

CHAMBER ACTION

1 The Health Care Regulation Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to medical malpractice insurance; creating  
7 the Enterprise Act for Patient Protection and Provider  
8 Liability; providing legislative findings; amending s.  
9 395.0197, F.S., relating to internal risk management  
10 programs; conforming provisions to changes made by the  
11 act; amending s. 458.320, F.S.; exempting certain  
12 physicians who perform surgery in certain patient safety  
13 facilities from the requirement to establish financial  
14 responsibility; requiring a licensed physician who is  
15 covered for medical negligence claims by a hospital that  
16 assumes liability under the act to prominently post notice  
17 or provide a written statement to patients; requiring a  
18 licensed physician who meets certain requirements for  
19 payment or settlement of a medical malpractice claim and  
20 who is covered for medical negligence claims by a hospital  
21 that assumes liability under the act to prominently post  
22 notice or provide a written statement to patients;  
23 amending s. 459.0085, F.S.; exempting certain osteopathic

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24 | physicians who perform surgery in certain patient safety  
25 | facilities from the requirement to establish financial  
26 | responsibility; requiring a licensed osteopathic physician  
27 | who is covered for medical negligence claims by a hospital  
28 | that assumes liability under the act to prominently post  
29 | notice or provide a written statement to patients;  
30 | requiring a licensee of osteopathic medicine who meets  
31 | certain requirements for payment or settlement of a  
32 | medical malpractice claim and who is covered for medical  
33 | negligence claims by a hospital that assumes liability  
34 | under the act to prominently post notice or provide a  
35 | written statement to patients; creating s. 627.41485,  
36 | F.S.; authorizing insurers to offer liability insurance  
37 | coverage to physicians which has an exclusion for certain  
38 | acts of medical negligence under certain conditions;  
39 | authorizing the Department of Financial Services to adopt  
40 | rules; amending s. 766.316, F.S.; requiring hospitals that  
41 | assume liability for affected physicians under the act to  
42 | provide notice to obstetrical patients regarding the  
43 | limited no-fault alternative to birth-related neurological  
44 | injuries; amending s. 766.110, F.S.; requiring hospitals  
45 | that assume liability for acts of medical negligence under  
46 | the act to carry insurance; requiring the hospital's  
47 | policy regarding medical liability insurance to satisfy  
48 | certain statutory financial responsibility requirements;  
49 | authorizing an insurer who is authorized to write casualty  
50 | insurance to write such coverage; authorizing certain  
51 | hospitals to indemnify certain medical staff for legal

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52 liability of loss, damages, or expenses arising from  
53 medical negligence within hospital premises; requiring a  
54 hospital to acquire a policy of professional liability  
55 insurance or a fund for malpractice coverage; requiring an  
56 annual certified financial statement to the Agency for  
57 Health Care Administration; authorizing certain hospitals  
58 to charge physicians a fee for malpractice coverage;  
59 preserving a hospital's ability to indemnify certain  
60 medical staff members; creating s. 766.401, F.S.;  
61 providing definitions; creating s. 766.402, F.S.;  
62 authorizing an eligible hospital to petition the Agency  
63 for Health Care Administration to enter an order  
64 certifying the hospital as a patient safety facility;  
65 providing requirements for certification as a patient  
66 safety facility; creating s. 766.403, F.S.; providing  
67 requirements for a hospital to demonstrate that it is  
68 engaged in a common enterprise for the care and treatment  
69 of patients; specifying required patient safety measures;  
70 prohibiting a report or document generated under the act  
71 from being admissible or discoverable as evidence;  
72 creating s. 766.404, F.S.; authorizing the agency to enter  
73 an order certifying a hospital as a patient safety  
74 facility and providing that the hospital bears liability  
75 for acts of medical negligence for its health care  
76 providers or an agent of the hospital; providing that  
77 certain persons or entities are not liable for medically  
78 negligent acts occurring in a certified patient safety  
79 facility; requiring that an affected practitioner

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80 prominently post notice regarding exemption from personal  
81 liability; requiring an affected physician who is covered  
82 by an enterprise plan in a licensed facility that receives  
83 sovereign immunity to prominently post notice regarding  
84 exemption from personal liability; providing that an  
85 agency order certifying approval of an enterprise plan is  
86 evidence of a hospital's compliance with applicable  
87 patient safety requirements; providing circumstances in  
88 which notice is not required; providing that the order  
89 certifying approval of an enterprise plan applies  
90 prospectively to causes of action for medical negligence;  
91 authorizing the agency to conduct onsite examinations of a  
92 licensed facility; providing circumstances under which the  
93 agency may revoke its order certifying approval of an  
94 enterprise plan; providing that an employee or agent of a  
95 certified patient safety facility may not be joined as a  
96 defendant in an action for medical negligence; requiring  
97 an affected practitioner to cooperate in good faith in an  
98 investigation of a claim for medical malpractice;  
99 providing a cause of action for failure of a physician to  
100 act in good faith; providing that strict liability or  
101 liability without fault is not imposed for medical  
102 incidents that occur in the affected facility; providing  
103 requirements that a claimant must prove to demonstrate  
104 medical negligence by an employee, agent, or medical staff  
105 of a licensed facility; providing that the act does not  
106 create an independent cause of action or waive sovereign  
107 immunity; creating s. 766.405, F.S.; requiring an eligible

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108 hospital to execute an enterprise plan; requiring certain  
109 conditions to be contained within an enterprise plan;  
110 creating s. 766.406, F.S.; requiring a certified patient  
111 safety facility to report medical incidents occurring on  
112 its premises and adverse findings of medical negligence to  
113 the Department of Health; requiring certified patient  
114 safety facilities to perform certain peer review  
115 functions; creating s. 766.407, F.S.; providing that an  
116 enterprise plan may provide clinical privileges to certain  
117 persons; requiring certain organizations to share in the  
118 cost of omnibus medical liability insurance premiums  
119 subject to certain conditions; authorizing a licensed  
120 facility to impose a reasonable assessment against an  
121 affected practitioner who commits medical negligence;  
122 providing for the revocation of clinical privileges for  
123 failure to pay the assessment; exempting certain employees  
124 and agents from such assessments; creating s. 766.408,  
125 F.S.; requiring a certified patient safety facility to  
126 submit an annual report to the agency and the Legislature;  
127 providing requirements for the annual report; providing  
128 that the annual report may include certain information  
129 from the Office of Insurance Regulation within the  
130 Department of Financial Services; providing that the  
131 annual report is subject to public records requirements,  
132 but is not admissible as evidence in a legal proceeding;  
133 creating s. 766.409, F.S.; authorizing certain teaching  
134 hospitals and eligible hospitals to petition the agency  
135 for certification; providing for limitations on damages

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136 | for eligible hospitals that are certified for compliance  
137 | with certain patient safety measures; authorizing the  
138 | agency to conduct onsite examinations of certified  
139 | eligible hospitals; authorizing the agency to revoke its  
140 | order certifying approval of an enterprise plan; providing  
141 | that an agency order certifying approval of an enterprise  
142 | plan is evidence of a hospital's compliance with  
143 | applicable patient safety requirements; providing that  
144 | evidence of noncompliance is inadmissible in any action  
145 | for medical malpractice; providing that entry of the  
146 | agency's order does not impose enterprise liability on the  
147 | licensed facility for acts or omissions of medical  
148 | negligence; providing that a hospital may not be approved  
149 | for certification for both enterprise liability and  
150 | limitations on damages; creating s. 766.410, F.S.;  
151 | providing rulemaking authority; amending s. 768.28, F.S.;  
152 | providing limitations on payment of a claim or judgment  
153 | for an action for medical negligence within a certified  
154 | patient safety facility that is covered by sovereign  
155 | immunity; providing definitions; providing that a  
156 | certified patient safety facility is an agent of a state  
157 | university board of trustees to the extent that the  
158 | licensed facility is solely liable for acts of medical  
159 | negligence of physicians providing health care services  
160 | within the licensed facility; specifying that certain  
161 | certified patient safety facilities are agents of a state  
162 | university board of trustees under certain circumstances;  
163 | authorizing licensed facilities to secure limits of

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164 liability protection from certain self-insurance programs;  
 165 providing requirements for commencing an action for  
 166 certain medical negligence; providing procedures;  
 167 providing limitations; providing for severability;  
 168 providing for broad statutory view of the act; providing  
 169 for self-execution of the act; providing an effective  
 170 date.

171

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

173

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

176 Section 2. Legislative findings.--

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

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

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

187 (4) The Legislature finds that modern hospitals are  
 188 complex organizations, that medical care and treatment in  
 189 hospitals is a complex process, and that, increasingly, medical  
 190 care and treatment in hospitals is a common enterprise involving  
 191 an array of responsible employees, agents, and other persons,

192 such as physicians, who are authorized to exercise clinical  
 193 privileges within the premises.

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

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

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

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

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

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

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



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

223       (13) The Legislature finds that the critical mission of  
 224 statutory teaching hospitals and hospitals owned and operated by  
 225 universities that maintain accredited medical schools is  
 226 severely undermined by the ongoing medical malpractice crisis.

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

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

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

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247 wider array of hospitals after a reasonable period of evaluation  
 248 and review.

249 (17) The Legislature finds an overwhelming public  
 250 necessity to promote the academic mission of statutory teaching  
 251 hospitals and hospitals owned and operated by universities that  
 252 maintain accredited medical schools. Furthermore, the  
 253 Legislature finds that the academic mission of these medical  
 254 facilities is materially enhanced by statutory authority for the  
 255 implementation of innovative approaches to patient protection  
 256 and provider liability. Such approaches can be carefully studied  
 257 and learned by medical students, medical school faculty, and  
 258 affiliated physicians in appropriate clinical settings, thereby  
 259 enlarging the body of knowledge concerning patient protection  
 260 and provider liability which is essential for advancement of  
 261 patient safety, reduction of expenses inherent in the medical  
 262 liability system, and curtailment of the medical malpractice  
 263 insurance crisis in this state.

264 Section 3. Subsection (3) of section 395.0197, Florida  
 265 Statutes, is amended to read:

266 395.0197 Internal risk management program.--

267 (3) In addition to the programs mandated by this section,  
 268 other innovative approaches intended to reduce the frequency and  
 269 severity of medical malpractice and patient injury claims shall  
 270 be encouraged and their implementation and operation  
 271 facilitated. Such additional approaches may include extending  
 272 internal risk management programs to health care providers'  
 273 offices and the assuming of provider liability by a licensed  
 274 health care facility for acts or omissions occurring within the

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275 | licensed facility pursuant to the Enterprise Act for Patient  
 276 | Protection and Provider Liability, inclusive of ss. 766.401-  
 277 | 766.409. Each licensed facility shall annually report to the  
 278 | agency and the Department of Health the name and judgments  
 279 | entered against each health care practitioner for which it  
 280 | assumes liability. The agency and Department of Health, in their  
 281 | respective annual reports, shall include statistics that report  
 282 | the number of licensed facilities that assume such liability and  
 283 | the number of health care practitioners, by profession, for whom  
 284 | they assume liability.

285 |       Section 4. Subsection (2) and paragraphs (f) and (g) of  
 286 | subsection (5) of section 458.320, Florida Statutes, are amended  
 287 | to read:

288 |       458.320 Financial responsibility.--

289 |       (2) Physicians who perform surgery in an ambulatory  
 290 | surgical center licensed under chapter 395 and, as a continuing  
 291 | condition of hospital staff privileges, physicians who have  
 292 | staff privileges must also establish financial responsibility by  
 293 | one of the following methods:

294 |       (a) Establishing and maintaining an escrow account  
 295 | consisting of cash or assets eligible for deposit in accordance  
 296 | with s. 625.52 in the per claim amounts specified in paragraph  
 297 | (b). The required escrow amount set forth in this paragraph may  
 298 | not be used for litigation costs or attorney's fees for the  
 299 | defense of any medical malpractice claim.

300 |       (b) Obtaining and maintaining professional liability  
 301 | coverage in an amount not less than \$250,000 per claim, with a  
 302 | minimum annual aggregate of not less than \$750,000 from an

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303 | authorized insurer as defined under s. 624.09, from a surplus  
 304 | lines insurer as defined under s. 626.914(2), from a risk  
 305 | retention group as defined under s. 627.942, from the Joint  
 306 | Underwriting Association established under s. 627.351(4),  
 307 | through a plan of self-insurance as provided in s. 627.357, or  
 308 | through a plan of self-insurance which meets the conditions  
 309 | specified for satisfying financial responsibility in s. 766.110.  
 310 | The required coverage amount set forth in this paragraph may not  
 311 | be used for litigation costs or attorney's fees for the defense  
 312 | of any medical malpractice claim.

313 |       (c) Obtaining and maintaining an unexpired irrevocable  
 314 | letter of credit, established pursuant to chapter 675, in an  
 315 | amount not less than \$250,000 per claim, with a minimum  
 316 | aggregate availability of credit of not less than \$750,000. The  
 317 | letter of credit must be payable to the physician as beneficiary  
 318 | upon presentment of a final judgment indicating liability and  
 319 | awarding damages to be paid by the physician or upon presentment  
 320 | of a settlement agreement signed by all parties to such  
 321 | agreement when such final judgment or settlement is a result of  
 322 | a claim arising out of the rendering of, or the failure to  
 323 | render, medical care and services. The letter of credit may not  
 324 | be used for litigation costs or attorney's fees for the defense  
 325 | of any medical malpractice claim. The letter of credit must be  
 326 | nonassignable and nontransferable. The letter of credit must be  
 327 | issued by any bank or savings association organized and existing  
 328 | under the laws of this state or any bank or savings association  
 329 | organized under the laws of the United States which has its  
 330 | principal place of business in this state or has a branch office

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331 that is authorized under the laws of this state or of the United  
332 States to receive deposits in this state.

333  
334 This subsection shall be inclusive of the coverage in subsection  
335 (1). A physician who only performs surgery or who has only  
336 clinical privileges or admitting privileges in one or more  
337 certified patient safety facilities, which health care facility  
338 or facilities are legally liable for medical negligence of  
339 affected practitioners, pursuant to the Enterprise Act for  
340 Patient Protection and Provider Liability, inclusive of ss.  
341 766.401-766.409, is exempt from the requirements of this  
342 subsection.

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

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

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

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

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

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

359           5. The licensee has not been subject within the last 10  
 360 years of practice to license revocation or suspension for any  
 361 period of time; probation for a period of 3 years or longer; or  
 362 a fine of \$500 or more for a violation of this chapter or the  
 363 medical practice act of another jurisdiction. The regulatory  
 364 agency's acceptance of a physician's relinquishment of a  
 365 license, stipulation, consent order, or other settlement,  
 366 offered in response to or in anticipation of the filing of  
 367 administrative charges against the physician's license,  
 368 constitutes action against the physician's license for the  
 369 purposes of this paragraph.

370           6. The licensee has submitted a form supplying necessary  
 371 information as required by the department and an affidavit  
 372 affirming compliance with this paragraph.

373           7. The licensee must submit biennially to the department  
 374 certification stating compliance with the provisions of this  
 375 paragraph. The licensee must, upon request, demonstrate to the  
 376 department information verifying compliance with this paragraph.

377  
 378 A licensee who meets the requirements of this paragraph must  
 379 post notice in the form of a sign prominently displayed in the  
 380 reception area and clearly noticeable by all patients or provide  
 381 a written statement to any person to whom medical services are  
 382 being provided. The sign or statement must read as follows:  
 383 "Under Florida law, physicians are generally required to carry  
 384 medical malpractice insurance or otherwise demonstrate financial  
 385 responsibility to cover potential claims for medical  
 386 malpractice. However, certain part-time physicians who meet

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387 state requirements are exempt from the financial responsibility  
 388 law. YOUR DOCTOR MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO  
 389 CARRY MEDICAL MALPRACTICE INSURANCE. This notice is provided  
 390 pursuant to Florida law." In addition, a licensee who is covered  
 391 for claims of medical negligence arising from care and treatment  
 392 of patients in a hospital that assumes sole and exclusive  
 393 liability for all such claims pursuant to the Enterprise Act for  
 394 Patient Protection and Provider Liability, inclusive of ss.  
 395 766.401-766.409, shall post notice in the form of a sign  
 396 prominently displayed in the reception area and clearly  
 397 noticeable by all patients or provide a written statement to any  
 398 person for whom the physician may provide medical care and  
 399 treatment in any such hospital in accordance with the  
 400 requirements of s. 766.404.

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

- 403 1. Upon the entry of an adverse final judgment arising  
 404 from a medical malpractice arbitration award, from a claim of  
 405 medical malpractice either in contract or tort, or from  
 406 noncompliance with the terms of a settlement agreement arising  
 407 from a claim of medical malpractice either in contract or tort,  
 408 the licensee shall pay the judgment creditor the lesser of the  
 409 entire amount of the judgment with all accrued interest or  
 410 either \$100,000, if the physician is licensed pursuant to this  
 411 chapter but does not maintain hospital staff privileges, or  
 412 \$250,000, if the physician is licensed pursuant to this chapter  
 413 and maintains hospital staff privileges, within 60 days after  
 414 the date such judgment became final and subject to execution,

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415 unless otherwise mutually agreed to in writing by the parties.  
 416 Such adverse final judgment shall include any cross-claim,  
 417 counterclaim, or claim for indemnity or contribution arising  
 418 from the claim of medical malpractice. Upon notification of the  
 419 existence of an unsatisfied judgment or payment pursuant to this  
 420 subparagraph, the department shall notify the licensee by  
 421 certified mail that he or she shall be subject to disciplinary  
 422 action unless, within 30 days from the date of mailing, he or  
 423 she either:

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

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

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

430 (II) An order from a court of competent jurisdiction  
 431 staying execution on the final judgment pending disposition of  
 432 the appeal.

433 2. The Department of Health shall issue an emergency order  
 434 suspending the license of any licensee who, after 30 days  
 435 following receipt of a notice from the Department of Health, has  
 436 failed to: satisfy a medical malpractice claim against him or  
 437 her; furnish the Department of Health a copy of a timely filed  
 438 notice of appeal; furnish the Department of Health a copy of a  
 439 supersedeas bond properly posted in the amount required by law;  
 440 or furnish the Department of Health an order from a court of  
 441 competent jurisdiction staying execution on the final judgment  
 442 pending disposition of the appeal.



443           3. Upon the next meeting of the probable cause panel of  
 444 the board following 30 days after the date of mailing the notice  
 445 of disciplinary action to the licensee, the panel shall make a  
 446 determination of whether probable cause exists to take  
 447 disciplinary action against the licensee pursuant to  
 448 subparagraph 1.

449           4. If the board determines that the factual requirements  
 450 of subparagraph 1. are met, it shall take disciplinary action as  
 451 it deems appropriate against the licensee. Such disciplinary  
 452 action shall include, at a minimum, probation of the license  
 453 with the restriction that the licensee must make payments to the  
 454 judgment creditor on a schedule determined by the board to be  
 455 reasonable and within the financial capability of the physician.  
 456 Notwithstanding any other disciplinary penalty imposed, the  
 457 disciplinary penalty may include suspension of the license for a  
 458 period not to exceed 5 years. In the event that an agreement to  
 459 satisfy a judgment has been met, the board shall remove any  
 460 restriction on the license.

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

463  
 464 A licensee who meets the requirements of this paragraph shall be  
 465 required either to post notice in the form of a sign prominently  
 466 displayed in the reception area and clearly noticeable by all  
 467 patients or to provide a written statement to any person to whom  
 468 medical services are being provided. Such sign or statement  
 469 shall state: "Under Florida law, physicians are generally  
 470 required to carry medical malpractice insurance or otherwise

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471 demonstrate financial responsibility to cover potential claims  
 472 for medical malpractice. YOUR DOCTOR HAS DECIDED NOT TO CARRY  
 473 MEDICAL MALPRACTICE INSURANCE. This is permitted under Florida  
 474 law subject to certain conditions. Florida law imposes penalties  
 475 against noninsured physicians who fail to satisfy adverse  
 476 judgments arising from claims of medical malpractice. This  
 477 notice is provided pursuant to Florida law." In addition, a  
 478 licensee who meets the requirements of this paragraph and who is  
 479 covered for claims of medical negligence arising from care and  
 480 treatment of patients in a hospital that assumes sole and  
 481 exclusive liability for all such claims pursuant to the  
 482 Enterprise Act for Patient Protection and Provider Liability,  
 483 inclusive of ss. 766.401-766.409, shall post notice in the form  
 484 of a sign prominently displayed in the reception area and  
 485 clearly noticeable by all patients or provide a written  
 486 statement to any person for whom the physician may provide  
 487 medical care and treatment in any such hospital. The sign or  
 488 statement must adhere to the requirements of s. 766.404.

489 Section 5. Subsection (2) and paragraphs (f) and (g) of  
 490 subsection (5) of section 459.0085, Florida Statutes, are  
 491 amended to read:

492 459.0085 Financial responsibility.--

493 (2) Osteopathic physicians who perform surgery in an  
 494 ambulatory surgical center licensed under chapter 395 and, as a  
 495 continuing condition of hospital staff privileges, osteopathic  
 496 physicians who have staff privileges must also establish  
 497 financial responsibility by one of the following methods:

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

504 (b) Obtaining and maintaining professional liability  
 505 coverage in an amount not less than \$250,000 per claim, with a  
 506 minimum annual aggregate of not less than \$750,000 from an  
 507 authorized insurer as defined under s. 624.09, from a surplus  
 508 lines insurer as defined under s. 626.914(2), from a risk  
 509 retention group as defined under s. 627.942, from the Joint  
 510 Underwriting Association established under s. 627.351(4),  
 511 through a plan of self-insurance as provided in s. 627.357, or  
 512 through a plan of self-insurance that meets the conditions  
 513 specified for satisfying financial responsibility in s. 766.110.  
 514 The required coverage amount set forth in this paragraph may not  
 515 be used for litigation costs or attorney's fees for the defense  
 516 of any medical malpractice claim.

517 (c) Obtaining and maintaining an unexpired, irrevocable  
 518 letter of credit, established pursuant to chapter 675, in an  
 519 amount not less than \$250,000 per claim, with a minimum  
 520 aggregate availability of credit of not less than \$750,000. The  
 521 letter of credit must be payable to the osteopathic physician as  
 522 beneficiary upon presentment of a final judgment indicating  
 523 liability and awarding damages to be paid by the osteopathic  
 524 physician or upon presentment of a settlement agreement signed  
 525 by all parties to such agreement when such final judgment or

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526 settlement is a result of a claim arising out of the rendering  
 527 of, or the failure to render, medical care and services. The  
 528 letter of credit may not be used for litigation costs or  
 529 attorney's fees for the defense of any medical malpractice  
 530 claim. The letter of credit must be nonassignable and  
 531 nontransferable. The letter of credit must be issued by any bank  
 532 or savings association organized and existing under the laws of  
 533 this state or any bank or savings association organized under  
 534 the laws of the United States which has its principal place of  
 535 business in this state or has a branch office that is authorized  
 536 under the laws of this state or of the United States to receive  
 537 deposits in this state.

538  
 539 This subsection shall be inclusive of the coverage in subsection  
 540 (1). An osteopathic physician who only performs surgery or who  
 541 has only clinical privileges or admitting privileges in one or  
 542 more certified patient safety facilities, which health care  
 543 facility or facilities are legally liable for medical negligence  
 544 of affected practitioners, pursuant to the Enterprise Act for  
 545 Patient Protection and Provider Liability, inclusive of ss.  
 546 766.401-766.409, is exempt from the requirements of this  
 547 subsection.

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

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

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

555           2. The licensee has either retired from the practice of  
556 osteopathic medicine or maintains a part-time practice of  
557 osteopathic medicine of no more than 1,000 patient contact hours  
558 per year.

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

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

565           5. The licensee has not been subject within the last 10  
566 years of practice to license revocation or suspension for any  
567 period of time, probation for a period of 3 years or longer, or  
568 a fine of \$500 or more for a violation of this chapter or the  
569 medical practice act of another jurisdiction. The regulatory  
570 agency's acceptance of an osteopathic physician's relinquishment  
571 of a license, stipulation, consent order, or other settlement,  
572 offered in response to or in anticipation of the filing of  
573 administrative charges against the osteopathic physician's  
574 license, constitutes action against the physician's license for  
575 the purposes of this paragraph.

576           6. The licensee has submitted a form supplying necessary  
577 information as required by the department and an affidavit  
578 affirming compliance with this paragraph.

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579           7. The licensee must submit biennially to the department a  
580 certification stating compliance with this paragraph. The  
581 licensee must, upon request, demonstrate to the department  
582 information verifying compliance with this paragraph.

583  
584 A licensee who meets the requirements of this paragraph must  
585 post notice in the form of a sign prominently displayed in the  
586 reception area and clearly noticeable by all patients or provide  
587 a written statement to any person to whom medical services are  
588 being provided. The sign or statement must read as follows:  
589 "Under Florida law, osteopathic physicians are generally  
590 required to carry medical malpractice insurance or otherwise  
591 demonstrate financial responsibility to cover potential claims  
592 for medical malpractice. However, certain part-time osteopathic  
593 physicians who meet state requirements are exempt from the  
594 financial responsibility law. YOUR OSTEOPATHIC PHYSICIAN MEETS  
595 THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL  
596 MALPRACTICE INSURANCE. This notice is provided pursuant to  
597 Florida law." In addition, a licensee who is covered for claims  
598 of medical negligence arising from care and treatment of  
599 patients in a hospital that assumes sole and exclusive liability  
600 for all such claims pursuant to the Enterprise Act for Patient  
601 Protection and Provider Liability, inclusive of ss. 766.401-  
602 766.409, shall post notice in the form of a sign prominently  
603 displayed in the reception area and clearly noticeable by all  
604 patients or provide a written statement to any person for whom  
605 the osteopathic physician may provide medical care and treatment

606 | in any such hospital in accordance with the requirements of s.  
 607 | 766.404.

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

610 | 1. Upon the entry of an adverse final judgment arising  
 611 | from a medical malpractice arbitration award, from a claim of  
 612 | medical malpractice either in contract or tort, or from  
 613 | noncompliance with the terms of a settlement agreement arising  
 614 | from a claim of medical malpractice either in contract or tort,  
 615 | the licensee shall pay the judgment creditor the lesser of the  
 616 | entire amount of the judgment with all accrued interest or  
 617 | either \$100,000, if the osteopathic physician is licensed  
 618 | pursuant to this chapter but does not maintain hospital staff  
 619 | privileges, or \$250,000, if the osteopathic physician is  
 620 | licensed pursuant to this chapter and maintains hospital staff  
 621 | privileges, within 60 days after the date such judgment became  
 622 | final and subject to execution, unless otherwise mutually agreed  
 623 | to in writing by the parties. Such adverse final judgment shall  
 624 | include any cross-claim, counterclaim, or claim for indemnity or  
 625 | contribution arising from the claim of medical malpractice. Upon  
 626 | notification of the existence of an unsatisfied judgment or  
 627 | payment pursuant to this subparagraph, the department shall  
 628 | notify the licensee by certified mail that he or she shall be  
 629 | subject to disciplinary action unless, within 30 days from the  
 630 | date of mailing, the licensee either:

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

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

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

637           (II) An order from a court of competent jurisdiction  
638 staying execution on the final judgment, pending disposition of  
639 the appeal.

640           2. The Department of Health shall issue an emergency order  
641 suspending the license of any licensee who, after 30 days  
642 following receipt of a notice from the Department of Health, has  
643 failed to: satisfy a medical malpractice claim against him or  
644 her; furnish the Department of Health a copy of a timely filed  
645 notice of appeal; furnish the Department of Health a copy of a  
646 supersedeas bond properly posted in the amount required by law;  
647 or furnish the Department of Health an order from a court of  
648 competent jurisdiction staying execution on the final judgment  
649 pending disposition of the appeal.

650           3. Upon the next meeting of the probable cause panel of  
651 the board following 30 days after the date of mailing the notice  
652 of disciplinary action to the licensee, the panel shall make a  
653 determination of whether probable cause exists to take  
654 disciplinary action against the licensee pursuant to  
655 subparagraph 1.

656           4. If the board determines that the factual requirements  
657 of subparagraph 1. are met, it shall take disciplinary action as  
658 it deems appropriate against the licensee. Such disciplinary  
659 action shall include, at a minimum, probation of the license  
660 with the restriction that the licensee must make payments to the



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661 judgment creditor on a schedule determined by the board to be  
 662 reasonable and within the financial capability of the  
 663 osteopathic physician. Notwithstanding any other disciplinary  
 664 penalty imposed, the disciplinary penalty may include suspension  
 665 of the license for a period not to exceed 5 years. In the event  
 666 that an agreement to satisfy a judgment has been met, the board  
 667 shall remove any restriction on the license.

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

670  
 671 A licensee who meets the requirements of this paragraph shall be  
 672 required either to post notice in the form of a sign prominently  
 673 displayed in the reception area and clearly noticeable by all  
 674 patients or to provide a written statement to any person to whom  
 675 medical services are being provided. Such sign or statement  
 676 shall state: "Under Florida law, osteopathic physicians are  
 677 generally required to carry medical malpractice insurance or  
 678 otherwise demonstrate financial responsibility to cover  
 679 potential claims for medical malpractice. YOUR OSTEOPATHIC  
 680 PHYSICIAN HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE  
 681 INSURANCE. This is permitted under Florida law subject to  
 682 certain conditions. Florida law imposes strict penalties against  
 683 noninsured osteopathic physicians who fail to satisfy adverse  
 684 judgments arising from claims of medical malpractice. This  
 685 notice is provided pursuant to Florida law." In addition, a  
 686 licensee who meets the requirements of this paragraph and who is  
 687 covered for claims of medical negligence arising from care and  
 688 treatment of patients in a hospital that assumes sole and

689 exclusive liability for all such claims pursuant to an  
 690 enterprise plan for patient protection and provider liability  
 691 under ss. 766.401-766.409, shall post notice in the form of a  
 692 sign prominently displayed in the reception area and clearly  
 693 noticeable by all patients or provide a written statement to any  
 694 person for whom the osteopathic physician may provide medical  
 695 care and treatment in any such hospital. The sign or statement  
 696 must adhere to the requirements of s. 766.404.

697 Section 6. Section 627.41485, Florida Statutes, is created  
 698 to read:

699 627.41485 Medical malpractice insurers; optional coverage  
 700 exclusion for insureds who are covered by an enterprise plan for  
 701 patient protection and provider liability.--

702 (1) An insurer issuing policies of professional liability  
 703 coverage for claims arising out of the rendering of, or the  
 704 failure to render, medical care or services may make available  
 705 to physicians licensed under chapter 458 and to osteopathic  
 706 physicians licensed under chapter 459 coverage having an  
 707 appropriate exclusion for acts of medical negligence occurring  
 708 within:

709 (a) A certified patient safety facility that bears sole  
 710 and exclusive liability for acts of medical negligence pursuant  
 711 to the Enterprise Act for Patient Protection and Provider  
 712 Liability, inclusive of ss. 766.401-766.409, subject to the  
 713 usual underwriting standards; or

714 (b) A statutory teaching hospital that has agreed to  
 715 indemnify the physician or osteopathic physician for legal

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716 liability pursuant to s. 766.110(2)(c), subject to the usual  
717 underwriting standards.

718 (2) The Department of Financial Services may adopt rules  
719 to administer this section.

720 Section 7. Section 766.316, Florida Statutes, is amended  
721 to read:

722 766.316 Notice to obstetrical patients of participation in  
723 the plan.--Each hospital with a participating physician on its  
724 staff, each hospital that assumes liability for affected  
725 physicians pursuant to the Enterprise Act for Patient Protection  
726 and Provider Liability, inclusive of ss. 766.401-766.409, and  
727 each participating physician, other than residents, assistant  
728 residents, and interns deemed to be participating physicians  
729 under s. 766.314(4)(c), under the Florida Birth-Related  
730 Neurological Injury Compensation Plan shall provide notice to  
731 the obstetrical patients as to the limited no-fault alternative  
732 for birth-related neurological injuries. Such notice shall be  
733 provided on forms furnished by the association and shall include  
734 a clear and concise explanation of a patient's rights and  
735 limitations under the plan. The hospital or the participating  
736 physician may elect to have the patient sign a form  
737 acknowledging receipt of the notice form. Signature of the  
738 patient acknowledging receipt of the notice form raises a  
739 rebuttable presumption that the notice requirements of this  
740 section have been met. Notice need not be given to a patient  
741 when the patient has an emergency medical condition as defined  
742 in s. 395.002(9)(b) or when notice is not practicable.

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743 Section 8. Subsection (2) of section 766.110, Florida  
 744 Statutes, is amended to read:  
 745 766.110 Liability of health care facilities.--  
 746 (2)(a) Every hospital licensed under chapter 395 may carry  
 747 liability insurance or adequately insure itself in an amount of  
 748 not less than \$1.5 million per claim, \$5 million annual  
 749 aggregate to cover all medical injuries to patients resulting  
 750 from negligent acts or omissions on the part of those members of  
 751 its medical staff who are covered thereby in furtherance of the  
 752 requirements of ss. 458.320 and 459.0085. Self-insurance  
 753 coverage extended hereunder to a member of a hospital's medical  
 754 staff meets the financial responsibility requirements of ss.  
 755 458.320 and 459.0085 if the physician's coverage limits are not  
 756 less than the minimum limits established in ss. 458.320 and  
 757 459.0085 and the hospital is a verified trauma center that has  
 758 extended self-insurance coverage continuously to members of its  
 759 medical staff for activities both inside and outside of the  
 760 hospital. Any insurer authorized to write casualty insurance may  
 761 make available, but is ~~shall~~ not ~~be~~ required to write, such  
 762 coverage. The hospital may assess on an equitable and pro rata  
 763 basis the following professional health care providers for a  
 764 portion of the total hospital insurance cost for this coverage:  
 765 physicians licensed under chapter 458, osteopathic physicians  
 766 licensed under chapter 459, podiatric physicians licensed under  
 767 chapter 461, dentists licensed under chapter 466, and nurses  
 768 licensed under part I of chapter 464. The hospital may provide  
 769 for a deductible amount to be applied against any individual  
 770 health care provider found liable in a law suit in tort or for

771 breach of contract. The legislative intent in providing for the  
 772 deductible to be applied to individual health care providers  
 773 found negligent or in breach of contract is to instill in each  
 774 individual health care provider the incentive to avoid the risk  
 775 of injury to the fullest extent and ensure that the citizens of  
 776 this state receive the highest quality health care obtainable.

777 (b) Except with regard to hospitals that receive sovereign  
 778 immunity under s. 768.28, each hospital licensed under chapter  
 779 395 which assumes sole and exclusive liability for acts of  
 780 medical negligence by affected providers pursuant to the  
 781 Enterprise Act for Patient Protection and Provider Liability,  
 782 inclusive of ss. 766.401-766.409, shall carry liability  
 783 insurance or adequately insure itself in an amount not less than  
 784 \$2.5 million per claim, \$7.5 million annual aggregate to cover  
 785 all medical injuries to patients resulting from negligent acts  
 786 or omissions on the part of affected physicians and  
 787 practitioners who are covered by an enterprise plan for patient  
 788 protection and provider liability. The hospital's policy of  
 789 medical liability insurance or self-insurance must satisfy the  
 790 financial responsibility requirements of ss. 458.320(2) and  
 791 459.0085(2) for affected providers. Any authorized insurer as  
 792 defined in s. 626.914(2), risk retention group as defined in s.  
 793 627.942, or joint underwriting association established under s.  
 794 627.351(4) that has authority to write casualty insurance may  
 795 make available, but is not required to write, such coverage.

796 (c) Notwithstanding any provision in the Insurance Code to  
 797 the contrary, a statutory teaching hospital, as defined in s.  
 798 408.07, other than a hospital that receives sovereign immunity

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799 under s. 768.28, which complies with the patient safety measures  
 800 specified in s. 766.403 and all other requirements of s.  
 801 766.409, including approval by the Agency for Health Care  
 802 Administration, may agree to indemnify some or all members of  
 803 its medical staff, including, but not limited to, physicians  
 804 having clinical privileges who are not employees or agents of  
 805 the hospital and any organization, association, or group of  
 806 persons liable for the negligent acts of such physicians,  
 807 whether incorporated or unincorporated, and some or all medical,  
 808 nursing, or allied health students affiliated with the hospital,  
 809 collectively known as covered persons, other than persons exempt  
 810 from liability due to sovereign immunity under s. 768.28, for  
 811 legal liability of such covered persons for loss, damages, or  
 812 expense arising out of medical negligence within the hospital  
 813 premises, as defined in s. 766.401, thereby providing limited  
 814 malpractice coverage for such covered persons. Any hospital that  
 815 agrees to provide malpractice coverage for covered persons under  
 816 this section shall acquire an appropriate policy of professional  
 817 liability insurance or establish and maintain a fund from which  
 818 such malpractice coverage is provided, in accordance with usual  
 819 underwriting standards. Such insurance or fund may be separate  
 820 and apart from any insurance or fund maintained by or on behalf  
 821 of the hospital or combined in a single policy of insurance or a  
 822 fund maintained by or on behalf of the hospital. Any hospital  
 823 that provides malpractice coverage to covered persons as defined  
 824 in this paragraph through a fund providing any such malpractice  
 825 coverage, shall annually provide a certified financial statement  
 826 containing actuarial projections as to the soundness of reserves

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827 to the Agency for Health Care Administration. The indemnity  
 828 agreements or malpractice coverage provided by this section  
 829 shall be in amounts that, at a minimum, meet the financial  
 830 responsibility requirements of ss. 458.320 and 459.0085 for  
 831 affected providers. Any such indemnity agreement or malpractice  
 832 coverage in such amounts satisfies the financial responsibility  
 833 requirements of ss. 458.320 and 459.0085 for affected providers.  
 834 Any statutory teaching hospital that agrees to indemnify  
 835 physicians or other covered persons for medical negligence on  
 836 the premises pursuant to this section may charge such physicians  
 837 or other covered persons a reasonable fee for malpractice  
 838 coverage, notwithstanding any provision in the Insurance Code to  
 839 the contrary. Such fee shall be based on appropriate actuarial  
 840 criteria. This paragraph does not constitute a waiver of  
 841 sovereign immunity under s. 768.28. Nothing in this subsection  
 842 impairs a hospital's ability to indemnify member of its medical  
 843 staff to the extent such indemnification is allowed by law.

844 Section 9. Section 766.401, Florida Statutes, is created  
 845 to read:

846 766.401 Definitions.--As used in this section and ss.  
 847 766.402-766.409, the term:

848 (1) "Affected facility" means a certified patient safety  
 849 facility.

850 (2) "Affected patient" means a patient of a certified  
 851 patient safety facility.

852 (3) "Affected physician" means a medical staff member who  
 853 is covered by an enterprise plan for patient protection and  
 854 provider liability in a certified patient safety facility.

855       (4) "Affected practitioner" means any person, including a  
 856 physician, who is credentialed by the eligible hospital to  
 857 provide health care services who is covered by an enterprise  
 858 plan for patient protection and provider liability in a  
 859 certified patient safety facility.

860       (5) "Agency" means the Agency for Health Care  
 861 Administration.

862       (6) "Certified patient safety facility" means any eligible  
 863 hospital that is solely and exclusively liable for the medical  
 864 negligence within the licensed facility in accordance with an  
 865 agency order approving an enterprise plan for patient protection  
 866 and provider liability, except that for an eligible hospital  
 867 meeting the requirements of s. 768.28(12)(c)3., such hospital  
 868 shall be solely and exclusively liable for the medical  
 869 negligence of affected practitioners who are employees and  
 870 agents of a state university and the employees and agents of the  
 871 hospital.

872       (7) "Clinical privileges" means the privileges granted to  
 873 a physician or other licensed health care practitioner to render  
 874 patient care services in a hospital.

875       (8) "Eligible hospital" or "licensed facility" means:

876       (a) A statutory teaching hospital as defined by s. 408.07;  
 877 or

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

881       (9) "Enterprise plan" means a document adopted by the  
 882 governing board of an eligible hospital and the executive



883 committee of the medical staff of the eligible hospital, however  
 884 defined, or the board of trustees of a state university,  
 885 manifesting concurrence and setting forth certain rights,  
 886 duties, privileges, obligations, and responsibilities of the  
 887 health care facility and its medical staff, or its affiliated  
 888 medical school, in furtherance of seeking and maintaining status  
 889 as a certified patient safety facility.

890 (10) "Health care provider" or "provider" means:

891 (a) An eligible hospital.

892 (b) A physician or physician assistant licensed under  
 893 chapter 458.

894 (c) An osteopathic physician or osteopathic physician  
 895 assistant licensed under chapter 459.

896 (d) A registered nurse, nurse midwife, licensed practical  
 897 nurse, or advanced registered nurse practitioner licensed or  
 898 registered under part I of chapter 464 or any facility that  
 899 employs nurses licensed or registered under part I of chapter  
 900 464 to supply all or part of the care delivered by that  
 901 facility.

902 (e) A health care professional association and its  
 903 employees or a corporate medical group and its employees.

904 (f) Any other medical facility the primary purpose of  
 905 which is to deliver human medical diagnostic services or which  
 906 delivers nonsurgical human medical treatment, including an  
 907 office maintained by a provider.

908 (g) A free clinic that delivers only medical diagnostic  
 909 services or nonsurgical medical treatment free of charge to all  
 910 low-income recipients.

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911 (h) Any other health care professional, practitioner, or  
 912 provider, including a student enrolled in an accredited program  
 913 that prepares the student for licensure as any one of the  
 914 professionals listed in this subsection.

915  
 916 The term includes any person, organization, or entity that is  
 917 vicariously liable under the theory of respondent superior or  
 918 any other theory of legal liability for medical negligence  
 919 committed by any licensed professional listed in this  
 920 subsection. The term also includes any nonprofit corporation  
 921 qualified as exempt from federal income taxation under s. 501(a)  
 922 of the Internal Revenue Code, and described in s. 501(c) of the  
 923 Internal Revenue Code, including any university or medical  
 924 school that employs licensed professionals listed in this  
 925 subsection or that delivers health care services provided by  
 926 licensed professionals listed in this subsection, any federally  
 927 funded community health center, and any volunteer corporation or  
 928 volunteer health care provider that delivers health care  
 929 services.

930 (11) "Health care practitioner" or "practitioner" means  
 931 any person, entity, or organization identified in subsection  
 932 (9), except for a hospital.

933 (12) "Medical incident" or "adverse incident" has the same  
 934 meaning as provided in ss. 381.0271, 395.0197, 458.351, and  
 935 459.026.

936 (13) "Medical negligence" means medical malpractice,  
 937 whether grounded in tort or in contract, including statutory  
 938 claims arising out of any act or omission relating to the

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939 rendering or failure to render medical or nursing care. The term  
 940 does not include intentional acts.

941 (14) "Medical staff" means a physician licensed under  
 942 chapter 458 or chapter 459 having clinical privileges and active  
 943 status in a licensed facility. The term includes any affected  
 944 physician.

945 (15) "Person" means any individual, partnership,  
 946 corporation, association, or governmental unit.

947 (16) "Premises" means those buildings, beds, and equipment  
 948 located at the address of the licensed facility and all other  
 949 buildings, beds, and equipment for the provision of hospital,  
 950 ambulatory surgical, mobile surgical care, primary care, or  
 951 comprehensive health care under the dominion and control of the  
 952 licensee, including offices and locations where the licensed  
 953 facility provides medical care and treatment to affected  
 954 patients.

955 (17) "Statutory teaching hospital" or "teaching hospital"  
 956 has the same meaning as provided in s. 408.07.

957 (18) "Within the licensed facility" or "within the  
 958 premises" means anywhere on the premises of the licensed  
 959 facility or the premises of any office, clinic, or ancillary  
 960 facility that is owned or leased or controlled by the licensed  
 961 facility.

962 Section 10. Section 766.402, Florida Statutes, is created  
 963 to read:

964 766.402 Agency approval of enterprise plans for patient  
 965 protection and provider liability.--

966       (1) An eligible hospital in conjunction with the executive  
 967 committee of its medical staff or the board of trustees of a  
 968 state university, if applicable, that has adopted an enterprise  
 969 plan may petition the agency to enter an order certifying  
 970 approval of the hospital as a certified patient safety facility.

971       (2) In accordance with chapter 120, the agency shall enter  
 972 an order certifying approval of the certified patient safety  
 973 facility upon a showing that, in furtherance of an enterprise  
 974 approach to patient protection and provider liability:

975           (a) The petitioners have established enterprise-wide  
 976 safety measures for the care and treatment of patients.

977           (b) The petitioners satisfy requirements for patient  
 978 protection measures, as specified in s. 766.403.

979           (c) The petitioners acknowledge and agree to enterprise  
 980 liability for medical negligence within the premises, as  
 981 specified in s. 766.404.

982           (d) The petitioners have adopted an enterprise plan, as  
 983 specified in s. 766.405.

984           (e) The petitioners satisfy requirements for professional  
 985 accountability of affected practitioners, as specified in s.  
 986 766.406.

987           (f) The petitioners satisfy requirements for financial  
 988 accountability of affected practitioners, as specified in s.  
 989 766.407.

990           (g) The petitioners satisfy all other requirements of ss.  
 991 766.401-766.409.

992       Section 11. Section 766.403, Florida Statutes, is created  
 993 to read:

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994           766.403 Enterprise-wide patient safety measures.--  
 995           (1) In order to satisfy the requirements of s.  
 996 766.402(2)(a) or s. 766.409, the licensed facility shall:  
 997           (a) Have in place a process, either through the facility's  
 998 patient safety committee or a similar body, for coordinating the  
 999 quality control, risk management, and patient relations  
 1000 functions of the facility and for reporting to the facility's  
 1001 governing board at least quarterly regarding such efforts.  
 1002           (b) Establish within the facility a system for reporting  
 1003 near misses and agree to submit any information collected to the  
 1004 Florida Patient Safety Corporation. Such information must be  
 1005 submitted by the facility and made available by the Patient  
 1006 Safety Corporation in accordance with s. 381.0271(7).  
 1007           (c) Design and make available to facility staff, including  
 1008 medical staff, a patient safety curriculum that provides lecture  
 1009 and web-based training on recognized patient safety principles,  
 1010 which may include communication skills training, team  
 1011 performance assessment and training, risk prevention strategies,  
 1012 and best practices and evidence based medicine. The licensed  
 1013 facility shall report annually to the agency the programs  
 1014 presented.  
 1015           (d) Implement a program to identify health care providers  
 1016 on the facility's staff who may be eligible for an early-  
 1017 intervention program providing additional skills assessment and  
 1018 training and offer such training to the staff on a voluntary and  
 1019 confidential basis with established mechanisms to assess program  
 1020 performance and results.

1021       (e) Implement a simulation-based program for skills  
 1022 assessment, training, and retraining of a facility's staff in  
 1023 those tasks and activities that the agency identifies by rule.

1024       (f) Designate a patient advocate who coordinates with  
 1025 members of the medical staff and the facility's chief medical  
 1026 officer regarding disclosure of medical incidents to patients.  
 1027 In addition, the patient advocate shall establish an advisory  
 1028 panel, consisting of providers, patients or their families, and  
 1029 other health care consumer or consumer groups to review general  
 1030 patient safety concerns and other issues related to relations  
 1031 among and between patients and providers and to identify areas  
 1032 where additional education and program development may be  
 1033 appropriate.

1034       (g) Establish a procedure to biennially review the  
 1035 facility's patient safety program and its compliance with the  
 1036 requirements of this section. Such review shall be conducted by  
 1037 an independent patient safety organization as defined in s.  
 1038 766.1016(1) or other professional organization approved by the  
 1039 agency. The organization performing the review shall prepare a  
 1040 written report with detailed findings and recommendations. The  
 1041 report shall be forwarded to the facility's risk manager or  
 1042 patient safety officer, who may make written comments in  
 1043 response thereto. The report and any written comments shall be  
 1044 presented to the governing board of the licensed facility. A  
 1045 copy of the report and any of the facilities' responses to the  
 1046 findings and recommendations shall be provided to the agency  
 1047 within 60 days after the date that the governing board reviewed  
 1048 the report. The report is confidential and exempt from

1049 production or discovery in any civil action. Likewise, the  
 1050 report, and the information contained therein, is not admissible  
 1051 as evidence for any purpose in any action for medical  
 1052 negligence.

1053 (h) Establish a system for the trending and tracking of  
 1054 quality and patient safety indicators that the agency may  
 1055 identify by rule, and a method for review of the data at least  
 1056 semiannually by the facility's patient safety committee.

1057 (i) Provide assistance to affected physicians, upon  
 1058 request, regarding implementation and evaluation of individual  
 1059 risk-management, patient-safety, and incident-reporting systems  
 1060 in clinical settings outside the premises of the licensed  
 1061 facility. Provision of such assistance may not be the basis for  
 1062 finding or imposing any liability on the licensed facility for  
 1063 acts or omissions of the affected physicians in clinical  
 1064 settings outside the premises of the licensed facility.

1065 (2) This section does not constitute an applicable  
 1066 standard of care in any action for medical negligence or  
 1067 otherwise create a private right of action, and evidence of  
 1068 noncompliance with this section is not admissible for any  
 1069 purpose in any action for medical negligence against an affected  
 1070 facility or any other health care provider.

1071 (3) This section does not prohibit the licensed facility  
 1072 from implementing other measures for promoting patient safety  
 1073 within the premises. This section does not relieve the licensed  
 1074 facility from the duty to implement any other patient safety  
 1075 measure that is required by state law. The Legislature intends  
 1076 that the patient safety measures specified in this section are

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1077 in addition to all other patient safety measures required by  
 1078 state law, federal law, and applicable accreditation standards  
 1079 for licensed facilities.

1080 (4) A review, report, or other document created, produced,  
 1081 delivered, or discussed pursuant to this section is not  
 1082 discoverable or admissible as evidence in any legal action.

1083 Section 12. Section 766.404, Florida Statutes, is created  
 1084 to read:

1085 766.404 Enterprise liability in certain health care  
 1086 facilities.--

1087 (1) Subject to the requirements of ss. 766.401-766.409,  
 1088 the agency may enter an order certifying the petitioner-hospital  
 1089 as a certified patient safety facility and providing that the  
 1090 hospital bears sole and exclusive liability for any and all acts  
 1091 of medical negligence within the licensed facility when such  
 1092 acts of medical negligence within the premises cause damage to  
 1093 affected patients, including, but not limited to, acts of  
 1094 medical negligence by physicians or other licensed health care  
 1095 providers who exercise clinical privileges in a licensed  
 1096 hospital, whether or not the active tortfeasor is an employee or  
 1097 agent of the health care facility when the incident of medical  
 1098 negligence occurred, except that for petitioner hospitals  
 1099 meeting the requirements of s. 768.28(12)(c)3., enterprise  
 1100 liability shall be limited to apply to affected practitioners  
 1101 who are employees or agents of a state university and the  
 1102 employees and agents of the hospital.

1103 (2) In any action for personal injury or wrongful death,  
 1104 whether in contract or tort or predicated upon a statutory cause



1105 of action, arising out of medical negligence within the premises  
 1106 resulting in damages to a patient of a certified patient safety  
 1107 facility, the licensed facility bears sole and exclusive  
 1108 liability for medical negligence, whether or not the  
 1109 practitioner was an employee or agent of the facility when the  
 1110 incident of medical negligence occurred, except that for  
 1111 petitioner hospitals meeting the requirements of s.  
 1112 768.28(12)(c)3., enterprise liability shall be limited to apply  
 1113 to affected practitioners who are employees or agents of a state  
 1114 university and the employees and agents of the hospital. Any  
 1115 other provider, person, organization, or entity that commits  
 1116 medical negligence within the premises resulting in damages to a  
 1117 patient, and any other provider, person, organization, or entity  
 1118 that is vicariously liable for medical negligence within the  
 1119 premises of an affected practitioner under the theory of  
 1120 respondent superior or otherwise, may not be named as a  
 1121 defendant in any such action and any such provider, person,  
 1122 organization, or entity is not liable for the medical negligence  
 1123 of an affected practitioner. This subsection does not impose  
 1124 liability or confer immunity on any other provider, person,  
 1125 organization, or entity for acts of medical malpractice  
 1126 committed on any person in clinical settings other than the  
 1127 premises of the affected facility.

1128 (3) An affected practitioner shall post an applicable  
 1129 notice or provide an appropriate written statement as follows:

1130 (a) An affected practitioner shall post notice in the form  
 1131 of a sign prominently displayed in the reception area and  
 1132 clearly noticeable by all patients or provide a written

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1133 statement to any person to whom medical services are being  
 1134 provided. The sign or statement must read as follows: "In  
 1135 general, physicians in the State of Florida are personally  
 1136 liable for acts of medical negligence, subject to certain  
 1137 limitations. However, physicians who perform medical services  
 1138 within a certified patient safety facility are exempt from  
 1139 personal liability because the licensed hospital bears sole and  
 1140 exclusive liability for acts of medical negligence within the  
 1141 health care facility pursuant to an administrative order of the  
 1142 Agency for Health Care Administration entered in accordance with  
 1143 the Enterprise Act for Patient Protection and Provider  
 1144 Liability. YOUR DOCTOR HOLDS CLINICAL STAFF PRIVILEGES IN A  
 1145 CERTIFIED PATIENT SAFETY FACILITY. UNDER FLORIDA LAW, ANY CLAIM  
 1146 FOR MEDICAL NEGLIGENCE WITHIN THE HEALTH CARE FACILITY MUST BE  
 1147 INITIATED AGAINST THE HOSPITAL AND NOT AGAINST YOUR DOCTOR,  
 1148 BECAUSE THE HOSPITAL IS SOLELY RESPONSIBLE FOR ALL ACTS OF  
 1149 PROFESSIONAL NEGLIGENCE WITHIN THE PREMISES. THIS PROVISION DOES  
 1150 NOT AFFECT YOUR PHYSICIAN'S LIABILITY FOR ACTS OF MEDICAL  
 1151 NEGLIGENCE IN OTHER CLINICAL SETTINGS. IF YOU DO NOT UNDERSTAND,  
 1152 PLEASE DISCUSS WITH YOUR DOCTOR BEFORE YOUR CONSULTATION. This  
 1153 notice is provided pursuant to Florida law."

1154 (b) If an affected practitioner is covered by an  
 1155 enterprise plan for patient protection and provider liability in  
 1156 one or more licensed facilities that receive sovereign immunity,  
 1157 and one or more other licensed facilities, the affected  
 1158 practitioner shall post notice in the form of a sign prominently  
 1159 displayed in the reception area and clearly noticeable by all  
 1160 patients or provide a written statement to any person to whom

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1161 medical services are being provided. The sign or statement must  
 1162 read as follows: "In general, physicians in the state of Florida  
 1163 are personally liable for acts of medical negligence, subject to  
 1164 certain limitations such as sovereign immunity. However,  
 1165 physicians who perform medical services within a certified  
 1166 patient safety facility are exempt from personal liability  
 1167 because the licensed hospital bears sole and exclusive liability  
 1168 for acts of medical negligence within the affected facility  
 1169 pursuant to an administrative order of the Agency for Health  
 1170 Care Administration entered in accordance with the Enterprise  
 1171 Act for Patient Protection and Provider Liability. YOUR DOCTOR  
 1172 HOLDS CLINICAL STAFF PRIVILEGES IN ONE OR MORE CERTIFIED PATIENT  
 1173 SAFETY FACILITIES. AT LEAST ONE OF THESE HOSPITALS IS SUBJECT TO  
 1174 SOVEREIGN IMMUNITY. UNDER FLORIDA LAW, ANY CLAIM FOR MEDICAL  
 1175 NEGLIGENCE WITHIN THE HEALTH CARE FACILITY MUST BE INITIATED  
 1176 AGAINST THE HOSPITAL AND NOT AGAINST YOUR DOCTOR, BECAUSE THE  
 1177 HOSPITAL IS SOLELY RESPONSIBLE FOR ALL ACTS OF PROFESSIONAL  
 1178 NEGLIGENCE WITHIN THE PREMISES. MOREOVER, RECOVERY AGAINST THE  
 1179 HOSPITAL MAY BE LIMITED, DUE TO FLORIDA'S SOVEREIGN IMMUNITY  
 1180 LAW. THESE PROVISIONS DO NOT AFFECT YOUR PHYSICIAN'S LIABILITY  
 1181 FOR ACTS OF MEDICAL NEGLIGENCE IN OTHER CLINICAL SETTINGS. IF  
 1182 YOU DO NOT UNDERSTAND, PLEASE DISCUSS WITH YOUR DOCTOR BEFORE  
 1183 YOUR CONSULTATION. This notice is provided pursuant to Florida  
 1184 law."

1185 (c) Notice need not be given to a patient when:  
 1186 1. The patient has an emergency medical condition as  
 1187 defined in s. 395.002;

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1188        2. The practitioner is an employee or agent of a  
 1189 governmental entity and is immune from liability and suit under  
 1190 s. 768.28; or

1191        3. Notice is not practicable.

1192        (d) This subsection is directory in nature. An agency  
 1193 order certifying approval of an enterprise plan for patient  
 1194 protection and provider liability shall, as a matter of law,  
 1195 constitute conclusive evidence that the hospital complies with  
 1196 all applicable patient safety requirements of s. 766.403 and all  
 1197 other requirements of ss. 766.401-766.409. Evidence of  
 1198 noncompliance with s. 766.403 or any other provision of ss.  
 1199 766.401-766.409 may not be admissible for any purpose in any  
 1200 action for medical malpractice. Failure to comply with the  
 1201 requirements of this subsection does not affect the liabilities  
 1202 or immunities conferred by ss. 766.401-766.409. This subsection  
 1203 does not give rise to an independent cause of action for  
 1204 damages.

1205        (4) The agency order certifying approval of an enterprise  
 1206 plan for patient protection and provider liability applies  
 1207 prospectively to causes of action for medical negligence that  
 1208 arise on or after the effective date of the order.

1209        (5) Upon entry of an order approving the petition, the  
 1210 agency may conduct onsite examinations of the licensed facility  
 1211 to assure continued compliance with the terms and conditions of  
 1212 the order.

1213        (6) The agency order certifying approval of an enterprise  
 1214 plan for patient protection remains in effect until revoked. The  
 1215 agency shall revoke the order upon the unilateral request of the

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1216 licensed facility, the executive committee of the medical staff,  
 1217 or the affiliated medical school, whichever is applicable. The  
 1218 agency may revoke the order upon reasonable notice to the  
 1219 affected facility that it fails to comply with material  
 1220 requirements of ss. 766.401-766.409 or material conditions of  
 1221 the order certifying approval of the enterprise plan and further  
 1222 upon a determination that the licensed facility has failed to  
 1223 cure stated deficiencies upon reasonable notice. An  
 1224 administrative order revoking approval of an enterprise plan for  
 1225 patient protection and provider liability terminates the plan on  
 1226 January 1 of the year following entry of the order or 6 months  
 1227 after entry of the order, whichever is longer. Revocation of an  
 1228 agency order certifying approval of an enterprise plan for  
 1229 patient protection and provider liability applies prospectively  
 1230 to causes of action for medical negligence which arise on or  
 1231 after the effective date of the termination.

1232 (7) This section does not exempt a licensed facility from  
 1233 liability for acts of medical negligence committed by employees  
 1234 and agents thereof; although employees and agents of a certified  
 1235 patient safety facility may not be joined as defendants in any  
 1236 action for medical negligence because the licensed facility  
 1237 bears sole and exclusive liability for acts of medical  
 1238 negligence within the premises of the licensed facility,  
 1239 including acts of medical negligence by such employees and  
 1240 agents.

1241 (8) Affected practitioners shall cooperate in good faith  
 1242 with an affected facility in the investigation and defense of  
 1243 any claim for medical negligence. An affected facility shall

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1244 have a cause of action for damages against an affected  
 1245 practitioner for bad faith refusal to cooperate in the  
 1246 investigation and defense of any claim of medical malpractice  
 1247 against the licensed facility.

1248 (9) Sections 766.401-766.409 do not impose strict  
 1249 liability or liability without fault for medical incidents that  
 1250 occur within an affected facility. To maintain a cause of action  
 1251 against an affected facility pursuant to ss. 766.401-766.409,  
 1252 the claimant must allege and prove that an employee or agent of  
 1253 the licensed facility, or an affected practitioner who is  
 1254 covered by an approved enterprise plan for patient protection  
 1255 and provider liability, committed medical negligence within the  
 1256 premises of the licensed facility which constitutes medical  
 1257 negligence under state law, even though an active tortfeasor is  
 1258 not named or joined as a party defendant in the lawsuit.

1259 (10) Sections 766.401-766.409 do not create an independent  
 1260 cause of action against any health care provider and do not  
 1261 impose enterprise liability on any health care provider, except  
 1262 as expressly provided, and may not be construed to support any  
 1263 cause of action other than an action for medical negligence as  
 1264 expressly provided against any person, organization, or entity.

1265 (11) Sections 766.401-766.409 do not waive sovereign  
 1266 immunity, except as expressly provided in s. 768.28.

1267 Section 13. Section 766.405, Florida Statutes, is created  
 1268 to read:

1269 766.405 Enterprise plans.--

1270 (1) It is the intent of the Legislature that enterprise  
 1271 plans for patient protection are elective and not mandatory for

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1272 eligible hospitals. It is further the intent of the Legislature  
 1273 that the medical staff or affiliated medical school of an  
 1274 eligible hospital must concur with the development and  
 1275 implementation of an enterprise plan for patient protection and  
 1276 provider liability. It is further the intent of the Legislature  
 1277 that the licensed facility and medical staff or affiliated  
 1278 medical school be accorded wide latitude in formulating  
 1279 enterprise plans consistent with the underlying purpose of ss.  
 1280 766.401-766.409 to encourage innovative, systemic measures for  
 1281 patient protection and quality assurance in licensed facilities,  
 1282 especially in clinical settings where surgery is performed.  
 1283 Adoption of an enterprise plan is a necessary condition for  
 1284 agency approval of an enterprise plan for a certified patient  
 1285 safety facility.

1286 (2) An eligible hospital and the executive committee of  
 1287 its medical staff of the board of trustees of a state  
 1288 university, if applicable, shall adopt an enterprise plan as a  
 1289 necessary condition to agency approval of a certified patient  
 1290 safety facility. An affirmative vote of approval by the  
 1291 regularly constituted executive committee of the medical staff,  
 1292 however named or constituted, is sufficient to manifest approval  
 1293 by the medical staff of the enterprise plan. Once approved,  
 1294 affected practitioners are subject to the enterprise plan. The  
 1295 plan may be conditioned on agency approval of an enterprise plan  
 1296 for patient protection and provider liability for the affected  
 1297 facility. For eligible hospitals meeting the requirements of s.  
 1298 768.28(12)(c)3., the enterprise plan shall be limited to  
 1299 affective practitioners who are also employees or agents of a

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1300 state university and employees and agents of the hospital. At a  
 1301 minimum, the enterprise plan must contain provisions covering:  
 1302 (a) Compliance with a patient protection plan.  
 1303 (b) Internal review of medical incidents.  
 1304 (c) Timely reporting of medical incidents to state  
 1305 agencies.  
 1306 (d) Professional accountability of affected practitioners.  
 1307 (e) Financial accountability of affected practitioners.  
 1308 (3) This section does not prohibit a patient safety  
 1309 facility from including other provisions in the enterprise plan,  
 1310 in a separate agreement, as a condition of staff privileges, or  
 1311 by way of contract with an organization providing medical staff  
 1312 for the licensed facility.  
 1313 (4) This section does not limit the power of any licensed  
 1314 facility to enter into other agreements with members of its  
 1315 medical staff or otherwise to impose restrictions, requirements,  
 1316 or conditions on clinical privileges, as authorized by law.  
 1317 (5) If multiple campuses of a licensed facility share a  
 1318 license, the enterprise plan may be limited to the primary  
 1319 campus or the campus with the largest number of beds and, if  
 1320 applicable, associated outpatient ancillary facilities. If the  
 1321 enterprise plan is so limited, the plan must specify the campus  
 1322 and, if applicable, the ancillary facilities that will  
 1323 constitute the enterprise.  
 1324 Section 14. Section 766.406, Florida Statutes, is created  
 1325 to read:  
 1326 766.406 Professional accountability of affected  
 1327 practitioners.--



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1328       (1) A certified patient safety facility shall report  
 1329 medical incidents occurring in the affected facility to the  
 1330 Department of Health, in accordance with s. 395.0197.

1331       (2) A certified patient safety facility shall report  
 1332 adverse findings of medical negligence or failure to adhere to  
 1333 applicable standards of professional responsibility by affected  
 1334 practitioners to the Department of Health.

1335       (3) A certified patient safety facility shall continue to  
 1336 perform all peer review functions pursuant to s. 395.0193.

1337       Section 15. Section 766.407, Florida Statutes, is created  
 1338 to read:

1339       766.407 Financial accountability of affected  
 1340 practitioners.--

1341       (1) An enterprise plan may provide that any affected  
 1342 member of the medical staff or any affected practitioner having  
 1343 clinical privileges, other than an employee of the licensed  
 1344 facility, and any organization that contracts with the licensed  
 1345 facility to provide practitioners to treat patients within the  
 1346 licensed facility, shall share equitably in the cost of omnibus  
 1347 medical liability insurance premiums covering the certified  
 1348 patient safety facility, similar self-insurance expense, or  
 1349 other expenses reasonably related to risk management and  
 1350 adjustment of claims of medical negligence. This subsection does  
 1351 not permit a licensed facility and any affected practitioner to  
 1352 agree on charges for an equitable share of medical liability  
 1353 expense based on the number of patients admitted to the hospital  
 1354 by individual practitioners, patient revenue for the licensed  
 1355 facility generated by individual practitioners, or overall

1356 profit or loss sustained by the certified patient safety  
 1357 facility in a given fiscal period.

1358 (2) Pursuant to an enterprise plan for patient protection  
 1359 and provider liability, a licensed facility may impose a  
 1360 reasonable assessment against an affected practitioner that  
 1361 commits medical negligence resulting in injury and damages to an  
 1362 affected patient of the health care facility, upon a  
 1363 determination of failure to adhere to acceptable standards of  
 1364 professional responsibility by an internal peer review  
 1365 committee. A schedule of assessments, criteria for the levying  
 1366 of assessments, procedures for levying assessments, and due  
 1367 process rights of an affected practitioner must be agreed to by  
 1368 the executive committee of the medical staff or affiliated  
 1369 medical school, as applicable, and the licensed facility. The  
 1370 legislative intent in providing for assessments against an  
 1371 affected physician is to instill in each individual health care  
 1372 practitioner the incentive to avoid the risk of injury to the  
 1373 fullest extent and ensure that the residents of this state  
 1374 receive the highest quality health care obtainable. Failure to  
 1375 pay an assessment constitutes grounds for suspension of clinical  
 1376 privileges by the licensed facility. Assessments may be enforced  
 1377 as bona fide debts in a court of law. The licensed facility may  
 1378 exempt its employees and agents from all such assessments.  
 1379 Employees and agents of the state, its agencies, and  
 1380 subdivisions, as defined by s. 768.28, are exempt from all such  
 1381 assessments.

1382 (3) An assessment levied pursuant to this section is not  
 1383 discoverable or admissible as evidence in any legal action.

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1384 Section 16. Section 766.408, Florida Statutes, is created  
1385 to read:

1386 766.408 Data collection and reports.--

1387 (1) Each certified patient safety facility shall submit an  
1388 annual report to the agency containing information and data  
1389 reasonably required by the agency to evaluate performance and  
1390 effectiveness of the facility's enterprise plan for patient  
1391 protection and provider liability. However, information may not  
1392 be submitted or disclosed in violation of any patient's right to  
1393 privacy under state or federal law.

1394 (2) The agency shall aggregate information and data  
1395 submitted by all affected facilities and each year, on or before  
1396 March 1, the agency shall submit a report to the Legislature  
1397 that evaluates the performance and effectiveness of the  
1398 enterprise approach to patient safety and provider liability in  
1399 certified patient safety facilities, which reports must include,  
1400 but are not limited to, pertinent data on:

1401 (a) The number and names of affected facilities;

1402 (b) The number and types of patient protection measures  
1403 currently in effect in these facilities;

1404 (c) The number of affected practitioners;

1405 (d) The number of affected patients;

1406 (e) The number of surgical procedures by affected  
1407 practitioners on affected patients;

1408 (f) The number of medical incidents, claims of medical  
1409 malpractice, and claims resulting in indemnity;

1410 (g) The average time for resolution of contested and  
1411 uncontested claims of medical malpractice;

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1412        (h) The percentage of claims that result in civil trials;  
 1413        (i) The percentage of civil trials resulting in adverse  
 1414 judgments against affected facilities;  
 1415        (j) The number and average size of an indemnity paid to  
 1416 claimants;  
 1417        (k) The number and average size of assessments imposed on  
 1418 affected practitioners;  
 1419        (l) The estimated liability expense, inclusive of medical  
 1420 liability insurance premiums; and  
 1421        (m) The percentage of medical liability expense, inclusive  
 1422 of medical liability insurance premiums, which is borne by  
 1423 affected practitioners in affected health care facilities.  
 1424  
 1425 Such reports to the Legislature may also include other  
 1426 information and data that the agency deems appropriate to gauge  
 1427 the cost and benefit of enterprise plans for patient protection  
 1428 and provider liability.  
 1429        (3) The agency's annual report to the Legislature may  
 1430 include relevant information and data obtained from the Office  
 1431 of Insurance Regulation within the Department of Financial  
 1432 Services on the availability and affordability of enterprise-  
 1433 wide medical liability insurance coverage for affected  
 1434 facilities and the availability and affordability of insurance  
 1435 policies for individual practitioners which contain coverage  
 1436 exclusions for acts of medical negligence in certified patient  
 1437 safety facilities. The Office of Insurance Regulation within the  
 1438 Department of Financial Services shall cooperate with the agency

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1439 in the reporting of information and data specified in this  
1440 subsection.

1441 (4) Reports submitted to the agency by affected facilities  
1442 pursuant to this section are public records under chapter 199.  
1443 However, these reports, and the information contained therein,  
1444 are not admissible as evidence in a court of law in any action.

1445 Section 17. Section 766.409, Florida Statutes, is created  
1446 to read:

1447 766.409 Damages in malpractice actions against certain  
1448 hospitals that meet patient safety requirements; agency approval  
1449 of patient safety measures.--

1450 (1) In recognition of their essential role in training  
1451 future health care providers and in providing innovative medical  
1452 care for this state's residents, in recognition of their  
1453 commitment to treating indigent patients, and further in  
1454 recognition that all teaching hospitals, as defined in s.  
1455 408.07, both public and private, and hospitals licensed under  
1456 chapter 395 which are owned and operated by a university that  
1457 maintains an accredited medical school, collectively defined as  
1458 eligible hospitals in s. 766.401(8), provide benefits to the  
1459 residents of this state through their roles in improving the  
1460 quality of medical care, training health care providers, and  
1461 caring for indigent patients, the limits of liability for  
1462 medical malpractice arising out of the rendering of, or the  
1463 failure to render, medical care by all such hospitals, shall be  
1464 determined in accordance with the requirements of this section,  
1465 notwithstanding any other provision of state law.

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1466       (2) Except as otherwise provided in subsections (9) and  
 1467       (10), any eligible hospital may petition the agency to enter an  
 1468       order certifying that the licensed facility complies with  
 1469       patient safety measures specified in s. 766.403.

1470       (3) In accordance with chapter 120, the agency shall enter  
 1471       an order approving the petition upon a showing that the eligible  
 1472       hospital complies with the patient safety measures specified in  
 1473       s. 766.403. Upon entry of the agency order, and for the entire  
 1474       period of time that the order remains in effect, the limits of  
 1475       liability for medical malpractice arising out of the rendering  
 1476       of, or the failure to render, medical care by the hospital  
 1477       covered by the order and its employees and agents shall be up to  
 1478       \$500,000 in the aggregate for all related claims or judgments  
 1479       for noneconomic damages arising out of the same incident or  
 1480       occurrence. Claims or judgments for noneconomic damages and  
 1481       awards of past economic damages shall be offset by collateral  
 1482       sources, and paid in full at the time of final settlement.  
 1483       Awards of future economic damages, after being offset by  
 1484       collateral sources, shall be reduced, at the option of the  
 1485       teaching hospital, by the court to present value and paid in  
 1486       full or paid by means of periodic payments in the form of  
 1487       annuities or reversionary trusts, such payments to be paid for  
 1488       the life of the claimant or for so long as the condition for  
 1489       which the award was made persists, whichever is shorter, without  
 1490       regard to the number of years awarded by the trier of fact, at  
 1491       which time the obligation to make such payments terminates. A  
 1492       company that underwrites an annuity to pay future economic  
 1493       damages shall have a Best Company rating of not less than A. The

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1494 terms of a reversionary instrument used to periodically pay  
 1495 future economic damages must be approved by the court, such  
 1496 approval may not be unreasonably withheld.

1497 (4) The limitations on damages in subsection (3) apply  
 1498 prospectively to causes of action for medical negligence that  
 1499 arise on or after the effective date of the order.

1500 (5) Upon entry of an order approving the petition, the  
 1501 agency may conduct onsite examinations of the licensed facility  
 1502 to assure continued compliance with terms and conditions of the  
 1503 order.

1504 (6) The agency order certifying approval of a petition  
 1505 under this section remains in effect until revoked. The agency  
 1506 may revoke the order upon reasonable notice to the affected  
 1507 hospital that it fails to comply with material requirements of  
 1508 ss. 766.401-766.409 or material conditions of the order  
 1509 certifying compliance with required patient safety measures and  
 1510 that the hospital has failed to cure stated deficiencies upon  
 1511 reasonable notice. Revocation of an agency order certifying  
 1512 approval of an enterprise plan for patient protection and  
 1513 provider liability applies prospectively to causes of action for  
 1514 medical negligence that arise on or after the effective date of  
 1515 the order of revocation.

1516 (7) An agency order certifying approval of a petition  
 1517 under this section shall, as a matter of law, constitute  
 1518 conclusive evidence that the hospital complies with all  
 1519 applicable patient safety requirements of s. 766.403. A  
 1520 hospital's noncompliance with the requirements of s. 766.403 may  
 1521 not affect the limitations on damages conferred by this section.

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1522 Evidence of noncompliance with s. 766.403 may not be admissible  
 1523 for any purpose in any action for medical malpractice. This  
 1524 section, or any portion thereof, may not give rise to an  
 1525 independent cause of action for damages against any hospital.

1526 (8) The entry of an agency order pursuant to this section  
 1527 does not impose enterprise liability, or sole and exclusive  
 1528 liability, on the licensed facility for acts or omissions of  
 1529 medical negligence within the premises.

1530 (9) An eligible hospital may petition the agency for an  
 1531 order pursuant to this section or an order pursuant to s.  
 1532 766.404. However, a hospital may not be approved for both  
 1533 enterprise liability under s. 766.404 and the limitations on  
 1534 damages under this section.

1535 (10) This section may not apply to hospitals that are  
 1536 subject to sovereign immunity under s. 768.28.

1537 Section 18. Section 766.410, Florida Statutes, is created  
 1538 to read:

1539 766.410 Rulemaking authority.--The agency may adopt rules  
 1540 to administer ss. 766.401-766.409.

1541 Section 19. Subsections (5) and (12) of section 768.28,  
 1542 Florida Statutes, are amended to read:

1543 768.28 Waiver of sovereign immunity in tort actions;  
 1544 recovery limits; limitation on attorney fees; statute of  
 1545 limitations; exclusions; indemnification; risk management  
 1546 programs.--

1547 (5)(a) The state and its agencies and subdivisions shall  
 1548 be liable for tort claims in the same manner and to the same  
 1549 extent as a private individual under like circumstances, but



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1550 liability does ~~shall~~ not include punitive damages or interest  
1551 for the period before judgment.

1552 (b) Except as provided in paragraph (c), neither the state  
1553 or ~~nor~~ its agencies or subdivisions are ~~shall be~~ liable to pay a  
1554 claim or a judgment by any one person which exceeds the sum of  
1555 \$100,000 or any claim or judgment, or portions thereof, which,  
1556 when totaled with all other claims or judgments paid by the  
1557 state or its agencies or subdivisions arising out of the same  
1558 incident or occurrence, exceeds the sum of \$200,000. However, a  
1559 judgment or judgments may be claimed and rendered in excess of  
1560 these amounts and may be settled and paid pursuant to this act  
1561 up to \$100,000 or \$200,000, as the case may be; and that portion  
1562 of the judgment that exceeds these amounts may be reported to  
1563 the Legislature, but may be paid in part or in whole only by  
1564 further act of the Legislature. Notwithstanding the limited  
1565 waiver of sovereign immunity provided herein, the state or an  
1566 agency or subdivision thereof may agree, within the limits of  
1567 insurance coverage provided, to settle a claim made or a  
1568 judgment rendered against it without further action by the  
1569 Legislature, but the state or agency or subdivision thereof  
1570 shall not be deemed to have waived any defense of sovereign  
1571 immunity or to have increased the limits of its liability as a  
1572 result of its obtaining insurance coverage for tortious acts in  
1573 excess of the \$100,000 or \$200,000 waiver provided above. The  
1574 limitations of liability set forth in this subsection shall  
1575 apply to the state and its agencies and subdivisions whether or  
1576 not the state or its agencies or subdivisions possessed  
1577 sovereign immunity before July 1, 1974.

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1578        (c) In any action for medical negligence within a  
 1579 certified patient safety facility that is covered by sovereign  
 1580 immunity, given that the licensed health care facility bears  
 1581 sole and exclusive liability for acts of medical negligence  
 1582 pursuant to the Enterprise Act for Patient Protection and  
 1583 Provider Liability, inclusive of ss. 766.401-766.409, neither  
 1584 the state or its agencies or subdivisions are liable to pay a  
 1585 claim or a judgment by any one person which exceeds the sum of  
 1586 \$150,000 or any claim or judgment, or portions thereof, which,  
 1587 when totaled with all other claims or judgments paid by the  
 1588 state or its agencies or subdivisions arising out of the same  
 1589 incident or occurrence, exceeds the sum of \$300,000. However, a  
 1590 judgment may be claimed and rendered in excess of these amounts  
 1591 and may be settled and paid up to \$150,000 or \$300,000, as the  
 1592 case may be. That portion of the judgment which exceeds these  
 1593 amounts may be reported to the Legislature, but may be paid in  
 1594 part or in whole only by further act of the Legislature.  
 1595 Notwithstanding the limited waiver of sovereign immunity  
 1596 provided in this paragraph, the state or an agency or  
 1597 subdivision thereof may agree, within the limits of insurance  
 1598 coverage provided, to settle a claim made or a judgment rendered  
 1599 against it without further action by the Legislature, but the  
 1600 state or agency or subdivision thereof does not waive any  
 1601 defense of sovereign immunity or increase limits of its  
 1602 liability as a result of its obtaining insurance coverage for  
 1603 tortious acts in excess of the \$150,000 waiver or the \$300,000  
 1604 waiver provided in this paragraph. The limitations of liability  
 1605 set forth in this paragraph apply to the state and its agencies

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1606 and subdivisions whether or not the state or its agencies or  
 1607 subdivisions possessed sovereign immunity before July 1, 1974.

1608 (12)(a) A health care practitioner, as defined in s.  
 1609 456.001(4), who has contractually agreed to act as an agent of a  
 1610 state university board of trustees to provide medical services  
 1611 to a student athlete for participation in or as a result of  
 1612 intercollegiate athletics, to include team practices, training,  
 1613 and competitions, ~~is shall be considered~~ an agent of the  
 1614 respective state university board of trustees, for the purposes  
 1615 of this section, while acting within the scope of and pursuant  
 1616 to guidelines established in that contract. The contracts shall  
 1617 provide for the indemnification of the state by the agent for  
 1618 any liabilities incurred up to the limits set out in this  
 1619 chapter.

1620 (b) This subsection shall not be construed as designating  
 1621 persons providing contracted health care services to athletes as  
 1622 employees or agents of a state university board of trustees for  
 1623 the purposes of chapter 440.

1624 (c)1. For purposes of this subsection, the terms  
 1625 "certified patient safety facility," "medical staff," and  
 1626 "medical negligence" have the same meanings as provided in s.  
 1627 766.401.

1628 2. A certified patient safety facility, wherein a minimum  
 1629 of 90 percent of the members of the medical staff consist of  
 1630 physicians are employees or agents of a state university, is an  
 1631 agent of the respective state university board of trustees for  
 1632 purposes of this section to the extent that the licensed  
 1633 facility, in accordance with an enterprise plan for patient

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1634 protection and provider liability, inclusive of ss. 766.401-  
 1635 766.409, approved by the Agency for Health Care Administration,  
 1636 is solely and exclusively liable for acts of medical negligence  
 1637 of physicians providing health care services within the licensed  
 1638 facility.

1639 3. A certified patient safety facility that has been found  
 1640 to be an agent of the state for other purposes and has adopted  
 1641 an enterprise plan for patient protection and provider liability  
 1642 for the sole and exclusive liability for acts of medical  
 1643 negligence of affected practitioners who are employees and  
 1644 agents of the affiliated state university board of trustees and  
 1645 its own hospital employees and agents, inclusive of ss. 766.401-  
 1646 766.409, approved by the Agency for Health Care Administration,  
 1647 is an agent of the respective state university board of trustees  
 1648 for purposes of this subsection only.

1649 4. Subject to the acceptance of the Board of Governors and  
 1650 a state university board of trustees, a licensed facility as  
 1651 described by this subsection may secure the limits of liability  
 1652 protection described in paragraph (c) from a self insurance  
 1653 program created pursuant to s. 1004.24.

1654 5. A notice of intent to commence an action for medical  
 1655 negligence arising from the care or treatment of a patient in a  
 1656 certified patient safety facility subject to the provisions of  
 1657 this subsection shall be sent to the licensed facility as the  
 1658 statutory agent created pursuant to an enterprise plan of the  
 1659 related board of trustees of a state university for the limited  
 1660 purposes of administering an enterprise plan for patient  
 1661 protection and provider liability. A complaint alleging medical

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1662 negligence resulting in damages to a patient in a certified  
 1663 patient safety facility subject to the provisions of this  
 1664 paragraph shall be commenced against the applicable board of  
 1665 trustees of a state university on the relation of the licensed  
 1666 facility, and the doctrines of res judicata and collateral  
 1667 estoppel shall apply. The complaint shall be served on the  
 1668 licensed facility. Any notice of intent mailed to the licensed  
 1669 facility, any legal process served on the licensed facility, and  
 1670 any other notice, paper, or pleading that is served, sent, or  
 1671 delivered to the licensed facility pertaining to a claim of  
 1672 medical negligence shall have the same legal force and effect as  
 1673 mailing, service, or delivery to a duly authorized agent of the  
 1674 board of trustees of the respective state university,  
 1675 notwithstanding any provision of the laws of this state to the  
 1676 contrary. Upon receipt of any such notice of intent, complaint  
 1677 for damages, or other notice, paper, or pleading pertaining to a  
 1678 claim of medical negligence, a licensed facility subject to the  
 1679 provisions of this paragraph shall give timely notice to the  
 1680 related board of trustees of the state university, although  
 1681 failure to give timely notice does not affect the legal  
 1682 sufficiency of the notice of intent, service of process, or  
 1683 other notice, paper, or pleading. A final judgment or binding  
 1684 arbitration award against the board of trustees of a state  
 1685 university on the relation of a licensed facility, arising from  
 1686 a claim of medical negligence resulting in damages to a patient  
 1687 in a certified patient safety facility subject to the provisions  
 1688 of this paragraph, may be enforced in the same manner, and is  
 1689 subject to the same limitations on enforcement or recovery, as

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1690 any final judgment for damages or binding arbitration award  
 1691 against the board of trustees of a state university,  
 1692 notwithstanding any provision of the laws of this state to the  
 1693 contrary. Any settlement agreement executed by the board of  
 1694 trustees of a state university on the relation of a licensed  
 1695 facility, arising from a claim of medical negligence resulting  
 1696 in damages to a patient in a certified patient safety facility  
 1697 subject to the provisions of this paragraph, may be enforced in  
 1698 the same manner and is subject to the same limitations as a  
 1699 settlement agreement executed by an authorized agent of the  
 1700 board of trustees. The board of trustees of a state university  
 1701 may make payment to a claimant in whole or in part of any  
 1702 portion of a final judgment or binding arbitration award against  
 1703 the board of trustees of a state university on the relation of a  
 1704 licensed facility, and any portion of a settlement of a claim  
 1705 for medical negligence arising from a certified patient safety  
 1706 facility subject to the provisions of this paragraph, which  
 1707 exceeds the amounts of the limited waiver of sovereign immunity  
 1708 specified in paragraph (5)(c), only as provided in that  
 1709 paragraph.

1710 Section 20. If any provision of this act or its  
 1711 application to any person or circumstance is held invalid, the  
 1712 invalidity does not affect other provisions or applications of  
 1713 the act which can be given effect without the invalid provision  
 1714 or application, and to this end, the provisions of this act are  
 1715 severable.

1716 Section 21. If a conflict between any provision of this  
 1717 act and s. 456.052, s. 456.053, s. 456.054, s. 458.331, s.

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1718 | 459.015, or s. 817.505, Florida Statutes, the provisions of this  
 1719 | act shall govern. The provisions of this act should be broadly  
 1720 | construed in furtherance of the overriding legislative intent to  
 1721 | facilitate innovative approaches for patient protection and  
 1722 | provider liability in eligible hospitals.

1723 |       Section 22. It is the intention of the Legislature that  
 1724 | the provisions of this act are self-executing.

1725 |       Section 23. This act shall take effect upon becoming a  
 1726 | law.