A bill to be entitled

An act relating to medical malpractice insurance; creating the Enterprise Act for Patient Protection and Provider Liability; providing legislative findings; amending s. 458.320, F.S.; requiring a licensed physician who is covered for medical negligence claims by a hospital that assumes liability under the act to prominently post notice or provide a written statement to patients; requiring a licensed physician who meets certain requirements for payment or settlement of a medical malpractice claim and who is covered for medical negligence claims by a hospital that assumes liability under the act to prominently post notice or provide a written statement to patients; amending s. 459.0085, F.S.; requiring a licensed osteopathic physician who is covered for medical negligence claims by a hospital that assumes liability under the act to prominently post notice or provide a written statement to patients; requiring a licensee of osteopathic medicine who meets certain requirements for payment or settlement of a medical malpractice claim and who is covered for medical negligence claims by a hospital that assumes liability under the act to prominently post notice or provide a written statement to patients; creating s. 627.41485, F.S.; authorizing insurers to offer liability insurance coverage to physicians which has an exclusion for certain acts of medical negligence under certain conditions; authorizing the Department of Financial Services to adopt rules; amending s. 766.316,

F.S.; requiring hospitals that assume liability for affected physicians under the act to provide notice to obstetrical patients regarding the limited no-fault alternative to birth-related neurological injuries; amending s. 766.110, F.S.; requiring hospitals that assume liability for acts of medical negligence under the act to carry insurance; requiring the hospital's policy regarding medical liability insurance to satisfy certain statutory financial responsibility requirements; authorizing an insurer who is authorized to write casualty insurance to write such coverage; authorizing certain hospitals to indemnify certain medical staff for legal liability of loss, damages, or expenses arising from medical negligence within hospital premises; requiring a hospital to acquire a policy of professional liability insurance or a fund for malpractice coverage; requiring an annual certified financial statement to the Agency for Health Care Administration; authorizing certain hospitals to charge physicians a fee for malpractice coverage; preserving a hospital's ability to indemnify certain medical staff members; amending s. 766.118, F.S.; providing a cap on noneconomic damages for eligible hospitals meeting certain patient safety measures; creating s. 766.401, F.S.; providing definitions; creating s. 766.402, F.S.; authorizing an eligible hospital to petition the Agency for Health Care Administration to enter an order certifying the hospital as a patient safety facility; providing requirements for certification as a patient

safety facility; creating s. 766.403, F.S.; providing requirements for a hospital to demonstrate that it is engaged in a common enterprise for the care and treatment of patients; specifying required patient safety measures; prohibiting a report or document generated under the act from being admissible or discoverable as evidence; creating s. 766.404, F.S.; authorizing the agency to enter an order certifying a hospital as a patient safety facility and providing that the hospital bears liability for acts of medical negligence by certain physicians and practitioners; specifying a licensed facility as bearing sole and exclusive liability for medical negligence by certain physicians and practitioners under certain circumstances in actions for personal injury or wrongful death; providing that certain persons or entities are not liable for medically negligent acts occurring in a certified patient safety facility; requiring that an affected practitioner prominently post notice regarding exemption from personal liability; requiring an affected physician who is covered by an enterprise plan in a licensed facility that receives sovereign immunity to prominently post notice regarding exemption from personal liability; providing that an agency order certifying approval of an enterprise plan is evidence of a hospital's compliance with applicable patient safety requirements; providing circumstances in which notice is not required; providing that the order certifying approval of an enterprise plan applies prospectively to causes of action

for medical negligence; authorizing the agency to conduct onsite examinations of a licensed facility; providing circumstances under which the agency may revoke its order certifying approval of an enterprise plan; providing that an employee or agent of a certified patient safety facility may not be joined as a defendant in an action for medical negligence; requiring an affected practitioner to cooperate in good faith in an investigation of a claim for medical malpractice; providing a cause of action for failure of a physician to act in good faith; providing that strict liability or liability without fault is not imposed for medical incidents that occur in the affected facility; providing requirements that a claimant must prove to demonstrate medical negligence by an employee, agent, or medical staff of a licensed facility; providing that the act does not create an independent cause of action or waive sovereign immunity; creating s. 766.405, F.S.; requiring an eligible hospital to execute an enterprise plan; requiring certain conditions to be contained within an enterprise plan; creating s. 766.406, F.S.; requiring a certified patient safety facility to report medical incidents occurring on its premises and adverse findings of medical negligence to the Department of Health; requiring certified patient safety facilities to perform certain peer review functions; creating s. 766.407, F.S.; providing that an enterprise plan may provide clinical privileges to certain persons; requiring certain organizations to share in the cost of omnibus

medical liability insurance premiums subject to certain conditions; authorizing a licensed facility to impose a reasonable assessment against an affected practitioner who commits medical negligence; providing for the revocation of clinical privileges for failure to pay the assessment; exempting certain employees and agents from such assessments; creating s. 766.408, F.S.; requiring a certified patient safety facility to submit an annual report to the agency and the Legislature; providing requirements for the annual report; providing that the annual report may include certain information from the Office of Insurance Regulation within the Department of Financial Services; providing that the annual report is subject to public records requirements, but is not admissible as evidence in a legal proceeding; creating s. 766.409, F.S.; authorizing certain teaching hospitals and eligible hospitals to petition the agency for certification; providing criteria for determining noneconomic, economic, and future economic damages recoverable in actions arising from medical negligence; providing for application of limitations on damages for eligible hospitals that are certified for compliance with certain patient safety measures; authorizing the agency to conduct onsite examinations of certified eligible hospitals; authorizing the agency to revoke its order certifying approval of an enterprise plan; providing that an agency order certifying approval of an enterprise plan is evidence of a hospital's compliance with applicable

patient safety requirements; providing that evidence of noncompliance is inadmissible in any action for medical malpractice; providing that entry of the agency's order does not impose enterprise liability on the licensed facility for acts or omissions of medical negligence; providing that a hospital may not be approved for certification for both enterprise liability and limitations on damages; creating s. 766.410, F.S.; providing rulemaking authority; amending s. 768.28, F.S.; providing limitations on payment of a claim or judgment for an action for medical negligence within a certified patient safety facility that is covered by sovereign immunity; providing definitions; providing that a certified patient safety facility is an agent of a state university board of trustees to the extent that the licensed facility is solely liable for acts of medical negligence of physicians providing health care services within the licensed facility; specifying that certain certified patient safety facilities are agents of a state university board of trustees under certain circumstances; authorizing licensed facilities to secure limits of liability protection from certain self-insurance programs; providing requirements for commencing an action for certain medical negligence; providing procedures; providing limitations; providing for severability; providing for broad statutory view of the act; providing for self-execution of the act; providing an effective date.

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

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

Section 2. Legislative findings.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) The Legislature finds an overwhelming public necessity to promote the academic mission of statutory teaching hospitals and hospitals owned and operated by universities that maintain accredited medical schools. Furthermore, the Legislature finds that the academic mission of these medical facilities is materially enhanced by statutory authority for the

implementation of innovative approaches to patient protection and provider liability. Such approaches can be carefully studied and learned by medical students, medical school faculty, and affiliated physicians in appropriate clinical settings, thereby enlarging the body of knowledge concerning patient protection and provider liability which is essential for advancement of patient safety, reduction of expenses inherent in the medical liability system, and curtailment of the medical malpractice insurance crisis in this state.

Section 3. Paragraphs (f) and (g) of subsection (5) of section 458.320, Florida Statutes, are amended to read:

458.320 Financial responsibility.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Paragraphs (f) and (g) of subsection (5) of section 459.0085, Florida Statutes, are amended to read:

459.0085 Financial responsibility.--

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

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

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

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

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

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

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

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

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

A licensee who meets the requirements of this paragraph must post notice in the form of a sign prominently displayed in the reception area and clearly noticeable by all patients or provide a written statement to any person to whom medical services are being provided. The sign or statement must read as follows: "Under Florida law, osteopathic physicians are generally required to carry medical malpractice insurance or otherwise demonstrate financial responsibility to cover potential claims for medical malpractice. However, certain part-time osteopathic physicians who meet state requirements are exempt from the financial responsibility law. YOUR OSTEOPATHIC PHYSICIAN MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This notice is provided pursuant to Florida law." In addition, a licensee who is covered for claims of medical negligence arising from care and treatment of patients in a hospital that assumes sole and exclusive liability for all such claims pursuant to the Enterprise Act for Patient Protection and Provider Liability, inclusive of ss. 766.401-766.409, shall post notice in the form of a sign prominently displayed in the reception area and clearly noticeable by all patients or provide a written statement to any person for whom the osteopathic physician may provide medical care and treatment in any such hospital in accordance with the requirements of s. 766.404.

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

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

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

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

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

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

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

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

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

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

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

A licensee who meets the requirements of this paragraph shall be required either to post notice in the form of a sign prominently displayed in the reception area and clearly noticeable by all patients or to provide a written statement to any person to whom medical services are being provided. Such sign or statement shall state: "Under Florida law, osteopathic physicians are generally required to carry medical malpractice insurance or otherwise demonstrate financial responsibility to cover potential claims for medical malpractice. YOUR OSTEOPATHIC PHYSICIAN HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. This is permitted under Florida law subject to certain conditions. Florida law imposes strict penalties against noninsured osteopathic physicians who fail to satisfy adverse judgments arising from claims of medical malpractice. This notice is provided pursuant to Florida law." In addition, a licensee who meets the requirements of this paragraph and who is covered for claims of medical negligence arising from care and treatment of patients in a hospital that assumes sole and exclusive liability for all such claims pursuant to an enterprise plan for patient protection and provider liability under ss. 766.401-766.409, shall post notice in the form of a sign prominently displayed in the reception area and clearly

noticeable by all patients or provide a written statement to any person for whom the osteopathic physician may provide medical care and treatment in any such hospital. The sign or statement must adhere to the requirements of s. 766.404.

Section 5. Section 627.41485, Florida Statutes, is created to read:

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

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

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

(b) A statutory teaching hospital that has agreed to indemnify the physician or osteopathic physician for legal liability pursuant to s. 766.110(2)(c), subject to the usual underwriting standards.

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

Section 6. Section 766.316, Florida Statutes, is amended to read:

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

Section 7. Subsection (2) of section 766.110, Florida Statutes, is amended to read:

766.110 Liability of health care facilities.--

(2)(a) Every hospital licensed under chapter 395 may carry liability insurance or adequately insure itself in an amount of

not less than $1.5 million per claim, $5 million annual aggregate to cover all medical injuries to patients resulting from negligent acts or omissions on the part of those members of its medical staff who are covered thereby in furtherance of the requirements of ss. 458.320 and 459.0085. Self-insurance coverage extended hereunder to a member of a hospital's medical staff meets the financial responsibility requirements of ss. 458.320 and 459.0085 if the physician's coverage limits are not less than the minimum limits established in ss. 458.320 and 459.0085 and the hospital is a verified trauma center that has extended self-insurance coverage continuously to members of its medical staff for activities both inside and outside of the hospital. Any insurer authorized to write casualty insurance may make available, but is ~~shall~~ not ~~be~~ required to write, such coverage. The hospital may assess on an equitable and pro rata basis the following professional health care providers for a portion of the total hospital insurance cost for this coverage: physicians licensed under chapter 458, osteopathic physicians licensed under chapter 459, podiatric physicians licensed under chapter 461, dentists licensed under chapter 466, and nurses licensed under part I of chapter 464. The hospital may provide for a deductible amount to be applied against any individual health care provider found liable in a law suit in tort or for breach of contract. The legislative intent in providing for the deductible to be applied to individual health care providers found negligent or in breach of contract is to instill in each individual health care provider the incentive to avoid the risk

of injury to the fullest extent and ensure that the citizens of this state receive the highest quality health care obtainable.

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

(c) Notwithstanding any provision in the Insurance Code to the contrary, a statutory teaching hospital, as defined in s. 408.07, other than a hospital that receives sovereign immunity under s. 768.28, which complies with the patient safety measures specified in s. 766.403 and all other requirements of s. 766.409, including approval by the Agency for Health Care Administration, may agree to indemnify some or all members of

its medical staff, including, but not limited to, physicians having clinical privileges who are not employees or agents of the hospital and any organization, association, or group of persons liable for the negligent acts of such physicians, whether incorporated or unincorporated, and some or all medical, nursing, or allied health students affiliated with the hospital, collectively known as covered persons, other than persons exempt from liability due to sovereign immunity under s. 768.28, for legal liability of such covered persons for loss, damages, or expense arising out of medical negligence within the hospital premises, as defined in s. 766.401, thereby providing limited malpractice coverage for such covered persons. Any hospital that agrees to provide malpractice coverage for covered persons under this section shall acquire an appropriate policy of professional liability insurance or establish and maintain a fund from which such malpractice coverage is provided, in accordance with usual underwriting standards. Such insurance or fund may be separate and apart from any insurance or fund maintained by or on behalf of the hospital or combined in a single policy of insurance or a fund maintained by or on behalf of the hospital. Any hospital that provides malpractice coverage to covered persons as defined in this paragraph through a fund providing any such malpractice coverage, shall annually provide a certified financial statement containing actuarial projections as to the soundness of reserves to the Agency for Health Care Administration. The indemnity agreements or malpractice coverage provided by this section shall be in amounts that, at a minimum, meet the financial responsibility requirements of ss. 458.320 and 459.0085 for

affected providers. Any such indemnity agreement or malpractice coverage in such amounts satisfies the financial responsibility requirements of ss. 458.320 and 459.0085 for affected providers. Any statutory teaching hospital that agrees to indemnify physicians or other covered persons for medical negligence on the premises pursuant to this section may charge such physicians or other covered persons a reasonable fee for malpractice coverage, notwithstanding any provision in the Insurance Code to the contrary. Such fee shall be based on appropriate actuarial criteria. This paragraph does not constitute a waiver of sovereign immunity under s. 768.28. Nothing in this subsection impairs a hospital's ability to indemnify member of its medical staff to the extent such indemnification is allowed by law.

Section 8. Subsections (6) and (7) of section 766.118, Florida Statutes, are renumbered as subsections (7) and (8), respectively, and new subsection (6) is added to said section, to read:

766.118 Determination of noneconomic damages.--

(6) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF CERTAIN HOSPITALS.--A hospital that has received an order from the Agency for Health Care Administration pursuant to s. 766.409 certifying that the facility complies with patient safety measures specified in s. 766.403 shall be liable for no more than $500,000 in noneconomic damages, regardless of the number of claimants or theory of liability, including vicarious liability, and notwithstanding any other provisions of this section.

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

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

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

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

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

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

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

(6) "Certified patient safety facility" means any eligible hospital that, in accordance with agency order, is solely and exclusively liable for the medical negligence within the licensed facility by affected physicians and practitioners who are employees or agents of an accredited medical school or who are employees or agents of the hospital.

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

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

(a) A statutory teaching hospital as defined by s. 408.07, which maintains at least seven different accredited graduate medical education programs and has 100 or more full-time equivalent resident physicians; or

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

(9) "Employee or agent of an accredited medical school" means any physician or practitioner who is a full-time employee or agent of the accredited medical school or who devotes his or her entire paid professional effort to the accredited medical school.

(10) "Enterprise plan" means a document adopted by the governing board of an eligible hospital and the executive committee of the medical staff of the eligible hospital, however defined, or the board of trustees of a state university, manifesting concurrence and setting forth certain rights, duties, privileges, obligations, and responsibilities of the health care facility and its medical staff, or its affiliated medical school, in furtherance of seeking and maintaining status as a certified patient safety facility.

(11) "Health care provider" or "provider" means:

(a) An eligible hospital.

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

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

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

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

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

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

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

The term includes any person, organization, or entity that is vicariously liable under the theory of respondent superior or any other theory of legal liability for medical negligence committed by any licensed professional listed in this subsection. The term also includes any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, including any university or medical

school that employs licensed professionals listed in this subsection or that delivers health care services provided by licensed professionals listed in this subsection, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

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

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

(14) "Medical negligence" means medical malpractice, whether grounded in tort or in contract, arising out of the rendering of or failure to render medical care or services.

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

(16) "Person" means any individual, partnership, corporation, association, or governmental unit.

(17) "Premises" means those buildings, beds, and equipment located at the address of the licensed facility and all other buildings, beds, and equipment for the provision of hospital, ambulatory surgical, mobile surgical care, primary care, or comprehensive health care under the dominion and control of the licensee, including offices and locations where the licensed

facility provides medical care and treatment to affected patients.

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

(19) "Within the licensed facility" or "within the premise" means anywhere on the premises of the licensed facility or the premises of any office, clinic, or ancillary facility that is owned or leased or controlled by the licensed facility.

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

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

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

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

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

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

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

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

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

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

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

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

766.403 Enterprise-wide patient safety measures.--

(1) In order to satisfy the requirements of s. 766.402(2)(a) or s. 766.409, the licensed facility shall:

(a) Have in place a process, either through the facility's patient safety committee or a similar body, for coordinating the quality control, risk management, and patient relations functions of the facility and for reporting to the facility's governing board at least quarterly regarding such efforts.

(b) Establish within the facility a system for reporting near misses and agree to submit any information collected to the Florida Patient Safety Corporation. Such information must be submitted by the facility and made available by the Patient Safety Corporation in accordance with s. 381.0271(7).

(c) Design and make available to facility staff, including medical staff, a patient safety curriculum that provides lecture and web-based training on recognized patient safety principles,

which may include communication skills training, team performance assessment and training, risk prevention strategies, and best practices and evidence based medicine. The licensed facility shall report annually to the agency the programs presented.

(d) Implement a program to identify health care providers on the facility's staff who may be eligible for an early-intervention program providing additional skills assessment and training and offer such training to the staff on a voluntary and confidential basis with established mechanisms to assess program performance and results.

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

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

(g) Establish a procedure to biennially review the facility's patient safety program and its compliance with the requirements of this section. Such review shall be conducted by an independent patient safety organization as defined in s.

766.1016(1) or other professional organization approved by the agency. The organization performing the review shall prepare a written report with detailed findings and recommendations. The report shall be forwarded to the facility's risk manager or patient safety officer, who may make written comments in response thereto. The report and any written comments shall be presented to the governing board of the licensed facility. A copy of the report and any of the facilities' responses to the findings and recommendations shall be provided to the agency within 60 days after the date that the governing board reviewed the report. The report is confidential and exempt from production or discovery in any civil action. Likewise, the report, and the information contained therein, is not admissible as evidence for any purpose in any action for medical negligence.

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

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

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

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

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

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

766.404 Enterprise liability in certain health care facilities.--

(1) Subject to the requirements of ss. 766.401-766.409, the agency may enter an order certifying the petitioner-hospital as a certified patient safety facility and providing that the hospital bears sole and exclusive liability for any and all acts of medical negligence within the licensed facility by affected physicians and affected practitioners who are employees or

agents of the accredited medical school or employees or agents of the hospital when such medical negligence causes damage to affected patients.

(2) In any action for personal injury or wrongful death, whether in contract or tort or predicated upon a statutory cause of action, arising out of medical negligence within the premises resulting in damages to a patient of a certified patient safety facility, the licensed facility bears sole and exclusive liability for medical negligence by affected physicians and affected practitioners who, when the act of medical negligence occurred, were employees or agents of the accredited medical school or employees or agents of the hospital. Any such affected physician or affected practitioner may not be named as defendant in any such action. This subsection does not impose liability or confer immunity on any other provider, person, organization, or entity for acts of medical malpractice committed on any person in clinical settings other than the premises of the affected facility.

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

(a) An affected practitioner shall post notice in the form of a sign prominently displayed in the reception area and clearly noticeable by all patients or provide a written statement to any person to whom medical services are being provided. The sign or statement must read as follows: "In general, physicians in the State of Florida are personally liable for acts of medical negligence, subject to certain limitations. However, physicians who perform medical services

within a certified patient safety facility are exempt from personal liability because the licensed hospital bears sole and exclusive liability for acts of medical negligence within the health care facility pursuant to an administrative order of the Agency for Health Care Administration entered in accordance with the Enterprise Act for Patient Protection and Provider Liability. YOUR DOCTOR HOLDS CLINICAL STAFF PRIVILEGES IN A CERTIFIED PATIENT SAFETY FACILITY. UNDER FLORIDA LAW, ANY CLAIM FOR MEDICAL NEGLIGENCE WITHIN THE HEALTH CARE FACILITY MUST BE INITIATED AGAINST THE HOSPITAL AND NOT AGAINST YOUR DOCTOR, BECAUSE THE HOSPITAL IS SOLELY RESPONSIBLE FOR ALL ACTS OF PROFESSIONAL NEGLIGENCE WITHIN THE PREMISES. THIS PROVISION DOES NOT AFFECT YOUR PHYSICIAN'S LIABILITY FOR ACTS OF MEDICAL NEGLIGENCE IN OTHER CLINICAL SETTINGS. IF YOU DO NOT UNDERSTAND, PLEASE DISCUSS WITH YOUR DOCTOR BEFORE YOUR CONSULTATION. This notice is provided pursuant to Florida law."

(b) If an affected practitioner is covered by an enterprise plan for patient protection and provider liability in one or more licensed facilities that receive sovereign immunity, and one or more other licensed facilities, the affected practitioner shall post notice in the form of a sign prominently displayed in the reception area and clearly noticeable by all patients or provide a written statement to any person to whom medical services are being provided. The sign or statement must read as follows: "In general, physicians in the state of Florida are personally liable for acts of medical negligence, subject to certain limitations such as sovereign immunity. However, physicians who perform medical services within a certified

patient safety facility are exempt from personal liability because the licensed hospital bears sole and exclusive liability for acts of medical negligence within the affected facility pursuant to an administrative order of the Agency for Health Care Administration entered in accordance with the Enterprise Act for Patient Protection and Provider Liability. YOUR DOCTOR HOLDS CLINICAL STAFF PRIVILEGES IN ONE OR MORE CERTIFIED PATIENT SAFETY FACILITIES. AT LEAST ONE OF THESE HOSPITALS IS SUBJECT TO SOVEREIGN IMMUNITY. UNDER FLORIDA LAW, ANY CLAIM FOR MEDICAL NEGLIGENCE WITHIN THE HEALTH CARE FACILITY MUST BE INITIATED AGAINST THE HOSPITAL AND NOT AGAINST YOUR DOCTOR, BECAUSE THE HOSPITAL IS SOLELY RESPONSIBLE FOR ALL ACTS OF PROFESSIONAL NEGLIGENCE WITHIN THE PREMISES. MOREOVER, RECOVERY AGAINST THE HOSPITAL MAY BE LIMITED, DUE TO FLORIDA'S SOVEREIGN IMMUNITY LAW. THESE PROVISIONS DO NOT AFFECT YOUR PHYSICIAN'S LIABILITY FOR ACTS OF MEDICAL NEGLIGENCE IN OTHER CLINICAL SETTINGS. IF YOU DO NOT UNDERSTAND, PLEASE DISCUSS WITH YOUR DOCTOR BEFORE YOUR CONSULTATION. This notice is provided pursuant to Florida law."

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

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

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

3. Notice is not practicable.

(d) This subsection is directory in nature. An agency order certifying approval of an enterprise plan for patient

protection and provider liability shall, as a matter of law, constitute conclusive evidence that the hospital complies with all applicable patient safety requirements of s. 766.403 and all other requirements of ss. 766.401-766.409. Evidence of noncompliance with s. 766.403 or any other provision of ss. 766.401-766.409 may not be admissible for any purpose in any action for medical malpractice. Failure to comply with the requirements of this subsection does not affect the liabilities or immunities conferred by ss. 766.401-766.409. This subsection does not give rise to an independent cause of action for damages.

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

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

(6) The agency order certifying approval of an enterprise plan for patient protection remains in effect until revoked. The agency shall revoke the order upon the unilateral request of the licensed facility, the executive committee of the medical staff, or the affiliated medical school, whichever is applicable. The agency may revoke the order upon reasonable notice to the affected facility that it fails to comply with material requirements of ss. 766.401-766.409 or material conditions of the order certifying approval of the enterprise plan and further

upon a determination that the licensed facility has failed to cure stated deficiencies upon reasonable notice. An administrative order revoking approval of an enterprise plan for patient protection and provider liability terminates the plan on January 1 of the year following entry of the order or 6 months after entry of the order, whichever is longer. Revocation of an agency order certifying approval of an enterprise plan for patient protection and provider liability applies prospectively to causes of action for medical negligence which arise on or after the effective date of the termination.

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

(8) Affected practitioners shall cooperate in good faith with an affected facility in the investigation and defense of any claim for medical negligence. An affected facility shall have a cause of action for damages against an affected practitioner for bad faith refusal to cooperate in the investigation and defense of any claim of medical malpractice against the licensed facility.

(9) Sections 766.401-766.409 do not impose strict liability or liability without fault for medical incidents that

occur within an affected facility. To maintain a cause of action against an affected facility pursuant to ss. 766.401-766.409, the claimant must allege and prove that an employee or agent of the licensed facility, or an affected practitioner who is covered by an approved enterprise plan for patient protection and provider liability, committed medical negligence within the premises of the licensed facility which constitutes medical negligence under state law, even though an active tortfeasor is not named or joined as a party defendant in the lawsuit.

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

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

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

766.405 Enterprise plans.--

(1) It is the intent of the Legislature that enterprise plans for patient protection are elective and not mandatory for eligible hospitals. It is further the intent of the Legislature that the medical staff or affiliated medical school of an eligible hospital must concur with the development and implementation of an enterprise plan for patient protection and provider liability. It is further the intent of the Legislature that the licensed facility and medical staff or affiliated

medical school be accorded wide latitude in formulating enterprise plans consistent with the underlying purpose of ss. 766.401-766.409 to encourage innovative, systemic measures for patient protection and quality assurance in licensed facilities, especially in clinical settings where surgery is performed. Adoption of an enterprise plan is a necessary condition for agency approval of an enterprise plan for a certified patient safety facility.

(2) An eligible hospital and the executive committee of its medical staff of the board of trustees of a state university, if applicable, shall adopt an enterprise plan as a necessary condition to agency approval of a certified patient safety facility. An affirmative vote of approval by the regularly constituted executive committee of the medical staff, however named or constituted, is sufficient to manifest approval by the medical staff of the enterprise plan. Once approved, affected practitioners are subject to the enterprise plan. The plan may be conditioned on agency approval of an enterprise plan for patient protection and provider liability for the affected facility. The enterprise plan shall be limited to affected physicians and affected practitioners who are employees or agents of an accredited medical school or who are employees or agents of the hospital. At a minimum, the enterprise plan must contain provisions covering:

(a) Compliance with a patient protection plan.

(b) Internal review of medical incidents.

(c) Timely reporting of medical incidents to state agencies.

(d) Professional accountability of affected practitioners.

(e) Financial accountability of affected practitioners.

(3) This section does not prohibit a patient safety facility from including other provisions in the enterprise plan, in a separate agreement, as a condition of staff privileges, or by way of contract with an organization providing medical staff for the licensed facility.

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

(5) If multiple campuses of a licensed facility share a license, the enterprise plan may be limited to the primary campus or the campus with the largest number of beds and, if applicable, associated outpatient ancillary facilities. If the enterprise plan is so limited, the plan must specify the campus and, if applicable, the ancillary facilities that will constitute the enterprise.

Section 14. Section 766.406, Florida Statutes, is created to read:

766.406 Professional accountability of affected practitioners.--

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

(2) A certified patient safety facility shall report adverse findings of medical negligence or failure to adhere to

applicable standards of professional responsibility by affected practitioners to the Department of Health.

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

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

766.407 Financial accountability of affected practitioners.--

(1) An enterprise plan may provide that any affected member of the medical staff or any affected practitioner having clinical privileges, other than an employee of the licensed facility, and any organization that contracts with the licensed facility to provide practitioners to treat patients within the licensed facility, shall share equitably in the cost of omnibus medical liability insurance premiums covering the certified patient safety facility, similar self-insurance expense, or other expenses reasonably related to risk management and adjustment of claims of medical negligence. This subsection does not permit a licensed facility and any affected practitioner to agree on charges for an equitable share of medical liability expense based on the number of patients admitted to the hospital by individual practitioners, patient revenue for the licensed facility generated by individual practitioners, or overall profit or loss sustained by the certified patient safety facility in a given fiscal period.

(2) Pursuant to an enterprise plan for patient protection and provider liability, a licensed facility may impose a reasonable assessment against an affected practitioner that

commits medical negligence resulting in injury and damages to an affected patient of the health care facility, upon a determination of failure to adhere to acceptable standards of professional responsibility by an internal peer review committee. A schedule of assessments, criteria for the levying of assessments, procedures for levying assessments, and due process rights of an affected practitioner must be agreed to by the executive committee of the medical staff or affiliated medical school, as applicable, and the licensed facility. The legislative intent in providing for assessments against an affected physician is to instill in each individual health care practitioner the incentive to avoid the risk of injury to the fullest extent and ensure that the residents of this state receive the highest quality health care obtainable. Failure to pay an assessment constitutes grounds for suspension of clinical privileges by the licensed facility. Assessments may be enforced as bona fide debts in a court of law. The licensed facility may exempt its employees and agents from all such assessments. Employees and agents of the state, its agencies, and subdivisions, as defined by s. 768.28, are exempt from all such assessments.

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

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

766.408 Data collection and reports.--

(1) Each certified patient safety facility shall submit an annual report to the agency containing information and data

reasonably required by the agency to evaluate performance and effectiveness of the facility's enterprise plan for patient protection and provider liability. However, information may not be submitted or disclosed in violation of any patient's right to privacy under state or federal law.

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

(a) The number and names of affected facilities;

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

(c) The number of affected practitioners;

(d) The number of affected patients;

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

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

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

(h) The percentage of claims that result in civil trials;

(i) The percentage of civil trials resulting in adverse judgments against affected facilities;

(j) The number and average size of an indemnity paid to claimants;

(k) The number and average size of assessments imposed on affected practitioners;

(l) The estimated liability expense, inclusive of medical liability insurance premiums; and

(m) The percentage of medical liability expense, inclusive of medical liability insurance premiums, which is borne by affected practitioners in affected health care facilities.

Such reports to the Legislature may also include other information and data that the agency deems appropriate to gauge the cost and benefit of enterprise plans for patient protection and provider liability.

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

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

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

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

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

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

(3) In accordance with chapter 120, the agency shall enter an order approving the petition upon a showing that the eligible hospital complies with the patient safety measures specified in s. 766.403. Upon entry of an order, and for the entire period of

time that the order remains in effect, the damages recoverable from the eligible hospital covered by the order and its employees and agents in actions arising from medical negligence shall be determined in accordance with the following provisions:

(a) Noneconomic damages shall be limited to a maximum of $500,000, regardless of the number of claimants or the theory of liability, in accordance with s. 766.118(6).

(b) Awards of economic damages shall be offset by payments from collateral sources, as defined by s. 766.202(2), and any set-offs available under ss. 46.015 and 768.041. Awards for future economic losses shall be offset by future collateral source payments.

(c) Awards of future economic damages, after being offset by collateral sources, shall, at the option of the eligible hospital, be reduced by the court to present value or paid by means of periodic payments in the form of annuities or reversionary trusts. A company that underwrites an annuity to pay future economic damages shall have rating of "A" or higher by A.M. Best Company. The terms of the reversionary instrument used to periodically pay future economic damages must be approved by the court; such approval may not be unreasonably withheld.

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

(5) Upon entry of an order approving the petition, the agency may conduct onsite examinations of the licensed facility

to assure continued compliance with terms and conditions of the order.

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

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

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

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

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

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

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

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

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

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

(b) Except as provided in paragraph (c), neither the state or ~~nor~~ its agencies or subdivisions are ~~shall be~~ liable to pay a claim or a judgment by any one person which exceeds the sum of $100,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same

incident or occurrence, exceeds the sum of $200,000. However, a judgment or judgments may be claimed and rendered in excess of these amounts and may be settled and paid pursuant to this act up to $100,000 or $200,000, as the case may be; and that portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. Notwithstanding the limited waiver of sovereign immunity provided herein, the state or an agency or subdivision thereof may agree, within the limits of insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof shall not be deemed to have waived any defense of sovereign immunity or to have increased the limits of its liability as a result of its obtaining insurance coverage for tortious acts in excess of the $100,000 or $200,000 waiver provided above. The limitations of liability set forth in this subsection shall apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(c) In any action for medical negligence within a certified patient safety facility that is covered by sovereign immunity, given that the licensed health care facility bears sole and exclusive liability for acts of medical negligence pursuant to the Enterprise Act for Patient Protection and Provider Liability, inclusive of ss. 766.401-766.409, neither the state or its agencies or subdivisions are liable to pay a claim or a judgment by any one person which exceeds the sum of

$150,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the state or its agencies or subdivisions arising out of the same incident or occurrence, exceeds the sum of $300,000. However, a judgment may be claimed and rendered in excess of these amounts and may be settled and paid up to $150,000 or $300,000, as the case may be. That portion of the judgment which exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature. Notwithstanding the limited waiver of sovereign immunity provided in this paragraph, the state or an agency or subdivision thereof may agree, within the limits of insurance or self-insurance coverage provided, to settle a claim made or a judgment rendered against it without further action by the Legislature, but the state or agency or subdivision thereof does not waive any defense of sovereign immunity or increase limits of its liability as a result of its obtaining insurance coverage or providing for self-insurance to cover claims for medical negligence in excess of the $150,000 waiver or the $300,000 waiver provided in this paragraph. The limitations of liability set forth in this paragraph apply to the state and its agencies and subdivisions whether or not the state or its agencies or subdivisions possessed sovereign immunity before July 1, 1974.

(12)(a) A health care practitioner, as defined in s. 456.001(4), who has contractually agreed to act as an agent of a state university board of trustees to provide medical services to a student athlete for participation in or as a result of intercollegiate athletics, to include team practices, training,

and competitions, is ~~shall be considered~~ an agent of the respective state university board of trustees, for the purposes of this section, while acting within the scope of and pursuant to guidelines established in that contract. The contracts shall provide for the indemnification of the state by the agent for any liabilities incurred up to the limits set out in this chapter.

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

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

2. A certified patient safety facility, wherein a minimum of 90 percent of the members of the medical staff consist of physicians are employees or agents of a state university, is an agent of the respective state university board of trustees for purposes of this section to the extent that the licensed facility, in accordance with an enterprise plan for patient protection and provider liability, inclusive of ss. 766.401-766.409, approved by the Agency for Health Care Administration, is solely and exclusively liable for acts of medical negligence of physicians providing health care services within the licensed facility.

3. A certified patient safety facility that has been found to be an agent of the state for other purposes and has adopted

an enterprise plan for patient protection and provider liability for the sole and exclusive liability for acts of medical negligence of affected practitioners who are employees and agents of the affiliated state university board of trustees and its own hospital employees and agents, inclusive of ss. 766.401-766.409, approved by the Agency for Health Care Administration, is an agent of the respective state university board of trustees for purposes of this subsection only.

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

5. A notice of intent to commence an action for medical negligence arising from the care or treatment of a patient in a certified patient safety facility subject to the provisions of this subsection shall be sent to the licensed facility as the statutory agent created pursuant to an enterprise plan of the related board of trustees of a state university for the limited purposes of administering an enterprise plan for patient protection and provider liability. A complaint alleging medical negligence resulting in damages to a patient in a certified patient safety facility subject to the provisions of this paragraph shall be commenced against the applicable board of trustees of a state university on the relation of the licensed facility, and the doctrines of res judicata and collateral estoppel shall apply. The complaint shall be served on the licensed facility. Any notice of intent mailed to the licensed

facility, any legal process served on the licensed facility, and any other notice, paper, or pleading that is served, sent, or delivered to the licensed facility pertaining to a claim of medical negligence shall have the same legal force and effect as mailing, service, or delivery to a duly authorized agent of the board of trustees of the respective state university, notwithstanding any provision of the laws of this state to the contrary. Upon receipt of any such notice of intent, complaint for damages, or other notice, paper, or pleading pertaining to a claim of medical negligence, a licensed facility subject to the provisions of this paragraph shall give timely notice to the related board of trustees of the state university, although failure to give timely notice does not affect the legal sufficiency of the notice of intent, service of process, or other notice, paper, or pleading. A final judgment or binding arbitration award against the board of trustees of a state university on the relation of a licensed facility, arising from a claim of medical negligence resulting in damages to a patient in a certified patient safety facility subject to the provisions of this paragraph, may be enforced in the same manner, and is subject to the same limitations on enforcement or recovery, as any final judgment for damages or binding arbitration award against the board of trustees of a state university, notwithstanding any provision of the laws of this state to the contrary. Any settlement agreement executed by the board of trustees of a state university on the relation of a licensed facility, arising from a claim of medical negligence resulting in damages to a patient in a certified patient safety facility

subject to the provisions of this paragraph, may be enforced in the same manner and is subject to the same limitations as a settlement agreement executed by an authorized agent of the board of trustees. The board of trustees of a state university may make payment to a claimant in whole or in part of any portion of a final judgment or binding arbitration award against the board of trustees of a state university on the relation of a licensed facility, and any portion of a settlement of a claim for medical negligence arising from a certified patient safety facility subject to the provisions of this paragraph, which exceeds the amounts of the limited waiver of sovereign immunity specified in paragraph (5)(c), only as provided in that paragraph.

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

Section 21. If a conflict between any provision of this act and s. 456.052, s. 456.053, s. 456.054, s. 458.331, s. 459.015, or s. 817.505, Florida Statutes, the provisions of this act shall govern. The provisions of this act should be broadly construed in furtherance of the overriding legislative intent to facilitate innovative approaches for patient protection and provider liability in eligible hospitals.

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

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