185, Florida Statutes, is
14 created to read:

15 766.1185 Bad faith actions.--In all actions for bad
16 faith against a medical malpractice insurer relating to
17 professional liability insurance coverage for medical
18 negligence, and in determining whether the insurer could and
19 should have settled the claim within the policy limits had it
20 acted fairly and honestly towards its insured with due regard
21 for her or his interest, whether under statute or common law:

22 (1)(a) An insurer shall not be held in bad faith for
23 failure to pay its policy limits if it tenders its policy
24 limits and meets other reasonable conditions of settlement by
25 the earlier of either:

26 1. The 210th day after service of the complaint in the
27 medical negligence action upon the insured. The time period
28 specified in this subparagraph shall be extended by an
29 additional 60 days if the court in the bad-faith action finds
30 that, at any time during such period and after the 150th day
31 after service of the complaint, the claimant provided new

1 information previously unavailable to the insurer relating to
2 the identity or testimony of any material witnesses or the
3 identity of any additional claimants or defendants, if such
4 disclosure materially alters the risk to the insured of an
5 excess judgment; or

6 2. The 60th day after the conclusion of all of the
7 following:

8 a. Deposition of all claimants named in the complaint
9 or amended complaint.

10 b. Deposition of all defendants named in the complaint
11 or amended complaint, including, in the case of a corporate
12 defendant, deposition of a designated representative.

13 c. Deposition of all of the claimants' expert
14 witnesses.

15 d. The initial disclosure of witnesses and production
16 of documents.

17 e. Mediation as provided in s. 766.108.

18 (b) Either party may request that the court enter an
19 order finding that the other party has unnecessarily or
20 inappropriately delayed any of the events specified in
21 subparagraph (a)2. If the court finds that the claimant was
22 responsible for such unnecessary or inappropriate delay,
23 subparagraph (a)1. shall not apply to the insurer's tendering
24 of policy limits. If the court finds that the defendant or
25 insurer was responsible for such unnecessary or inappropriate
26 delay, subparagraph (a)2. shall not apply to the insurer's
27 tendering of policy limits.

28 (c) If any party to an action alleging medical
29 negligence amends its witness list after service of the
30 complaint in such action, that party shall provide a copy of
31

1 the amended witness list to the insurer of the defendant
2 health care provider.

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

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

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

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

13 (c) Whether the insurer timely informed the insured of
14 an offer to settle within the limits of coverage, the right to
15 retain personal counsel, and the risk of litigation.

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

19 (e) Whether the claimant imposed any condition, other
20 than the tender of the policy limits, on the settlement of the
21 claim.

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

24 (g) Whether and when other defendants in the case
25 settled or were dismissed from the case.

26 (h) Whether there were multiple claimants seeking, in
27 the aggregate, compensation in excess of policy limits from
28 the defendant or the defendant's insurer.

29 (i) Whether the insured misrepresented material facts
30 to the insurer or made material omissions of fact to the
31 insurer.

1 (j) In addition to the foregoing the court shall allow
2 consideration of such additional factors as the court
3 determines to be relevant.

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

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

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

12 766.201 Legislative findings and intent.--

13 (1) The Legislature makes the following findings:

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

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

25 Section 58. Section 766.202, Florida Statutes, is
26 amended to read:

27 766.202 Definitions; ss. 766.201-766.212.--As used in
28 ss. 766.201-766.212, the term:

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

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

3 (a) The United States Social Security Act; any
4 federal, state, or local income disability act; or any other
5 public programs providing medical expenses, disability
6 payments, or other similar benefits, except as prohibited by
7 federal law.

8 (b) Any health, sickness, or income disability
9 insurance; automobile accident insurance that provides health
10 benefits or income disability coverage; and any other similar
11 insurance benefits, except life insurance benefits available
12 to the claimant, whether purchased by him or her or provided
13 by others.

14 (c) Any contract or agreement of any group,
15 organization, partnership, or corporation to provide, pay for,
16 or reimburse the costs of hospital, medical, dental, or other
17 health care services.

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

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

28 (4) "Health care provider" means any hospital,
29 ambulatory surgical center, or mobile surgical facility as
30 defined and licensed under chapter 395; a birth center
31 licensed under chapter 383; any person licensed under chapter

1 458, chapter 459, chapter 460, chapter 461, chapter 462,
2 chapter 463, part I of chapter 464, chapter 466, chapter 467
3 or chapter 486; a clinical lab licensed under chapter 483; a
4 health maintenance organization certificated under part I of
5 chapter 641; a blood bank; a plasma center; an industrial
6 clinic; a renal dialysis facility; or a professional
7 association partnership, corporation, joint venture, or other
8 association for professional activity by health care
9 providers.

10 (5)~~(4)~~ "Investigation" means that an attorney has
11 reviewed the case against each and every potential defendant
12 and has consulted with a medical expert and has obtained a
13 written opinion from said expert.

14 (6)~~(5)~~ "Medical expert" means a person duly and
15 regularly engaged in the practice of his or her profession who
16 holds a health care professional degree from a university or
17 college and who meets the requirements of an expert witness as
18 set forth in s. 766.102 ~~has had special professional training~~
19 ~~and experience or one possessed of special health care~~
20 ~~knowledge or skill about the subject upon which he or she is~~
21 ~~called to testify or provide an opinion.~~

22 (7)~~(6)~~ "Medical negligence" means medical malpractice,
23 whether grounded in tort or in contract.

24 (8)~~(7)~~ "Noneconomic damages" means nonfinancial losses
25 that ~~which~~ would not have occurred but for the injury giving
26 rise to the cause of action, including pain and suffering,
27 inconvenience, physical impairment, mental anguish,
28 disfigurement, loss of capacity for enjoyment of life, and
29 other nonfinancial losses to the extent the claimant is
30 entitled to recover such damages under general law, including
31 the Wrongful Death Act.

1 ~~(9)(8)~~ "Periodic payment" means provision for the
2 structuring of future economic damages payments, in whole or
3 in part, over a period of time, as follows:

4 (a) A specific finding of the dollar amount of
5 periodic payments which will compensate for these future
6 damages after offset for collateral sources shall be made.
7 The total dollar amount of the periodic payments shall equal
8 the dollar amount of all such future damages before any
9 reduction to present value.

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

22 (c) The provision for payment of future damages by
23 periodic payments shall specify the recipient or recipients of
24 the payments, the dollar amounts of the payments, the interval
25 between payments, and the number of payments or the period of
26 time over which payments shall be made.

27 Section 59. Section 766.2021, Florida Statutes, is
28 created to read:

29 766.2021 Limitation on damages against insurers,
30 prepaid limited health service organizations, health
31 maintenance organizations, or prepaid health clinics.--An

1 entity licensed or certified under chapter 624, chapter 636,
2 or chapter 641 shall not be liable for the medical negligence
3 of a health care provider with whom the licensed or certified
4 entity has entered into a contract in any amount greater than
5 the amount of damages that may be imposed by law directly upon
6 the health care provider, and any suits against such entity
7 shall be subject to all provisions and requirements of
8 evidence in this chapter and other requirements imposed by law
9 in connection with suits against health care providers for
10 medical negligence.

11 Section 60. Section 766.203, Florida Statutes, is
12 amended to read:

13 766.203 Presuit investigation of medical negligence
14 claims and defenses by prospective parties.--

15 (1) Application of presuit investigation.--Presuit
16 investigation of medical negligence claims and defenses
17 pursuant to this section and ss. 766.204-766.206 shall apply
18 to all medical negligence, ~~including dental negligence,~~ claims
19 and defenses. This shall include:

20 (a) Rights of action under s. 768.19 and defenses
21 thereto.

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

25 (2) Presuit investigation by claimant.--Prior to
26 issuing notification of intent to initiate medical negligence
27 ~~malpractice~~ litigation pursuant to s. 766.106, the claimant
28 shall conduct an investigation to ascertain that there are
29 reasonable grounds to believe that:

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

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

3
4 Corroboration of reasonable grounds to initiate medical
5 negligence litigation shall be provided by the claimant's
6 submission of a verified written medical expert opinion from a
7 medical expert as defined in s. 766.202(5), at the time the
8 notice of intent to initiate litigation is mailed, which
9 statement shall corroborate reasonable grounds to support the
10 claim of medical negligence.

11 (3) Presuit investigation by prospective
12 defendant.--Prior to issuing its response to the claimant's
13 notice of intent to initiate litigation, during the time
14 period for response authorized pursuant to s. 766.106, the
15 prospective defendant or the defendant's insurer or
16 self-insurer shall conduct an investigation as provided in s.
17 766.106(3)to ascertain whether there are reasonable grounds
18 to believe that:

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

21 (b) Such negligence resulted in injury to the
22 claimant.

23
24 Corroboration of lack of reasonable grounds for medical
25 negligence litigation shall be provided with any response
26 rejecting the claim by the defendant's submission of a
27 verified written medical expert opinion from a medical expert
28 as defined in s. 766.202(5), at the time the response
29 rejecting the claim is mailed, which statement shall
30 corroborate reasonable grounds for lack of negligent injury
31 sufficient to support the response denying negligent injury.

1 (4) Presuit medical expert opinion.--The medical
2 expert opinions required by this section are subject to
3 discovery. The opinions shall specify whether any previous
4 opinion by the same medical expert has been disqualified and
5 if so the name of the court and the case number in which the
6 ruling was issued.

7 Section 61. Section 766.206, Florida Statutes, is
8 amended to read:

9 766.206 Presuit investigation of medical negligence
10 claims and defenses by court.--

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

16 (2) If the court finds that the notice of intent to
17 initiate litigation mailed by the claimant is not in
18 compliance with the reasonable investigation requirements of
19 ss. 766.201-766.212, including a review of the claim and a
20 verified written medical expert opinion by an expert witness
21 as defined in s. 766.202,the court shall dismiss the claim,
22 and the person who mailed such notice of intent, whether the
23 claimant or the claimant's attorney, shall be personally
24 liable for all attorney's fees and costs incurred during the
25 investigation and evaluation of the claim, including the
26 reasonable attorney's fees and costs of the defendant or the
27 defendant's insurer.

28 (3) If the court finds that the response mailed by a
29 defendant rejecting the claim is not in compliance with the
30 reasonable investigation requirements of ss. 766.201-766.212,
31 including a review of the claim and a verified written medical

1 expert opinion by an expert witness as defined in s. 766.202,
2 the court shall strike the defendant's pleading~~response, and~~
3 The person who mailed such response, whether the defendant,
4 the defendant's insurer, or the defendant's attorney, shall be
5 personally liable for all attorney's fees and costs incurred
6 during the investigation and evaluation of the claim,
7 including the reasonable attorney's fees and costs of the
8 claimant.

9 (4) If the court finds that an attorney for the
10 claimant mailed notice of intent to initiate litigation
11 without reasonable investigation, or filed a medical
12 negligence claim without first mailing such notice of intent
13 which complies with the reasonable investigation requirements,
14 or if the court finds that an attorney for a defendant mailed
15 a response rejecting the claim without reasonable
16 investigation, the court shall submit its finding in the
17 matter to The Florida Bar for disciplinary review of the
18 attorney. Any attorney so reported three or more times within
19 a 5-year period shall be reported to a circuit grievance
20 committee acting under the jurisdiction of the Supreme Court.
21 If such committee finds probable cause to believe that an
22 attorney has violated this section, such committee shall
23 forward to the Supreme Court a copy of its finding.

24 (5)(a) If the court finds that the corroborating
25 written medical expert opinion attached to any notice of claim
26 or intent or to any response rejecting a claim lacked
27 reasonable investigation or that the medical expert submitting
28 the opinion did not meet the expert witness qualifications as
29 set forth in s. 766.202(5), the court shall report the medical
30 expert issuing such corroborating opinion to the Division of
31 Medical Quality Assurance or its designee. If such medical

1 expert is not a resident of the state, the division shall
2 forward such report to the disciplining authority of that
3 medical expert.

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

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

10 766.207 Voluntary binding arbitration of medical
11 negligence claims.--

12 (7) Arbitration pursuant to this section shall
13 preclude recourse to any other remedy by the claimant against
14 any participating defendant, and shall be undertaken with the
15 understanding that damages shall be awarded as provided by
16 general law, including the Wrongful Death Act, subject to the
17 following limitations:

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

22 (b) Noneconomic damages shall be limited to a maximum
23 of \$250,000 per incident, and shall be calculated on a
24 percentage basis with respect to capacity to enjoy life, so
25 that a finding that the claimant's injuries resulted in a
26 50-percent reduction in his or her capacity to enjoy life
27 would warrant an award of not more than \$125,000 noneconomic
28 damages.

29 (c) Damages for future economic losses shall be
30 awarded to be paid by periodic payments pursuant to s.

31

1 766.202(9)~~s. 766.202(8)~~ and shall be offset by future
2 collateral source payments.

3 (d) Punitive damages shall not be awarded.

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

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

11 (g) The defendant shall pay all the costs of the
12 arbitration proceeding and the fees of all the arbitrators
13 other than the administrative law judge.

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

17 (i) The defendant's obligation to pay the claimant's
18 damages shall be for the purpose of arbitration under this
19 section only. A defendant's or claimant's offer to arbitrate
20 shall not be used in evidence or in argument during any
21 subsequent litigation of the claim following the rejection
22 thereof.

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

26 (k) Any offer by a claimant to arbitrate must be made
27 to each defendant against whom the claimant has made a claim.
28 Any offer by a defendant to arbitrate must be made to each
29 claimant who has joined in the notice of intent to initiate
30 litigation, as provided in s. 766.106. A defendant who
31 rejects a claimant's offer to arbitrate shall be subject to

1 the provisions of s. 766.209(3). A claimant who rejects a
2 defendant's offer to arbitrate shall be subject to the
3 provisions of s. 766.209(4).

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

8
9 The provisions of this subsection shall not preclude
10 settlement at any time by mutual agreement of the parties.

11 Section 63. Paragraph (a) of subsection (3) of section
12 766.209, Florida Statutes, is amended to read:

13 766.209 Effects of failure to offer or accept
14 voluntary binding arbitration.--

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

17 (a) The claim shall proceed to trial ~~without~~
18 ~~limitation on damages~~, and the claimant, upon proving medical
19 negligence, shall be entitled to recover damages subject to
20 the limitations in s. 766.118,prejudgment interest, and
21 reasonable attorney's fees up to 25 percent of the award
22 reduced to present value.

23 Section 64. Section 768.0981, Florida Statutes, is
24 created to read:

25 768.0981 Limitation on actions against insurers,
26 prepaid limited health service organizations, health
27 maintenance organizations, or prepaid health clinics.--An
28 entity licensed or certified under chapter 624, chapter 636,
29 or chapter 641 shall not be liable for the medical negligence
30 of a health care provider with whom the licensed or certified
31 entity has entered into a contract, other than an employee of

1 such licensed or certified entity, unless the licensed or
2 certified entity expressly directs or exercises actual control
3 over the specific conduct that caused injury.

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

6 768.13 Good Samaritan Act; immunity from civil
7 liability.--

8 (2)(a) Any person, including those licensed to
9 practice medicine, who gratuitously and in good faith renders
10 emergency care or treatment either in direct response to
11 emergency situations related to and arising out of a public
12 health emergency declared pursuant to s. 381.00315, a state of
13 emergency which has been declared pursuant to s. 252.36 or at
14 the scene of an emergency outside of a hospital, doctor's
15 office, or other place having proper medical equipment,
16 without objection of the injured victim or victims thereof,
17 shall not be held liable for any civil damages as a result of
18 such care or treatment or as a result of any act or failure to
19 act in providing or arranging further medical treatment where
20 the person acts as an ordinary reasonably prudent person would
21 have acted under the same or similar circumstances.

22 (b)1. Any health care provider, including a hospital
23 licensed under chapter 395, providing emergency services
24 pursuant to obligations imposed by 42 U.S.C. s. 1395dd, s.
25 395.401, s. 395.1041, or s. 401.45 ~~any employee of such~~
26 ~~hospital working in a clinical area within the facility and~~
27 ~~providing patient care, and any person licensed to practice~~
28 ~~medicine who in good faith renders medical care or treatment~~
29 ~~necessitated by a sudden, unexpected situation or occurrence~~
30 ~~resulting in a serious medical condition demanding immediate~~
31 ~~medical attention, for which the patient enters the hospital~~

1 ~~through its emergency room or trauma center, or necessitated~~
2 ~~by a public health emergency declared pursuant to s. 381.00315~~
3 shall not be held liable for any civil damages as a result of
4 such medical care or treatment unless such damages result from
5 providing, or failing to provide, medical care or treatment
6 under circumstances demonstrating a reckless disregard for the
7 consequences so as to affect the life or health of another.

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

11 a. Which occurs prior to the time ~~after~~ the patient is
12 stabilized and is capable of receiving medical treatment as a
13 nonemergency patient, unless surgery is required as a result
14 of the emergency within a reasonable time after the patient is
15 stabilized, in which case the immunity provided by this
16 paragraph applies to any act or omission of providing medical
17 care or treatment which occurs prior to the stabilization of
18 the patient following the surgery. ~~† or~~

19 b. Which is related ~~Unrelated~~ to the original medical
20 emergency.

21 3. For purposes of this paragraph, "reckless
22 disregard" as it applies to a given health care provider
23 rendering emergency medical services shall be such conduct
24 that ~~which~~ a health care provider knew or should have known,
25 at the time such services were rendered, created an
26 unreasonable risk of injury so as to affect the life or health
27 of another, and such risk was substantially greater than that
28 which is necessary to make the conduct negligent. ~~would be~~
29 ~~likely to result in injury so as to affect the life or health~~
30 ~~of another, taking into account the following to the extent~~
31 ~~they may be present;~~

1 ~~a. The extent or serious nature of the circumstances~~
2 ~~prevailing.~~

3 ~~b. The lack of time or ability to obtain appropriate~~
4 ~~consultation.~~

5 ~~c. The lack of a prior patient physician relationship.~~

6 ~~d. The inability to obtain an appropriate medical~~
7 ~~history of the patient.~~

8 ~~e. The time constraints imposed by coexisting~~
9 ~~emergencies.~~

10 4. Every emergency care facility granted immunity
11 under this paragraph shall accept and treat all emergency care
12 patients within the operational capacity of such facility
13 without regard to ability to pay, including patients
14 transferred from another emergency care facility or other
15 health care provider pursuant to Pub. L. No. 99-272, s. 9121.
16 The failure of an emergency care facility to comply with this
17 subparagraph constitutes grounds for the department to
18 initiate disciplinary action against the facility pursuant to
19 chapter 395.

20 (c)1. Any health care practitioner as defined in s.
21 456.001(4) who is in a hospital attending to a patient of his
22 or her practice or for business or personal reasons unrelated
23 to direct patient care, and who voluntarily responds to
24 provide care or treatment to a patient with whom at that time
25 the practitioner does not have a then-existing health care
26 patient-practitioner relationship, and when such care or
27 treatment is necessitated by a sudden or unexpected situation
28 or by an occurrence that demands immediate medical attention,
29 shall not be held liable for any civil damages as a result of
30 any act or omission relative to that care or treatment, unless
31 that care or treatment is proven to amount to conduct that is

1 willful and wanton and would likely result in injury so as to
2 affect the life or health of another.

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

7 3. For purposes of this paragraph, the Legislature's
8 intent is to encourage health care practitioners to provide
9 necessary emergency care to all persons without fear of
10 litigation as described in this paragraph.

11 ~~(c) Any person who is licensed to practice medicine,~~
12 ~~while acting as a staff member or with professional clinical~~
13 ~~privileges at a nonprofit medical facility, other than a~~
14 ~~hospital licensed under chapter 395, or while performing~~
15 ~~health screening services, shall not be held liable for any~~
16 ~~civil damages as a result of care or treatment provided~~
17 ~~gratuitously in such capacity as a result of any act or~~
18 ~~failure to act in such capacity in providing or arranging~~
19 ~~further medical treatment, if such person acts as a reasonably~~
20 ~~prudent person licensed to practice medicine would have acted~~
21 ~~under the same or similar circumstances.~~

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

24 768.21 Damages.--All potential beneficiaries of a
25 recovery for wrongful death, including the decedent's estate,
26 shall be identified in the complaint, and their relationships
27 to the decedent shall be alleged. Damages may be awarded as
28 follows:

29 (8) The damages specified in subsection (3) shall not
30 be recoverable by adult children and the damages specified in
31 subsection (4) shall not be recoverable by parents of an adult

1 child with respect to claims for medical negligence
2 ~~malpractice~~ as defined by s. 766.106(1).

3 Section 67. Present subsections (12) through (19) of
4 section 768.28, Florida Statutes, as amended by section 9 of
5 chapter 2003-159, Laws of Florida, by section 1903 of chapter
6 2003-261, Laws of Florida, and by section 1 of chapter
7 2003-290, Laws of Florida, are renumbered as subsections (13)
8 through (20), respectively, and a new subsection (12) is added
9 to that section to read:

10 768.28 Waiver of sovereign immunity in tort actions;
11 recovery limits; limitation on attorney fees; statute of
12 limitations; exclusions; indemnification; risk management
13 programs.--

14 (12)(a) A health care practitioner, as defined in s.
15 456.001(4), who has contractually agreed to act as an agent of
16 a state university board of trustees to provide medical
17 services to a student-athlete for participation in or as a
18 result of intercollegiate athletics, to include team
19 practices, training, and competitions, shall be considered an
20 agent of the respective state university board of trustees,
21 for the purposes of this section, while acting within the
22 scope of and pursuant to guidelines established in that
23 contract. The contracts shall provide for the indemnification
24 of the state by the agent for any liabilities incurred up to
25 the limits set out in this chapter.

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

30 Section 68. Section 768.77, Florida Statutes, is
31 amended to read:

1 768.77 Itemized verdict.--

2 (1) Except as provided in subsection (2), in any
3 action to which this part applies in which the trier of fact
4 determines that liability exists on the part of the defendant,
5 the trier of fact shall, as a part of the verdict, itemize the
6 amounts to be awarded to the claimant into the following
7 categories of damages:

8 (a)~~(1)~~ Amounts intended to compensate the claimant for
9 economic losses;

10 (b)~~(2)~~ Amounts intended to compensate the claimant for
11 noneconomic losses; and

12 (c)~~(3)~~ Amounts awarded to the claimant for punitive
13 damages, if applicable.

14 (2) In any action for damages based on personal injury
15 or wrongful death arising out of medical malpractice, whether
16 in tort or contract, to which this part applies in which the
17 trier of fact determines that liability exists on the part of
18 the defendant, the trier of fact shall, as a part of the
19 verdict, itemize the amounts to be awarded to the claimant
20 into the following categories of damages:

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

22 1. Past economic losses; and

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

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

27 1. Past noneconomic losses; and

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

30 (c) Amounts awarded to the claimant for punitive
31 damages, if applicable.

1 Section 69. Nothing in this act constitutes a waiver
2 of sovereign immunity under section 768.28, Florida Statutes,
3 or contravenes the abrogation of joint and several liability
4 contained in section 766.112, Florida Statutes.

5 Section 70. Paragraph (c) of subsection (2) of section
6 1006.20, Florida Statutes, as amended by section 2 of chapter
7 2003-129, Laws of Florida, is amended to read:

8 1006.20 Athletics in public K-12 schools.--

9 (2) ADOPTION OF BYLAWS.--

10 (c) The organization shall adopt bylaws that require
11 all students participating in interscholastic athletic
12 competition or who are candidates for an interscholastic
13 athletic team to satisfactorily pass a medical evaluation each
14 year prior to participating in interscholastic athletic
15 competition or engaging in any practice, tryout, workout, or
16 other physical activity associated with the student's
17 candidacy for an interscholastic athletic team. Such medical
18 evaluation can only be administered by a practitioner licensed
19 under the provisions of chapter 458, chapter 459, chapter 460,
20 or s. 464.012, and in good standing with the practitioner's
21 regulatory board. The bylaws shall establish requirements for
22 eliciting a student's medical history and performing the
23 medical evaluation required under this paragraph, which shall
24 include a physical assessment of the student's physical
25 capabilities to participate in interscholastic athletic
26 competition as contained in a uniform preparticipation
27 physical evaluation and history form. The evaluation form
28 shall incorporate the recommendations of the American Heart
29 Association for participation cardiovascular screening and
30 shall provide a place for the signature of the practitioner
31 performing the evaluation with an attestation that each

1 examination procedure listed on the form was performed by the
2 practitioner or by someone under the direct supervision of the
3 practitioner. The form shall also contain a place for the
4 practitioner to indicate if a referral to another practitioner
5 was made in lieu of completion of a certain examination
6 procedure. The form shall provide a place for the practitioner
7 to whom the student was referred to complete the remaining
8 sections and attest to that portion of the examination. The
9 preparticipation physical evaluation form shall advise
10 students to complete a cardiovascular assessment and shall
11 include information concerning alternative cardiovascular
12 evaluation and diagnostic tests. ~~Practitioners administering~~
13 ~~medical evaluations pursuant to this subsection must, at a~~
14 ~~minimum, solicit all information required by, and perform a~~
15 ~~physical assessment according to, the uniform preparticipation~~
16 ~~form referred to in this paragraph and must certify, based on~~
17 ~~the information provided and the physical assessment, that the~~
18 ~~student is physically capable of participating in~~
19 ~~interscholastic athletic competition. If the practitioner~~
20 ~~determines that there are any abnormal findings in the~~
21 ~~cardiovascular system, the student may not participate until a~~
22 ~~further cardiovascular assessment, which may include an EKG,~~
23 ~~is performed which indicates that the student is physically~~
24 ~~capable of participating in interscholastic athletic~~
25 ~~competition.~~Results of such medical evaluation must be
26 provided to the school. No student shall be eligible to
27 participate in any interscholastic athletic competition or
28 engage in any practice, tryout, workout, or other physical
29 activity associated with the student's candidacy for an
30 interscholastic athletic team until the results of the medical
31

1 ~~evaluation clearing the student for participation~~ has been
2 received and approved by the school.

3 Section 71. (1) The Department of Health shall study
4 and report to the Legislature as to whether medical review
5 panels should be included as part of the presuit process in
6 medical malpractice litigation. Medical review panels review a
7 medical malpractice case during the presuit process and make
8 judgements on the merits of the case based on established
9 standards of care with the intent of reducing the number of
10 frivolous claims. The panel's report could be used as
11 admissible evidence at trial or for other purposes.

12 (a) The department's report should address:

13 1. Historical use of medical review panels and similar
14 pretrial programs in this state, including the mediation
15 panels created by chapter 75-9, Laws of Florida.

16 2. Constitutional issues relating to the use of
17 medical review panels.

18 3. The use of medical review panels or similar
19 programs in other states.

20 4. Whether medical review panels or similar panels
21 should be created for use during the presuit process.

22 5. Other recommendations and information that the
23 department deems appropriate.

24 (b) In submitting its report with respect to
25 subparagraphs (a)1.-3., the department should identify at a
26 minimum:

27 1. The percentage of medical malpractice claims
28 submitted to the panels during the time period the panels were
29 in existence.

30 2. The percentage of claims that were settled while
31 the panels were in existence and the percentage of claims that

1 were settled in the 3 years prior to the establishment of such
2 panels or, for each panel which no longer exists, 3 years
3 after the dissolution of such panels.

4 3. In those states where panels have been
5 discontinued, whether additional safeguards have been
6 implemented to avoid the filing of frivolous lawsuits and what
7 those additional safeguards are.

8 4. How the rates for medical malpractice insurance in
9 states utilizing such panels compares with the rates in states
10 not utilizing such panels.

11 5. Whether, and to what extent, a finding by a panel
12 is subject to review and the burden of proof required to
13 overcome a finding by the panel.

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

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

21 Section 72. Subsection (1) of section 391.025, Florida
22 Statutes, as amended by section 409 of chapter 2003-261, Laws
23 of Florida, is amended to read:

24 391.025 Applicability and scope.--

25 (1) This act applies to health services provided to
26 eligible individuals who are:

27 (a)1. Enrolled in the Medicaid program;

28 2.(b) Enrolled in the Florida Kidcare program; and

29 3.(c) Uninsured or underinsured, provided that they
30 meet the financial eligibility requirements established in
31

1 this act, and to the extent that resources are appropriated
2 for their care; or-

3 (b) Infants who receive an award of compensation under
4 s. 766.31(1).

5 Section 73. Paragraph (f) is added to subsection (2)
6 of section 391.029, Florida Statutes, to read:

7 391.029 Program eligibility.--

8 (2) The following individuals are financially eligible
9 for the program:

10 (f) An infant who receives an award of compensation
11 under s. 766.31(1). The Florida Birth-Related Neurological
12 Injury Compensation Association shall reimburse the Children's
13 Medical Services Network the state's share of funding, which
14 must thereafter be used to obtain matching federal funds under
15 Title XXI of the Social Security Act.

16

17 The department may continue to serve certain children with
18 special health care needs who are 21 years of age or older and
19 who were receiving services from the program prior to April 1,
20 1998. Such children may be served by the department until
21 July 1, 2000.

22 Section 74. Subsection (2) of section 766.303, Florida
23 Statutes, is amended to read:

24 766.303 Florida Birth-Related Neurological Injury
25 Compensation Plan; exclusiveness of remedy.--

26 (2) The rights and remedies granted by this plan on
27 account of a birth-related neurological injury shall exclude
28 all other rights and remedies of such infant, her or his
29 personal representative, parents, dependents, and next of kin,
30 at common law or otherwise, against any person or entity
31 directly involved with the labor, delivery, or immediate

1 postdelivery resuscitation during which such injury occurs,
2 arising out of or related to a medical negligence ~~malpractice~~
3 claim with respect to such injury; except that a civil action
4 shall not be foreclosed where there is clear and convincing
5 evidence of bad faith or malicious purpose or willful and
6 wanton disregard of human rights, safety, or property,
7 provided that such suit is filed prior to and in lieu of
8 payment of an award under ss. 766.301-766.316. Such suit
9 shall be filed before the award of the division becomes
10 conclusive and binding as provided for in s. 766.311.

11 Section 75. Section 766.304, Florida Statutes, is
12 amended to read:

13 766.304 Administrative law judge to determine
14 claims.--The administrative law judge shall hear and determine
15 all claims filed pursuant to ss. 766.301-766.316 and shall
16 exercise the full power and authority granted to her or him in
17 chapter 120, as necessary, to carry out the purposes of such
18 sections. The administrative law judge has exclusive
19 jurisdiction to determine whether a claim filed under this act
20 is compensable. No civil action may be brought until the
21 determinations under s. 766.309 have been made by the
22 administrative law judge. If the administrative law judge
23 determines that the claimant is entitled to compensation from
24 the association, or if the claimant accepts an award issued
25 under s. 766.31,no civil action may be brought or continued
26 in violation of the exclusiveness of remedy provisions of s.
27 766.303. If it is determined that a claim filed under this act
28 is not compensable, neither the doctrine of collateral
29 estoppel nor res judicata shall prohibit the claimant from
30 pursuing any and all civil remedies available under common law
31 and statutory law. The findings of fact and conclusions of law

1 of the administrative law judge shall not be admissible in any
2 subsequent proceeding; however, the sworn testimony of any
3 person and the exhibits introduced into evidence in the
4 administrative case are admissible as impeachment in any
5 subsequent civil action only against a party to the
6 administrative proceeding, subject to the Rules of Evidence.
7 An award ~~action~~ may not be made or paid ~~brought~~ under ss.
8 766.301-766.316 if the claimant recovers under a settlement or
9 a final judgment is entered in a civil action. The division
10 may adopt rules to promote the efficient administration of,
11 and to minimize the cost associated with, the prosecution of
12 claims.

13 Section 76. Subsections (1) and (2) of section
14 766.305, Florida Statutes, are amended, present subsections
15 (3), (4), (5), and (6) of that section are redesignated as
16 subsections (4), (5), (6), and (7), respectively, and a new
17 subsection (3) is added to that section to read:

18 766.305 Filing of claims and responses; medical
19 disciplinary review.--

20 (1) All claims filed for compensation under the plan
21 shall commence by the claimant filing with the division a
22 petition seeking compensation. Such petition shall include
23 the following information:

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

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

28 (c) The name and address of any physician providing
29 obstetrical services who was present at the birth and the name
30 and address of the hospital at which the birth occurred.

31

1 (d) A description of the disability for which the
2 claim is made.

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

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

6 ~~(g) All available relevant medical records relating to~~
7 ~~the birth-related neurological injury, and an identification~~
8 ~~of any unavailable records known to the claimant and the~~
9 ~~reasons for their unavailability.~~

10 ~~(h) Appropriate assessments, evaluations, and~~
11 ~~prognoses, and such other records and documents as are~~
12 ~~reasonably necessary for the determination of the amount of~~
13 ~~compensation to be paid to, or on behalf of, the injured~~
14 ~~infant on account of the birth-related neurological injury.~~

15 ~~(i) Documentation of expenses and services incurred to~~
16 ~~date, which indicates any payment made for such expenses and~~
17 ~~services, and by whom.~~

18 ~~(j) Documentation of any applicable private or~~
19 ~~governmental source of services or reimbursement relative to~~
20 ~~the impairments.~~

21 (2) The claimant shall furnish the division with as
22 many copies of the petition as required for service upon the
23 association, any physician and hospital named in the petition,
24 and the Division of Medical Quality Assurance, along with a
25 \$15 filing fee payable to the Division of Administrative
26 Hearings. Upon receipt of the petition, the division shall
27 immediately serve the association, by service upon the agent
28 designated to accept service on behalf of the association, by
29 registered or certified mail, and shall mail copies of the
30 petition, by registered or certified mail, to any physician,
31 health care provider, and hospital named in the petition, and

1 shall furnish a copy by regular mail to the Division of
2 Medical Quality Assurance, and the Agency for Health Care
3 Administration.

4 (3) The claimant shall furnish to the Florida
5 Birth-Related Neurological Injury Compensation Association the
6 following information, which must be filed with the
7 association within 10 days after the filing of the petition as
8 set forth in s. 766.305(1):

9 (a) All available relevant medical records relating to
10 the birth-related neurological injury and a list identifying
11 any unavailable records known to the claimant and the reasons
12 for the records' unavailability.

13 (b) Appropriate assessments, evaluations, and
14 prognoses and such other records and documents as are
15 reasonably necessary for the determination of the amount of
16 compensation to be paid to, or on behalf of, the injured
17 infant on account of the birth-related neurological injury.

18 (c) Documentation of expenses and services incurred to
19 date which identifies any payment made for such expenses and
20 services and the payor.

21 (d) Documentation of any applicable private or
22 governmental source of services or reimbursement relative to
23 the impairments.

24
25 The information required by (a)-(d) shall remain confidential
26 and exempt under the provisions of s. 766.315(5)(b).

27 Section 77. Subsection (4) is added to section
28 766.309, Florida Statutes, to read:

29 766.309 Determination of claims; presumption; findings
30 of administrative law judge binding on participants.--

31

1 (4) If it is in the interest of judicial economy or if
2 requested to by the claimant, the administrative law judge may
3 bifurcate the proceeding addressing compensability and notice
4 pursuant to s. 766.316 first, and addressing an award pursuant
5 to s. 766.31, if any, in a separate proceeding. The
6 administrative law judge may issue a final order on
7 compensability and notice which is subject to appeal under s.
8 766.311, prior to issuance of an award pursuant to s. 766.31.

9 Section 78. Subsection (1) of section 766.31, Florida
10 Statutes, is amended to read:

11 766.31 Administrative law judge awards for
12 birth-related neurological injuries; notice of award.--

13 (1) Upon determining that an infant has sustained a
14 birth-related neurological injury and that obstetrical
15 services were delivered by a participating physician at the
16 birth, the administrative law judge shall make an award
17 providing compensation for the following items relative to
18 such injury:

19 (a) Actual expenses for medically necessary and
20 reasonable medical and hospital, habilitative and training,
21 family residential or custodial care, professional
22 residential, and custodial care and service, for medically
23 necessary drugs, special equipment, and facilities, and for
24 related travel. However, such expenses shall not include:

25 1. Expenses for items or services that the infant has
26 received, or is entitled to receive, under the laws of any
27 state or the Federal Government, except to the extent such
28 exclusion may be prohibited by federal law.

29 2. Expenses for items or services that the infant has
30 received, or is contractually entitled to receive, from any
31

1 prepaid health plan, health maintenance organization, or other
2 private insuring entity.

3 3. Expenses for which the infant has received
4 reimbursement, or for which the infant is entitled to receive
5 reimbursement, under the laws of any state or the Federal
6 Government, except to the extent such exclusion may be
7 prohibited by federal law.

8 4. Expenses for which the infant has received
9 reimbursement, or for which the infant is contractually
10 entitled to receive reimbursement, pursuant to the provisions
11 of any health or sickness insurance policy or other private
12 insurance program.

13

14 Expenses included under this paragraph shall be limited to
15 reasonable charges prevailing in the same community for
16 similar treatment of injured persons when such treatment is
17 paid for by the injured person.

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

24 2. Death benefit for the infant in an amount of
25 \$10,000 ~~Payment for funeral expenses not to exceed \$1,500.~~

26 (c) Reasonable expenses incurred in connection with
27 the filing of a claim under ss. 766.301-766.316, including
28 reasonable attorney's fees, which shall be subject to the
29 approval and award of the administrative law judge. In
30 determining an award for attorney's fees, the administrative
31 law judge shall consider the following factors:

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

4 2. The fee customarily charged in the locality for
5 similar legal services.

6 3. The time limitations imposed by the claimant or the
7 circumstances.

8 4. The nature and length of the professional
9 relationship with the claimant.

10 5. The experience, reputation, and ability of the
11 lawyer or lawyers performing services.

12 6. The contingency or certainty of a fee.

13
14 Should there be a final determination of compensability, and
15 the claimants accept an award under this section, the
16 claimants shall not be liable for any expenses, including
17 attorney's fees, incurred in connection with the filing of a
18 claim under ss. 766.301-766.316 other than those expenses
19 awarded under this section.

20 Section 79. Paragraph (a) and paragraph (c) of
21 subsection (4) of section 766.314, Florida Statutes, as
22 amended by section 4 of chapter 2003-258, Laws of Florida, and
23 by section 1901 of chapter 2003-261, Laws of Florida, are
24 amended, paragraph (d) is added to that subsection, and
25 paragraph (a) of subsection (5) of that section is amended to
26 read:

27 766.314 Assessments; plan of operation.--

28 (4) The following persons and entities shall pay into
29 the association an initial assessment in accordance with the
30 plan of operation:

31

1 (a) On or before October 1, 1988, each hospital
2 licensed under chapter 395 shall pay an initial assessment of
3 \$50 per infant delivered in the hospital during the prior
4 calendar year, as reported to the Agency for Health Care
5 Administration; provided, however, that a hospital owned or
6 operated by the state or a county, special taxing district, or
7 other political subdivision of the state shall not be required
8 to pay the initial assessment or any assessment required by
9 subsection (5). The term "infant delivered" includes live
10 births and not stillbirths, but the term does not include
11 infants delivered by employees or agents of the board of
12 trustees of a state university ~~Board of Regents~~ or those born
13 in a teaching hospital as defined in s. 408.07. The initial
14 assessment and any assessment imposed pursuant to subsection
15 (5) may not include any infant born to a charity patient (as
16 defined by rule of the Agency for Health Care Administration)
17 or born to a patient for whom the hospital receives Medicaid
18 reimbursement, if the sum of the annual charges for charity
19 patients plus the annual Medicaid contractals of the hospital
20 exceeds 10 percent of the total annual gross operating
21 revenues of the hospital. The hospital is responsible for
22 documenting, to the satisfaction of the association, the
23 exclusion of any birth from the computation of the assessment.
24 Upon demonstration of financial need by a hospital, the
25 association may provide for installment payments of
26 assessments.

27 (c) On or before December 1, 1988, each physician
28 licensed pursuant to chapter 458 or chapter 459 who wishes to
29 participate in the Florida Birth-Related Neurological Injury
30 Compensation Plan and who otherwise qualifies as a
31 participating physician under ss. 766.301-766.316 shall pay an

1 initial assessment of \$5,000. However, if the physician is
2 either a resident physician, assistant resident physician, or
3 intern in an approved postgraduate training program, as
4 defined by the Board of Medicine or the Board of Osteopathic
5 Medicine by rule, and is supervised in accordance with program
6 requirements established by the Accreditation Council for
7 Graduate Medical Education or the American Osteopathic
8 Association by a physician who is participating in the plan,
9 such resident physician, assistant resident physician, or
10 intern is deemed to be a participating physician without the
11 payment of the assessment. Participating physicians also
12 include any employee of the board of trustees of a state
13 university ~~Board of Regents~~ who has paid the assessment
14 required by this paragraph and paragraph (5)(a), and any
15 certified nurse midwife supervised by such employee.
16 Participating physicians include any certified nurse midwife
17 who has paid 50 percent of the physician assessment required
18 by this paragraph and paragraph (5)(a) and who is supervised
19 by a participating physician who has paid the assessment
20 required by this paragraph and paragraph (5)(a). Supervision
21 for nurse midwives shall require that the supervising
22 physician will be easily available and have a prearranged plan
23 of treatment for specified patient problems which the
24 supervised certified nurse midwife may carry out in the
25 absence of any complicating features. Any physician who
26 elects to participate in such plan on or after January 1,
27 1989, who was not a participating physician at the time of
28 such election to participate and who otherwise qualifies as a
29 participating physician under ss. 766.301-766.316 shall pay an
30 additional initial assessment equal to the most recent
31

1 assessment made pursuant to this paragraph, paragraph (5)(a),
2 or paragraph (7)(b).

3 (d) Any hospital located in a county with a population
4 in excess of 1.1 million as of January 1, 2003, as determined
5 by the Agency for Health Care Administration under the Health
6 Care Responsibility Act, may elect to pay the fee for the
7 participating physician and the certified nurse midwife if the
8 hospital first determines that the primary motivating purpose
9 for making such payment is to ensure coverage for the
10 hospital's patients under the provisions of ss.

11 766.301-766.316; however, no hospital may restrict any
12 participating physician or nurse midwife, directly or
13 indirectly, from being on the staff of hospitals other than
14 the staff of the hospital making the payment. Each hospital
15 shall file with the association an affidavit setting forth
16 specifically the reasons why the hospital elected to make the
17 payment on behalf of each participating physician and
18 certified nurse midwife. The payments authorized under this
19 paragraph shall be in addition to the assessment set forth in
20 paragraph (5)(a).

21 (5)(a) Beginning January 1, 1990, the persons and
22 entities listed in paragraphs (4)(b) and (c), except those
23 persons or entities who are specifically excluded from said
24 provisions, as of the date determined in accordance with the
25 plan of operation, taking into account persons licensed
26 subsequent to the payment of the initial assessment, shall pay
27 an annual assessment in the amount equal to the initial
28 assessments provided in paragraphs (4)(b) and (c). If payment
29 of the annual assessment by a physician is received by the
30 association by January 31 of any calendar year, the physician
31 shall qualify as a participating physician for that entire

1 calendar year. If the payment is received after January 31 of
2 any calendar year, the physician shall qualify as a
3 participating physician for that calendar year only from the
4 date the payment was received by the association.On January
5 1, 1991, and on each January 1 thereafter, the association
6 shall determine the amount of additional assessments necessary
7 pursuant to subsection (7), in the manner required by the plan
8 of operation, subject to any increase determined to be
9 necessary by the Department of Insurance pursuant to paragraph
10 (7)(b). On July 1, 1991, and on each July 1 thereafter, the
11 persons and entities listed in paragraphs (4)(b) and (c),
12 except those persons or entities who are specifically excluded
13 from said provisions, shall pay the additional assessments
14 which were determined on January 1. Beginning January 1, 1990,
15 the entities listed in paragraph (4)(a), including those
16 licensed on or after October 1, 1988, shall pay an annual
17 assessment of \$50 per infant delivered during the prior
18 calendar year. The additional assessments which were
19 determined on January 1, 1991, pursuant to the provisions of
20 subsection (7) shall not be due and payable by the entities
21 listed in paragraph (4)(a) until July 1.

22 Section 80. The Office of Program Policy Analysis and
23 Government Accountability shall complete a study of the
24 eligibility requirements for a birth to be covered under the
25 Florida Birth-Related Neurological Injury Compensation
26 Association and submit a report to the Legislature by January
27 1, 2004, recommending whether or not the statutory criteria
28 for a claim to qualify for referral to the Florida
29 Birth-Related Neurological Injury Compensation Association
30 under section 766.302, Florida Statutes, should be modified.
31

1 Section 81. The sum of \$687,786 is appropriated from
2 the Medical Quality Assurance Trust Fund to the Department of
3 Health, and seven positions are authorized, for the purpose of
4 implementing this act during the 2003-2004 fiscal year. The
5 sum of \$1,629,994 is appropriated from the Health Care Trust
6 Fund to the Agency for Health Care Administration, and 11
7 positions are authorized, for the purpose of implementing this
8 act during the 2003-2004 fiscal year.

9 Section 82. The sum of \$1,450,000 is appropriated to
10 the Insurance Regulatory Trust Fund in the Department of
11 Financial Services to the Office of Insurance Regulation for
12 the purpose of implementing this act during the 2003-2004
13 fiscal year.

14 Section 83. The sum of \$850,000 in nonrecurring
15 general revenue funds is appropriated to the Agency for Health
16 Care Administration for the purpose of implementing patient
17 safety initiatives during the 2003-2004 fiscal year.

18 Section 84. If any law that is amended by this act was
19 also amended by a law enacted at the 2003 Regular Session or a
20 2003 special session of the Legislature, such laws shall be
21 construed as if they had been enacted during the same session
22 of the Legislature, and full effect should be given to each if
23 that is possible.

24 Section 85. If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 invalidity does not affect other provisions or applications of
27 the act which can be given effect without the invalid
28 provision or application, and to this end the provisions of
29 this act are severable.

30 Section 86. It is the intent of the Legislature to
31 apply the provisions of this act to prior medical incidents,

1 to the extent such application is not prohibited by the State
2 Constitution or Federal Constitution, except that the changes
3 to chapter 766, Florida Statutes, shall apply only to any
4 medical incident for which a notice of intent to initiate
5 litigation is mailed on or after the effective date of this
6 act.

7 Section 87. Except as otherwise expressly provided in
8 this act, this act shall take effect September 15, 2003.

9
10 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
11 COMMITTEE SUBSTITUTE FOR
12 Senate Bill 2-D

13 This CS for SB 2-D does the following:

14 Provides that the application of the limitation on noneconomic
15 damages for negligence of certain practitioner and
16 nonpractitioner defendants providing emergency services and
17 care is for those acts or omissions occurring prior to the
18 time the patient is stabilized and capable of receiving
19 medical treatment as a nonemergency patient, except when
20 surgery is required as a result of the emergency under
21 specified circumstances.

22 Revises the term "practitioner" for purposes of the
23 application of the limitation on noneconomic damages for
24 medical negligence claims.

25 Revises provisions that would amend current law and provide
26 for the discovery of presuit medical expert opinions and
27 statements to specify that the medical expert's "opinions"
28 rather than "opinions and statements" are discoverable.

29 Revises the factors that may be used by the trier of fact to
30 ascertain whether a medical malpractice insurer has acted in
31 bad faith.