



1 for medical malpractice; creating s. 766.403,  
2 F.S.; providing requirements for a hospital to  
3 demonstrate that it is engaged in a common  
4 enterprise for the care and treatment of  
5 patients; specifying required patient-safety  
6 measures; prohibiting a report or document  
7 generated under the act from being admissible  
8 or discoverable as evidence; creating s.  
9 766.404, F.S.; requiring a certified  
10 patient-safety facility to submit an annual  
11 report to the agency and the Legislature;  
12 providing requirements for the annual report;  
13 providing that the annual report may include  
14 certain information from the Office of  
15 Insurance Regulation within the Department of  
16 Financial Services; providing that the annual  
17 report is subject to public-records  
18 requirements but is not admissible as evidence  
19 in a legal proceeding; creating s. 766.405,  
20 F.S.; providing for limitations on damages for  
21 eligible hospitals that are certified for  
22 compliance with certain patient-safety  
23 measures; creating s. 766.406, F.S.; providing  
24 rulemaking authority; providing for  
25 severability; providing for broad statutory  
26 view of the act; providing for self-execution  
27 of the act; providing an effective date.

28  
29 Be It Enacted by the Legislature of the State of Florida:  
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31

1           Section 1. (1) This act may be cited as the "Patient  
2 Safety and Provider Liability Act."

3           Section 2. Legislative findings.--

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

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

11           (3) The Legislature finds that the medical malpractice  
12 insurance crisis in this state can be alleviated by the  
13 adoption of innovative approaches for patient safety in  
14 teaching hospitals, which can lead to a reduction in medical  
15 errors coupled with a limitation on noneconomic damages that  
16 can be awarded against a teaching hospital that implements  
17 such innovative approaches.

18           (4) The Legislature finds statutory incentives are  
19 necessary to facilitate innovative approaches for patient  
20 safety in hospitals and that such incentives and  
21 patient-safety measures will benefit all persons seeking  
22 health care services in this state.

23           (5) The Legislature finds that coupling patient safety  
24 measures and a limitation on provider liability in teaching  
25 hospitals will lead to a reduction in the frequency and  
26 severity of incidents of medical malpractice in hospitals.

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

31

1           (7) The Legislature finds that there is no alternative  
2 method that addresses the overwhelming public necessity to  
3 implement patient-safety measures and limit provider  
4 liability.

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

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

10           (10) The Legislature finds that statutory teaching  
11 hospitals are essential for high-quality medical care and  
12 medical education in this state.

13           (11) The Legislature finds that the critical mission  
14 of statutory teaching hospitals is severely undermined by the  
15 ongoing medical malpractice crisis.

16           (12) The Legislature finds that teaching hospitals are  
17 appropriate health care facilities for the implementation of  
18 innovative approaches to enhancing patient safety and limiting  
19 provider liability.

20           (13) The Legislature finds an overwhelming public  
21 necessity to impose reasonable limitations on actions for  
22 medical malpractice against teaching hospitals in furtherance  
23 of the critical public interest in promoting access to  
24 high-quality medical care, medical education, and innovative  
25 approaches to patient safety and provider liability.

26           (14) The Legislature finds an overwhelming public  
27 necessity for teaching hospitals to implement innovative  
28 measures for patient safety and limit provider liability in  
29 order to generate empirical data for state policymakers  
30 concerning the effectiveness of these measures. Such data may  
31 lead to broader application of these measures in a wider array

1 of hospitals after a reasonable period of evaluation and  
2 review.

3 (15) The Legislature finds an overwhelming public  
4 necessity to promote the academic mission of teaching  
5 hospitals. Furthermore, the Legislature finds that the  
6 academic mission of these medical facilities is materially  
7 enhanced by statutory authority for the implementation of  
8 innovative approaches to promoting patient safety and limiting  
9 provider liability. Such approaches can be carefully studied  
10 and learned by medical students, medical school faculty, and  
11 affiliated physicians in appropriate clinical settings,  
12 thereby enlarging the body of knowledge concerning patient  
13 safety and provider liability which is essential for  
14 advancement of patient safety, reduction of expenses inherent  
15 in the medical liability system, and curtailment of the  
16 medical malpractice insurance crisis in this state.

17 Section 3. Section 627.41485, Florida Statutes, is  
18 created to read:

19 627.41485 Medical malpractice insurers; optional  
20 coverage exclusion for insureds that maintain a patient-safety  
21 plan specified in s. 766.403.--

22 (1) An insurer issuing policies of professional  
23 liability coverage for claims arising out of the rendering of,  
24 or the failure to render, medical care or services may make  
25 available to physicians licensed under chapter 458,  
26 osteopathic physicians licensed under chapter 459, podiatric  
27 physicians licensed under chapter 461, dentists licensed under  
28 chapter 466, and nurses licensed under part I of chapter 464  
29 coverage having an appropriate exclusion for acts of medical  
30 negligence occurring within the premises of a hospital that  
31 has agreed to indemnify covered persons for legal liability

1 pursuant to s. 766.110(2), subject to the usual underwriting  
2 standards.

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

5 Section 4. Subsection (2) of section 766.110, Florida  
6 Statutes, is amended to read:

7 766.110 Liability of health care facilities.--

8 (2) Every hospital licensed under chapter 395 may  
9 carry liability insurance or adequately insure itself in an  
10 amount of not less than \$1.5 million per claim, \$5 million  
11 annual aggregate to cover all medical injuries to patients  
12 resulting from negligent acts or omissions on the part of  
13 those members of its medical staff who are covered thereby in  
14 furtherance of the requirements of ss. 458.320 and 459.0085.  
15 Notwithstanding s. 626.901, a licensed hospital and verified  
16 trauma center may extend insurance and self-insurance coverage  
17 to members of the medical staff, including physicians'  
18 practices, individually or through a professional association,  
19 as defined in chapter 621, and other health care  
20 practitioners, as defined in s. 456.001(4), including students  
21 preparing for licensure. Such coverage may be limited to legal  
22 liability arising out of medical negligence within the  
23 hospital premises as defined under s. 766.401. Self-insurance  
24 Coverage extended hereunder to a member of a hospital's  
25 medical staff meets the financial responsibility requirements  
26 of ss. 458.320 and 459.0085 if the physician's coverage limits  
27 are not less than the minimum limits established in ss.  
28 458.320 and 459.0085 ~~and the hospital is a verified trauma~~  
29 ~~center that has extended self-insurance coverage continuously~~  
30 ~~to members of its medical staff for activities both inside and~~  
31 ~~outside of the hospital. Any authorized insurer as defined in~~

1 s. 626.914(2), risk retention group as defined in s. 627.942,  
2 or joint underwriting association established under s.  
3 627.351(4) which is authorized to write casualty insurance may  
4 make available, but ~~is shall~~ not ~~be~~ required to write, such  
5 coverage. The hospital may assess on an equitable and pro rata  
6 basis the following individuals to whom it extends coverage  
7 pursuant to this section ~~professional health care providers~~  
8 for a portion of the total hospital insurance cost for this  
9 coverage: physicians licensed under chapter 458, osteopathic  
10 physicians licensed under chapter 459, podiatric physicians  
11 licensed under chapter 461, dentists licensed under chapter  
12 466, ~~and~~ nurses licensed under part I of chapter 464, and  
13 other health professionals. The hospital may provide for a  
14 deductible amount to be applied against any individual health  
15 care provider found liable in a law suit in tort or for breach  
16 of contract. The legislative intent in providing for the  
17 deductible to be applied to individual health care providers  
18 found negligent or in breach of contract is to instill in each  
19 individual health care provider the incentive to avoid the  
20 risk of injury to the fullest extent and ensure that the  
21 citizens of this state receive the highest quality health care  
22 obtainable.

23 Section 5. Present subsections (6) and (7) of section  
24 766.118, Florida Statutes, are renumbered as subsections (7)  
25 and (8), respectively, and a new subsection (6) is added to  
26 that section, to read:

27 766.118 Determination of noneconomic damages.--

28 (6) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE  
29 OF CERTAIN HOSPITALS.--With respect to a complaint for  
30 personal injury or wrongful death arising from medical  
31 negligence, a hospital that has received an order from the

1 Agency for Health Care Administration pursuant to s. 766.402  
2 which certifies that the facility complies with patient-safety  
3 measures specified in s. 766.403 shall be liable for no more  
4 than \$500,000 in noneconomic damages, regardless of the number  
5 of claimants, number of claims, or theory of liability,  
6 including vicarious liability, arising from the same nucleus  
7 of operative fact, notwithstanding any other provision of this  
8 section.

9           Section 6. Section 766.401, Florida Statutes, is  
10 created to read:

11           766.401 Definitions.--As used in this section and ss.  
12 766.402-766.405, the term:

13           (1) "Affected patient" means a patient of a certified  
14 patient-safety facility.

15           (2) "Affected practitioner" means any person,  
16 including a physician, who is credentialed by the eligible  
17 hospital to provide health care services in a certified  
18 patient-safety facility.

19           (3) "Agency" means the Agency for Health Care  
20 Administration.

21           (4) "Certified patient-safety facility" means any  
22 eligible hospital that, in accordance with an order from the  
23 Agency for Health Care Administration, has adopted a  
24 patient-safety plan.

25           (5) "Clinical privileges" means the privileges granted  
26 to a physician or other licensed health care practitioner to  
27 render patient-care services in a hospital.

28           (6) "Eligible hospital" or "licensed facility" means a  
29 statutory teaching hospital, as defined by s. 408.07, which  
30 maintains at least seven different accredited programs in  
31



1 graduate medical education and has 100 or more full-time  
2 equivalent resident physicians.

3 (7) "Health care provider" or "provider" means:

4 (a) An eligible hospital.

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

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

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

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

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

21 (g) A free clinic that delivers only medical  
22 diagnostic services or nonsurgical medical treatment free of  
23 charge to low-income persons not otherwise covered by Medicaid  
24 or other programs for low-income persons.

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

29 (i) Any person, organization, or entity that is  
30 vicariously liable under the theory of respondeat superior or  
31 any other theory of legal liability for medical negligence

1 committed by any licensed professional listed in this  
2 subsection.

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

13 (8) "Health care practitioner" or "practitioner" means  
14 any person, entity, or organization identified in subsection  
15 (7), except for a hospital.

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

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

22 (11) "Person" means any individual, partnership,  
23 corporation, association, or governmental unit.

24 (12) "Premises" means those buildings, beds, and  
25 equipment located at the address of the licensed facility and  
26 all other buildings, beds, and equipment for the provision of  
27 the hospital, ambulatory surgical, mobile surgical care,  
28 primary care, or comprehensive health care under the dominion  
29 and control of the licensee, including offices and locations  
30 where the licensed facility offers medical care and treatment  
31 to affected patients.

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

3           Section 7. Section 766.402, Florida Statutes, is  
4 created to read:

5           766.402 Agency approval of patient-safety plans.--

6           (1) An eligible hospital that has adopted a  
7 patient-safety plan may petition the agency to enter an order  
8 certifying approval of the hospital as a certified  
9 patient-safety facility.

10           (2) In accordance with chapter 120, the agency shall  
11 enter an order certifying approval of the certified  
12 patient-safety facility upon a showing that, in furtherance of  
13 an approach to patient safety:

14           (a) The petitioner has established safety measures for  
15 the care and treatment of patients.

16           (b) The petitioner satisfies requirements for  
17 patient-protection measures, as specified in s. 766.403.

18           (c) The petitioner satisfies all other requirements of  
19 ss. 766.401-766.405.

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

24           (4) The order approving a petition under this section  
25 remains in effect until revoked. The agency may revoke the  
26 order upon reasonable notice to the eligible hospital that it  
27 fails to comply with material requirements of s. 766.403 and  
28 that the hospital has failed to cure stated deficiencies upon  
29 reasonable notice. Revocation of an agency order pursuant to  
30 s. 766.403 applies prospectively to any cause of action for  
31

1 medical negligence which arises on or after the effective date  
2 of the order of revocation.

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

13 Section 8. Section 766.403, Florida Statutes, is  
14 created to read:

15 766.403 Patient-safety plans.--

16 (1) In order to satisfy the requirements of s.  
17 766.402, the licensed facility shall have a patient-safety  
18 plan, which provides that the facility shall:

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

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

31

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

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

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

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

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

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

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

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

26 (3) This section does not prohibit the licensed  
27 facility from implementing other measures for promoting  
28 patient safety within the premises. This section does not  
29 relieve the licensed facility from the duty to implement any  
30 other patient-safety measure that is required by state law.  
31 The Legislature intends that the patient-safety measures

1 specified in this section are in addition to all other  
2 patient-safety measures required by state law, federal law,  
3 and applicable accreditation standards for licensed  
4 facilities.

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

9 Section 9. Section 766.404, Florida Statutes, is  
10 created to read:

11 766.404 Annual report.--

12 (1) Each certified patient-safety facility shall  
13 submit an annual report to the agency containing information  
14 and data reasonably required by the agency to evaluate  
15 performance and effectiveness of its patient-safety plan.  
16 However, information may not be submitted or disclosed in  
17 violation of any patient's right to privacy under state or  
18 federal law.

19 (2) The agency shall aggregate information and data  
20 submitted by all certified patient-safety facilities, and each  
21 year, on or before March 1, the agency shall submit a report  
22 to the President of the Senate and the Speaker of the House of  
23 Representatives which evaluates the performance and  
24 effectiveness of the approach to enhancing patient safety and  
25 limiting provider liability in certified patient-safety  
26 facilities. The report must include, but need not be limited  
27 to, pertinent data concerning:

28 (a) The number and names of certified patient-safety  
29 facilities;

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

- 1           (c) The number of affected patients;  
2           (d) The number of surgical procedures on affected  
3 patients;  
4           (e) The number of medical incidents, claims of medical  
5 malpractice, and claims resulting in indemnity;  
6           (f) The average time for resolution of contested and  
7 uncontested claims of medical malpractice;  
8           (g) The percentage of claims which result in civil  
9 trials;  
10           (h) The percentage of civil trials which result in  
11 adverse judgments against affected facilities;  
12           (i) The number and average size of an indemnity paid  
13 to claimants;  
14           (j) The estimated liability expense, inclusive of  
15 medical liability insurance premiums; and  
16           (k) The percentage of medical liability expense,  
17 inclusive of medical liability insurance premiums, which is  
18 borne by affected practitioners in certified patient-safety  
19 facilities.  
20  
21 The report may also include other information and data that  
22 the agency deems appropriate to gauge the cost and benefit of  
23 patient-safety plans.  
24           (3) The agency's annual report to the President of the  
25 Senate and the Speaker of the House of Representatives may  
26 include relevant information and data obtained from the Office  
27 of Insurance Regulation within the Department of Financial  
28 Services concerning the availability and affordability of  
29 enterprise-wide medical liability insurance coverage for  
30 affected facilities and the availability and affordability of  
31 insurance policies for individual practitioners which contain



1 coverage exclusions for acts of medical negligence in  
2 facilities that indemnify health practitioners. The Office of  
3 Insurance Regulation shall cooperate with the agency in the  
4 reporting of information and data specified in this  
5 subsection.

6 (4) Reports submitted to the agency by certified  
7 patient-safety facilities pursuant to this section are public  
8 records under chapter 119. However, these reports, and the  
9 information contained therein, are not admissible as evidence  
10 in a court of law in any action.

11 Section 10. Section 766.405, Florida Statutes, is  
12 created to read:

13 766.405 Damages in malpractice actions against certain  
14 hospitals that meet patient-safety requirements; agency  
15 approval of patient-safety measures.--

16 (1) In recognition of their essential role in training  
17 future health care providers and in providing innovative  
18 medical care for this state's residents, in recognition of  
19 their commitment to treating indigent patients, and further in  
20 recognition that teaching hospitals, as defined in s. 408.07,  
21 provide benefits to the residents of this state through their  
22 roles in improving the quality of medical care, training of  
23 health care providers, and caring for indigent patients, the  
24 limits of liability for medical malpractice arising out of the  
25 rendering of, or the failure to render, medical care by all  
26 such hospitals shall be determined in accordance with the  
27 requirements of this section.

28 (2) Upon entry of an order and for the entire period  
29 of time that the order remains in effect, the damages  
30 recoverable from an eligible hospital covered by the order and  
31 from its employees and agents in actions arising from medical

1 negligence shall be determined in accordance with the  
2 following provisions:

3 (a) Noneconomic damages shall be limited to a maximum  
4 of \$500,000, regardless of the number of claimants, number of  
5 claims, or the theory of liability pursuant to s. 766.118(6).

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

11 (c) After being offset by collateral sources, awards  
12 of future economic damages shall, at the option of the  
13 eligible hospital, be reduced by the court to present value or  
14 paid through periodic payments in the form of an annuity or a  
15 reversionary trust. A company that underwrites an annuity to  
16 pay future economic damages shall have a rating of "A" or  
17 higher by A.M. Best Company. The terms of the reversionary  
18 instrument used to periodically pay future economic damages  
19 must be approved by the court. Such approval may not be  
20 unreasonably withheld.

21 (3) The limitations on damages in subsection (2) apply  
22 prospectively to causes of action for medical negligence which  
23 arise on or after the effective date of the order.

24 Section 11. Section 766.406, Florida Statutes, is  
25 created to read:

26 766.406 Rulemaking authority.--The agency may adopt  
27 rules to administer ss. 766.401-766.405.

28 Section 12. If any provision of this act or its  
29 application to any person or circumstance is held invalid, the  
30 invalidity does not affect other provisions or applications of  
31 the act which can be given effect without the invalid

