

By the Committee on Health Care; and Senator Saunders

587-2176-05

1 A bill to be entitled

2 An act relating to medical malpractice

3 insurance; creating the Enterprise Act for

4 Patient Protection and Provider Liability;

5 providing legislative findings; amending s.

6 395.0197, F.S., relating to internal risk

7 management programs; conforming provisions to

8 changes made by the act; amending ss. 458.320

9 and 459.0085, F.S.; exempting certain

10 allopathic and osteopathic physicians who

11 perform surgery in certain patient safety

12 facilities from the requirement to establish

13 financial responsibility; requiring a licensed

14 physician who is covered for medical negligence

15 claims by a hospital that assumes liability

16 under the act to prominently post notice or

17 provide a written statement to patients;

18 requiring a licensed allopathic physician or a

19 licensed osteopathic physician who meets

20 certain requirements for payment or settlement

21 of a medical malpractice claim and who is

22 covered for medical negligence claims by a

23 hospital that assumes liability under the act

24 to prominently post notice or provide a written

25 statement to patients; creating s. 627.41485,

26 F.S.; authorizing insurers to offer liability

27 insurance coverage to physicians which has an

28 exclusion for certain acts of medical

29 negligence under certain conditions;

30 authorizing the Department of Health to adopt

31 rules; amending s. 766.316, F.S.; requiring

1 hospitals that assume liability for affected
2 physicians under the act to provide notice to
3 obstetrical patients regarding the limited
4 no-fault alternative to birth-related
5 neurological injuries; amending s. 766.110,
6 F.S.; requiring hospitals that assume liability
7 for acts of medical negligence under the act to
8 carry insurance; requiring the hospital's
9 policy regarding medical liability insurance to
10 satisfy certain statutory
11 financial-responsibility requirements;
12 authorizing an insurer who is authorized to
13 write casualty insurance to write such
14 coverage; authorizing certain hospitals to
15 indemnify certain medical staff for legal
16 liability of loss, damages, or expenses arising
17 from medical malpractice within hospital
18 premises; requiring a hospital to acquire a
19 policy of professional liability insurance or a
20 fund for malpractice coverage; requiring an
21 annual certified financial statement to the
22 Agency for Health Care Administration;
23 authorizing certain hospitals to charge
24 physicians a fee for malpractice coverage;
25 creating s. 766.401, F.S.; providing
26 definitions; creating s. 766.402, F.S.;
27 authorizing an eligible hospital to petition
28 the Agency for Health Care Administration to
29 enter an order certifying the hospital as a
30 patient safety facility; providing requirements
31 for certification as a patient safety facility;

1 creating s. 766.403, F.S.; providing
2 requirements for a hospital to demonstrate that
3 it is engaged in a common enterprise for the
4 care and treatment of patients; specifying
5 required patient safety measures; prohibiting a
6 report or document generated under the act,
7 from being admissible or discoverable as
8 evidence; creating s. 766.404, F.S.;
9 authorizing the agency to enter an order
10 certifying a hospital as a patient safety
11 facility and providing that the hospital bears
12 liability for acts of medical negligence for
13 its health care providers or an agent of the
14 hospital; providing that certain persons or
15 entities are not liable for medically negligent
16 acts occurring in a certified patient safety
17 facility; requiring that an affected
18 practitioner prominently post notice regarding
19 exemption from personal liability; requiring an
20 affected physician who is covered by an
21 enterprise plan in a licensed facility that
22 receives sovereign immunity to prominently post
23 notice regarding exemption from personal
24 liability; providing that an agency order
25 certifying approval of an enterprise plan is
26 evidence of a hospital's compliance with
27 applicable patient safety requirements;
28 providing circumstances in which notice is not
29 required; providing that the order certifying
30 approval of an enterprise plan applies
31 prospectively to causes of action for medical

1 negligence; authorizing the agency to conduct
2 onsite examinations of a licensed facility;
3 providing circumstances under which the agency
4 may revoke its order certifying approval of an
5 enterprise plan; providing that an employee or
6 agent of a certified patient safety facility
7 may not be joined as a defendant in an action
8 for medical negligence; requiring an affected
9 physician to cooperate in good faith in an
10 investigation of a claim for medical
11 malpractice; providing a cause of action for
12 failure of a physician to act in good faith;
13 providing that strict liability or liability
14 without fault is not imposed for medical
15 incidents that occur in the affected facility;
16 providing requirements that a claimant must
17 prove to demonstrate medical negligence by an
18 employee, agent, or medical staff of a licensed
19 facility; providing that the act does not
20 create an independent cause of action or waive
21 sovereign immunity; creating s. 766.405, F.S.;
22 requiring an eligible hospital to execute an
23 enterprise plan; requiring certain conditions
24 to be contained within an enterprise plan;
25 creating s. 766.406, F.S.; requiring a
26 certified patient safety facility to report
27 medical incidents occurring on its premises and
28 adverse findings of medical negligence to the
29 Department of Health; authorizing a certified
30 patient safety facility to continue to perform
31 certain peer review activities; creating s.

1 766.407, F.S.; providing that an enterprise
2 plan may require practitioners with clinical
3 privileges to share in the cost of liability
4 insurance premiums and require certain
5 organizations to share in the cost of omnibus
6 medical liability insurance premiums subject to
7 certain conditions; authorizing a licensed
8 facility to impose a reasonable assessment
9 against an affected practitioner who commits
10 medical negligence; providing for the
11 revocation of clinical privileges for failure
12 to pay the assessment; exempting certain
13 employees and agents from such assessments;
14 creating s. 766.408, F.S.; requiring a
15 certified patient safety facility to submit an
16 annual report to the agency and the
17 Legislature; providing requirements for the
18 annual report; providing that the annual report
19 may include certain information from the Office
20 of Insurance Regulation within the Department
21 of Financial Services; providing that the
22 annual report is subject to public-records
23 requirements, but is not admissible as evidence
24 in a legal proceeding; creating s. 766.409,
25 F.S.; providing rulemaking authority; creating
26 s. 766.410, F.S.; authorizing certain teaching
27 hospitals and eligible hospitals to petition
28 the agency for certification; providing for
29 limitations on damages for eligible hospitals
30 that are certified for compliance with certain
31 patient safety measures; authorizing the agency

1 to conduct onsite examinations of certified
2 eligible hospitals; authorizing the agency to
3 revoke its order certifying approval of an
4 enterprise plan; providing that an agency order
5 certifying approval of an enterprise plan is
6 evidence of a hospital's compliance with
7 applicable patient safety requirements;
8 providing that evidence of noncompliance is
9 inadmissible in any action for medical
10 malpractice; providing that entry of the
11 agency's order does not impose enterprise
12 liability on the licensed facility for acts or
13 omissions of medical negligence; providing that
14 a hospital may not be approved for
15 certification for both enterprise liability and
16 limitations on damages; amending s. 768.28,
17 F.S.; providing limitations on payment of a
18 claim or judgment for an action for medical
19 negligence within a certified patient safety
20 facility that is covered by sovereign immunity;
21 providing definitions; providing that a
22 certified patient safety facility is an agent
23 of a state university board of trustees to the
24 extent that the licensed facility is solely
25 liable for acts of medical negligence of
26 physicians providing health care services
27 within the licensed facility; providing for
28 severability; providing for broad statutory
29 view of the act; providing for self-execution
30 of the act; providing an effective date.

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

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3 Section 1. Short title.--This act may be cited as the
4 "Enterprise Act for Patient Protection and Provider
5 Liability."

6 Section 2. Legislative findings.--

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

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

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

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

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

30 (6) The Legislature finds that the medical malpractice
31 insurance crisis in this state can be alleviated by the

1 adoption of innovative approaches for patient protection in
2 hospitals which can lead to a reduction in medical errors.

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

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

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

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

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

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

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

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

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

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

20 (17) The Legislature finds an overwhelming public
21 necessity to promote the academic mission of statutory
22 teaching hospitals and hospitals owned and operated by
23 universities that maintain accredited medical schools.
24 Furthermore, the Legislature finds that the academic mission
25 of these medical facilities is materially enhanced by
26 statutory authority for the implementation of innovative
27 approaches to patient protection and provider liability. Such
28 approaches can be carefully studied and learned by medical
29 students, medical school faculty, and affiliated physicians in
30 appropriate clinical settings, thereby enlarging the body of
31 knowledge concerning patient protection and provider liability

1 which is essential for advancement of patient safety,
2 reduction of expenses inherent in the medical liability
3 system, and curtailment of the medical malpractice insurance
4 crisis in this state.

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

7 395.0197 Internal risk management program.--

8 (3) In addition to the programs mandated by this
9 section, other innovative approaches intended to reduce the
10 frequency and severity of medical malpractice and patient
11 injury claims shall be encouraged and their implementation and
12 operation facilitated. Such additional approaches may include
13 extending internal risk management programs to health care
14 providers' offices and the assuming of provider liability by a
15 licensed health care facility for acts or omissions occurring
16 within the licensed facility pursuant to the Enterprise Act
17 for Patient Protection and Provider Liability, inclusive of
18 ss. 766.401-766.409. Each licensed facility shall annually
19 report to the agency and the Department of Health the name and
20 judgments entered against each health care practitioner for
21 which it assumes liability. The agency and Department of
22 Health, in their respective annual reports, shall include
23 statistics that report the number of licensed facilities that
24 assume such liability and the number of health care
25 practitioners, by profession, for whom they assume liability.

26 Section 4. Subsection (2) and paragraphs (f) and (g)
27 of subsection (5) of section 458.320, Florida Statutes, are
28 amended to read:

29 458.320 Financial responsibility.--

30 (2) Physicians who perform surgery in an ambulatory
31 surgical center licensed under chapter 395 and, as a

1 continuing condition of hospital staff privileges, physicians
2 who have staff privileges must also establish financial
3 responsibility by one of the following methods:

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

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

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

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

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14 This subsection shall be inclusive of the coverage in
15 subsection (1). A physician who only performs surgery or who
16 has only clinical privileges or admitting privileges in one or
17 more certified patient safety facilities, which health care
18 facility or facilities are legally liable for medical
19 negligence of affected practitioners, pursuant to the
20 Enterprise Act for Patient Protection and Provider Liability,
21 inclusive of ss. 766.401-766.409, is exempt from the
22 requirements of this subsection.

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

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

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

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1 2. The licensee has either retired from the practice
2 of medicine or maintains a part-time practice of no more than
3 1,000 patient contact hours per year.

4 3. The licensee has had no more than two claims for
5 medical malpractice resulting in an indemnity exceeding
6 \$25,000 within the previous 5-year period.

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

11 5. The licensee has not been subject within the last
12 10 years of practice to license revocation or suspension for
13 any period of time; probation for a period of 3 years or
14 longer; or a fine of \$500 or more for a violation of this
15 chapter or the medical practice act of another jurisdiction.
16 The regulatory agency's acceptance of a physician's
17 relinquishment of a license, stipulation, consent order, or
18 other settlement, offered in response to or in anticipation of
19 the filing of administrative charges against the physician's
20 license, constitutes action against the physician's license
21 for the purposes of this paragraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Section 5. Subsection (2) and paragraphs (f) and (g)
22 of subsection (5) of section 459.0085, Florida Statutes, are
23 amended to read:

24 459.0085 Financial responsibility.--

25 (2) Osteopathic physicians who perform surgery in an
26 ambulatory surgical center licensed under chapter 395 and, as
27 a continuing condition of hospital staff privileges,
28 osteopathic physicians who have staff privileges must also
29 establish financial responsibility by one of the following
30 methods:
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1 (a) Establishing and maintaining an escrow account
2 consisting of cash or assets eligible for deposit in
3 accordance with s. 625.52 in the per-claim amounts specified
4 in paragraph (b). The required escrow amount set forth in this
5 paragraph may not be used for litigation costs or attorney's
6 fees for the defense of any medical malpractice claim.

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

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

1 used for litigation costs or attorney's fees for the defense
2 of any medical malpractice claim. The letter of credit must be
3 nonassignable and nontransferable. The letter of credit must
4 be issued by any bank or savings association organized and
5 existing under the laws of this state or any bank or savings
6 association organized under the laws of the United States
7 which has its principal place of business in this state or has
8 a branch office that is authorized under the laws of this
9 state or of the United States to receive deposits in this
10 state.

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12 This subsection shall be inclusive of the coverage in
13 subsection (1). A physician who only performs surgery or who
14 has only clinical privileges or admitting privileges in one or
15 more certified patient safety facilities, which health care
16 facility or facilities are legally liable for medical
17 negligence of affected practitioners, pursuant to the
18 Enterprise Act for Patient Protection and Provider Liability,
19 inclusive of ss. 766.401-766.409, is exempt from the
20 requirements of this subsection.

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

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

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

28 2. The licensee has either retired from the practice
29 of medicine or maintains a part-time practice of no more than
30 1,000 patient contact hours per year.

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

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

8 5. The licensee has not been subject within the last
9 10 years of practice to license revocation or suspension for
10 any period of time; probation for a period of 3 years or
11 longer; or a fine of \$500 or more for a violation of this
12 chapter or the medical practice act of another jurisdiction.
13 The regulatory agency's acceptance of a physician's
14 relinquishment of a license, stipulation, consent order, or
15 other settlement, offered in response to or in anticipation of
16 the filing of administrative charges against the physician's
17 license, constitutes action against the physician's license
18 for the purposes of this paragraph.

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

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

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28 A licensee who meets the requirements of this paragraph must
29 post notice in the form of a sign prominently displayed in the
30 reception area and clearly noticeable by all patients or
31 provide a written statement to any person to whom medical

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

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

22 1. Upon the entry of an adverse final judgment arising
23 from a medical malpractice arbitration award, from a claim of
24 medical malpractice either in contract or tort, or from
25 noncompliance with the terms of a settlement agreement arising
26 from a claim of medical malpractice either in contract or
27 tort, the licensee shall pay the judgment creditor the lesser
28 of the entire amount of the judgment with all accrued interest
29 or either \$100,000, if the physician is licensed pursuant to
30 this chapter but does not maintain hospital staff privileges,
31 or \$250,000, if the physician is licensed pursuant to this

1 chapter and maintains hospital staff privileges, within 60
2 days after the date such judgment became final and subject to
3 execution, unless otherwise mutually agreed to in writing by
4 the parties. Such adverse final judgment shall include any
5 cross-claim, counterclaim, or claim for indemnity or
6 contribution arising from the claim of medical malpractice.
7 Upon notification of the existence of an unsatisfied judgment
8 or payment pursuant to this subparagraph, the department shall
9 notify the licensee by certified mail that he or she shall be
10 subject to disciplinary action unless, within 30 days from the
11 date of mailing, he or she either:

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

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

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

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

21 2. The Department of Health shall issue an emergency
22 order suspending the license of any licensee who, after 30
23 days following receipt of a notice from the Department of
24 Health, has failed to: satisfy a medical malpractice claim
25 against him or her; furnish the Department of Health a copy of
26 a timely filed notice of appeal; furnish the Department of
27 Health a copy of a supersedeas bond properly posted in the
28 amount required by law; or furnish the Department of Health an
29 order from a court of competent jurisdiction staying execution
30 on the final judgment pending disposition of the appeal.
31

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

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

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

22
23 A licensee who meets the requirements of this paragraph shall
24 be required either to post notice in the form of a sign
25 prominently displayed in the reception area and clearly
26 noticeable by all patients or to provide a written statement
27 to any person to whom medical services are being provided.
28 Such sign or statement shall state: "Under Florida law,
29 physicians are generally required to carry medical malpractice
30 insurance or otherwise demonstrate financial responsibility to
31 cover potential claims for medical malpractice. YOUR DOCTOR

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

18 Section 6. Section 627.41485, Florida Statutes, is
19 created to read:

20 627.41485 Medical malpractice insurers; optional
21 coverage exclusion for insureds who are covered by an
22 enterprise plan for patient protection and provider
23 liability.--

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

31

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

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

10 Section 7. Section 766.316, Florida Statutes, is
11 amended to read:

12 766.316 Notice to obstetrical patients of
13 participation in the plan.--Each hospital with a participating
14 physician on its staff, each hospital that assumes liability
15 for affected physicians pursuant to the Enterprise Act for
16 Patient Protection and Provider Liability, inclusive of ss.
17 766.401-766.409, and each participating physician, other than
18 residents, assistant residents, and interns deemed to be
19 participating physicians under s. 766.314(4)(c), under the
20 Florida Birth-Related Neurological Injury Compensation Plan
21 shall provide notice to the obstetrical patients as to the
22 limited no-fault alternative for birth-related neurological
23 injuries. Such notice shall be provided on forms furnished by
24 the association and shall include a clear and concise
25 explanation of a patient's rights and limitations under the
26 plan. The hospital or the participating physician may elect to
27 have the patient sign a form acknowledging receipt of the
28 notice form. Signature of the patient acknowledging receipt of
29 the notice form raises a rebuttable presumption that the
30 notice requirements of this section have been met. Notice need
31 not be given to a patient when the patient has an emergency

1 | medical condition as defined in s. 395.002(9)(b) or when
2 | notice is not practicable.

3 | Section 8. Subsection (2) of section 766.110, Florida
4 | Statutes, is amended to read:

5 | 766.110 Liability of health care facilities.--

6 | (2)(a) Every hospital licensed under chapter 395 may
7 | carry liability insurance or adequately insure itself in an
8 | amount of not less than \$1.5 million per claim, \$5 million
9 | annual aggregate to cover all medical injuries to patients
10 | resulting from negligent acts or omissions on the part of
11 | those members of its medical staff who are covered thereby in
12 | furtherance of the requirements of ss. 458.320 and 459.0085.
13 | Self-insurance coverage extended hereunder to a member of a
14 | hospital's medical staff meets the financial responsibility
15 | requirements of ss. 458.320 and 459.0085 if the physician's
16 | coverage limits are not less than the minimum limits
17 | established in ss. 458.320 and 459.0085 and the hospital is a
18 | verified trauma center that has extended self-insurance
19 | coverage continuously to members of its medical staff for
20 | activities both inside and outside of the hospital. Any
21 | insurer authorized to write casualty insurance may make
22 | available, but ~~is shall~~ not ~~be~~ required to write, such
23 | coverage. The hospital may assess on an equitable and pro
24 | rata basis the following professional health care providers
25 | for a portion of the total hospital insurance cost for this
26 | coverage: physicians licensed under chapter 458, osteopathic
27 | physicians licensed under chapter 459, podiatric physicians
28 | licensed under chapter 461, dentists licensed under chapter
29 | 466, and nurses licensed under part I of chapter 464. The
30 | hospital may provide for a deductible amount to be applied
31 | against any individual health care provider found liable in a

1 law suit in tort or for breach of contract. The legislative
2 intent in providing for the deductible to be applied to
3 individual health care providers found negligent or in breach
4 of contract is to instill in each individual health care
5 provider the incentive to avoid the risk of injury to the
6 fullest extent and ensure that the citizens of this state
7 receive the highest quality health care obtainable.

8 (b) Except with regard to hospitals that receive
9 sovereign immunity under s. 768.28, each hospital licensed
10 under chapter 395 which assumes sole and exclusive liability
11 for acts of medical negligence by affected providers pursuant
12 to the Enterprise Act for Patient Protection and Provider
13 Liability, inclusive of ss. 766.401-766.409, shall carry
14 liability insurance or adequately insure itself in an amount
15 of not less than \$2.5 million per claim, \$7.5 million annual
16 aggregate to cover all medical injuries to patients resulting
17 from negligent acts or omissions on the part of affected
18 physicians and practitioners who are covered by an enterprise
19 plan for patient protection and provider liability. The
20 hospital's policy of medical liability insurance or
21 self-insurance must satisfy the financial-responsibility
22 requirements of ss. 458.320(2) and 459.0085(2) for affected
23 providers. Any authorized insurer as defined under s. 624.09,
24 surplus lines insurer as defined under s. 626.914(2), risk
25 retention group as defined under s. 627.942, joint
26 underwriting association established under s. 627.351(4), or
27 plan of self-insurance as provided in s. 627.387, which has
28 authority to write casualty insurance may make available, but
29 is not required to write, such coverage.

30 (c) Notwithstanding any provision in the Insurance
31 Code to the contrary, a statutory teaching hospital, as

1 defined in s. 408.07, other than a hospital that receives
2 sovereign immunity under s. 768.28, which complies with the
3 patient safety measures specified in s. 766.403 and all other
4 requirements of s. 766.410, including approval by the Agency
5 for Health Care Administration, may agree to indemnify some or
6 all members of its medical staff, including, but not limited
7 to, physicians having clinical privileges who are not
8 employees or agents of the hospital and any organization,
9 association, or group of persons liable for the negligent acts
10 of such physicians, whether incorporated or unincorporated,
11 and some or all medical, nursing, or allied health students
12 affiliated with the hospital, collectively known as covered
13 persons, other than persons exempt from liability due to
14 sovereign immunity under s. 768.28, for legal liability of
15 such covered persons for loss, damages, or expense arising out
16 of medical negligence within the hospital premises, as defined
17 in s. 766.401, thereby providing limited malpractice coverage
18 for such covered persons. Any hospital that agrees to provide
19 malpractice coverage for covered persons pursuant to this
20 section shall acquire an appropriate policy of professional
21 liability insurance or establish and maintain a fund from
22 which such malpractice coverage is provided, in accordance
23 with usual underwriting standards. Such insurance or fund may
24 be separate and apart from any insurance or fund maintained by
25 or on behalf of the hospital or combined in a single policy of
26 insurance or a fund maintained by or on behalf of the
27 hospital. Any hospital that provides malpractice coverage to
28 covered persons defined under this paragraph through a fund or
29 a self-insurance fund providing any such malpractice coverage,
30 shall annually provide a certified financial statement
31 containing actuarial projections as to the soundness of

1 reserves to the Agency for Health Care Administration. The
2 indemnity agreements or malpractice coverage provided by this
3 section shall be in amounts that, at a minimum, meet the
4 financial responsibility requirements of ss. 458.320 and
5 459.0085 for affected providers. Any such indemnity agreement
6 or malpractice coverage in such amounts satisfies the
7 financial responsibility requirements of ss. 458.320 and
8 459.0085 for affected providers. Any statutory teaching
9 hospital that agrees to indemnify physicians or other covered
10 persons for medical negligence on the premises pursuant to
11 this section may charge such physicians or other covered
12 persons a reasonable fee for malpractice coverage,
13 notwithstanding any provision in the Insurance Code to the
14 contrary. Such fee shall be based on appropriate actuarial
15 criteria. This paragraph does not constitute a waiver of
16 sovereign immunity under s. 768.28. This section does not
17 limit a hospital's ability to indemnify members of its medical
18 staff to the extent that such indemnification is allowed by
19 law.

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

22 766.401 Definitions.--As used in ss. 766.401-766.410,
23 the term:

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

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

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

31

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

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

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

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

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

18 (a) A statutory teaching hospital as defined by s.
19 408.07; or

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

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

1 (10) "Health care provider" or "provider" means:
2 (a) An eligible hospital.
3 (b) A physician or physician assistant licensed under
4 chapter 458.
5 (c) An osteopathic physician or osteopathic physician
6 assistant licensed under chapter 459.
7 (d) A registered nurse, nurse midwife, licensed
8 practical nurse, or advanced registered nurse practitioner
9 licensed or registered under part I of chapter 464 or any
10 facility that employs nurses licensed or registered under part
11 I of chapter 464 to supply all or part of the care delivered
12 by that facility.
13 (e) A health care professional association and its
14 employees or a corporate medical group and its employees.
15 (f) Any other medical facility the primary purpose of
16 which is to deliver human medical diagnostic services or which
17 delivers nonsurgical human medical treatment, including an
18 office maintained by a provider.
19 (g) A free clinic that delivers only medical
20 diagnostic services or nonsurgical medical treatment free of
21 charge to all low-income recipients.
22 (h) Any other health care professional, practitioner,
23 or provider, including a student enrolled in an accredited
24 program that prepares the student for licensure as any one of
25 the professionals listed in this subsection.
26
27 The term includes any person, organization, or entity that is
28 vicariously liable under the theory of respondent superior or
29 any other theory of legal liability for medical negligence
30 committed by any licensed professional listed in this
31 subsection. The term also includes any nonprofit corporation

1 qualified as exempt from federal income taxation under s.
2 501(a) of the Internal Revenue Code, and described in s.
3 501(c) of the Internal Revenue Code, including any university
4 or medical school that employs licensed professionals listed
5 in this subsection or that delivers health care services
6 provided by licensed professionals listed in this subsection,
7 any federally funded community health center, and any
8 volunteer corporation or volunteer health care provider that
9 delivers health care services.

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

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

16 (13) "Medical negligence" means medical malpractice,
17 whether grounded in tort or in contract, including statutory
18 claims arising out of any act or omission related to the
19 rendering or failure to render medical or nursing care. The
20 term does not include intentional acts.

21 (14) "Medical staff" means a physician licensed under
22 chapter 458 or chapter 459 having clinical privileges and
23 active status in a licensed facility. The term includes any
24 affected physician or affected practitioner having clinical
25 privileges as approved by a licensed facility's governing
26 board. The term includes any affected physician, regardless of
27 his or her status as an employee, agent, or independent
28 contractor with regard to the licensed facility.

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

31

1 (16) "Premises" means those buildings, beds, and
2 equipment located at the address of the licensed facility and
3 all other buildings, beds, and equipment for the provision of
4 hospital, ambulatory surgical, mobile surgical care, primary
5 care, or comprehensive health care under the dominion and
6 control of the licensee, including offices and locations where
7 the licensed facility provides medical care and treatment to
8 affected patients.

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

11 (18) "Within the licensed facility" or "within the
12 premises" means anywhere on the premises of the licensed
13 facility or the premises of any office, clinic, or ancillary
14 facility that is owned, leased and operated, or controlled by
15 the licensed facility.

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

18 766.402 Agency approval of enterprise plans for
19 patient protection and provider liability.--

20 (1) An eligible hospital in conjunction with either
21 the executive committee of its medical staff, or the board of
22 trustees of a state university, if applicable, which has
23 adopted an enterprise plan in accordance with s. 766.404 may
24 petition the Agency for Health Care Administration to enter an
25 order certifying approval of the hospital as a certified
26 patient safety facility.

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

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

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

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

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

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

13 (f) The petitioners satisfy requirements for financial
14 accountability of affected practitioners, as specified in s.
15 766.407; and

16 (g) The petitioners satisfy all other requirements of
17 ss. 766.401-766.410.

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

20 766.403 Enterprise-wide patient safety measures.--

21 (1) In order to satisfy the requirements of s.
22 766.402(2)(a) or s. 766.410, the licensed facility shall:

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

29 (b) Establish within the facility a system for
30 reporting near misses and agree to submit any information
31 collected to the Florida Patient Safety Corporation. Such

1 information must be submitted by the facility and made
2 available by the Patient Safety Corporation in accordance with
3 s. 381.0271(7).

4 (c) Design and make available to facility staff,
5 including medical staff, a patient safety curriculum that
6 provides lecture and web-based training on recognized patient
7 safety principles, which may include communication-skills
8 training, team-performance assessment and training,
9 risk-prevention strategies, and best practices and
10 evidence-based medicine. The licensed facility shall report
11 annually to the agency the programs presented.

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

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

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

31

1 (g) Establish a procedure to biennially review the
2 facility's patient safety program and its compliance with
3 requirements of this section. Such review shall be conducted
4 by an independent patient safety organization as defined in s.
5 766.1016(1) or other professional organization approved by the
6 agency. The organization performing the review shall prepare a
7 written report with detailed findings and recommendations. The
8 report shall be forwarded to the facility's risk manager or
9 patient safety officer, who may make written comments in
10 response thereto. The report and any written comments shall be
11 presented to the governing board of the licensed facility. A
12 copy of the report and any of the facilities' responses to the
13 findings and recommendations shall be provided to the agency
14 within 60 days after the date that the governing board
15 reviewed the report. The report is confidential and may not be
16 produced or discovered in any civil action. Likewise, the
17 report, and the information contained therein, is not
18 admissible as evidence for any purpose in any action for
19 medical negligence.

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

24 (i) Provide assistance to affected physicians, upon
25 request, regarding implementation and evaluation of individual
26 risk-management, patient-safety, and incident-reporting
27 systems in clinical settings outside the premises of the
28 licensed facility. Provision of such assistance may not be the
29 basis for finding or imposing any liability on the licensed
30 facility for the medical negligence of the affected physician
31

1 in clinical settings outside the premises of the licensed
2 facility.

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

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

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

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

24 766.404 Enterprise liability in certain health care
25 facilities.--

26 (1) Subject to the requirements of ss.
27 766.401-766.409, the agency may enter an order certifying the
28 petitioner-hospital as a certified patient safety facility and
29 providing that the hospital bears sole and exclusive liability
30 for any and all acts of medical negligence within the licensed
31 facility by affected physicians and affected practitioners who

1 are employees and agents of an accredited medical school when
2 such medical negligence causes damage to affected patients.

3 (2) In any action for personal injury or wrongful
4 death, whether in contract or tort or predicated on a
5 statutory cause of action, arising out of medical negligence
6 within the premises resulting in damages to a patient of a
7 certified patient safety facility, the licensed facility bears
8 sole and exclusive liability for the medical negligence of
9 affected physicians and affected practitioners who are
10 employees or agents of an accredited medical school and the
11 employees and agents of the hospital. Any other provider,
12 person, organization, or entity that commits medical
13 negligence within the premises resulting in damages to a
14 patient, and any other provider, person, organization, or
15 entity that is vicariously liable for medical negligence
16 within the premises of an affected practitioner under the
17 theory of respondent superior or otherwise, may not be named
18 as a defendant in any such action and any such provider,
19 person, organization, or entity is not liable for the medical
20 negligence of an affected practitioner. This subsection does
21 not impose liability or confer immunity on any other provider,
22 person, organization, or entity for acts of medical
23 malpractice committed on any person in clinical settings other
24 than the premises of the affected facility.

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

27 (a) An affected practitioner shall post notice in the
28 form of a sign prominently displayed in the reception area and
29 clearly noticeable by all patients or provide a written
30 statement to any person to whom medical services are being
31 provided. The sign or statement must read as follows: "In

1 general, physicians in the State of Florida are personally
2 liable for acts of medical negligence, subject to certain
3 limitations. However, physicians who perform medical services
4 within a certified patient safety facility are exempt from
5 personal liability because the licensed hospital bears sole
6 and exclusive liability for acts of medical negligence within
7 the health care facility pursuant to an administrative order
8 of the Agency for Health Care Administration entered in
9 accordance with the Enterprise Act for Patient Protection and
10 Provider Liability. YOUR DOCTOR HOLDS CLINICAL STAFF
11 PRIVILEGES IN A CERTIFIED PATIENT SAFETY FACILITY. UNDER
12 FLORIDA LAW, ANY CLAIM FOR MEDICAL NEGLIGENCE WITHIN THE
13 HEALTH CARE FACILITY MUST BE INITIATED AGAINST THE HOSPITAL
14 AND NOT AGAINST YOUR DOCTOR, BECAUSE THE HOSPITAL IS SOLELY
15 RESPONSIBLE FOR ALL ACTS OF PROFESSIONAL NEGLIGENCE WITHIN THE
16 PREMISES. THIS PROVISION DOES NOT AFFECT YOUR PHYSICIAN'S
17 LIABILITY FOR ACTS OF MEDICAL NEGLIGENCE IN OTHER CLINICAL
18 SETTINGS. IF YOU DO NOT UNDERSTAND, PLEASE DISCUSS WITH YOUR
19 DOCTOR BEFORE YOUR CONSULTATION. This notice is provided
20 pursuant to Florida law."

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

1 such as sovereign immunity. However, physicians who perform
2 medical services within a certified patient safety facility
3 are exempt from personal liability because the licensed
4 hospital bears sole and exclusive liability for acts of
5 medical negligence within the affected facility pursuant to an
6 administrative order of the Agency for Health Care
7 Administration entered in accordance with the Enterprise Act
8 for Patient Protection and Provider Liability. YOUR DOCTOR
9 HOLDS CLINICAL STAFF PRIVILEGES IN ONE OR MORE CERTIFIED
10 PATIENT SAFETY FACILITIES. AT LEAST ONE OF THESE HOSPITALS IS
11 SUBJECT TO SOVEREIGN IMMUNITY. UNDER FLORIDA LAW, ANY CLAIM
12 FOR MEDICAL NEGLIGENCE WITHIN THE HEALTH CARE FACILITY MUST BE
13 INITIATED AGAINST THE HOSPITAL AND NOT AGAINST YOUR DOCTOR,
14 BECAUSE THE HOSPITAL IS SOLELY RESPONSIBLE FOR ALL ACTS OF
15 PROFESSIONAL NEGLIGENCE WITHIN THE PREMISES. MOREOVER,
16 RECOVERY AGAINST THE HOSPITAL MAY BE LIMITED, DUE TO FLORIDA'S
17 SOVEREIGN IMMUNITY LAW. THESE PROVISIONS DO NOT AFFECT YOUR
18 PHYSICIAN'S LIABILITY FOR ACTS OF MEDICAL NEGLIGENCE IN OTHER
19 CLINICAL SETTINGS. IF YOU DO NOT UNDERSTAND, PLEASE DISCUSS
20 WITH YOUR DOCTOR BEFORE YOUR CONSULTATION. This notice is
21 provided pursuant to Florida law."

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

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

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

28 3. Notice is not practicable.

29 (d) This subsection is directory in nature. An agency
30 order certifying approval of an enterprise plan for patient
31 protection and provider liability shall, as a matter of law,

1 constitute conclusive evidence that the hospital complies with
2 all applicable patient safety requirements of s. 766.403 and
3 all other requirements of ss. 766.401-766.409. Evidence of
4 noncompliance with s. 766.403 or any other provision of ss.
5 766.401-766.409 may not be admissible for any purpose in any
6 action for medical malpractice. Failure to comply with the
7 requirements of this subsection does not affect the
8 liabilities or immunities conferred by ss. 766.401-766.409.
9 This subsection does not give rise to an independent cause of
10 action for damages.

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

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

20 (6) The agency order certifying approval of an
21 enterprise plan for patient protection remains in effect until
22 revoked. The agency shall revoke the order upon the unilateral
23 request of the licensed facility, the executive committee of
24 the medical staff, or the affiliated medical school, whichever
25 is applicable. The agency may revoke the order upon reasonable
26 notice to the affected facility that it fails to comply with
27 material requirements of ss. 766.401-766.409 or material
28 conditions of the order certifying approval of the enterprise
29 plan and further upon a determination that the licensed
30 facility has failed to cure stated deficiencies upon
31 reasonable notice. An administrative order revoking approval

1 of an enterprise plan for patient protection and provider
2 liability terminates the plan on January 1 of the year
3 following entry of the order or 6 months after entry of the
4 order, whichever is longer. Revocation of an agency order
5 certifying approval of an enterprise plan for patient
6 protection and provider liability applies prospectively to
7 causes of action for medical negligence which arise on or
8 after the effective date of termination.

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

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

25 (9) Sections 766.401-766.409 do not impose strict
26 liability or liability without fault for medical incidents
27 that occur within an affected facility. To maintain a cause of
28 action against an affected facility pursuant to ss.
29 766.401-766.409, the claimant must allege and prove that an
30 employee or agent of the licensed facility, or an affected
31 practitioner who is covered by an approved enterprise plan for

1 patient protection and provider liability, committed medical
2 negligence within the premises of the licensed facility, even
3 though an active tortfeasor is not named or joined as a party
4 defendant in the lawsuit.

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

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

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

16 766.405 Enterprise plans.--

17 (1) It is the intent of the Legislature that
18 enterprise plans for patient protection are elective and not
19 mandatory for eligible hospitals. It is further the intent of
20 the Legislature that the medical staff or affiliated medical
21 school of an eligible hospital must concur with the
22 development and implementation of an enterprise plan for
23 patient protection and provider liability. It is further the
24 intent of the Legislature that the licensed facility and
25 medical staff or affiliated medical school be accorded wide
26 latitude in formulating enterprise plans, consistent with the
27 underlying purpose of ss. 766.401-766.409 to encourage
28 innovative, systemic measures for patient protection and
29 quality assurance in licensed facilities, especially in
30 clinical settings where surgery is performed. Adoption of an
31

1 enterprise plan is a necessary condition for agency approval
2 of a certified patient safety facility.

3 (2) An eligible hospital and the executive committee
4 of its medical staff or affiliated medical school, if
5 applicable, shall adopt an enterprise plan as a necessary
6 condition to agency approval of a certified patient safety
7 facility. An affirmative vote of approval by the regularly
8 constituted executive committee of the medical staff, however
9 named or constituted, is sufficient to manifest approval by
10 the medical staff of the enterprise plan. Once approved,
11 affected physicians and affected practitioners are subject to
12 the enterprise plan. The plan may be conditioned on agency
13 approval of an enterprise plan for patient protection and
14 provider liability for the affected facility. For eligible
15 hospitals meeting the requirements of s. 768.28(12)(c)3., the
16 enterprise plan shall be limited to affected physicians and
17 affected practitioners who are employees or agents of a state
18 university. At a minimum, the enterprise plan must contain
19 provisions covering:

20 (a) Compliance with a patient protection plan;

21 (b) Internal review of medical incidents;

22 (c) Timely reporting of medical incidents to state
23 agencies;

24 (d) Professional accountability of affected physicians
25 and affected practitioners; and

26 (e) Financial accountability of affected physicians
27 and affected practitioners.

28 (3) This section does not prohibit a patient safety
29 facility from including other provisions relating to the
30 enterprise plan in a separate agreement, as a condition of
31

1 staff privileges, or by way of contract with an organization
2 providing medical staff for the licensed facility.

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

8 (5) If multiple campuses share one license, the
9 enterprise plan shall be limited to the primary campus or the
10 campus having the largest number of beds and, if applicable,
11 associated outpatient ancillary facilities. If the enterprise
12 plan is so limited, it must specify the campus and any
13 outpatient ancillary facilities that will constitute the
14 enterprise.

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

17 766.406 Professional accountability of affected
18 practitioners.--

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

22 (2) A certified patient safety facility shall report
23 adverse findings of medical negligence or failure to adhere to
24 applicable standards of professional responsibility by
25 affected practitioners to the Department of Health.

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

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

30 766.407 Financial accountability of affected
31 practitioners.--

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

20 (2) Pursuant to an enterprise plan for patient
21 protection and provider liability, a licensed facility may
22 impose a reasonable assessment against an affected
23 practitioner that commits medical negligence resulting in
24 injury and damages to an affected patient of the health care
25 facility, upon a determination of failure to adhere to
26 acceptable standards of professional responsibility by an
27 internal peer review committee. A schedule of assessments,
28 criteria for the levying of assessments, procedures for
29 levying assessments, and due process rights of an affected
30 practitioner must be agreed to by the executive committee of
31 the medical staff or affiliated medical school, as applicable,

1 and the licensed facility. The legislative intent in providing
2 for assessments against an affected physician is to instill in
3 each individual health care practitioner the incentive to
4 avoid the risk of injury to the fullest extent and ensure that
5 the residents of this state receive the highest quality health
6 care obtainable. Failure to pay an assessment constitutes
7 grounds for suspension of clinical privileges by the licensed
8 facility. Assessments may be enforced as bona fide debts in a
9 court of law. The licensed facility may exempt its employees
10 and agents from all such assessments. Employees and agents of
11 the state, its agencies, and subdivisions, as defined by s.
12 768.28, are exempt from all such assessments.

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

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

18 766.408 Data collection and reports.--

19 (1) Each certified patient safety facility shall
20 submit an annual report to the agency containing information
21 and data reasonably required by the agency to evaluate
22 performance and effectiveness of the facility's enterprise
23 plan for patient protection and provider liability. However,
24 information may not be submitted or disclosed in violation of
25 any patient's right to privacy under state or federal law.

26 (2) The agency shall aggregate information and data
27 submitted by all affected facilities and each year, on or
28 before March 1, the agency shall submit a report to the
29 Legislature which evaluates the performance and effectiveness
30 of the enterprise approach to patient safety and provider
31 liability in certified patient safety facilities, which

1 reports must include, but are not limited to, pertinent data
2 on:
3 (a) The number and names of affected facilities;
4 (b) The number and types of patient protection
5 measures currently in effect in these facilities;
6 (c) The number of affected practitioners;
7 (d) The number of affected patients;
8 (e) The number of surgical procedures by affected
9 practitioners on affected patients;
10 (f) The number of medical incidents, claims of medical
11 malpractice, and claims resulting in indemnity;
12 (g) The average time for resolution of contested and
13 uncontested claims of medical malpractice;
14 (h) The percentage of claims that result in civil
15 trials;
16 (i) The percentage of civil trials resulting in
17 adverse judgments against affected facilities;
18 (j) The number and average size of an indemnity paid
19 to claimants;
20 (k) The number and average size of assessments imposed
21 on affected practitioners;
22 (l) The estimated liability expense, inclusive of
23 medical liability insurance premiums; and
24 (m) The percentage of medical liability expense,
25 inclusive of medical liability insurance premiums, which is
26 borne by affected practitioners in affected health care
27 facilities.
28
29 Such reports to the Legislature may also include other
30 information and data that the agency deems appropriate to
31

1 gauge the cost and benefit of enterprise plans for patient
2 protection and provider liability.

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

15 (4) Reports submitted to the agency by affected
16 facilities pursuant to this section are public records under
17 chapter 119. However, these reports, and the information
18 contained therein, are not admissible as evidence in a court
19 of law in any action.

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

22 766.409 Rulemaking authority.--The agency may adopt
23 rules to administer ss. 766.401-766.410.

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

26 766.410 Damages in malpractice actions against certain
27 hospitals that meet patient safety requirements; agency
28 approval of patient safety measures.--

29 (1) In recognition of their essential role in training
30 future health care providers and in providing innovative
31 medical care for this state's residents, in recognition of

1 their commitment to treating indigent patients, and further in
2 recognition that all teaching hospitals, as defined in s.
3 408.07, both public and private, and hospitals licensed under
4 chapter 395 which are owned and operated by a university that
5 maintains an accredited medical school, collectively defined
6 as eligible hospitals in s. 766.401(8), provide benefits to
7 the residents of this state through their roles in improving
8 the quality of medical care, training health care providers,
9 and caring for indigent patients, the limits of liability for
10 medical malpractice arising out of the rendering of, or the
11 failure to render, medical care by all such hospitals, shall
12 be determined in accordance with the requirements of this
13 section, notwithstanding any other provision of state law.

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

18 (3) In accordance with chapter 120, the agency shall
19 enter an order approving the petition upon a showing that the
20 eligible hospital complies with the patient safety measures
21 specified in s. 766.403. Upon entry of the agency order, and
22 for the entire period of time that the order remains in
23 effect, the limits of liability for medical malpractice
24 arising out of the rendering of, or the failure to render,
25 medical care by the hospital covered by the order and its
26 employees and agents shall be up to \$500,000 in the aggregate
27 for all related claims or judgments for noneconomic damages
28 arising out of the same incident or occurrence. Claims or
29 judgments for noneconomic damages and awards of past economic
30 damages shall be offset by collateral sources, and paid in
31 full at the time of final settlement. Awards of future

1 economic damages, after being offset by collateral sources,
2 shall, at the option of the teaching hospital, be reduced by
3 the court to present value and paid in full or paid by means
4 of periodic payments in the form of annuities or reversionary
5 trusts, such payments to be paid for the life of the claimant
6 or for so long as the condition for which the award was made
7 persists, whichever is shorter, without regard to the number
8 of years awarded by the trier of fact, at which time the
9 obligation to make such payments terminates. A company that
10 underwrites an annuity to pay future economic damages shall
11 have a Best Company rating of not less than A. The terms of a
12 reversionary instrument used to periodically pay future
13 economic damages must be approved by the court, such approval
14 may not be unreasonably withheld.

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

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

22 (6) The agency order certifying approval of a petition
23 under this section remains in effect until revoked. The agency
24 may revoke the order upon reasonable notice to the affected
25 hospital that it fails to comply with material requirements of
26 ss. 766.401-766.410 or material conditions of the order
27 certifying compliance with required patient safety measures
28 and that the hospital has failed to cure stated deficiencies
29 upon reasonable notice. Revocation of an agency order
30 certifying approval of an enterprise plan for patient
31 protection and provider liability applies prospectively to

1 causes of action for medical negligence that arise on or after
2 the effective date of the order of revocation.

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

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

18 (9) An eligible hospital may petition the agency for
19 an order pursuant to this section or an order pursuant to s.
20 766.404. However, a hospital may not be approved for both
21 enterprise liability under s. 766.404 and the limitations on
22 damages under this section.

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

25 Section 19. Subsections (5) and (12) of section
26 768.28, Florida Statutes, are amended to read:

27 768.28 Waiver of sovereign immunity in tort actions;
28 recovery limits; limitation on attorney fees; statute of
29 limitations; exclusions; indemnification; risk management
30 programs.--
31

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

6 (b) Except as provided in paragraph (c), neither the
7 state or ~~nor~~ its agencies or subdivisions are ~~shall be~~ liable
8 to pay a claim or a judgment by any one person which exceeds
9 the sum of \$100,000 or any claim or judgment, or portions
10 thereof, which, when totaled with all other claims or
11 judgments paid by the state or its agencies or subdivisions
12 arising out of the same incident or occurrence, exceeds the
13 sum of \$200,000. However, a judgment or judgments may be
14 claimed and rendered in excess of these amounts and may be
15 settled and paid pursuant to this act up to \$100,000 or
16 \$200,000, as the case may be; and that portion of the judgment
17 that exceeds these amounts may be reported to the Legislature,
18 but may be paid in part or in whole only by further act of the
19 Legislature. Notwithstanding the limited waiver of sovereign
20 immunity provided herein, the state or an agency or
21 subdivision thereof may agree, within the limits of insurance
22 coverage provided, to settle a claim made or a judgment
23 rendered against it without further action by the Legislature,
24 but the state or agency or subdivision thereof shall not be
25 deemed to have waived any defense of sovereign immunity or to
26 have increased the limits of its liability as a result of its
27 obtaining insurance coverage for tortious acts in excess of
28 the \$100,000 or \$200,000 waiver provided above. The
29 limitations of liability set forth in this subsection shall
30 apply to the state and its agencies and subdivisions whether
31

1 or not the state or its agencies or subdivisions possessed
2 sovereign immunity before July 1, 1974.

3 (c) In any action for medical negligence within a
4 certified patient safety facility that is covered by sovereign
5 immunity, given that the licensed health care facility bears
6 sole and exclusive liability for acts of medical negligence
7 pursuant to the Enterprise Act for Patient Protection and
8 Provider Liability, inclusive of ss. 766.401-766.409, neither
9 the state or its agencies or subdivisions are liable to pay a
10 claim or a judgment by any one person which exceeds the sum of
11 \$150,000 or any claim or judgment, or portions thereof, which,
12 when totaled with all other claims or judgments paid by the
13 state or its agencies or subdivisions arising out of the same
14 incident or occurrence, exceeds the sum of \$300,000. However,
15 a judgment may be claimed and rendered in excess of these
16 amounts and may be settled and paid up to \$150,000 or
17 \$300,000, as the case may be. That portion of the judgment
18 which exceeds these amounts may be reported to the
19 Legislature, but may be paid in part or in whole only by
20 further act of the Legislature. Notwithstanding the limited
21 waiver of sovereign immunity provided in this paragraph, the
22 state or an agency or subdivision thereof may agree, within
23 the limits of insurance coverage provided, to settle a claim
24 made or a judgment rendered against it without further action
25 by the Legislature, but the state or agency or subdivision
26 thereof does not waive any defense of sovereign immunity or
27 increase limits of its liability as a result of its obtaining
28 insurance coverage for tortious acts in excess of the \$150,000
29 waiver or the \$300,000 waiver provided in this paragraph. The
30 limitations of liability set forth in this paragraph apply to
31 the state and its agencies and subdivisions whether or not the

1 state or its agencies or subdivisions possessed sovereign
2 immunity before July 1, 1974.

3 (12)(a) A health care practitioner, as defined in s.
4 456.001(4), who has contractually agreed to act as an agent of
5 a state university board of trustees to provide medical
6 services to a student athlete for participation in or as a
7 result of intercollegiate athletics, to include team
8 practices, training, and competitions, ~~is shall be considered~~
9 an agent of the respective state university board of trustees,
10 for the purposes of this section, while acting within the
11 scope of and pursuant to guidelines established in that
12 contract. The contracts shall provide for the indemnification
13 of the state by the agent for any liabilities incurred up to
14 the limits set out in this chapter.

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

19 (c)1. For purposes of this subsection, the terms
20 "certified patient safety facility," "medical staff," and
21 "medical negligence" have the same meanings as provided in s.
22 766.401.

23 2. A certified patient safety facility, wherein a
24 minimum of 90 percent of the members of the medical staff
25 consist of physicians are employees or agents of a state
26 university, is an agent of the respective state university
27 board of trustees for purposes of this section only to the
28 extent that the licensed facility, in accordance with an
29 enterprise plan for patient protection and provider liability,
30 inclusive of ss. 766.401-766.409, approved by the Agency for
31 Health Care Administration, is solely and exclusively liable

1 for acts of medical negligence of physicians providing health
2 care services within the licensed facility.

3 3. A statutory teaching hospital as defined in s.
4 408.07 which has been found to be an agent of the state for
5 other purposes and which has adopted an enterprise plan for
6 patient protection and provider liability for the sole and
7 exclusive liability for acts of medical negligence of affected
8 physicians and affected practitioners who are employees and
9 agents of the affiliated state university board of trustees
10 and its own hospital employees and agents, inclusive of ss.
11 766.401-766.409, approved by the Agency for Health Care
12 Administration, is an agent of the respective state university
13 board of trustees only for purposes of this section.

14 4. Subject to the acceptance of the Florida Board of
15 Governors and a state university board of trustees, a licensed
16 facility as defined by this subsection may secure the limits
17 of liability protection described in paragraph (5)(c) from a
18 self-insurance program created pursuant to s. 1004.24. A
19 notice of intent to commence an action for medical negligence
20 arising from the care or treatment of a patient in a statutory
21 teaching hospital as defined in s. 408.07 having an approved
22 enterprise plan subject to the provisions of this subsection
23 shall be sent to the licensed facility, as the statutory agent
24 created pursuant to an enterprise plan of the related board of
25 trustees of a state university for the limited purposes of
26 administering an enterprise plan for patient protection and
27 provider liability. A complaint alleging medical negligence
28 resulting in damages to a patient in a statutory teaching
29 hospital as defined in s. 408.07 having an approved enterprise
30 plan subject to the provisions of this paragraph shall be
31 commenced against the applicable board of trustees of a state

1 university on the relation of the licensed facility, and the
2 doctrines of res judicata and collateral estoppel shall apply.
3 The complaint shall be served on the licensed facility. Any
4 notice of intent mailed to the licensed facility, any legal
5 process served on the licensed facility, and any other notice,
6 paper, or pleading that is served, sent, or delivered to the
7 licensed facility pertaining to a claim of medical negligence,
8 shall have the same legal force and effect as mailing,
9 service, or delivery to a duly authorized agent of the board
10 of trustees of the respective state university,
11 notwithstanding any provision of law to the contrary. Upon
12 receipt of any such notice of intent, complaint for damages,
13 or other notice, paper, or pleading pertaining to a claim of
14 medical negligence, a licensed facility subject to the
15 provisions of this paragraph shall give timely notice to the
16 related board of trustees of the state university, except that
17 failure to give timely notice does not affect the legal
18 sufficiency of the notice of intent, service of process, or
19 other notice, paper, or pleading. A final judgment or binding
20 arbitration award against the board of trustees of a state
21 university on the relation of a licensed facility, arising
22 from a claim of medical negligence resulting in damages to a
23 patient in a certified patient safety facility subject to the
24 provisions of this paragraph, may be enforced in the same
25 manner, and is subject to the same limitations on enforcement
26 or recovery, as any final judgment for damages or binding
27 arbitration award against the board of trustees of a state
28 university, notwithstanding any provision of law to the
29 contrary. Any settlement agreement executed by the board of
30 trustees of a state university on the relation of a licensed
31 facility arising from a claim of medical negligence resulting

1 in damages to a patient in a statutory teaching hospital as
2 defined in s. 407.08 having an approved enterprise plan
3 subject to the provisions of this paragraph may be enforced in
4 the same manner, and is subject to the same limitations, as a
5 settlement agreement executed by an authorized agent of the
6 board of trustees. The board of trustees of a state university
7 may make payment to a claimant, in whole or in part, only as
8 provided in paragraph (5)(c) if, any portion of a final
9 judgment or binding arbitration award against the board of
10 trustees of a state university on the relation of a licensed
11 facility, or if any portion of a settlement of a claim for
12 medical negligence arising from a statutory teaching hospital
13 as defined in s. 408.07 having an approved enterprise plan
14 subject to the provisions of this paragraph, exceeds the
15 amounts of the limited waiver of sovereign immunity specified
16 in paragraph (5)(c).

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

23 Section 21. If a conflict between any provision of
24 this act and section 817.505, section 456.052, section
25 456.053, section 456.054, section 458.331, or section 459.015,
26 Florida Statutes, the provisions of this act shall govern. The
27 provisions of this act should be broadly construed in
28 furtherance of the overriding legislative intent to facilitate
29 innovative approaches for patient protection and provider
30 liability in eligible hospitals.

31

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

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

5
6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 Senate Bill 1916

9 The committee substitute exempts, from the financial
10 responsibility requirements for licensure and licensure
11 renewal, osteopathic physicians who only perform surgery or
12 who have only clinic privileges or admitting privileges in one
13 or more certified patient safety facilities which are legally
14 liable for medical negligence of affected practitioners
15 pursuant to the Enterprise Act for Patient Protection and
16 Provider Liability.

17 The committee substitute corrects requirements for insurers to
18 provide insurance to physicians to meet financial
19 responsibility requirements and the Department of Health no
20 longer must adopt administrative rules for medical malpractice
21 insurers to do so.

22 The requirements for certain hospitals providing malpractice
23 coverage under an enterprise plan to submit a certified
24 financial statement regarding the soundness of the reserve
25 funds is revised.

26 Definitions are revised for purposes of the Enterprise Act for
27 Patient Protection and Provider Liability. Requirements for
28 enterprise plans are revised.

29 The committee substitute deletes provisions that authorize the
30 Florida Patient Safety Corporation to intervene as a party in
31 administrative actions related to patient safety in licensed
health care facilities, including hospitals.

The committee substitute provides a procedure for malpractice
litigants to serve notice of intent to sue on teaching
hospitals that have executed an enterprise plan and procedures
for settlements and final judgments to be enforced.