

1                   A bill to be entitled  
2           An act relating to medical malpractice insurance; creating  
3           the Enterprise Act for Patient Protection and Provider  
4           Liability; providing legislative findings; amending s.  
5           381.0271, F.S.; authorizing the Florida Patient Safety  
6           Corporation to intervene as a party in certain actions  
7           involving patient safety; amending s. 395.0197, F.S.,  
8           relating to internal risk management programs; conforming  
9           provisions to changes made by the act; amending s.  
10          458.320, F.S.; exempting certain physicians who perform  
11          surgery in certain patient safety facilities from the  
12          requirement to establish financial responsibility;  
13          requiring a licensed physician who is covered for medical  
14          negligence claims by a hospital that assumes liability  
15          under the act to prominently post notice or provide a  
16          written statement to patients; requiring a licensed  
17          physician who meets certain requirements for payment or  
18          settlement of a medical malpractice claim and who is  
19          covered for medical negligence claims by a hospital that  
20          assumes liability under the act to prominently post notice  
21          or provide a written statement to patients; amending s.  
22          459.0085, F.S.; requiring a licensed osteopathic physician  
23          who is covered for medical negligence claims by a hospital  
24          that assumes liability under the act to prominently post  
25          notice or provide a written statement to patients;  
26          requiring a licensee of osteopathic medicine who meets  
27          certain requirements for payment or settlement of a  
28          medical malpractice claim and who is covered for medical

29 negligence claims by a hospital that assumes liability  
30 under the act to prominently post notice or provide a  
31 written statement to patients; creating s. 627.41485,  
32 F.S.; authorizing insurers to offer liability insurance  
33 coverage to physicians which has an exclusion for certain  
34 acts of medical negligence under certain conditions;  
35 authorizing the Department of Health to adopt rules;  
36 amending s. 766.316, F.S.; requiring hospitals that assume  
37 liability for affected physicians under the act to provide  
38 notice to obstetrical patients regarding the limited no-  
39 fault alternative to birth-related neurological injuries;  
40 amending s. 766.110, F.S.; requiring hospitals that assume  
41 liability for acts of medical negligence under the act to  
42 carry insurance; requiring the hospital's policy regarding  
43 medical liability insurance to satisfy certain statutory  
44 financial-responsibility requirements; authorizing an  
45 insurer who is authorized to write casualty insurance to  
46 write such coverage; authorizing certain hospitals to  
47 indemnify certain medical staff for legal liability of  
48 loss, damages, or expenses arising from medical  
49 malpractice within hospital premises; requiring a hospital  
50 to acquire a policy of professional liability insurance or  
51 a fund for malpractice coverage; requiring an annual  
52 certified financial statement to the Patient Safety  
53 Corporation and the Office of Insurance Regulation within  
54 the Department of Financial Services; authorizing certain  
55 hospitals to charge physicians a fee for malpractice  
56 coverage; creating s. 766.401, F.S.; providing

57 definitions; creating s. 766.402, F.S.; authorizing an  
58 eligible hospital to petition the Agency for Health Care  
59 Administration to enter an order certifying the hospital  
60 as a patient safety facility; providing requirements for  
61 certification as a patient safety facility; creating s.  
62 766.403, F.S.; providing requirements for a hospital to  
63 demonstrate that it is engaged in a common enterprise for  
64 the care and treatment of patients; specifying required  
65 patient safety measures; prohibiting a report or document  
66 generated under the act, from being admissible or  
67 discoverable as evidence; creating s. 766.404, F.S.;  
68 authorizing the agency to enter an order certifying a  
69 hospital as a patient safety facility and providing that  
70 the hospital bears liability for acts of medical  
71 negligence for its health care providers or an agent of  
72 the hospital; providing that certain persons or entities  
73 are not liable for medically negligent acts occurring in a  
74 certified patient safety facility; requiring that an  
75 affected practitioner prominently post notice regarding  
76 exemption from personal liability; requiring an affected  
77 physician who is covered by an enterprise plan in a  
78 licensed facility that receives sovereign immunity to  
79 prominently post notice regarding exemption from personal  
80 liability; providing that an agency order certifying  
81 approval of an enterprise plan is evidence of a hospital's  
82 compliance with applicable patient safety requirements;  
83 providing circumstances in which notice is not required;  
84 providing that the order certifying approval of an

85 enterprise plan applies prospectively to causes of action  
86 for medical negligence; authorizing the agency to conduct  
87 onsite examinations of a licensed facility; providing  
88 circumstances under which the agency may revoke its order  
89 certifying approval of an enterprise plan; providing that  
90 an employee or agent of a certified patient safety  
91 facility may not be joined as a defendant in an action for  
92 medical negligence; requiring an affected physician to  
93 cooperate in good faith in an investigation of a claim for  
94 medical malpractice; providing a cause of action for  
95 failure of a physician to act in good faith; providing  
96 that strict liability or liability without fault is not  
97 imposed for medical incidents that occur in the affected  
98 facility; providing requirements that a claimant must  
99 prove to demonstrate medical negligence by an employee,  
100 agent, or medical staff of a licensed facility; providing  
101 that the act does not create an independent cause of  
102 action or waive sovereign immunity; creating s. 766.405,  
103 F.S.; requiring an eligible hospital to execute an  
104 enterprise agreement; requiring certain conditions to be  
105 contained within an enterprise agreement; creating s.  
106 766.406, F.S.; requiring a certified patient safety  
107 facility to report medical incidents occurring on its  
108 premises and adverse findings of medical negligence to the  
109 Department of Health; authorizing an affected facility to  
110 require an affected practitioner to undertake additional  
111 training, education, or professional counseling under  
112 certain conditions; authorizing an affected facility to

113 | limit, suspend, or terminate clinical privileges of an  
114 | affected practitioner under certain circumstances;  
115 | providing that a licensed facility and its officers,  
116 | directors, employees, and agents are immune from liability  
117 | for certain sanctions; providing that deliberations and  
118 | findings of a peer review committee are not discoverable  
119 | or admissible as evidence; authorizing the department to  
120 | adopt rules; creating s. 766.407, F.S.; providing that an  
121 | enterprise agreement may provide clinical privileges to  
122 | certain persons; requiring certain organizations to share  
123 | in the cost of omnibus medical liability insurance  
124 | premiums subject to certain conditions; authorizing a  
125 | licensed facility to impose a reasonable assessment  
126 | against an affected practitioner who commits medical  
127 | negligence; providing for the revocation of clinical  
128 | privileges for failure to pay the assessment; exempting  
129 | certain employees and agents from such assessments;  
130 | creating s. 766.408, F.S.; requiring a certified patient  
131 | safety facility to submit an annual report to the agency  
132 | and the Legislature; providing requirements for the annual  
133 | report; providing that the annual report may include  
134 | certain information from the Office of Insurance  
135 | Regulation within the Department of Financial Services;  
136 | providing that the annual report is subject to public-  
137 | records requirements, but is not admissible as evidence in  
138 | a legal proceeding; creating s. 766.409, F.S.; providing  
139 | rulemaking authority; creating s. 766.410, F.S. ;  
140 | authorizing certain teaching hospitals and eligible

141 hospitals to petition the agency for certification;  
142 providing for limitations on damages for eligible  
143 hospitals that are certified for compliance with certain  
144 patient safety measures; authorizing the agency to conduct  
145 onsite examinations of certified eligible hospitals;  
146 authorizing the agency to revoke its order certifying  
147 approval of an enterprise plan; providing that an agency  
148 order certifying approval of an enterprise plan is  
149 evidence of a hospital's compliance with applicable  
150 patient safety requirements; providing that evidence of  
151 noncompliance is inadmissible in any action for medical  
152 malpractice; providing that entry of the agency's order  
153 does not impose enterprise liability on the licensed  
154 facility for acts or omissions of medical negligence;  
155 providing that a hospital may not be approved for  
156 certification for both enterprise liability and  
157 limitations on damages; amending s. 768.28, F.S.;  
158 providing limitations on payment of a claim or judgment  
159 for an action for medical negligence within a certified  
160 patient safety facility that is covered by sovereign  
161 immunity; providing definitions; providing that a  
162 certified patient safety facility is an agent of a state  
163 university board of trustees to the extent that the  
164 licensed facility is solely liable for acts of medical  
165 negligence of physicians providing health care services  
166 within the licensed facility; providing for severability;  
167 providing for broad statutory view of the act; providing  
168 for self-execution of the act; providing an effective

169 date.

170

171 Be It Enacted by the Legislature of the State of Florida:

172

173 Section 1. Popular name.--This act may be cited as the  
 174 "Enterprise Act for Patient Protection and Provider Liability."

175 Section 2. Legislative findings.--

176 (1) The Legislature finds that this state is in the midst  
 177 of a prolonged medical malpractice insurance crisis that has  
 178 serious adverse effects on patients, practitioners, licensed  
 179 healthcare facilities, and all residents of this state.

180 (2) The Legislature finds that hospitals are central  
 181 components of the modern health care delivery system.

182 (3) The Legislature finds that many of the most serious  
 183 incidents of medical negligence occur in hospitals, where the  
 184 most seriously ill patients are treated, and where surgical  
 185 procedures are performed.

186 (4) The Legislature finds that modern hospitals are  
 187 complex organizations, that medical care and treatment in  
 188 hospitals is a complex process, and that, increasingly, medical  
 189 care and treatment in hospitals is a common enterprise involving  
 190 an array of responsible employees, agents, and other persons,  
 191 such as physicians, who are authorized to exercise clinical  
 192 privileges within the premises.

193 (5) The Legislature finds that an increasing number of  
 194 medical incidents in hospitals involve a combination of acts and  
 195 omissions by employees, agents, and other persons, such as  
 196 physicians, who are authorized to exercise clinical privileges

197 within the premises.

198 (6) The Legislature finds that the medical malpractice  
199 insurance crisis in this state can be alleviated by the adoption  
200 of innovative approaches for patient protection in hospitals  
201 which can lead to a reduction in medical errors.

202 (7) The Legislature finds statutory incentives are  
203 necessary to facilitate innovative approaches for patient  
204 protection in hospitals.

205 (8) The Legislature finds that an enterprise approach to  
206 patient protection and provider liability in hospitals will lead  
207 to a reduction in the frequency and severity of incidents of  
208 medical malpractice in hospitals.

209 (9) The Legislature finds that a reduction in the  
210 frequency and severity of incidents of medical malpractice in  
211 hospitals will reduce attorney's fees and other expenses  
212 inherent in the medical liability system.

213 (10) The Legislature finds that making high-quality health  
214 care available to the residents of this state is an overwhelming  
215 public necessity.

216 (11) The Legislature finds that medical education in this  
217 state is an overwhelming public necessity.

218 (12) The Legislature finds that statutory teaching  
219 hospitals and hospitals owned by and operated by universities  
220 that maintain accredited medical schools are essential for high-  
221 quality medical care and medical education in this state.

222 (13) The Legislature finds that the critical mission of  
223 statutory teaching hospitals and hospitals owned and operated by  
224 universities that maintain accredited medical schools is



225 severely undermined by the ongoing medical malpractice crisis.

226 (14) The Legislature finds that statutory teaching  
227 hospitals and hospitals owned and operated by universities that  
228 maintain accredited medical schools are appropriate health care  
229 facilities for the implementation of innovative approaches to  
230 patient protection and provider liability.

231 (15) The Legislature finds an overwhelming public  
232 necessity to impose reasonable limitations on actions for  
233 medical malpractice against statutory teaching hospitals and  
234 hospitals that are owned and operated by universities that  
235 maintain accredited medical schools, in furtherance of the  
236 critical public interest in promoting access to high-quality  
237 medical care, medical education, and innovative approaches to  
238 patient protection.

239 (16) The Legislature finds an overwhelming public  
240 necessity for statutory teaching hospitals and hospitals owned  
241 and operated by universities that maintain accredited medical  
242 schools to implement innovative measures for patient protection  
243 and provider liability in order to generate empirical data for  
244 state policymakers on the effectiveness of these measures. Such  
245 data may lead to broader application of these measures in a  
246 wider array of hospitals after a reasonable period of evaluation  
247 and review.

248 (17) The Legislature finds an overwhelming public  
249 necessity to promote the academic mission of statutory teaching  
250 hospitals and hospitals owned and operated by universities that  
251 maintain accredited medical schools. Furthermore, the  
252 Legislature finds that the academic mission of these medical

253 facilities is materially enhanced by statutory authority for the  
254 implementation of innovative approaches to patient protection  
255 and provider liability. Such approaches can be carefully studied  
256 and learned by medical students, medical school faculty, and  
257 affiliated physicians in appropriate clinical settings, thereby  
258 enlarging the body of knowledge concerning patient protection  
259 and provider liability which is essential for advancement of  
260 patient safety, reduction of expenses inherent in the medical  
261 liability system, and curtailment of the medical malpractice  
262 insurance crisis in this state.

263 Section 3. Paragraph (b) of subsection (7) of section  
264 381.0271, Florida Statutes, is amended to read:

265 381.0271 Florida Patient Safety Corporation.--

266 (7) POWERS AND DUTIES.--

267 (b) In carrying out its powers and duties, the corporation  
268 may also:

269 1. Assess the patient safety culture at volunteering  
270 hospitals and recommend methods to improve the working  
271 environment related to patient safety at these hospitals.

272 2. Inventory the information technology capabilities  
273 related to patient safety of health care facilities and health  
274 care practitioners and recommend a plan for expediting the  
275 implementation of patient safety technologies statewide.

276 3. Recommend continuing medical education regarding  
277 patient safety to practicing health care practitioners.

278 4. Study and facilitate the testing of alternative systems  
279 of compensating injured patients as a means of reducing and  
280 preventing medical errors and promoting patient safety.

281           5. Intervene as a party, as defined by s. 120.52, in any  
 282 administrative action related to patient safety in hospitals or  
 283 other licensed health care facilities.

284           ~~6.5-~~ Conduct other activities identified by the board of  
 285 directors to promote patient safety in this state.

286           Section 4. Subsection (3) of section 395.0197, Florida  
 287 Statutes, is amended to read:

288           395.0197 Internal risk management program.--

289           (3) In addition to the programs mandated by this section,  
 290 other innovative approaches intended to reduce the frequency and  
 291 severity of medical malpractice and patient injury claims shall  
 292 be encouraged and their implementation and operation  
 293 facilitated. Such additional approaches may include extending  
 294 internal risk management programs to health care providers'  
 295 offices and the assuming of provider liability by a licensed  
 296 health care facility for acts or omissions occurring within the  
 297 licensed facility pursuant to the Enterprise Act for Patient  
 298 Protection and Provider Liability, inclusive of ss. 766.401-  
 299 766.409. Each licensed facility shall annually report to the  
 300 agency and the Department of Health the name and judgments  
 301 entered against each health care practitioner for which it  
 302 assumes liability. The agency and Department of Health, in their  
 303 respective annual reports, shall include statistics that report  
 304 the number of licensed facilities that assume such liability and  
 305 the number of health care practitioners, by profession, for whom  
 306 they assume liability.

307           Section 5. Subsection (2) and paragraphs (f) and (g) of  
 308 subsection (5) of section 458.320, Florida Statutes, are amended

309 to read:

310 458.320 Financial responsibility.--

311 (2) Physicians who perform surgery in an ambulatory  
 312 surgical center licensed under chapter 395 and, as a continuing  
 313 condition of hospital staff privileges, physicians who have  
 314 staff privileges must also establish financial responsibility by  
 315 one of the following methods:

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

322 (b) Obtaining and maintaining professional liability  
 323 coverage in an amount not less than \$250,000 per claim, with a  
 324 minimum annual aggregate of not less than \$750,000 from an  
 325 authorized insurer as defined under s. 624.09, from a surplus  
 326 lines insurer as defined under s. 626.914(2), from a risk  
 327 retention group as defined under s. 627.942, from the Joint  
 328 Underwriting Association established under s. 627.351(4),  
 329 through a plan of self-insurance as provided in s. 627.357, or  
 330 through a plan of self-insurance which meets the conditions  
 331 specified for satisfying financial responsibility in s. 766.110.  
 332 The required coverage amount set forth in this paragraph may not  
 333 be used for litigation costs or attorney's fees for the defense  
 334 of any medical malpractice claim.

335 (c) Obtaining and maintaining an unexpired irrevocable  
 336 letter of credit, established pursuant to chapter 675, in an

337 amount not less than \$250,000 per claim, with a minimum  
 338 aggregate availability of credit of not less than \$750,000. The  
 339 letter of credit must be payable to the physician as beneficiary  
 340 upon presentment of a final judgment indicating liability and  
 341 awarding damages to be paid by the physician or upon presentment  
 342 of a settlement agreement signed by all parties to such  
 343 agreement when such final judgment or settlement is a result of  
 344 a claim arising out of the rendering of, or the failure to  
 345 render, medical care and services. The letter of credit may not  
 346 be used for litigation costs or attorney's fees for the defense  
 347 of any medical malpractice claim. The letter of credit must be  
 348 nonassignable and nontransferable. The letter of credit must be  
 349 issued by any bank or savings association organized and existing  
 350 under the laws of this state or any bank or savings association  
 351 organized under the laws of the United States which has its  
 352 principal place of business in this state or has a branch office  
 353 that is authorized under the laws of this state or of the United  
 354 States to receive deposits in this state.

355  
 356 This subsection shall be inclusive of the coverage in subsection  
 357 (1). A physician who only performs surgery or who has only  
 358 clinical privileges or admitting privileges in one or more  
 359 certified patient safety facilities, which health care facility  
 360 or facilities are legally liable for medical negligence of  
 361 affected practitioners, pursuant to the Enterprise Act for  
 362 Patient Protection and Provider Liability, inclusive of ss.  
 363 766.401-766.409, is exempt from the requirements of this  
 364 subsection.

365 (5) The requirements of subsections (1), (2), and (3) do  
 366 not apply to:

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

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

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

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

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

381 5. The licensee has not been subject within the last 10  
 382 years of practice to license revocation or suspension for any  
 383 period of time; probation for a period of 3 years or longer; or  
 384 a fine of \$500 or more for a violation of this chapter or the  
 385 medical practice act of another jurisdiction. The regulatory  
 386 agency's acceptance of a physician's relinquishment of a  
 387 license, stipulation, consent order, or other settlement,  
 388 offered in response to or in anticipation of the filing of  
 389 administrative charges against the physician's license,  
 390 constitutes action against the physician's license for the  
 391 purposes of this paragraph.

392 6. The licensee has submitted a form supplying necessary

393 information as required by the department and an affidavit  
 394 affirming compliance with this paragraph.

395 7. The licensee must submit biennially to the department  
 396 certification stating compliance with the provisions of this  
 397 paragraph. The licensee must, upon request, demonstrate to the  
 398 department information verifying compliance with this paragraph.

399  
 400 A licensee who meets the requirements of this paragraph must  
 401 post notice in the form of a sign prominently displayed in the  
 402 reception area and clearly noticeable by all patients or provide  
 403 a written statement to any person to whom medical services are  
 404 being provided. The sign or statement must read as follows:

405 "Under Florida law, physicians are generally required to carry  
 406 medical malpractice insurance or otherwise demonstrate financial  
 407 responsibility to cover potential claims for medical  
 408 malpractice. However, certain part-time physicians who meet  
 409 state requirements are exempt from the financial responsibility  
 410 law. YOUR DOCTOR MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO  
 411 CARRY MEDICAL MALPRACTICE INSURANCE. This notice is provided  
 412 pursuant to Florida law." In addition, a licensee who is covered  
 413 for claims of medical negligence arising from care and treatment  
 414 of patients in a hospital that assumes sole and exclusive  
 415 liability for all such claims pursuant to the Enterprise Act for  
 416 Patient Protection and Provider Liability, inclusive of ss.  
 417 766.401-766.409, shall post notice in the form of a sign  
 418 prominently displayed in the reception area and clearly  
 419 noticeable by all patients or provide a written statement to any  
 420 person for whom the physician may provide medical care and

421 treatment in any such hospital in accordance with the  
422 requirements of s. 766.404.

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

425 1. Upon the entry of an adverse final judgment arising  
426 from a medical malpractice arbitration award, from a claim of  
427 medical malpractice either in contract or tort, or from  
428 noncompliance with the terms of a settlement agreement arising  
429 from a claim of medical malpractice either in contract or tort,  
430 the licensee shall pay the judgment creditor the lesser of the  
431 entire amount of the judgment with all accrued interest or  
432 either \$100,000, if the physician is licensed pursuant to this  
433 chapter but does not maintain hospital staff privileges, or  
434 \$250,000, if the physician is licensed pursuant to this chapter  
435 and maintains hospital staff privileges, within 60 days after  
436 the date such judgment became final and subject to execution,  
437 unless otherwise mutually agreed to in writing by the parties.  
438 Such adverse final judgment shall include any cross-claim,  
439 counterclaim, or claim for indemnity or contribution arising  
440 from the claim of medical malpractice. Upon notification of the  
441 existence of an unsatisfied judgment or payment pursuant to this  
442 subparagraph, the department shall notify the licensee by  
443 certified mail that he or she shall be subject to disciplinary  
444 action unless, within 30 days from the date of mailing, he or  
445 she either:

446 a. Shows proof that the unsatisfied judgment has been paid  
447 in the amount specified in this subparagraph; or

448 b. Furnishes the department with a copy of a timely filed



449 notice of appeal and either:

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

452 (II) An order from a court of competent jurisdiction  
453 staying execution on the final judgment pending disposition of  
454 the appeal.

455 2. The Department of Health shall issue an emergency order  
456 suspending the license of any licensee who, after 30 days  
457 following receipt of a notice from the Department of Health, has  
458 failed to: satisfy a medical malpractice claim against him or  
459 her; furnish the Department of Health a copy of a timely filed  
460 notice of appeal; furnish the Department of Health a copy of a  
461 supersedeas bond properly posted in the amount required by law;  
462 or furnish the Department of Health an order from a court of  
463 competent jurisdiction staying execution on the final judgment  
464 pending disposition of the appeal.

465 3. Upon the next meeting of the probable cause panel of  
466 the board following 30 days after the date of mailing the notice  
467 of disciplinary action to the licensee, the panel shall make a  
468 determination of whether probable cause exists to take  
469 disciplinary action against the licensee pursuant to  
470 subparagraph 1.

471 4. If the board determines that the factual requirements  
472 of subparagraph 1. are met, it shall take disciplinary action as  
473 it deems appropriate against the licensee. Such disciplinary  
474 action shall include, at a minimum, probation of the license  
475 with the restriction that the licensee must make payments to the  
476 judgment creditor on a schedule determined by the board to be

477 reasonable and within the financial capability of the physician.  
 478 Notwithstanding any other disciplinary penalty imposed, the  
 479 disciplinary penalty may include suspension of the license for a  
 480 period not to exceed 5 years. In the event that an agreement to  
 481 satisfy a judgment has been met, the board shall remove any  
 482 restriction on the license.

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

485  
 486 A licensee who meets the requirements of this paragraph shall be  
 487 required either to post notice in the form of a sign prominently  
 488 displayed in the reception area and clearly noticeable by all  
 489 patients or to provide a written statement to any person to whom  
 490 medical services are being provided. Such sign or statement  
 491 shall state: "Under Florida law, physicians are generally  
 492 required to carry medical malpractice insurance or otherwise  
 493 demonstrate financial responsibility to cover potential claims  
 494 for medical malpractice. YOUR DOCTOR HAS DECIDED NOT TO CARRY  
 495 MEDICAL MALPRACTICE INSURANCE. This is permitted under Florida  
 496 law subject to certain conditions. Florida law imposes penalties  
 497 against noninsured physicians who fail to satisfy adverse  
 498 judgments arising from claims of medical malpractice. This  
 499 notice is provided pursuant to Florida law." In addition, a  
 500 licensee who meets the requirements of this paragraph and who is  
 501 covered for claims of medical negligence arising from care and  
 502 treatment of patients in a hospital that assumes sole and  
 503 exclusive liability for all such claims pursuant to the  
 504 Enterprise Act for Patient Protection and Provider Liability,

505 inclusive of ss. 766.401-766.409, shall post notice in the form  
 506 of a sign prominently displayed in the reception area and  
 507 clearly noticeable by all patients or provide a written  
 508 statement to any person for whom the physician may provide  
 509 medical care and treatment in any such hospital. The sign or  
 510 statement must adhere to the requirements of s. 766.404.

511 Section 6. Paragraphs (f) and (g) of subsection (5) of  
 512 section 459.0085, Florida Statutes, are amended to read:

513 459.0085 Financial responsibility.--

514 (5) The requirements of subsections (1), (2), and (3) do  
 515 not apply to:

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

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

521 2. The licensee has either retired from the practice of  
 522 osteopathic medicine or maintains a part-time practice of  
 523 osteopathic medicine of no more than 1,000 patient contact hours  
 524 per year.

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

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

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

533 | period of time, probation for a period of 3 years or longer, or  
 534 | a fine of \$500 or more for a violation of this chapter or the  
 535 | medical practice act of another jurisdiction. The regulatory  
 536 | agency's acceptance of an osteopathic physician's relinquishment  
 537 | of a license, stipulation, consent order, or other settlement,  
 538 | offered in response to or in anticipation of the filing of  
 539 | administrative charges against the osteopathic physician's  
 540 | license, constitutes action against the physician's license for  
 541 | the purposes of this paragraph.

542 |         6. The licensee has submitted a form supplying necessary  
 543 | information as required by the department and an affidavit  
 544 | affirming compliance with this paragraph.

545 |         7. The licensee must submit biennially to the department a  
 546 | certification stating compliance with this paragraph. The  
 547 | licensee must, upon request, demonstrate to the department  
 548 | information verifying compliance with this paragraph.

549 |  
 550 | A licensee who meets the requirements of this paragraph must  
 551 | post notice in the form of a sign prominently displayed in the  
 552 | reception area and clearly noticeable by all patients or provide  
 553 | a written statement to any person to whom medical services are  
 554 | being provided. The sign or statement must read as follows:  
 555 | "Under Florida law, osteopathic physicians are generally  
 556 | required to carry medical malpractice insurance or otherwise  
 557 | demonstrate financial responsibility to cover potential claims  
 558 | for medical malpractice. However, certain part-time osteopathic  
 559 | physicians who meet state requirements are exempt from the  
 560 | financial responsibility law. YOUR OSTEOPATHIC PHYSICIAN MEETS

561 THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL  
562 MALPRACTICE INSURANCE. This notice is provided pursuant to  
563 Florida law." In addition, a licensee who is covered for claims  
564 of medical negligence arising from care and treatment of  
565 patients in a hospital that assumes sole and exclusive liability  
566 for all such claims pursuant to the Enterprise Act for Patient  
567 Protection and Provider Liability, inclusive of ss. 766.401-  
568 766.409, shall post notice in the form of a sign prominently  
569 displayed in the reception area and clearly noticeable by all  
570 patients or provide a written statement to any person for whom  
571 the osteopathic physician may provide medical care and treatment  
572 in any such hospital in accordance with the requirements of s.  
573 766.404.

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

576 1. Upon the entry of an adverse final judgment arising  
577 from a medical malpractice arbitration award, from a claim of  
578 medical malpractice either in contract or tort, or from  
579 noncompliance with the terms of a settlement agreement arising  
580 from a claim of medical malpractice either in contract or tort,  
581 the licensee shall pay the judgment creditor the lesser of the  
582 entire amount of the judgment with all accrued interest or  
583 either \$100,000, if the osteopathic physician is licensed  
584 pursuant to this chapter but does not maintain hospital staff  
585 privileges, or \$250,000, if the osteopathic physician is  
586 licensed pursuant to this chapter and maintains hospital staff  
587 privileges, within 60 days after the date such judgment became  
588 final and subject to execution, unless otherwise mutually agreed

589 to in writing by the parties. Such adverse final judgment shall  
 590 include any cross-claim, counterclaim, or claim for indemnity or  
 591 contribution arising from the claim of medical malpractice. Upon  
 592 notification of the existence of an unsatisfied judgment or  
 593 payment pursuant to this subparagraph, the department shall  
 594 notify the licensee by certified mail that he or she shall be  
 595 subject to disciplinary action unless, within 30 days from the  
 596 date of mailing, the licensee either:

597 a. Shows proof that the unsatisfied judgment has been paid  
 598 in the amount specified in this subparagraph; or

599 b. Furnishes the department with a copy of a timely filed  
 600 notice of appeal and either:

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

603 (II) An order from a court of competent jurisdiction  
 604 staying execution on the final judgment, pending disposition of  
 605 the appeal.

606 2. The Department of Health shall issue an emergency order  
 607 suspending the license of any licensee who, after 30 days  
 608 following receipt of a notice from the Department of Health, has  
 609 failed to: satisfy a medical malpractice claim against him or  
 610 her; furnish the Department of Health a copy of a timely filed  
 611 notice of appeal; furnish the Department of Health a copy of a  
 612 supersedeas bond properly posted in the amount required by law;  
 613 or furnish the Department of Health an order from a court of  
 614 competent jurisdiction staying execution on the final judgment  
 615 pending disposition of the appeal.

616 3. Upon the next meeting of the probable cause panel of

617 the board following 30 days after the date of mailing the notice  
618 of disciplinary action to the licensee, the panel shall make a  
619 determination of whether probable cause exists to take  
620 disciplinary action against the licensee pursuant to  
621 subparagraph 1.

622 4. If the board determines that the factual requirements  
623 of subparagraph 1. are met, it shall take disciplinary action as  
624 it deems appropriate against the licensee. Such disciplinary  
625 action shall include, at a minimum, probation of the license  
626 with the restriction that the licensee must make payments to the  
627 judgment creditor on a schedule determined by the board to be  
628 reasonable and within the financial capability of the  
629 osteopathic physician. Notwithstanding any other disciplinary  
630 penalty imposed, the disciplinary penalty may include suspension  
631 of the license for a period not to exceed 5 years. In the event  
632 that an agreement to satisfy a judgment has been met, the board  
633 shall remove any restriction on the license.

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

636

637 A licensee who meets the requirements of this paragraph shall be  
638 required either to post notice in the form of a sign prominently  
639 displayed in the reception area and clearly noticeable by all  
640 patients or to provide a written statement to any person to whom  
641 medical services are being provided. Such sign or statement  
642 shall state: "Under Florida law, osteopathic physicians are  
643 generally required to carry medical malpractice insurance or  
644 otherwise demonstrate financial responsibility to cover

645 potential claims for medical malpractice. YOUR OSTEOPATHIC  
 646 PHYSICIAN HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE  
 647 INSURANCE. This is permitted under Florida law subject to  
 648 certain conditions. Florida law imposes strict penalties  
 649 against noninsured osteopathic physicians who fail to satisfy  
 650 adverse judgments arising from claims of medical malpractice.  
 651 This notice is provided pursuant to Florida law." In addition, a  
 652 licensee who meets the requirements of this paragraph and who is  
 653 covered for claims of medical negligence arising from care and  
 654 treatment of patients in a hospital that assumes sole and  
 655 exclusive liability for all such claims pursuant to an  
 656 enterprise plan for patient protection and provider liability  
 657 under ss. 766.401-766.409, shall post notice in the form of a  
 658 sign prominently displayed in the reception area and clearly  
 659 noticeable by all patients or provide a written statement to any  
 660 person for whom the osteopathic physician may provide medical  
 661 care and treatment in any such hospital. The sign or statement  
 662 must adhere to the requirements of s. 766.404.

663 Section 7. Section 627.41485, Florida Statutes, is created  
 664 to read:

665 627.41485 Medical malpractice insurers; optional coverage  
 666 exclusion for insureds who are covered by an enterprise plan for  
 667 patient protection and provider liability.--

668 (1) An insurer issuing policies of professional liability  
 669 coverage for claims arising out of the rendering of, or the  
 670 failure to render, medical care or services may make available  
 671 to physicians licensed under chapter 458 and to osteopathic  
 672 physicians licensed under chapter 459 coverage having an



673 appropriate exclusion for acts of medical negligence occurring  
674 within a certified patient safety facility that bears sole and  
675 exclusive liability for acts of medical negligence pursuant to  
676 the Enterprise Act for Patient Protection and Provider  
677 Liability, inclusive of ss. 766.401-766.409, subject to the  
678 usual underwriting standards.

679 (2) The Department of Health may adopt rules to administer  
680 this section.

681 Section 8. Section 766.316, Florida Statutes, is amended  
682 to read:

683 766.316 Notice to obstetrical patients of participation in  
684 the plan.--Each hospital with a participating physician on its  
685 staff, each hospital that assumes liability for affected  
686 physicians pursuant to the Enterprise Act for Patient Protection  
687 and Provider Liability, inclusive of ss. 766.401-766.409, and  
688 each participating physician, other than residents, assistant  
689 residents, and interns deemed to be participating physicians  
690 under s. 766.314(4)(c), under the Florida Birth-Related  
691 Neurological Injury Compensation Plan shall provide notice to  
692 the obstetrical patients as to the limited no-fault alternative  
693 for birth-related neurological injuries. Such notice shall be  
694 provided on forms furnished by the association and shall include  
695 a clear and concise explanation of a patient's rights and  
696 limitations under the plan. The hospital or the participating  
697 physician may elect to have the patient sign a form  
698 acknowledging receipt of the notice form. Signature of the  
699 patient acknowledging receipt of the notice form raises a  
700 rebuttable presumption that the notice requirements of this

701 section have been met. Notice need not be given to a patient  
 702 when the patient has an emergency medical condition as defined  
 703 in s. 395.002(9)(b) or when notice is not practicable.

704 Section 9. Subsection (2) of section 766.110, Florida  
 705 Statutes, is amended to read:

706 766.110 Liability of health care facilities.--

707 (2)(a) Every hospital licensed under chapter 395 may carry  
 708 liability insurance or adequately insure itself in an amount of  
 709 not less than \$1.5 million per claim, \$5 million annual  
 710 aggregate to cover all medical injuries to patients resulting  
 711 from negligent acts or omissions on the part of those members of  
 712 its medical staff who are covered thereby in furtherance of the  
 713 requirements of ss. 458.320 and 459.0085. Self-insurance  
 714 coverage extended hereunder to a member of a hospital's medical  
 715 staff meets the financial responsibility requirements of ss.  
 716 458.320 and 459.0085 if the physician's coverage limits are not  
 717 less than the minimum limits established in ss. 458.320 and  
 718 459.0085 and the hospital is a verified trauma center that has  
 719 extended self-insurance coverage continuously to members of its  
 720 medical staff for activities both inside and outside of the  
 721 hospital. Any insurer authorized to write casualty insurance may  
 722 make available, but is ~~shall~~ not be required to write, such  
 723 coverage. The hospital may assess on an equitable and pro rata  
 724 basis the following professional health care providers for a  
 725 portion of the total hospital insurance cost for this coverage:  
 726 physicians licensed under chapter 458, osteopathic physicians  
 727 licensed under chapter 459, podiatric physicians licensed under  
 728 chapter 461, dentists licensed under chapter 466, and nurses

729 licensed under part I of chapter 464. The hospital may provide  
730 for a deductible amount to be applied against any individual  
731 health care provider found liable in a law suit in tort or for  
732 breach of contract. The legislative intent in providing for the  
733 deductible to be applied to individual health care providers  
734 found negligent or in breach of contract is to instill in each  
735 individual health care provider the incentive to avoid the risk  
736 of injury to the fullest extent and ensure that the citizens of  
737 this state receive the highest quality health care obtainable.

738 (b) Except with regard to hospitals that receive sovereign  
739 immunity under s. 768.28, each hospital licensed under chapter  
740 395 which assumes sole and exclusive liability for acts of  
741 medical negligence by affected providers pursuant to the  
742 Enterprise Act for Patient Protection and Provider Liability,  
743 inclusive in ss. 766.401-766.409, shall carry liability  
744 insurance or adequately insure itself in an amount of not less  
745 than \$2.5 million per claim, \$7.5 million annual aggregate to  
746 cover all medical injuries to patients resulting from negligent  
747 acts or omissions on the part of affected members of its medical  
748 staff and others who are covered by an enterprise plan for  
749 patient protection and provider liability. The hospital's policy  
750 of medical liability insurance or self-insurance must satisfy  
751 the financial-responsibility requirements of ss. 458.320(2) and  
752 459.0085(2) for affected providers. Any insurer authorized to  
753 write casualty insurance may make available, but is not required  
754 to write, such coverage.

755 (c) Notwithstanding any provision in the Insurance Code to  
756 the contrary, a statutory teaching hospital, as defined in s.

757 408.07, other than a hospital that receives sovereign immunity  
758 under s. 768.28, which complies with the patient safety measures  
759 specified in s. 766.403 and all other requirements of s.  
760 766.410, including approval by the Agency for Health Care  
761 Administration, may agree to indemnify some or all members of  
762 its medical staff, including, but not limited to, physicians  
763 having clinical privileges who are not employees or agents of  
764 the hospital and any organization, association, or group of  
765 persons liable for the negligent acts of such physicians,  
766 whether incorporated or unincorporated, and some or all medical,  
767 nursing, or allied health students affiliated with the hospital,  
768 collectively covered persons, other than persons exempt from  
769 liability due to sovereign immunity under s. 768.28, for legal  
770 liability of such covered persons for loss, damages, or expense  
771 arising out of medical malpractice or professional error or  
772 mistake within the hospital premises, as defined in s. 766.401,  
773 thereby providing limited malpractice coverage for such covered  
774 persons. Any hospital that agrees to provide malpractice  
775 coverage for covered persons pursuant to this section shall  
776 acquire an appropriate policy of professional liability  
777 insurance or establish and maintain a fund from which such  
778 malpractice coverage is provided, in accordance with usual  
779 underwriting standards. Such insurance or self-insurance may be  
780 separate and apart from any insurance or self-insurance  
781 maintained by or on behalf of the hospital or combined in a  
782 single policy of insurance or a single self-insurance fund  
783 maintained by or on behalf of the hospital. Any hospital that  
784 provides malpractice coverage to covered persons through a self-

785 insurance fund, or a self-insurance fund providing any such  
 786 malpractice coverage, shall annually provide a certified  
 787 financial statement containing actuarial projections as to the  
 788 soundness of reserves to the Patient Safety Corporation and the  
 789 Office of Insurance Regulation within the Department of  
 790 Financial Services. The indemnity agreements or malpractice  
 791 coverage provided by this section shall be in amounts that, at a  
 792 minimum, meet the financial responsibility requirements of ss.  
 793 458.320 and 459.0085 for affected physicians. Any such indemnity  
 794 agreement or malpractice coverage in such amounts satisfies the  
 795 financial responsibility requirements of ss. 458.320 and  
 796 459.0085 for affected physicians. Any statutory teaching  
 797 hospital that agrees to indemnify physicians or other covered  
 798 persons for medical negligence on the premises pursuant to this  
 799 section may charge such physicians or other covered persons a  
 800 reasonable fee for malpractice coverage, notwithstanding any  
 801 provision in the Insurance Code to the contrary. Such fee shall  
 802 be based on appropriate actuarial criteria. This paragraph does  
 803 not constitute a waiver of sovereign immunity under s. 768.28.

804 Section 10. Section 766.401, Florida Statutes, is created  
 805 to read:

806 766.401 Definitions.--As used in this section and ss.  
 807 766.402-766.410, the term:

808 (1) "Affected facility" means a certified patient safety  
 809 facility.

810 (2) "Affected patient" means a patient of a certified  
 811 patient safety facility.

812 (3) "Affected practitioner" and "affected physician" means

813 a medical staff member who is covered by an enterprise plan for  
 814 patient protection and provider liability in a certified patient  
 815 safety facility.

816 (4) "Agency" means the Agency for Health Care  
 817 Administration.

818 (5) "Certified patient safety facility" means any eligible  
 819 hospital that is solely and exclusively liable for acts or  
 820 omissions of medical negligence within the licensed facility in  
 821 accordance with an agency order approving an enterprise plan for  
 822 patient protection and provider liability.

823 (6) "Clinical privileges" means the privileges granted to  
 824 a physician or other licensed health care practitioner to render  
 825 patient care services in a hospital.

826 (7) "Eligible hospital" or "licensed facility" means:

827 (a) A statutory teaching hospital as defined by s. 408.07;  
 828 or

829 (b) A hospital licensed in accordance with chapter 395  
 830 which is wholly owned by a university based in this state which  
 831 maintains an accredited medical school.

832 (8) "Enterprise agreement" means a document executed by  
 833 the governing board of an eligible hospital and the governing  
 834 board of the medical staff of the eligible hospital, however  
 835 defined, manifesting concurrence and setting forth certain  
 836 rights, duties, privileges, obligations, and responsibilities of  
 837 the health care facility and its medical staff in furtherance of  
 838 an enterprise plan for patient protection and provider liability  
 839 in a certified patient safety facility.

840 (9) "Health care provider" or "provider" means:

- 841        (a) An eligible hospital.
- 842        (b) A physician or physician assistant licensed under
- 843 chapter 458.
- 844        (c) An osteopathic physician or osteopathic physician
- 845 assistant licensed under chapter 459.
- 846        (d) A registered nurse, nurse midwife, licensed practical
- 847 nurse, or advanced registered nurse practitioner licensed or
- 848 registered under part I of chapter 464 or any facility that
- 849 employs nurses licensed or registered under part I of chapter
- 850 464 to supply all or part of the care delivered by that
- 851 facility.
- 852        (e) A health care professional association and its
- 853 employees or a corporate medical group and its employees.
- 854        (f) Any other medical facility the primary purpose of
- 855 which is to deliver human medical diagnostic services or which
- 856 delivers nonsurgical human medical treatment, including an
- 857 office maintained by a provider.
- 858        (g) A free clinic that delivers only medical diagnostic
- 859 services or nonsurgical medical treatment free of charge to all
- 860 low-income recipients.
- 861        (h) Any other health care professional, practitioner, or
- 862 provider, including a student enrolled in an accredited program
- 863 that prepares the student for licensure as any one of the
- 864 professionals listed in this subsection.
- 865
- 866 The term includes any person, organization, or entity that is
- 867 vicariously liable under the theory of respondent superior or
- 868 any other theory of legal liability for medical negligence

869 committed by any licensed professional listed in this  
 870 subsection. The term also includes any nonprofit corporation  
 871 qualified as exempt from federal income taxation under s. 501(a)  
 872 of the Internal Revenue Code, and described in s. 501(c) of the  
 873 Internal Revenue Code, including any university or medical  
 874 school that employs licensed professionals listed in this  
 875 subsection or that delivers health care services provided by  
 876 licensed professionals listed in this subsection, any federally  
 877 funded community health center, and any volunteer corporation or  
 878 volunteer health care provider that delivers health care  
 879 services.

880 (10) "Health care practitioner" or "practitioner" means  
 881 any person, entity, or organization identified in subsection  
 882 (9), except for a hospital.

883 (11) "Medical incident" or "adverse incident" has the same  
 884 meaning as provided in ss. 381.0271, 395.0197, 458.351, and  
 885 459.026.

886 (12) "Medical negligence" means medical malpractice,  
 887 whether grounded in tort or in contract. The term does not  
 888 include intentional acts.

889 (13) "Medical staff" means a physician licensed under  
 890 chapter 458 or chapter 459 having privileges in a licensed  
 891 facility, as well as any other licensed health care practitioner  
 892 having clinical privileges as approved by a licensed facility's  
 893 governing board. The term includes any affected physician,  
 894 regardless of his or her status as an employee, agent, or  
 895 independent contractor with regard to the licensed facility.

896 (14) "Person" means any individual, partnership,



897 corporation, association, or governmental unit.

898 (15) "Premises" means those buildings, beds, and equipment  
 899 located at the address of the licensed facility and all other  
 900 buildings, beds, and equipment for the provision of hospital,  
 901 ambulatory surgical, mobile surgical care, primary care, or  
 902 comprehensive health care under the dominion and control of the  
 903 licensee, or located in such reasonable proximity to the address  
 904 of the licensed facility as to appear to the public to be under  
 905 the dominion and control of the licensee, including offices and  
 906 locations where the licensed facility provides medical care and  
 907 treatment to affected patients.

908 (16) "Statutory teaching hospital" or "teaching hospital"  
 909 has the same meaning as provided in s. 408.07.

910 (17) "Within the licensed facility" or "within the  
 911 premises" means anywhere on the premises of the licensed  
 912 facility or the premises of any office, clinic, or ancillary  
 913 facility that is owned, operated, leased, or controlled by the  
 914 licensed facility.

915 Section 11. Section 766.402, Florida Statutes, is created  
 916 to read:

917 766.402 Agency approval of enterprise plans for patient  
 918 protection and provider liability.--

919 (1) An eligible hospital in conjunction with its medical  
 920 staff, or vice versa, may petition the Agency for Health Care  
 921 Administration to enter an order certifying approval of the  
 922 hospital as a certified patient safety facility.

923 (2) In accordance with chapter 120, the agency shall enter  
 924 an order certifying approval of the certified patient safety

925 facility upon a showing that, in furtherance of an enterprise  
 926 approach to patient protection and provider liability:

927 (a) The petitioners are engaged in a common enterprise for  
 928 the care and treatment of hospital patients;

929 (b) The petitioners satisfy requirements for patient  
 930 protection measures, as specified in s. 766.403;

931 (c) The petitioners acknowledge and agree to hospital-  
 932 centered enterprise liability for medical negligence within the  
 933 premises, as specified in s. 766.404;

934 (d) The petitioners have executed an enterprise agreement,  
 935 as specified in s. 766.405;

936 (e) The petitioners satisfy requirements for professional  
 937 accountability of affected practitioners, as specified in s.  
 938 766.406;

939 (f) The petitioners satisfy requirements for financial  
 940 accountability of affected practitioners, as specified in s.  
 941 766.407;

942 (g) The petitioners satisfy all other requirements of ss.  
 943 766.401-766.410; and

944 (h) The public interest in assuring access to quality  
 945 health care services and the promotion of patient safety in  
 946 licensed health care facilities is served by entry of the order.

947 (3) The Florida Patient Safety Corporation may intervene  
 948 and participate as a party, as defined in s. 120.52, or  
 949 otherwise present relevant testimony in any administrative  
 950 hearing conducted pursuant to this section.

951 Section 12. Section 766.403, Florida Statutes, is created  
 952 to read:

953           766.403 Enterprise-wide patient safety measures.--  
 954           (1) In order to satisfy the requirements of s.  
 955 766.402(2)(a) or s. 766.410, the licensed facility shall:  
 956           (a) Have in place a process, either through the facility's  
 957 patient safety committee or a similar body, for coordinating the  
 958 quality control, risk management, and patient relations  
 959 functions of the facility and for reporting to the facility's  
 960 governing board at least quarterly regarding such efforts.  
 961           (b) Establish within the facility a system for reporting  
 962 near misses and agree to submit any information collected to the  
 963 Florida Patient Safety Corporation. Such information must be  
 964 submitted by the facility and made available by the Patient  
 965 Safety Corporation in accordance with s. 381.0271(7).  
 966           (c) Design and make available to facility staff, including  
 967 medical staff, a patient safety curriculum that provides lecture  
 968 and web-based training on recognized patient safety principles,  
 969 which may include communication skills training, team  
 970 performance assessment and training, risk prevention strategies,  
 971 and best practices and evidence based medicine. The licensed  
 972 facility shall report annually to the agency the programs  
 973 presented.  
 974           (d) Implement a program to identify health care providers  
 975 on the facility's staff who may be eligible for an early-  
 976 intervention program providing additional skills assessment and  
 977 training and offer such training to the staff on a voluntary and  
 978 confidential basis with established mechanisms to assess program  
 979 performance and results.  
 980           (e) Implement a simulation-based program for skills

981 assessment, training, and retraining of a facility's staff in  
982 those tasks and activities that the agency identifies by rule.

983 (f) Designate a patient advocate that reports to the  
984 facility's risk manager who coordinates with members of the  
985 medical staff and the facility's chief medical officer regarding  
986 disclosure of medical incidents to patients. In addition, the  
987 patient advocate shall establish an advisory panel, consisting  
988 of providers, patients or their families, and other health care  
989 consumer or consumer groups to review general patient safety  
990 concerns and other issues related to relations among and between  
991 patients and providers and to identify areas where additional  
992 education and program development may be appropriate.

993 (g) Establish a procedure for a semiannual review of the  
994 facility's patient safety program and its compliance with the  
995 requirements of this section. Such review shall be conducted by  
996 an independent patient safety organization as defined in s.  
997 766.1016(1) or other professional organization approved by the  
998 agency. The organization performing the review shall prepare a  
999 written report with detailed findings and recommendations. The  
1000 report shall be forwarded to the facility's risk manager or  
1001 patient safety officer, who may make written comments in  
1002 response thereto. The report and any written comments shall be  
1003 presented to the governing board of the licensed facility. A  
1004 copy of the report and any of the facilities' responses to the  
1005 findings and recommendations shall be provided to the agency  
1006 within 60 days after the date that the governing board reviewed  
1007 the report. The report is confidential and exempt from  
1008 production or discovery in any civil action. Likewise, the

1009 report, and the information contained therein, is not admissible  
 1010 as evidence for any purpose in any action for medical  
 1011 malpractice.

1012 (h) Establish a system for the trending and tracking of  
 1013 quality and patient safety indicators that the agency may  
 1014 identify by rule, and a method for review of the data at least  
 1015 semiannually by the facility's patient safety committee.

1016 (i) Provide assistance to affected physicians, upon  
 1017 request, in their establishment, implementation, and evaluation  
 1018 of individual risk-management, patient-safety, and incident-  
 1019 reporting systems in clinical settings outside the premises of  
 1020 the licensed facility.

1021 (2) This section does not constitute an applicable  
 1022 standard of care in any action for medical negligence or  
 1023 otherwise create a private right of action, and evidence of  
 1024 noncompliance with this section is not admissible for any  
 1025 purpose in any action for medical negligence against an affected  
 1026 facility or any other health care provider.

1027 (3) This section does not prohibit the licensed facility  
 1028 from implementing other measures for promoting patient safety  
 1029 within the premises. This section does not relieve the licensed  
 1030 facility from the duty to implement any other patient safety  
 1031 measure that is required by state law. The Legislature intends  
 1032 that the patient safety measures specified in this section are  
 1033 in addition to all other patient safety measures required by  
 1034 state law, federal law, and applicable accreditation standards  
 1035 for licensed facilities.

1036 (4) A review, report, or other document created, produced,

1037 delivered, or discussed pursuant to this section is not  
 1038 discoverable or admissible as evidence in any legal action.

1039 Section 13. Section 766.404, Florida Statutes, is created  
 1040 to read:

1041 766.404 Enterprise liability in certain health care  
 1042 facilities.--

1043 (1) Subject to the requirements of ss. 766.401-766.410,  
 1044 the Agency for Health Care Administration may enter an order  
 1045 certifying the petitioner-hospital as a certified patient safety  
 1046 facility and providing that the hospital bears sole and  
 1047 exclusive liability for any and all acts of medical negligence  
 1048 within the licensed facility when such acts of medical  
 1049 negligence within the premises cause damage to affected  
 1050 patients, including, but not limited to, acts of medical  
 1051 negligence by physicians or other licensed health care providers  
 1052 who exercise clinical privileges in a licensed hospital, whether  
 1053 or not the active tortfeasor is an employee or agent of the  
 1054 health care facility when the incident of medical negligence  
 1055 occurred.

1056 (2) In any action for personal injury or wrongful death,  
 1057 whether in contract or tort, arising out of medical negligence  
 1058 resulting in damages to a patient of a certified patient safety  
 1059 facility, the licensed facility bears sole and exclusive  
 1060 liability for medical negligence, whether or not the  
 1061 practitioner was an employee or agent of the facility when the  
 1062 incident of medical negligence occurred. Any other provider,  
 1063 person, organization, or entity that commits medical negligence  
 1064 within the premises, and any other provider, person,

1065 organization, or entity that is vicariously liable for medical  
 1066 negligence within the premises of an affected practitioner under  
 1067 the theory of respondent superior or otherwise, may not be named  
 1068 as a defendant in any such action and any such provider, person,  
 1069 organization, or entity is not liable for the medical negligence  
 1070 of a covered practitioner. This subsection does not impose  
 1071 liability or confer immunity on any other provider, person,  
 1072 organization, or entity for acts of medical malpractice  
 1073 committed on any person before admission as a patient of a  
 1074 certified patient safety facility, or on any person after being  
 1075 discharged from the affected facility, or on affected patients  
 1076 in clinical settings other than the premises of the affected  
 1077 facility.

1078 (3) An affected practitioner shall post an applicable  
 1079 notice or provide an appropriate written statement as follows:

1080 (a) An affected practitioner shall post notice in the form  
 1081 of a sign prominently displayed in the reception area and  
 1082 clearly noticeable by all patients or provide a written  
 1083 statement to any person to whom medical services are being  
 1084 provided. The sign or statement must read as follows: "In  
 1085 general, physicians in the State of Florida are personally  
 1086 liable for acts of medical negligence, subject to certain  
 1087 limitations. However, physicians who perform medical services  
 1088 within a certified patient safety facility are exempt from  
 1089 personal liability because the licensed hospital bears sole and  
 1090 exclusive liability for acts of medical negligence within the  
 1091 health care facility pursuant to an administrative order of the  
 1092 Agency for Health Care Administration entered in accordance with

1093 the Enterprise Act for Patient Protection and Provider  
 1094 Liability. YOUR DOCTOR HOLDS CLINICAL STAFF PRIVILEGES IN A  
 1095 CERTIFIED PATIENT SAFETY FACILITY. UNDER FLORIDA LAW, ANY CLAIM  
 1096 FOR MEDICAL NEGLIGENCE WITHIN THE HEALTH CARE FACILITY MUST BE  
 1097 INITIATED AGAINST THE HOSPITAL AND NOT AGAINST YOUR DOCTOR,  
 1098 BECAUSE THE HOSPITAL IS SOLELY RESPONSIBLE FOR ALL ACTS OF  
 1099 PROFESSIONAL NEGLIGENCE WITHIN THE PREMISES. THIS PROVISION DOES  
 1100 NOT AFFECT YOUR PHYSICIAN'S LIABILITY FOR ACTS OF MEDICAL  
 1101 NEGLIGENCE IN OTHER CLINICAL SETTINGS. IF YOU DO NOT UNDERSTAND,  
 1102 PLEASE DISCUSS WITH YOUR DOCTOR BEFORE YOUR CONSULTATION. This  
 1103 notice is provided pursuant to Florida law."

1104 (b) If an affected practitioner is covered by an  
 1105 enterprise plan for patient protection and provider liability in  
 1106 one or more licensed facilities that receive sovereign immunity,  
 1107 and one or more other licensed facilities, the affected  
 1108 practitioner shall post notice in the form of a sign prominently  
 1109 displayed in the reception area and clearly noticeable by all  
 1110 patients or provide a written statement to any person to whom  
 1111 medical services are being provided. The sign or statement must  
 1112 read as follows: "In general, physicians in the state of Florida  
 1113 are personally liable for acts of medical negligence, subject to  
 1114 certain limitations such as sovereign immunity. However,  
 1115 physicians who perform medical services within a certified  
 1116 patient safety facility are exempt from personal liability  
 1117 because the licensed hospital bears sole and exclusive liability  
 1118 for acts of medical negligence within the affected facility  
 1119 pursuant to an administrative order of the Agency for Health  
 1120 Care Administration entered in accordance with the Enterprise



1121 Act for Patient Protection and Provider Liability. YOUR DOCTOR  
 1122 HOLDS CLINICAL STAFF PRIVILEGES IN ONE OR MORE CERTIFIED PATIENT  
 1123 SAFETY FACILITIES. AT LEAST ONE OF THESE HOSPITALS IS SUBJECT TO  
 1124 SOVEREIGN IMMUNITY. UNDER FLORIDA LAW, ANY CLAIM FOR MEDICAL  
 1125 NEGLIGENCE WITHIN THE HEALTH CARE FACILITY MUST BE INITIATED  
 1126 AGAINST THE HOSPITAL AND NOT AGAINST YOUR DOCTOR, BECAUSE THE  
 1127 HOSPITAL IS SOLELY RESPONSIBLE FOR ALL ACTS OF PROFESSIONAL  
 1128 NEGLIGENCE WITHIN THE PREMISES. MOREOVER, RECOVERY AGAINST THE  
 1129 HOSPITAL MAY BE LIMITED, DUE TO FLORIDA'S SOVEREIGN IMMUNITY  
 1130 LAW. THESE PROVISIONS DO NOT AFFECT YOUR PHYSICIAN'S LIABILITY  
 1131 FOR ACTS OF MEDICAL NEGLIGENCE IN OTHER CLINICAL SETTINGS. IF  
 1132 YOU DO NOT UNDERSTAND, PLEASE DISCUSS WITH YOUR DOCTOR BEFORE  
 1133 YOUR CONSULTATION. This notice is provided pursuant to Florida  
 1134 law."

1135 (c) Notice need not be given to a patient when:

1136 1. The patient has an emergency medical condition as  
 1137 defined in s. 395.002;

1138 2. The practitioner is an employee or agent of a  
 1139 governmental entity and is immune from liability and suit under  
 1140 s. 768.28; or

1141 3. Notice is not practicable.

1142 (d) This subsection is directory in nature. An agency  
 1143 order certifying approval of an enterprise plan for patient  
 1144 protection and provider liability shall, as a matter of law,  
 1145 constitute conclusive evidence that the hospital complies with  
 1146 all applicable patient safety requirements of s. 766.403 and all  
 1147 other requirements of ss. 766.401-766.410. Evidence of  
 1148 noncompliance with s. 766.403 or any other provision of ss.

1149 766.401-766.410 may not be admissible for any purpose in any  
 1150 action for medical malpractice. Failure to comply with the  
 1151 requirements of this subsection does not affect the liabilities  
 1152 or immunities conferred by ss. 766.401-766.410. This subsection  
 1153 does not give rise to an independent cause of action for  
 1154 damages.

1155 (4) The agency order certifying approval of an enterprise  
 1156 plan for patient protection and provider liability applies  
 1157 prospectively to causes of action for medical negligence that  
 1158 arise on or after the effective date of the order.

1159 (5) Upon entry of an order approving the petition, the  
 1160 agency may conduct onsite examinations of the licensed facility  
 1161 to assure continued compliance with the terms and conditions of  
 1162 the order.

1163 (6) The agency order certifying approval of an enterprise  
 1164 plan for patient protection remains in effect until revoked. The  
 1165 agency shall revoke the order upon the unilateral request of the  
 1166 licensed facility or the affected medical staff. The agency may  
 1167 revoke the order upon reasonable notice to the affected facility  
 1168 that it fails to comply with material requirements of ss.  
 1169 766.401-766.410 or material conditions of the order certifying  
 1170 approval of the enterprise plan and further upon a determination  
 1171 that the licensed facility has failed to cure stated  
 1172 deficiencies upon reasonable notice. An administrative order  
 1173 revoking approval of an enterprise plan for patient protection  
 1174 and provider liability terminates the plan on January 1 of the  
 1175 year following entry of the order or 6 months after entry of the  
 1176 order, whichever is longer. Revocation of an agency order

1177 certifying approval of an enterprise plan for patient protection  
 1178 and provider liability applies prospectively to causes of action  
 1179 for medical negligence which arise on or after the effective  
 1180 date of the order of revocation.

1181 (7) This section do not exempt a licensed facility from  
 1182 liability for acts of medical negligence committed by employees  
 1183 and agents thereof; although employees and agents of a certified  
 1184 patient safety facility may not be joined as defendants in any  
 1185 action for medical negligence because the licensed facility  
 1186 bears sole and exclusive liability for acts of medical  
 1187 negligence within the premises of the licensed facility,  
 1188 including acts of medical negligence by such employees and  
 1189 agents.

1190 (8) Affected physicians shall cooperate in good faith with  
 1191 an affected facility in the investigation and defense of any  
 1192 claim for medical malpractice. Failure to cooperate in good  
 1193 faith is grounds for disciplinary action against an affected  
 1194 physician by the affected facility and the Department of Health.  
 1195 An affected facility shall have a cause of action for damages  
 1196 against an affected physician for bad faith refusal to cooperate  
 1197 in the investigation and defense of any claim of medical  
 1198 malpractice against the licensed facility.

1199 (9) Sections 766.401-766.410 does not impose strict  
 1200 liability or liability without fault for medical incidents that  
 1201 occur within an affected facility. To maintain a cause of action  
 1202 against an affected facility pursuant to ss. 766.401-766.410,  
 1203 the claimant must allege and prove that an employee or agent of  
 1204 the licensed facility, or an affected member of the medical

1205 staff who is covered by an approved enterprise plan for patient  
 1206 protection and provider liability, committed an act or omission  
 1207 within the licensed facility which constitutes medical  
 1208 negligence under state law, even though an active tortfeasor is  
 1209 not named or joined as a party defendant in the lawsuit.

1210 (10) Sections 766.401-766.410 do not create an independent  
 1211 cause of action against any health care provider, do not impose  
 1212 enterprise liability on any health care provider, except as  
 1213 expressly provided, and may not be construed to support any  
 1214 cause of action other than an action for medical malpractice as  
 1215 expressly provided against any person, organization, or entity.

1216 (11) Sections 766.401-766.410 do not waive sovereign  
 1217 immunity, except as expressly provided in s. 768.28.

1218 Section 14. Section 766.405, Florida Statutes, is created  
 1219 to read:

1220 766.405 Enterprise agreements.--

1221 (1) It is the intent of the Legislature that enterprise  
 1222 plans for patient protection are elective and not mandatory for  
 1223 eligible hospitals. It is further the intent of the Legislature  
 1224 that the medical staff of an eligible hospital must concur with  
 1225 the development and implementation of an enterprise plan for  
 1226 patient protection and provider liability. It is further the  
 1227 intent of the Legislature that the licensed facility and medical  
 1228 staff be accorded wide latitude in formulating enterprise  
 1229 agreements, consistent with the underlying purpose of ss.  
 1230 766.401-766.410 to encourage innovative, systemic measures for  
 1231 patient protection and quality assurance in licensed facilities,  
 1232 especially in clinical settings where surgery is performed. This

1233 section does not require an eligible hospital to commence  
 1234 negotiations or enter into an enterprise agreement with its  
 1235 medical staff. However, execution of an enterprise agreement is  
 1236 a necessary condition for agency approval of an enterprise plan  
 1237 for patient protection and provider liability.

1238 (2) An eligible hospital and its medical staff shall  
 1239 execute an enterprise agreement as a necessary condition to  
 1240 agency approval of a certified patient safety facility. An  
 1241 affirmative vote of approval by the regularly constituted board  
 1242 of directors of the medical staff, however named or constituted,  
 1243 is sufficient to manifest approval by the medical staff of the  
 1244 enterprise agreement. Once approved, affected members of the  
 1245 medical staff are subject to the enterprise agreement. The  
 1246 agreement may be conditioned on agency approval of an enterprise  
 1247 plan for patient protection and provider liability for the  
 1248 affected facility. At a minimum, the enterprise agreement must  
 1249 contain provisions covering:

1250 (a) Compliance with a patient protection plan;

1251 (b) Internal review of medical incidents;

1252 (c) Timely reporting of medical incidents to state  
 1253 agencies;

1254 (d) Professional accountability of affected practitioners;  
 1255 and

1256 (e) Financial accountability of affected practitioners.

1257 (3) This section does not prohibit a patient safety  
 1258 facility from including other provisions of interest to the  
 1259 affected parties in the enterprise agreement, in a separate  
 1260 agreement, as a condition of staff privileges, or by way of

1261 contract with an organization providing medical staff for the  
 1262 licensed facility.

1263 (4) This section does not limit the power of any licensed  
 1264 facility to enter into other agreements with its medical staff,  
 1265 or members thereof, or otherwise to impose restrictions,  
 1266 requirements, or conditions on clinical privileges, as  
 1267 authorized by law.

1268 Section 15. Section 766.406, Florida Statutes, is created  
 1269 to read:

1270 766.406 Professional accountability of affected  
 1271 practitioners.--

1272 (1) A certified patient safety facility shall report  
 1273 medical incidents occurring in the affected facility to the  
 1274 Department of Health, in accordance with ss. 458.351 and  
 1275 459.026.

1276 (2) A certified patient safety facility shall report  
 1277 adverse findings of medical negligence or failure to adhere to  
 1278 applicable standards of professional responsibility by affected  
 1279 practitioners to the Department of Health.

1280 (3) Upon a determination by a peer review committee that a  
 1281 practitioner committed an act or omission or a pattern of acts  
 1282 or omissions which adversely affected the safety of any patient  
 1283 in the licensed facility, or which unduly exposed any patient to  
 1284 a risk of injury, the affected facility may require that the  
 1285 affected practitioner undertake additional training, education,  
 1286 or professional counseling as a condition of maintaining  
 1287 clinical privileges, in addition to any other sanction or  
 1288 penalty authorized by law.

1289       (4) Upon a determination by a peer review committee that a  
 1290 practitioner committed an act or omission or a pattern of acts  
 1291 or omissions which caused injury or damages to any patient or  
 1292 patients in an affected facility, the facility may limit,  
 1293 suspend, or terminate clinical privileges of the practitioner,  
 1294 in addition to any other sanction or penalty authorized by law.  
 1295 This section does not prohibit an affected facility from taking  
 1296 emergency action to temporarily limit or suspend clinical  
 1297 privileges of an affected practitioner pending a hearing and  
 1298 recommendation by the peer review committee and final action by  
 1299 the governing board of the licensed facility.

1300       (5) The licensed facility and its officers, directors,  
 1301 employees, and agents are immune from liability for any  
 1302 sanctions imposed against individual practitioners pursuant to  
 1303 this section.

1304       (6) Members of a peer review committee are immune from  
 1305 liability for any acts performed pursuant to this section.

1306       (7) Deliberations and findings of a peer review committee  
 1307 are not discoverable or admissible in any legal action.

1308       (8) The Department of Health may adopt rules to implement  
 1309 this section.

1310       Section 16. Section 766.407, Florida Statutes, is created  
 1311 to read:

1312       766.407 Financial accountability of affected  
 1313 practitioners.--

1314       (1) An enterprise agreement may provide that any affected  
 1315 member of the medical staff or any affected practitioner having  
 1316 clinical privileges, other than an employee of the licensed

1317 facility, and any organization that contracts with the licensed  
1318 facility to provide practitioners to treat patients within the  
1319 licensed facility, shall share equitably in the cost of omnibus  
1320 medical liability insurance premiums covering the facility-based  
1321 medical enterprise, similar self-insurance expense, or other  
1322 expenses reasonably related to risk management and adjustment of  
1323 claims of medical negligence, subject to the following  
1324 conditions:

1325 (a) This subsection does not permit a licensed facility  
1326 and any affected practitioner to agree on charges for an  
1327 equitable share of medical liability expense based on the number  
1328 of patients admitted to the hospital by individual  
1329 practitioners, patient revenue for the licensed facility  
1330 generated by individual practitioners, or overall profit or loss  
1331 sustained by the certified patient safety facility or certified  
1332 patient safety department of a licensed facility in a given  
1333 fiscal period.

1334 (b) Any agreement described in paragraph (a) must be  
1335 reviewed and approved by the agency.

1336 (2) Pursuant to an enterprise plan for patient protection  
1337 and provider liability, a licensed facility may impose a  
1338 reasonable assessment against an affected practitioner that  
1339 commits medical negligence resulting in injury and damages to an  
1340 affected patient of the health care facility, upon a  
1341 determination of professional responsibility by an internal peer  
1342 review committee. A schedule of assessments, criteria for the  
1343 levying of assessments, procedures for levying assessments, and  
1344 due process rights of an affected practitioner must be agreed to



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1345 by the medical staff. The legislative intent in providing for  
 1346 assessments against an affected physician is to instill in each  
 1347 individual health care practitioner the incentive to avoid the  
 1348 risk of injury to the fullest extent and ensure that the  
 1349 residents of this state receive the highest quality health care  
 1350 obtainable. Failure to pay an assessment constitutes grounds for  
 1351 suspension of clinical privileges by the licensed facility.  
 1352 Assessment may be enforced as bona fide debts in a court of law.  
 1353 The licensed facility may exempt its employees, agents, and  
 1354 other persons for whom it bears vicarious responsibility for  
 1355 acts of medical negligence from all such assessments. Employees  
 1356 and agents of the state, its agencies, and subdivisions, as  
 1357 defined by s. 768.28, are exempt from all such assessments.

1358 Section 17. Section 766.408, Florida Statutes, is created  
 1359 to read:

1360 766.408 Data collection and reports.--

1361 (1) Each certified patient safety facility shall submit an  
 1362 annual report to the agency containing information and data  
 1363 reasonably required by the agency to evaluate performance and  
 1364 effectiveness of the facility's enterprise plan for patient  
 1365 protection and provider liability. However, information may not  
 1366 be submitted or disclosed in violation of any patient's right to  
 1367 privacy under state or federal law.

1368 (2) The agency shall aggregate information and data  
 1369 submitted by all affected facilities and each year, on or before  
 1370 March 1, the agency shall submit a report to the Legislature  
 1371 which evaluates the performance and effectiveness of the  
 1372 enterprise approach to patient safety and provider liability in

1373 certified health care facilities, which reports must include,  
1374 but are not limited to, pertinent data on:

- 1375 (a) The number and names of affected facilities;
- 1376 (b) The number and types of patient protection measures  
1377 currently in effect in these facilities;
- 1378 (c) The number of affected practitioners;
- 1379 (d) The number of affected patients;
- 1380 (e) The number of surgical procedures by affected  
1381 practitioners on affected patients;
- 1382 (f) The number of medical incidents, claims of medical  
1383 malpractice, and claims resulting in indemnity;
- 1384 (g) The average time for resolution of contested and  
1385 uncontested claims of medical malpractice;
- 1386 (h) The percentage of claims that result in civil trials;
- 1387 (i) The percentage of civil trials resulting in adverse  
1388 judgments against affected facilities;
- 1389 (j) The number and average size of an indemnity paid to  
1390 claimants;
- 1391 (k) The number and average size of assessments imposed on  
1392 affected practitioners;
- 1393 (l) The estimated liability expense, inclusive of medical  
1394 liability insurance premiums; and
- 1395 (m) The percentage of medical liability expense, inclusive  
1396 of medical liability insurance premiums, which is borne by  
1397 affected practitioners in affected health care facilities.

1398

1399 Such reports to the Legislature may also include other  
1400 information and data that the agency deems appropriate to gauge

1401 the cost and benefit of enterprise plans for patient protection  
 1402 and provider liability.

1403 (3) The agency's annual report to the Legislature may  
 1404 include relevant information and data obtained from the Office  
 1405 of Insurance Regulation within the Department of Financial  
 1406 Services on the availability and affordability of enterprise-  
 1407 wide medical liability insurance coverage for affected  
 1408 facilities and the availability and affordability of insurance  
 1409 policies for individual practitioners which contain coverage  
 1410 exclusions for acts of medical negligence in certified patient  
 1411 safety facilities and certified patient safety departments of  
 1412 licensed facilities. The Office of Insurance Regulation within  
 1413 the Department of Financial Services shall cooperate with the  
 1414 agency in the reporting of information and data specified in  
 1415 this subsection.

1416 (4) Reports submitted to the agency by affected facilities  
 1417 pursuant to this section are public records under chapter 112.  
 1418 However, these reports, and the information contained therein,  
 1419 are not admissible as evidence in a court of law in any action.

1420 Section 18. Section 766.409, Florida Statutes, is created  
 1421 to read:

1422 766.409 Rulemaking authority.--The agency may adopt rules  
 1423 to administer ss. 766.401-766.410.

1424 Section 19. Section 766.410, Florida Statutes, is created  
 1425 to read:

1426 766.410 Damages in malpractice actions against certain  
 1427 hospitals that meet patient safety requirements; agency approval  
 1428 of patient safety measures.--

1429       (1) In recognition of their essential role in training  
1430 future health care providers and in providing innovative medical  
1431 care for this state's residents, in recognition of their  
1432 commitment to treating indigent patients, and further in  
1433 recognition that all teaching hospitals, as defined in s.  
1434 408.07, both public and private, and hospitals licensed under  
1435 chapter 395 which are owned and operated by a university that  
1436 maintains an accredited medical school, collectively defined as  
1437 eligible hospitals in s. 766.401(7), provide benefits to the  
1438 residents of this state through their roles in improving the  
1439 quality of medical care, training health care providers, and  
1440 caring for indigent patients, the limits of liability for  
1441 medical malpractice arising out of the rendering of, or the  
1442 failure to render, medical care by all such hospitals, shall be  
1443 determined in accordance with the requirements of this section,  
1444 notwithstanding any other provision of state law.

1445       (2) Except as otherwise provided in subsections (9) and  
1446 (10), any eligible hospital may petition the Agency for Health  
1447 Care Administration to enter an order certifying that the  
1448 licensed facility complies with patient safety measures  
1449 specified in s. 766.403.

1450       (3) In accordance with chapter 120, the agency shall enter  
1451 an order approving the petition upon a showing that the eligible  
1452 hospital complies with the patient safety measures specified in  
1453 s. 766.403. Upon entry of the agency order, and for the entire  
1454 period of time that the order remains in effect, the limits of  
1455 liability for medical malpractice arising out of the rendering  
1456 of, or the failure to render, medical care by the hospital

1457 covered by the order and its employees and agents shall be up to  
1458 \$500,000 in the aggregate for claims or judgments for  
1459 noneconomic damages arising out of the same incident or  
1460 occurrence. Claims or judgments for noneconomic damages and  
1461 awards of past economic damages shall be offset by collateral  
1462 sources and paid in full at the time of final settlement. Awards  
1463 of future economic damages, after being offset by collateral  
1464 sources at the option of the teaching hospital, shall be reduced  
1465 by the court to present value and paid in full or paid by means  
1466 of periodic payments in the form of annuities or reversionary  
1467 trusts, such payments to be paid for the life of the claimant or  
1468 for so long as the condition for which the award was made  
1469 persists, whichever is shorter, without regard to the number of  
1470 years awarded by the trier of fact, at which time the obligation  
1471 to make such payments terminates. A company that underwrites an  
1472 annuity to pay future economic damages shall have a Best Company  
1473 rating of not less than A. The terms of a reversionary  
1474 instrument used to periodically pay future economic damages must  
1475 be approved by the court, such approval may not be unreasonably  
1476 withheld.

1477 (4) The limitations on damages in subsection (3) apply  
1478 prospectively to causes of action for medical negligence that  
1479 arise on or after the effective date of the order.

1480 (5) Upon entry of an order approving the petition, the  
1481 agency may conduct onsite examinations of the licensed facility  
1482 to assure continued compliance with terms and conditions of the  
1483 order.

1484 (6) The agency order certifying approval of an enterprise

1485 plan for patient protection under this section remains in effect  
1486 until revoked. The agency may revoke the order upon reasonable  
1487 notice to the affected hospital that it fails to comply with  
1488 material requirements of ss. 766.401-766.410 or material  
1489 conditions of the order certifying compliance with required  
1490 patient safety measures and that the hospital has failed to cure  
1491 stated deficiencies upon reasonable notice. Revocation of an  
1492 agency order certifying approval of an enterprise plan for  
1493 patient protection and provider liability applies prospectively  
1494 to causes of action for medical negligence that arise on or  
1495 after the effective date of the order of revocation.

1496 (7) An agency order certifying approval of an enterprise  
1497 plan for patient protection under this section shall, as a  
1498 matter of law, constitute conclusive evidence that the hospital  
1499 complies with all applicable patient safety requirements of s.  
1500 766.403. A hospital's noncompliance with the requirements of s.  
1501 766.403 may not affect the limitations on damages conferred by  
1502 this section. Evidence of noncompliance with s. 766.403 may not  
1503 be admissible for any purpose in any action for medical  
1504 malpractice. This section, or any portion thereof, may not give  
1505 rise to an independent cause of action for damages against any  
1506 hospital.

1507 (8) The entry of an agency order pursuant to this section  
1508 does not impose enterprise liability, or sole and exclusive  
1509 liability, on the licensed facility for acts or omissions of  
1510 medical negligence within the premises.

1511 (9) An eligible hospital may petition the agency for an  
1512 order pursuant to this section or an order pursuant to s.

1513 766.404. However, a hospital may not be approved for both  
 1514 enterprise liability under s. 766.404 and the limitations on  
 1515 damages under this section.

1516 (10) This section may not apply to hospitals that are  
 1517 subject to sovereign immunity under s. 768.28.

1518 Section 20. Subsections (5) and (12) of section 768.28,  
 1519 Florida Statutes, are amended to read:

1520 768.28 Waiver of sovereign immunity in tort actions;  
 1521 recovery limits; limitation on attorney fees; statute of  
 1522 limitations; exclusions; indemnification; risk management  
 1523 programs.--

1524 (5)(a) The state and its agencies and subdivisions shall  
 1525 be liable for tort claims in the same manner and to the same  
 1526 extent as a private individual under like circumstances, but  
 1527 liability does ~~shall~~ not include punitive damages or interest  
 1528 for the period before judgment.

1529 (b) Except as provided in paragraph (c), neither the state  
 1530 or ~~nor~~ its agencies or subdivisions are ~~shall be~~ liable to pay a  
 1531 claim or a judgment by any one person which exceeds the sum of  
 1532 \$100,000 or any claim or judgment, or portions thereof, which,  
 1533 when totaled with all other claims or judgments paid by the  
 1534 state or its agencies or subdivisions arising out of the same  
 1535 incident or occurrence, exceeds the sum of \$200,000. However, a  
 1536 judgment or judgments may be claimed and rendered in excess of  
 1537 these amounts and may be settled and paid pursuant to this act  
 1538 up to \$100,000 or \$200,000, as the case may be; and that portion  
 1539 of the judgment that exceeds these amounts may be reported to  
 1540 the Legislature, but may be paid in part or in whole only by

1541 further act of the Legislature. Notwithstanding the limited  
1542 waiver of sovereign immunity provided herein, the state or an  
1543 agency or subdivision thereof may agree, within the limits of  
1544 insurance coverage provided, to settle a claim made or a  
1545 judgment rendered against it without further action by the  
1546 Legislature, but the state or agency or subdivision thereof  
1547 shall not be deemed to have waived any defense of sovereign  
1548 immunity or to have increased the limits of its liability as a  
1549 result of its obtaining insurance coverage for tortious acts in  
1550 excess of the \$100,000 or \$200,000 waiver provided above. The  
1551 limitations of liability set forth in this subsection shall  
1552 apply to the state and its agencies and subdivisions whether or  
1553 not the state or its agencies or subdivisions possessed  
1554 sovereign immunity before July 1, 1974.

1555 (c) In any action for medical negligence within a  
1556 certified patient safety facility that is covered by sovereign  
1557 immunity, given that the licensed health care facility bears  
1558 sole and exclusive liability for acts of medical negligence  
1559 pursuant to the Enterprise Act for Patient Protection and  
1560 Provider Liability, inclusive of ss. 766.401-766.409, neither  
1561 the state or its agencies or subdivisions are liable to pay a  
1562 claim or a judgment by any one person which exceeds the sum of  
1563 \$150,000 or any claim or judgment, or portions thereof, which,  
1564 when totaled with all other claims or judgments paid by the  
1565 state or its agencies or subdivisions arising out of the same  
1566 incident or occurrence, exceeds the sum of \$300,000. However, a  
1567 judgment may be claimed and rendered in excess of these amounts  
1568 and may be settled and paid up to \$150,000 or \$300,000, as the



1569 case may be. That portion of the judgment which exceeds these  
 1570 amounts may be reported to the Legislature, but may be paid in  
 1571 part or in whole only by further act of the Legislature.  
 1572 Notwithstanding the limited waiver of sovereign immunity  
 1573 provided in this paragraph, the state or an agency or  
 1574 subdivision thereof may agree, within the limits of insurance  
 1575 coverage provided, to settle a claim made or a judgment rendered  
 1576 against it without further action by the Legislature, but the  
 1577 state or agency or subdivision thereof does not waive any  
 1578 defense of sovereign immunity or increase limits of its  
 1579 liability as a result of its obtaining insurance coverage for  
 1580 tortious acts in excess of the \$150,000 waiver or the \$300,000  
 1581 waiver provided in this paragraph. The limitations of liability  
 1582 set forth in this paragraph apply to the state and its agencies  
 1583 and subdivisions whether or not the state or its agencies or  
 1584 subdivisions possessed sovereign immunity before July 1, 1974.

1585 (12)(a) A health care practitioner, as defined in s.  
 1586 456.001(4), who has contractually agreed to act as an agent of a  
 1587 state university board of trustees to provide medical services  
 1588 to a student athlete for participation in or as a result of  
 1589 intercollegiate athletics, to include team practices, training,  
 1590 and competitions, is ~~shall be considered~~ an agent of the  
 1591 respective state university board of trustees, for the purposes  
 1592 of this section, while acting within the scope of and pursuant  
 1593 to guidelines established in that contract. The contracts shall  
 1594 provide for the indemnification of the state by the agent for  
 1595 any liabilities incurred up to the limits set out in this  
 1596 chapter.

1597 (b) This subsection shall not be construed as designating  
1598 persons providing contracted health care services to athletes as  
1599 employees or agents of a state university board of trustees for  
1600 the purposes of chapter 440.

1601 (c)1. For purposes of this subsection only, the terms  
1602 "certified patient safety facility," "medical staff," and  
1603 "medical negligence" have the same meanings as provided in s.  
1604 766.401.

1605 2. A certified patient safety facility, wherein a minimum  
1606 of 50 percent of the members of the medical staff consist of  
1607 physicians are employees or agents of a state university, is an  
1608 agent of the respective state university board of trustees for  
1609 purposes of this section to the extent that the licensed  
1610 facility, in accordance with an enterprise plan for patient  
1611 protection and provider liability, inclusive of ss. 766.401-  
1612 766.409, approved by the Agency for Health Care Administration,  
1613 is solely and exclusively liable for acts of medical negligence  
1614 of physicians providing health care services within the licensed  
1615 facility. Subject to the acceptance of the Florida Board of  
1616 Governors and a state university board of trustees, a licensed  
1617 facility as herein described may secure the limits of liability  
1618 protection described in paragraph (c) from a self insurance  
1619 program created pursuant to s. 1004.24.

1620 Section 21. If any provision of this act or its  
1621 application to any person or circumstance is held invalid, the  
1622 invalidity does not affect other provisions or applications of  
1623 the act which can be given effect without the invalid provision  
1624 or application, and to this end, the provisions of this act are

1625 severable.

1626       Section 22. If a conflict between any provision of this  
 1627 act and s. 17.505, s. 456.052, s. 456.053, s. 456.054, s.  
 1628 458.331, or s. 459.015, the provisions of this act shall govern.  
 1629 The provisions of this act should be broadly construed in  
 1630 furtherance of the overriding legislative intent to facilitate  
 1631 innovative approaches for patient protection and provider  
 1632 liability in eligible hospitals.

1633       Section 23. It is the intention of the Legislature that  
 1634 the provisions of this act are self-executing.

1635       Section 24. This act shall take effect upon becoming a  
 1636 law.