

1 A bill to be entitled

2 An act relating to patient safety; creating the Patient
3 Safety and Provider Liability Act; providing legislative
4 findings; amending s. 766.110, F.S.; specifying certain
5 authorized insurers who may make available liability
6 insurance; amending s. 766.118, F.S.; providing a
7 limitation on noneconomic damages for a hospital facility
8 that complies with certain patient safety measures;
9 creating s. 766.401, F.S.; providing definitions; creating
10 s. 766.402, F.S.; authorizing an eligible hospital to
11 petition the agency for an order certifying the hospital
12 as a certified patient safety facility; providing
13 requirements for certification as a patient safety
14 facility; authorizing the agency to conduct onsite
15 examinations; providing for revocation of an order
16 certifying approval of a certified patient safety
17 facility; providing that an order certifying the approval
18 of a certified patient safety facility is conclusive
19 evidence of compliance with statutory patient safety
20 requirements; providing that evidence of noncompliance is
21 not admissible for any action for medical malpractice;
22 creating s. 766.403, F.S.; providing requirements for a
23 hospital to demonstrate that it is engaged in a common
24 enterprise for the care and treatment of patients;
25 specifying required patient safety measures; prohibiting a
26 report or document generated under the act from being
27 admissible or discoverable as evidence; creating s.
28 766.404, F.S.; requiring a certified patient safety

29 facility to submit an annual report to the agency and the
 30 Legislature; providing requirements for the annual report;
 31 providing that the annual report may include certain
 32 information from the Office of Insurance Regulation within
 33 the Department of Financial Services; providing that the
 34 annual report is subject to public records requirements
 35 but is not admissible as evidence in a legal proceeding;
 36 creating s. 766.405, F.S.; providing for limitations on
 37 damages for eligible hospitals that are certified for
 38 compliance with certain patient safety measures and
 39 certain faculty physicians on staff at those hospitals;
 40 creating s. 766.406, F.S.; providing rulemaking authority;
 41 providing for severability; providing an appropriation;
 42 providing an effective date.

43

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

45

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

48 Section 2. Legislative findings.--

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

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

55 (3) The Legislature finds that the medical malpractice
 56 insurance crisis in this state can be alleviated by the adoption

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57 of innovative approaches for patient safety in teaching
58 hospitals, which can lead to a reduction in medical errors
59 together with a limitation on noneconomic damages that can be
60 awarded against a teaching hospital that implements such
61 innovative approaches.

62 (4) The Legislature finds statutory incentives are
63 necessary to facilitate innovative approaches for patient safety
64 in hospitals and that such incentives and patient safety
65 measures will benefit all persons seeking health care services
66 in this state.

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

71 (6) The Legislature finds that there is no alternative
72 method that addresses the overwhelming public necessity to
73 implement patient safety measures and limit provider liability.

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

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

79 (9) The Legislature finds that statutory teaching
80 hospitals are essential for high-quality medical care and
81 medical education in this state.

82 (10) The Legislature finds that teaching hospitals are
83 appropriate health care facilities for the implementation of
84 innovative approaches to enhancing patient safety and limiting

85 provider liability.

86 (11) The Legislature finds an overwhelming public
87 necessity to impose reasonable limitations on actions for
88 medical malpractice against teaching hospitals in furtherance of
89 the critical public interest in promoting access to high-quality
90 medical care, medical education, and innovative approaches to
91 patient safety and provider liability.

92 (12) The Legislature finds an overwhelming public
93 necessity for teaching hospitals to implement innovative
94 measures for patient safety and limit provider liability in
95 order to generate empirical data for state policymakers
96 concerning the effectiveness of these measures. Such data may
97 lead to broader application of these measures in a wider array
98 of hospitals after a reasonable period of evaluation and review.

99 (13) The Legislature finds an overwhelming public
100 necessity to promote the academic mission of teaching hospitals.
101 Furthermore, the Legislature finds that the academic mission of
102 these medical facilities is materially enhanced by statutory
103 authority for the implementation of innovative approaches to
104 promoting patient safety and limiting provider liability. Such
105 approaches can be carefully studied and learned by medical
106 students, medical school faculty, and affiliated physicians in
107 appropriate clinical settings, thereby enlarging the body of
108 knowledge concerning patient safety and provider liability that
109 is essential for advancement of patient safety, reduction of
110 expenses inherent in the medical liability system, and
111 curtailment of the medical malpractice insurance crisis in this
112 state.

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113 Section 3. Subsection (2) of section 766.110, Florida
114 Statutes, is amended to read:

115 766.110 Liability of health care facilities.--

116 (2) Every hospital licensed under chapter 395 may carry
117 liability insurance or adequately insure itself in an amount of
118 not less than \$1.5 million per claim, \$5 million annual
119 aggregate to cover all medical injuries to patients resulting
120 from negligent acts or omissions on the part of those members of
121 its medical staff who are covered thereby in furtherance of the
122 requirements of ss. 458.320 and 459.0085. ~~Self-insurance~~
123 Coverage extended hereunder to a member of a hospital's medical
124 staff meets the financial responsibility requirements of ss.
125 458.320 and 459.0085 if the physician's coverage limits are not
126 less than the minimum limits established in ss. 458.320 and
127 459.0085 and the hospital is a verified trauma center that has
128 extended self-insurance coverage continuously to members of its
129 medical staff for activities both inside and outside of the
130 hospital. Any authorized insurer, approved insurer as defined in
131 s. 626.914(2), risk retention group as defined in s. 627.942, or
132 joint underwriting association established under s. 627.351(4)
133 that is authorized or approved to write casualty insurance may
134 make available, but is shall not be required to write, any such
135 coverage authorized under this subsection. The hospital may
136 assess on an equitable and pro rata basis the following
137 individuals to whom it extends coverage pursuant to this section
138 ~~professional health care providers~~ for a portion of the total
139 hospital insurance cost for this coverage: physicians licensed
140 under chapter 458, osteopathic physicians licensed under chapter

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141 459, podiatric physicians licensed under chapter 461, dentists
142 licensed under chapter 466, and nurses licensed under part I of
143 chapter 464. The hospital may provide for a deductible amount to
144 be applied against any individual health care provider found
145 liable in a law suit in tort or for breach of contract. The
146 legislative intent in providing for the deductible to be applied
147 to individual health care providers found negligent or in breach
148 of contract is to instill in each individual health care
149 provider the incentive to avoid the risk of injury to the
150 fullest extent and ensure that the citizens of this state
151 receive the highest quality health care obtainable.

152 Notwithstanding s. 626.901 or any other provision of this
153 section, a certified patient safety facility, as defined in s.
154 766.401, may extend insurance or self-insurance coverage to some
155 or all members of its medical staff, including, but not limited
156 to, physicians who are not employees or agents of the hospital,
157 and any incorporated or unincorporated organization,
158 association, or group of persons liable for the medical
159 negligence of such physicians, and some or all medical, nursing,
160 or allied health professionals or students affiliated with the
161 hospital, other than persons exempt from liability due to
162 sovereign immunity under s. 768.28. Such coverage must be
163 limited to legal liability arising out of medical negligence
164 within the hospital premises as defined under s. 766.401. A
165 certified patient safety facility may assess individuals to whom
166 it extends coverage for a portion of the total hospital
167 insurance cost for this coverage on an equitable and pro rata
168 basis, and may provide for a deductible amount to be applied

169 against any covered health care provider found liable in a law
 170 suit in tort or for breach of contract.

171 Section 4. Subsections (6) and (7) of section 766.118,
 172 Florida Statutes, are renumbered as subsections (7) and (8),
 173 respectively, and a new subsection (6) is added to that section,
 174 to read:

175 766.118 Determination of noneconomic damages.--

176 (6) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF
 177 CERTAIN HOSPITALS.--Notwithstanding any other provision of this
 178 section, with respect to liability for personal injury or
 179 wrongful death arising from medical negligence, within a
 180 certified safety facility, as defined in s. 766.401, by
 181 employees or agents of the certified patient safety facility or
 182 by the employees or agents of a nonprofit medical school whose
 183 faculty comprises at least 50 percent of the certified patient
 184 safety facility's medical staff, noneconomic damages shall not
 185 exceed \$500,000, regardless of the number of claimants, number
 186 of claims, or theory of liability, including vicarious
 187 liability, arising from the same nucleus of operative fact.

188 Section 5. Section 766.401, Florida Statutes, is created
 189 to read:

190 766.401 Definitions.--As used in this section and ss.
 191 766.402-766.405, the term:

192 (1) "Adverse medical incident" has the same meaning as
 193 provided in s. 381.028 and has the same meaning as "adverse
 194 incident" provided in ss. 381.0271, 395.0197, 458.351, and
 195 459.026.

196 (2) "Affected patient" means a patient of a certified

197 patient safety facility.

198 (3) "Affected practitioner" means any person, including a
 199 physician, who is credentialed by the eligible hospital to
 200 provide health care services in a certified patient safety
 201 facility.

202 (4) "Agency" means the Agency for Health Care
 203 Administration.

204 (5) "Certified patient safety facility" means any eligible
 205 hospital that, in accordance with an order from the Agency for
 206 Health Care Administration, has adopted a patient safety plan.

207 (6) "Eligible hospital" or "licensed facility" means a
 208 statutory teaching hospital, as defined in s. 408.07, that
 209 maintains at least seven different accredited programs in
 210 graduate medical education and has 100 or more full-time
 211 equivalent resident physicians.

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

213 (a) An eligible hospital.

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

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

218 (d) A registered nurse, nurse midwife, licensed practical
 219 nurse, or advanced registered nurse practitioner licensed or
 220 registered under part I of chapter 464 or any facility that
 221 employs nurses licensed or registered under part I of chapter
 222 464 to supply all or part of the care delivered by that
 223 facility.

224 (e) A health care professional association and its

225 employees or a corporate medical group and its employees.

226 (f) Any other medical facility the primary purpose of
 227 which is delivering human medical diagnostic services or
 228 nonsurgical human medical treatment, including an office
 229 maintained by a provider.

230 (g) A free clinic that delivers only medical diagnostic
 231 services or nonsurgical medical treatment free of charge to low-
 232 income persons not otherwise covered by Medicaid or other
 233 programs for low-income persons.

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

238 (i) Any person, organization, or entity that is
 239 vicariously liable under the theory of respondeat superior or
 240 any other theory of legal liability for medical negligence
 241 committed by any licensed professional listed in this
 242 subsection.

243 (j) Any nonprofit corporation qualified as exempt from
 244 federal income taxation under s. 501(a) of the Internal Revenue
 245 Code and described in s. 501(c) of the Internal Revenue Code,
 246 including any university or medical school that employs licensed
 247 professionals listed in this subsection or that delivers health
 248 care services provided by licensed professionals listed in this
 249 subsection, any federally funded community health center, and
 250 any volunteer corporation or volunteer health care provider that
 251 delivers health care services.

252 (8) "Health care practitioner" or "practitioner" means any

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253 person, entity, or organization identified in subsection (7),
254 except for a hospital.

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

258 (10) "Person" means any individual, partnership,
259 corporation, association, or governmental unit.

260 (11) "Premises" means those buildings, beds, and equipment
261 located at the address of the licensed facility and all other
262 buildings, beds, and equipment for the provision of the
263 hospital, ambulatory surgical, mobile surgical care, primary
264 care, or comprehensive health care under the dominion and
265 control of the licensee, including offices and locations where
266 the licensed facility offers medical care and treatment to
267 affected patients.

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

270 Section 6. Section 766.402, Florida Statutes, is created
271 to read:

272 766.402 Agency approval of patient safety plans.--

273 (1) An eligible hospital that has adopted a patient safety
274 plan may petition the agency to enter an order certifying
275 approval of the hospital as a certified patient safety facility.

276 (2) In accordance with chapter 120, the agency shall enter
277 an order certifying approval of the certified patient safety
278 facility upon a showing that, in furtherance of an approach to
279 patient safety, the petitioner:

280 (a) Has established safety measures for the care and

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281 treatment of patients.

282 (b) Satisfies the requirements for patient protection
283 measures specified in s. 766.403.

284 (c) Satisfies all other requirements of ss. 766.401-
285 766.405.

286 (3) Upon entry of an order approving the petition, the
287 agency may conduct onsite examinations of the licensed facility
288 to ensure continued compliance with the terms and conditions of
289 the order.

290 (4) The order approving a petition under this section
291 remains in effect until revoked. The agency may revoke the order
292 upon reasonable notice to the eligible hospital that it fails to
293 comply with material requirements of s. 766.403 and that the
294 hospital has failed to cure the stated deficiencies within a
295 reasonable time after receipt of the initial notice from the
296 agency that delineated the specific deficiencies to be cured by
297 the hospital. Revocation of an agency order pursuant to s.
298 766.403 applies prospectively to any cause of action for medical
299 negligence that arises on or after the effective date of the
300 order of revocation.

301 (5) An order approving a petition under this section is,
302 as a matter of law, conclusive evidence that the hospital
303 complies with the applicable patient safety requirements of s.
304 766.403. A hospital's noncompliance with the requirements of s.
305 766.403 does not affect the limitations on damages conferred by
306 this section. Evidence of noncompliance with s. 766.403 is not
307 admissible for any purpose in any action for medical
308 malpractice. This section, or any portion thereof, may not give

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309 rise to an independent cause of action for damages against any
310 hospital.

311 Section 7. Section 766.403, Florida Statutes, is created
312 to read:

313 766.403 Patient safety plans.--

314 (1) In order to satisfy the requirements of s. 766.402,
315 the licensed facility shall have a patient safety plan, which
316 provides that the facility shall:

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

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

327 (c) Design and make available to facility staff, including
328 medical staff, a patient safety curriculum that provides lecture
329 and web-based training on recognized patient safety principles,
330 which may include training in communication skills, team
331 performance assessment and training, risk prevention strategies,
332 and best practices and evidence-based medicine. The licensed
333 facility shall report annually the programs presented to the
334 agency.

335 (d) Implement a program to identify health care providers
336 on the facility's staff who may be eligible for an early

337 intervention program that provides additional skills assessment
338 and training and offer such training to the staff on a voluntary
339 and confidential basis with established mechanisms to assess
340 program performance and results.

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

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

354 (g) Establish a procedure to biennially review the
355 facility's patient safety program and its compliance with the
356 requirements of this section. Such review shall be conducted by
357 an independent patient safety organization as defined in s.
358 766.1016(1) or other professional organization approved by the
359 agency. The organization performing the review shall prepare a
360 written report that contains detailed findings and
361 recommendations. The report shall be forwarded to the facility's
362 risk manager or patient safety officer, who may make written
363 comments in response. The report and any written comments shall
364 be presented to the governing board of the licensed facility. A

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365 copy of the report and any of the facility's responses to the
366 findings and recommendations shall be provided to the agency
367 within 60 days after the date that the governing board reviewed
368 the report. The report is confidential and exempt from
369 production or discovery in any civil action. Likewise, the
370 report and the information contained therein are not admissible
371 as evidence for any purpose in any action for medical
372 negligence.

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

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

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

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

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

395 Section 8. Section 766.404, Florida Statutes, is created
396 to read:

397 766.404 Annual report.--

398 (1) Each certified patient safety facility shall submit an
399 annual report to the agency containing information and data
400 reasonably required by the agency to evaluate performance and
401 effectiveness of its patient safety plan. However, information
402 may not be submitted or disclosed in violation of any patient's
403 right to privacy under state or federal law.

404 (2) The agency shall aggregate information and data
405 submitted by all certified patient safety facilities and, each
406 year, on or before March 1, the agency shall submit a report to
407 the President of the Senate and the Speaker of the House of
408 Representatives that evaluates the performance and effectiveness
409 of the approach to enhancing patient safety and limiting
410 provider liability in certified patient safety facilities. The
411 report shall include, but need not be limited to, pertinent data
412 concerning:

413 (a) The number and names of certified patient safety
414 facilities;

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

417 (c) The number of affected patients;

418 (d) The number of surgical procedures on affected
419 patients;

420 (e) The number of adverse medical incidents, claims of

421 medical malpractice, and claims resulting in indemnity;
422 (f) The average time for resolution of contested and
423 uncontested claims of medical malpractice;
424 (g) The percentage of claims that result in civil trials;
425 (h) The percentage of civil trials that result in adverse
426 judgments against affected facilities;
427 (i) The number and average amount of an indemnity paid to
428 claimants;
429 (j) The estimated liability expense, inclusive of medical
430 liability insurance premiums; and
431 (k) The percentage of medical liability expense, inclusive
432 of medical liability insurance premiums, that is borne by
433 affected practitioners in certified patient safety facilities.
434
435 The report may also include other information and data that the
436 agency deems appropriate to gauge the cost and benefit of
437 patient safety plans.
438 (3) The agency's annual report to the President of the
439 Senate and the Speaker of the House of Representatives may
440 include relevant information and data obtained from the Office
441 of Insurance Regulation within the Department of Financial
442 Services concerning the availability and affordability of
443 enterprise-wide medical liability insurance coverage for
444 affected facilities and the availability and affordability of
445 insurance policies for individual practitioners that contain
446 coverage exclusions for acts of medical negligence in facilities
447 that indemnify health practitioners. The Office of Insurance
448 Regulation shall cooperate with the agency in the reporting of

449 information and data specified in this subsection.

450 (4) Reports submitted to the agency by certified patient
451 safety facilities pursuant to this section are public records
452 under chapter 119. However, these reports, and the information
453 contained therein, are not admissible as evidence in a court of
454 law in any action.

455 Section 9. Section 766.405, Florida Statutes, is created
456 to read:

457 766.405 Damages in malpractice actions against certain
458 hospitals and faculty physicians that meet patient safety
459 requirements; agency approval of patient safety measures.--

460 (1) Upon entry of an order pursuant to s. 766.402 and for
461 the entire period of time that the order remains in effect, the
462 damages recoverable from an eligible hospital covered by the
463 order and from its physician employees, the eligible hospital's
464 nonphysician employees, the eligible hospital's agents, a
465 nonprofit medical school whose physicians comprise of at least
466 50 percent of the medical staff of the eligible hospital, and
467 the physicians of such a nonprofit medical school in actions
468 arising from medical negligence on the premises of the eligible
469 hospital shall be determined in accordance with the following
470 provisions:

471 (a) Noneconomic damages shall be limited to a maximum of
472 \$500,000, regardless of the number of claimants, number of
473 claims, or the theory of liability pursuant to s. 766.118(6).

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

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477 future economic losses shall be offset by future collateral
478 source payments.

479 (c) Awards of future economic damages, after being offset
480 by collateral sources, shall, at the option of the eligible
481 hospital, be reduced by the court to present value and paid in
482 full or be paid by means of periodic payments in the form of
483 annuities or reversionary trusts. Periodic payments of future
484 economic damages attributable to the medical care, health care,
485 and personal care of the claimant shall be payable until the end
486 of the life of the claimant, at which time the obligation to
487 make such payments terminates. A company that underwrites an
488 annuity to pay future economic damages shall have rating of "A"
489 or higher by A.M. Best Company. The court shall approve the
490 terms of the periodic payments, which shall identify the amount
491 of the payment that is attributable to future medical care,
492 health care, and personal care. Court approval shall not be
493 unreasonably withheld.

494 (2) The limitations on liability provided by this section
495 apply to causes of action that accrue while an eligible facility
496 is a certified patient safety facility.

497 Section 10. Section 766.406, Florida Statutes, is created
498 to read:

499 766.406 Rulemaking authority.--The agency may adopt rules
500 to administer ss. 766.401-766.405.

501 Section 11. Paragraph (a) of subsection (2) of section
502 768.77, Florida Statutes, is amended to read:

503 768.77 Itemized verdict.--

504 (2) In any action for damages based on personal injury or

505 wrongful death arising out of medical malpractice, whether in
 506 tort or contract, to which this part applies in which the trier
 507 of fact determines that liability exists on the part of the
 508 defendant, the trier of fact shall, as a part of the verdict,
 509 itemize the amounts to be awarded to the claimant into the
 510 following categories of damages:

- 511 (a) Amounts intended to compensate the claimant for:
- 512 1. Past economic losses; and
 - 513 2. Future economic losses, with a separate item indicating
 514 the amount attributable to health care, medical care, and
 515 personal care, not reduced to present value, and the number of
 516 years or part thereof which the award is intended to cover;

517 Section 12. The sum of \$226,984 in recurring funds from
 518 the Health Care Trust Fund and the sum of \$72,057 in
 519 nonrecurring funds from the Health Care Trust Fund are
 520 appropriated, and 3 full time equivalent positions and
 521 associated salary rate of \$127,817 are authorized to the Agency
 522 for Health Care Administration for the 2006-2007 fiscal year,
 523 for the purpose of implementing the provisions of this act.

524 Section 13. If any provision of this act or its
 525 application to any person or circumstance is held invalid, the
 526 invalidity shall not affect other provisions or applications of
 527 the act that can be given effect without the invalid provision
 528 or application, and to this end, the provisions of this act are
 529 severable.

530 Section 14. This act shall take effect upon becoming a
 531 law.