By Senator Hays

11-00970B-16 20161308__

1 A bill to be entitled
2 An act relating to compensation for personal injury or
3 wrongful death arising from a medical injury; amending
4 s. 456.013, F.S.; requiring the Department of Health
5 or certain boards thereof to require the completion of
6 a course relating to communication of medical errors
7 as part of the licensure and renewal process;
8 providing a directive to the Division of Law Revision
9 and Information; creating s. 766.401, F.S.; providing
10 a short title; creating s. 766.402, F.S.; providing
11 definitions; creating s. 766.403, F.S.; providing
12 legislative findings and intent; creating s. 766.404,
13 F.S.; specifying that certain provisions are an
14 exclusive remedy for personal injury or wrongful
15 death; prohibiting compensation for certain wrongful
16 deaths; creating s. 766.405, F.S.; creating the
17 Patient Compensation System and the Patient
18 Compensation Board; providing for board membership,
19 terms, meetings, per diem and travel reimbursement,
20 and powers and duties; providing for offices, staff,
21 committees, and panels and the membership, terms,
22 meetings, per diem and travel reimbursement, and
23 powers and duties thereof; prohibiting certain
24 conflicts of interest; requiring the board to adopt
25 rules; creating s. 766.406, F.S.; providing a process
26 to file an application for compensation for a medical
27 injury; providing for the release of protected health
28 information; providing procedures for incomplete
29 applications; providing an application filing period;
30 authorizing applicants to provide supplemental
31 information; authorizing applicants to be represented
32 by legal counsel; creating s. 766.407, F.S.; providing

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33 for review of applications; providing for award of
34 compensation upon determination of medical injury;
35 providing a limitation on compensation; providing for
36 payment of compensation awards; providing for
37 determinations of medical malpractice for purposes of
38 a specified constitutional provision; requiring the
39 system to notify the Board of Medicine regarding
40 certain providers for purposes of professional
41 discipline; creating s. 766.408, F.S.; providing for
42 review of awards by an administrative law judge;
43 providing for appellate review; authorizing an
44 administrative law judge to grant time extensions;
45 creating s. 766.409, F.S.; requiring annual
46 contributions from specified providers for payment of
47 awards and administrative expenses; providing an
48 exception; providing maximum contribution amounts;
49 specifying payment dates; prohibiting the renewal of a
50 license under certain circumstances; providing for
51 deposit of funds; authorizing the State Board of
52 Administration to invest and reinvest funds held on
53 behalf of the system under certain circumstances;
54 authorizing providers to opt out of participation in
55 the system and providing requirements therefor;
56 creating s. 766.410, F.S.; requiring each practicing
57 provider to provide notice to patients of provider
58 participation in the Patient Compensation System;
59 providing exceptions; creating s. 766.411, F.S.;
60 requiring an annual report to the Governor and the
61 Legislature by a specified date; providing

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62 requirements for such report; providing applicability;
63 providing severability; providing effective dates.
64
65 Be It Enacted by the Legislature of the State of Florida:
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67 Section 1. Subsection (7) of section 456.013, Florida
68 Statutes, is amended to read:
69 456.013 Department; general licensing provisions.—
70 (7) The boards, or the department when there is no board,
71 shall require the completion of a 2-hour course relating to
72 prevention and communication of medical errors as part of the
73 licensure and renewal process. The 2-hour course shall count
74 towards the total number of continuing education hours required
75 for the profession. The course shall be approved by the board or
76 department, as appropriate, and shall include a study of root-
77 cause analysis, error reduction and prevention, ~~and~~ patient
78 safety, and communication of medical errors to patients and
79 their families. In addition, the course approved by the Board of
80 Medicine and the Board of Osteopathic Medicine shall include
81 information relating to the five most misdiagnosed conditions
82 during the previous biennium, as determined by the board. If the
83 course is being offered by a facility licensed pursuant to
84 chapter 395 for its employees, the board may approve up to 1
85 hour of the 2-hour course to be specifically related to error
86 reduction and prevention methods used in that facility.
87 Section 2. The Division of Law Revision and Information is
88 directed to designate ss. 766.101-766.1185, Florida Statutes, as
89 part I of chapter 766, Florida Statutes, entitled “Medical
90 Malpractice and Related Matters”; ss. 766.201-766.212, Florida

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91 Statutes, as part II of that chapter, entitled “Presuit
92 Investigation and Voluntary Binding Arbitration”; ss. 766.301-
93 766.316, Florida Statutes, as part III of that chapter, entitled
94 “Birth-Related Neurological Injuries”; and ss. 766.401-766.411,
95 Florida Statutes, as created by this act, as part IV of that
96 chapter, entitled “Patient Compensation System.”
97 Section 3. Section 766.401, Florida Statutes, is created to
98 read:
99 766.401 Short title.—This part may be cited as the “Patient
100 Compensation System.”
101 Section 4. Section 766.402, Florida Statutes, is created to
102 read:
103 766.402 Definitions.—As used in this part, the term:
104 (1) “Applicant” means a person who files an application
105 under this part requesting the investigation of an alleged
106 occurrence of a medical injury.
107 (2) “Application” means a request for investigation by the
108 Patient Compensation System of an alleged occurrence of a
109 medical injury.
110 (3) “Board” means the Patient Compensation Board as
111 established in s. 766.405.
112 (4) “Collateral source payment” means any payment made to
113 the applicant, or made on his or her behalf, by or pursuant to:
114 (a) The federal Social Security Act; any federal, state, or
115 local income disability act; or any other public program
116 providing medical expenses, disability payments, or other
117 similar benefits, except as prohibited by federal law.
118 (b) Any health, sickness, or income disability insurance;
119 any automobile accident insurance that provides health benefits

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120 or income disability coverage; and any other similar insurance
121 benefits, except life insurance benefits, available to the
122 applicant, whether purchased by the applicant or provided by
123 others.
124 (c) Any contract or agreement of any group, organization,
125 partnership, or corporation to provide, pay for, or reimburse
126 the costs of hospital, medical, dental, or other health care
127 services.
128 (d) Any contractual or voluntary wage continuation plan
129 provided by employers or by any other system intended to provide
130 wages during a period of disability.
131 (5) "Compensation schedule" means a schedule of
132 compensation for medical injuries.
133 (6) "Department" means the Department of Health.
134 (7) "Independent medical review panel" or "panel" means a
135 panel convened by the chief medical officer to review each
136 application.
137 (8)(a) "Medical injury" means a personal injury or wrongful
138 death due to medical treatment, including a missed diagnosis,
139 which could have been avoided by an experienced specialist
140 provider practicing in the same field of care under the same or
141 similar circumstances or, for a general practitioner provider,
142 an experienced general practitioner provider practicing under
143 the same or similar circumstances. Only information that would
144 have been known to an experienced specialist at the time of the
145 medical treatment may be considered when determining the
146 existence of a medical injury.
147 (b) For purposes of this subsection, the term "medical
148 injury" includes a personal injury or wrongful death for which

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149 all of the following criteria exist:
150 1. The participating provider performed a medical treatment
151 on the applicant.
152 2. The applicant suffered medical harm.
153 3. The medical treatment was the proximate cause of the
154 medical injury.
155 4. One or both of the following occurred:
156 a. An accepted method of medical treatment was not used.
157 b. An accepted method of medical treatment was used but was
158 executed in a substandard fashion.
159 (c) For purposes of this subsection, the term "medical
160 injury" does not include a personal injury or wrongful death if
161 the independent medical review panel determines that the medical
162 treatment performed conformed with national practice standards
163 for the care and treatment of patients with the underlying
164 condition.
165 (9) "Panelist" means a person licensed under chapter 458 or
166 chapter 459 and practicing in this state.
167 (10) "Participating provider" means a provider who, at the
168 time of the medical injury, had paid the contribution required
169 for participation in the Patient Compensation System for the
170 year in which the medical injury occurred.
171 (11) "System" means the Patient Compensation System as
172 established in s. 766.405.
173 (12) "Provider" means a person licensed under chapter 458
174 or chapter 459 and practicing in this state.
175 Section 5. Effective July 1, 2017, section 766.403, Florida
176 Statutes, is created to read:
177 766.403 Legislative findings and intent.—

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178 (1) LEGISLATIVE FINDINGS.—The Legislature finds that:
179 (a) The lack of legal representation, and, thus,
180 compensation, for the majority of patients with legitimate
181 medical injuries is creating an access-to-courts crisis.
182 (b) Seeking compensation through medical malpractice
183 litigation is a costly and protracted process, such that legal
184 counsel cannot afford to finance more than a small number of
185 legitimate claims.
186 (c) Even for patients who are able to obtain legal
187 representation, the delay in obtaining compensation is an
188 average of 5 years, creating a significant hardship for patients
189 and their caregivers who often need access to immediate care and
190 compensation.
191 (d) Because of continued exposure to liability, an
192 overwhelming majority of physicians practice defensive medicine
193 by ordering unnecessary tests and procedures, increasing the
194 cost of health care for individuals covered by a public or
195 private health care or health insurance program and exposing
196 patients to unnecessary clinical risks.
197 (e) A significant number of physicians, particularly
198 obstetricians, intend to relocate out of state, retire, or
199 change specialties as a result of the costs and risks of medical
200 liability in this state, according to the Department of Health
201 2014 Physician Workforce Annual Report.
202 (f) Recruiting physicians to practice in this state and
203 ensuring that current physicians continue to practice in this
204 state is an overwhelming public necessity.
205 (2) LEGISLATIVE INTENT.—The Legislature intends:
206 (a) To supersede medical malpractice litigation by creating

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207 a new remedy whereby patients are fairly and expeditiously
208 compensated for medical injuries. As provided in this part, this
209 alternative remedy is intended to significantly reduce the
210 practice of defensive medicine, thereby reducing health care
211 costs; increase patient safety; increase the number of
212 physicians practicing in this state; and provide patients fair
213 and timely compensation without the expense and delay of the
214 court system.
215 (b) That an application filed under this part does not
216 constitute a claim for medical malpractice or a written demand
217 for payment, any action on such application does not constitute
218 a judgment or an adjudication for medical malpractice, and,
219 therefore, professional liability carriers are not obligated to
220 report such applications or actions on such applications to the
221 National Practitioner Data Bank.
222 (c) That the definition of the term "medical injury" be
223 construed to encompass a broader range of personal injuries as
224 compared to a negligence standard, such that a greater number of
225 applications qualify for compensation under this part as
226 compared to the current system.
227 Section 6. Effective July 1, 2017, section 766.404, Florida
228 Statutes, is created to read:
229 766.404 Exclusive remedy; wrongful death.—
230 (1) EXCLUSIVE REMEDY.—All statutes in conflict with this
231 part shall stand repealed with respect to an applicant who has
232 suffered a personal injury or wrongful death while in the care
233 of a participating provider. Except as provided in part III of
234 this chapter, the rights and remedies granted by this part due
235 to a personal injury or wrongful death exclude all other rights

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236 and remedies of the applicant and his or her personal
237 representative, parents, dependents, and next of kin, at common
238 law or as provided in general law, against any participating
239 provider directly involved in providing the medical treatment
240 resulting in such injury or death arising out of or related to a
241 medical negligence claim, whether in tort or in contract, with
242 respect to such injury or death. Notwithstanding any other law,
243 this part applies exclusively to applications submitted under
244 this part.
245 (2) WRONGFUL DEATH.—Compensation may not be provided under
246 this part for an application requesting an investigation of an
247 alleged wrongful death due to medical treatment if such
248 application is filed by an adult child on behalf of his or her
249 parent or by a parent on behalf of his or her adult child.
250 Section 7. Section 766.405, Florida Statutes, is created to
251 read:
252 766.405 Patient Compensation System; Patient Compensation
253 Board; offices; staff; committees; independent medical review
254 panels; conflicts of interest; rulemaking.—
255 (1) PATIENT COMPENSATION SYSTEM.—The Patient Compensation
256 System is created and shall be governed by the Patient
257 Compensation Board created in this section. The Patient
258 Compensation System is not a state agency, board, or commission.
259 Notwithstanding s. 15.03, the system is authorized to use the
260 state seal.
261 (2) PATIENT COMPENSATION BOARD.—The Patient Compensation
262 Board is a board of trustees, as defined in s. 20.03,
263 established to govern the Patient Compensation System.
264 (a) *Members.*—The board shall be composed of 11 members who

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265 represent the medical, legal, patient, and business communities
266 from diverse geographic areas throughout this state. Members of
267 the board shall serve at the pleasure of, and be appointed by,
268 the Governor as follows:
269 1. Five members, two of whom shall be physicians licensed
270 under chapter 458 or chapter 459 who actively practice in this
271 state, one of whom shall be an executive in the business
272 community who works in this state, one of whom shall be a
273 certified public accountant who actively practices in this
274 state, and one of whom shall be a member of The Florida Bar who
275 actively practices in this state.
276 2. Three members from a list of persons recommended by the
277 President of the Senate, one of whom shall be a physician
278 licensed under chapter 458 or chapter 459 who actively practices
279 in this state and one of whom shall be a patient advocate who
280 resides in this state.
281 3. Three members from a list of persons recommended by the
282 Speaker of the House of Representatives, one of whom shall be a
283 physician licensed under chapter 458 or chapter 459 who actively
284 practices in this state and one of whom shall be a patient
285 advocate who resides in this state.
286 (b) *Terms of appointment.*—Each member shall be appointed
287 for a 4-year term. For the purpose of providing staggered terms
288 of the initial appointments, the five members appointed pursuant
289 to subparagraph (a)1. shall be appointed to 2-year terms and the
290 six members appointed pursuant to subparagraphs (a)2. and 3.
291 shall be appointed to 3-year terms. If a vacancy occurs on the
292 board before the expiration of a term, the Governor shall
293 appoint a successor to serve the remainder of the term.

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294 (c) *Chair and vice chair.*—The board shall annually elect
295 from its membership one member to serve as chair and one member
296 to serve as vice chair.
297 (d) *Meetings.*—The first meeting of the board shall be held
298 no later than August 1, 2016. Thereafter, the board shall meet
299 at least quarterly upon the call of the chair. A majority of the
300 board members constitutes a quorum. Meetings may be held by
301 teleconference, web conference, or other electronic means.
302 (e) *Compensation.*—Members of the board shall serve without
303 compensation but may be reimbursed for per diem and travel
304 expenses for required attendance at board meetings in accordance
305 with s. 112.061.
306 (f) *Powers and duties.*—The board shall:
307 1. Ensure the operation of the Patient Compensation System
308 in accordance with applicable federal and state laws, rules, and
309 regulations.
310 2. Enter into contracts as necessary to administer this
311 part.
312 3. Employ an executive director and other staff as
313 necessary to perform the functions of the Patient Compensation
314 System. However, the Governor shall appoint the initial
315 executive director.
316 4. Approve the hiring of a chief compensation officer and
317 chief medical officer, as recommended by the executive director.
318 5. Approve a schedule of compensation for medical injuries,
319 as recommended by the Compensation Committee.
320 6. Approve medical review panelists, as recommended by the
321 Medical Review Committee.
322 7. Approve an annual budget.

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323 8. Annually approve provider contribution amounts.
324 (3) OFFICES.—The following offices are established within
325 the Patient Compensation System:
326 (a) *Office of Medical Review.*—The Office of Medical Review
327 shall evaluate and, as necessary, investigate all applications
328 in accordance with this part. For the purpose of an
329 investigation of an application, the office shall have the power
330 to administer oaths; take depositions; issue subpoenas; compel
331 the attendance of witnesses and the production of papers,
332 documents, and other evidence; and obtain patient records
333 pursuant to the applicant's release of protected health
334 information.
335 (b) *Office of Compensation.*—The Office of Compensation
336 shall allocate compensation for each application in accordance
337 with the compensation schedule.
338 (c) *Office of Quality Improvement.*—The Office of Quality
339 Improvement shall regularly review application data to conduct
340 root cause analyses and develop and disseminate best practices
341 based on such reviews. In addition, the office shall capture and
342 record safety-related data obtained during an investigation
343 conducted by the Office of Medical Review, including the cause
344 of, the factors contributing to, and any interventions that may
345 have prevented the medical injury.
346 (4) STAFF.—The executive director shall oversee the
347 operation of the Patient Compensation System in accordance with
348 this part. The following staff shall report directly to and
349 serve at the pleasure of the executive director:
350 (a) *Advocacy director.*—The advocacy director shall ensure
351 that each applicant is provided high-quality individual

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352 assistance throughout the application process, from initial
353 filing to disposition of the application. The advocacy director
354 shall assist each applicant in determining whether to retain an
355 attorney and explain possible fee arrangements and the
356 advantages and disadvantages of retaining an attorney. If the
357 applicant seeks to file an application without an attorney, the
358 advocacy director shall assist the applicant in filing the
359 application. In addition, the advocacy director shall regularly
360 provide status reports to each applicant regarding his or her
361 application.
362 (b) *Chief compensation officer.*—The chief compensation
363 officer shall manage the Office of Compensation. The chief
364 compensation officer shall recommend to the Compensation
365 Committee a compensation schedule for each type of medical
366 injury. The chief compensation officer may not be a licensed
367 physician or an attorney.
368 (c) *Chief financial officer.*—The chief financial officer
369 shall be responsible for overseeing the financial operations of
370 the Patient Compensation System, including the annual
371 development of a budget.
372 (d) *Chief legal officer.*—The chief legal officer shall
373 represent the Patient Compensation System in all contested
374 applications, oversee the operation of the Patient Compensation
375 System to ensure compliance with established procedures, and
376 ensure adherence to all applicable federal and state laws,
377 rules, and regulations.
378 (e) *Chief medical officer.*—The chief medical officer shall
379 manage the Office of Medical Review. The chief medical officer
380 shall recommend to the Medical Review Committee a qualified list

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381 of multidisciplinary panelists for independent medical review
382 panels. In addition, the chief medical officer shall convene
383 independent medical review panels as necessary to review
384 applications. The chief medical officer must be a physician
385 licensed under chapter 458 or chapter 459 who resides in this
386 state.

387 (f) *Chief quality officer.*—The chief quality officer shall
388 manage the Office of Quality Improvement.

389 (5) COMMITTEES.—The board shall create a Medical Review
390 Committee and a Compensation Committee. The board may create
391 additional committees as necessary to assist in the performance
392 of its duties and responsibilities.

393 (a) *Members.*—Each committee shall be composed of three
394 board members chosen by a majority vote of the board.

395 1. The Medical Review Committee shall be composed of two
396 physicians licensed in this state and a board member who is not
397 an attorney who resides in this state. The board shall designate
398 a physician committee member to serve as chair of the committee.

399 2. The Compensation Committee shall be composed of a
400 certified public accountant practicing in this state and two
401 board members who are not physicians or attorneys who reside in
402 this state. The board shall designate the certified public
403 accountant to serve as chair of the committee.

404 (b) *Terms of appointment.*—Members of each committee shall
405 serve 2-year terms concurrent with their respective terms as
406 board members. If a vacancy occurs on a committee, the board
407 shall appoint a successor to serve the remainder of the term. A
408 committee member who is removed or resigns from the board shall
409 be removed from the committee.

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410 (c) *Chair and vice chair.*—The board shall annually
411 designate a chair and vice chair of each committee.
412 (d) *Meetings.*—Each committee shall meet at least quarterly
413 or at the specific direction of the board. Meetings may be held
414 by teleconference, web conference, or other electronic means.
415 (e) *Compensation.*—Members of the committees shall serve
416 without compensation but may be reimbursed for per diem and
417 travel expenses for required attendance at committee meetings in
418 accordance with s. 112.061.
419 (f) *Powers and duties.*—
420 1. The Medical Review Committee shall recommend to the
421 board a comprehensive, multidisciplinary list of panelists who
422 shall serve on the independent medical review panels as needed.
423 2. The Compensation Committee shall, in consultation with
424 the chief compensation officer, recommend to the board:
425 a. A compensation schedule such that, in any fiscal year,
426 the aggregate payments made by the system do not exceed the
427 contributions received under this part.
428 b. Guidelines for the payment of compensation awards
429 through periodic payments.
430 c. Guidelines for the apportionment of compensation among
431 multiple providers, which guidelines shall be based on the
432 historical apportionment among multiple providers for similar
433 medical injuries with similar severity.
434 (6) INDEPENDENT MEDICAL REVIEW PANELS.—The chief medical
435 officer shall convene an independent medical review panel to
436 evaluate each application to determine whether a medical injury
437 occurred. Each panel shall be composed of an odd number of at
438 least three panelists chosen from a list of panelists

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439 representing the same or similar specialty as the participating
440 provider identified in the application and shall convene, either
441 in person or by electronic means, upon the call of the chief
442 medical officer. Each panelist shall be paid a stipend as
443 determined by the board for his or her service on the panel. In
444 order to expedite the review of applications, the chief medical
445 officer may, whenever practicable, group related applications
446 together for consideration by a single panel.
447 (7) CONFLICTS OF INTEREST.—A board member, a panelist, or
448 an employee of the Patient Compensation System may not engage in
449 any conduct that constitutes a conflict of interest. For
450 purposes of this subsection, the term "conflict of interest"
451 means a situation in which the private interest of a board
452 member, a panelist, or an employee could influence his or her
453 judgment in the performance of his or her duties under this
454 part. A board member, a panelist, or an employee shall
455 immediately disclose in writing the presence of a conflict of
456 interest when the board member, panelist, or employee knows or
457 should reasonably have known that the factual circumstances
458 surrounding a particular application constitute a conflict of
459 interest. A board member, a panelist, or an employee who
460 violates this subsection is subject to disciplinary action as
461 determined by the board. A conflict of interest includes, but is
462 not limited to:
463 (a) Conduct that would lead a reasonable person having
464 knowledge of all of the circumstances to conclude that a board
465 member, a panelist, or an employee is biased against or in favor
466 of an applicant.
467 (b) Participation in an application in which the board

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468 member, panelist, or employee, or the parent, spouse, or child
469 of the board member, panelist, or employee, has a financial
470 interest.
471 (8) RULEMAKING.—The board shall adopt rules to implement
472 and administer this part, including rules addressing:
473 (a) The application process, including forms necessary to
474 collect relevant information from applicants.
475 (b) Disciplinary procedures for a board member, a panelist,
476 or an employee who violates subsection (7).
477 (c) Stipends paid to panelists for their service on an
478 independent medical review panel, which may be adjusted in
479 accordance with the relative scarcity of the panelist's
480 specialty, if applicable.
481 (d) Payment of compensation awards through periodic
482 payments and the apportionment of compensation among multiple
483 providers, as recommended by the Compensation Committee.
484 (e) The opt-out process for providers who do not want to
485 participate in the Patient Compensation System.
486 Section 8. Effective July 1, 2017, section 766.406, Florida
487 Statutes, is created to read:
488 766.406 Filing of applications.—
489 (1) CONTENT.—In order to obtain compensation for a medical
490 injury, an applicant, or his or her legal representative, shall
491 verbally submit an application with the Patient Compensation
492 System through a toll-free telephone number established by the
493 system. The application shall include:
494 (a) The full name and address of the applicant or his or
495 her legal representative and the basis of the representation.
496 (b) The full name and address of any participating provider

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497 who provided medical treatment allegedly resulting in the
498 medical injury.
499 (c) A brief statement of the facts and circumstances
500 surrounding the medical injury that gave rise to the
501 application.
502 (d) Any other information that the applicant believes will
503 benefit the investigatory process, including the full names and
504 addresses of potential witnesses.
505 (e) Documentation of any applicable private or governmental
506 source of services or reimbursement relating to the medical
507 injury.
508 (2) RELEASE OF PROTECTED HEALTH INFORMATION.—An applicant
509 must submit, in writing, to the Office of Medical Review an
510 authorization for release of all protected health information
511 that is potentially relevant to the application as required by
512 federal law.
513 (3) INCOMPLETE APPLICATIONS.—If an application is
514 incomplete, the Patient Compensation System shall, within 30
515 days after the receipt of the initial application, notify the
516 applicant in writing of any errors or omissions. An applicant
517 shall have 30 days after receipt of the notice in which to
518 correct the errors or omissions in the initial application
519 through the toll-free telephone number established by the
520 system.
521 (4) TIME LIMITATION ON APPLICATIONS.—An application shall
522 be filed within the time periods specified in s. 95.11(4) for
523 medical malpractice actions. The applicable time period shall be
524 tolled from the date the application is filed until the date the
525 applicant receives the results of the initial medical review

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526 under s. 766.407.

527 (5) SUPPLEMENTAL INFORMATION.—After filing an application,
528 the applicant may supplement the initial application with
529 additional information that he or she believes may be beneficial
530 in the resolution of the application.

531 (6) LEGAL COUNSEL.—This part does not prohibit an applicant
532 or participating provider from retaining an attorney to
533 represent the applicant or participating provider in the review
534 and resolution of the application.

535 Section 9. Effective July 1, 2017, section 766.407, Florida
536 Statutes, is created to read:

537 766.407 Disposition of applications; scope of compensation;
538 determination of medical malpractice; notice.—

539 (1) INITIAL MEDICAL REVIEW.—Individuals with relevant
540 clinical expertise in the Office of Medical Review shall
541 determine, within 10 days after the receipt of a completed
542 application, whether the application, prima facie, constitutes a
543 medical injury.

544 (a) If the Office of Medical Review determines that the
545 application, prima facie, constitutes a medical injury, the
546 office shall immediately notify, by registered or certified
547 mail, each participating provider named in the application. The
548 notification shall inform the participating provider that he or
549 she may support the application to expedite the processing of
550 the application. A participating provider shall have 15 days
551 after the receipt of notification of an application to support
552 the application. If the participating provider supports the
553 application, the Office of Medical Review shall review the
554 application in accordance with subsection (2).

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555 (b) If the Office of Medical Review determines that the
556 application does not, prima facie, constitute a medical injury,
557 the office shall send a rejection letter to the applicant by
558 registered or certified mail informing the applicant of his or
559 her right to appeal. The applicant shall have 15 days after
560 receipt of the rejection letter to appeal, through the toll-free
561 telephone number established by the Patient Compensation System,
562 the office's determination pursuant to s. 766.408.
563 (2) EXPEDITED MEDICAL REVIEW.—An application that is
564 supported by a participating provider in accordance with
565 subsection (1) shall be reviewed by individuals with relevant
566 clinical expertise in the Office of Medical Review within 30
567 days after notification of the participating provider's support
568 of the application to determine the validity of the application.
569 If the Office of Medical Review finds that the application is
570 valid, the Office of Compensation shall determine an award of
571 compensation in accordance with subsection (4). If the Office of
572 Medical Review finds that the application is invalid, the office
573 shall immediately notify the applicant of the rejection of the
574 application and, in the case of fraud, shall immediately notify
575 relevant law enforcement authorities.
576 (3) FORMAL MEDICAL REVIEW.—If the Office of Medical Review
577 determines that the application, prima facie, constitutes a
578 medical injury and the participating provider does not elect to
579 support the application, the office shall complete a thorough
580 investigation of the application within 60 days after the
581 office's determination. The investigation shall be conducted by
582 a multidisciplinary team with relevant clinical expertise and
583 shall include a thorough investigation of all available

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584 documentation, witnesses, and other information. Within 15 days
585 after the completion of the investigation, the chief medical
586 officer shall allow the applicant and the participating provider
587 to access records, statements, and other information obtained in
588 the course of its investigation, in accordance with relevant
589 state and federal laws.
590 (a) Within 30 days after the completion of the
591 investigation, the chief medical officer shall convene an
592 independent medical review panel to determine whether the
593 application constitutes a medical injury. The independent
594 medical review panel shall have access to all redacted
595 information obtained by the office in the course of its
596 investigation of the application and shall make a written
597 determination within 10 days after the convening of the panel,
598 which shall be immediately provided to the applicant and the
599 participating provider.
600 (b) If the panel determines that the application
601 constitutes a medical injury, the Office of Medical Review shall
602 immediately notify the participating provider by registered or
603 certified mail of the participating provider's right to appeal
604 the panel's determination. The participating provider shall have
605 15 days after receipt of the letter to appeal the panel's
606 determination pursuant to s. 766.408.
607 (c) If the panel determines that the application does not
608 constitute a medical injury, the Office of Medical Review shall
609 immediately notify the applicant by registered or certified mail
610 of his or her right to appeal the panel's determination. The
611 applicant shall have 15 days after receipt of the letter to
612 appeal the panel's determination pursuant to s. 766.408.

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613 (4) COMPENSATION REVIEW.—If an independent medical review
614 panel determines that an application constitutes a medical
615 injury under subsection (3) and all appeals of that finding have
616 been exhausted by the participating provider pursuant to s.
617 766.408, the Office of Compensation shall, within 30 days after
618 the determination of the panel or the exhaustion of all appeals
619 of that finding, whichever occurs later, make a written
620 determination of an award of compensation in accordance with the
621 compensation schedule and the findings of the panel. The office
622 shall notify the applicant and the participating provider by
623 registered or certified mail of the amount of compensation and
624 shall also explain to the applicant the process for appealing
625 the determination of the office. The applicant shall have 15
626 days after the receipt of the letter to appeal the determination
627 of the office pursuant to s. 766.408.
628 (5) LIMITATION ON COMPENSATION.—Compensation for each
629 application shall be offset by any past and future collateral
630 source payments. In addition, compensation may be paid by
631 periodic payments as determined by the Office of Compensation in
632 accordance with rules adopted by the board.
633 (6) PAYMENT OF COMPENSATION.—Within 14 days after the
634 earlier of the acceptance of compensation by the applicant or
635 the conclusion of all appeals pursuant to s. 766.408, the
636 Patient Compensation System shall immediately provide
637 compensation to the applicant in accordance with the
638 compensation award.
639 (7) DETERMINATION OF MEDICAL MALPRACTICE.—For purposes of
640 s. 26, Art. X of the State Constitution, a physician who is the
641 subject of an application under this part must be found to have

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642 committed medical malpractice only upon a specific finding of
643 the Board of Medicine or the Board of Osteopathic Medicine, as
644 applicable, in accordance with s. 456.50.
645 (8) PROFESSIONAL BOARD NOTICE.—If the independent medical
646 review panel determines that care and treatment of patients by a
647 provider represents an imminent risk of harm to the public, the
648 chief medical officer of the Patient Compensation System shall
649 notify the Board of Medicine of the independent medical review
650 panel's determination of imminent risk and provide the Board of
651 Medicine with electronic access to all appropriate and relevant
652 information concerning the medical injury. The Board of Medicine
653 may review such information and conduct an investigation to
654 determine whether any of the incidents that resulted in the
655 application may have involved conduct by the person who is
656 subject to disciplinary action.
657 Section 10. Effective July 1, 2017, section 766.408,
658 Florida Statutes, is created to read:
659 766.408 Review by administrative law judge; appellate
660 review; extensions of time.—
661 (1) REVIEW BY ADMINISTRATIVE LAW JUDGE.—An administrative
662 law judge shall hear and determine appeals filed pursuant to s.
663 766.407 and exercise the full power and authority granted to him
664 or her in chapter 120, as necessary, to carry out the purposes
665 of that section. The administrative law judge shall be limited
666 in his or her review to determining whether the Office of
667 Medical Review, the independent medical review panel, or the
668 Office of Compensation, as appropriate, has faithfully followed
669 the requirements of this part and rules adopted thereunder in
670 reviewing applications. If the administrative law judge

671 determines that such requirements were not followed in reviewing
672 an application, he or she shall require the chief medical
673 officer to reconvene the original independent medical review
674 panel or convene a new panel, or require the Office of
675 Compensation to redetermine the compensation amount, in
676 accordance with the determination of the judge.
677 (2) APPELLATE REVIEW.—A determination by an administrative
678 law judge under this section regarding the award or denial of
679 compensation under this part shall be conclusive and binding as
680 to all questions of fact and shall be provided to the applicant
681 and the participating provider. An applicant may appeal the
682 award or denial of compensation to the district court of appeal.
683 Appeals shall be filed in accordance with rules of procedure
684 adopted by the Supreme Court for review of such orders.
685 (3) EXTENSIONS OF TIME.—Upon a written petition by either
686 the applicant or the participating provider, an administrative
687 law judge may grant, for good cause, an extension of any of the
688 time periods specified in this part. The relevant time period
689 shall be tolled from the date of the written petition until the
690 date of the determination by the administrative law judge.
691 Section 11. Section 766.409, Florida Statutes, is created
692 to read:
693 766.409 Contributions by participating providers; opt out
694 option; administration of funds collected.—
695 (1) The board shall annually determine a contribution that
696 shall be paid by each participating provider for the payment of
697 awards under this part and for administrative expenses, unless
698 the provider opts out of participation in the Patient
699 Compensation System pursuant to subsection (5). The contribution

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700 amount is based on the provider’s specialty and may not exceed
701 the following amounts:
702 (a) Administrative Medicine: $2,100.
703 (b) Allergy/Immunology: $1,800.
704 (c) Anesthesiology: $4,300.
705 (d) Anesthesiology-Pain Management: $4,600.
706 (e) Cardiology (Invasive): $6,100.
707 (f) Cardiology (Non-invasive): $5,300.
708 (g) Colon & Rectal Surgery (Minor Surgery Limited to Anal
709 Ring): $6,100.
710 (h) Dermatology: $1,800.
711 (i) Dermatology (With Liposuction): $4,800.
712 (j) Diagnostic Radiology (interventional): $8,400.
713 (k) Diagnostic Radiology (Non-interventional): $8,400.
714 (l) Emergency Medicine: $8,400.
715 (m) Endocrinology: $2,700.
716 (n) Family General Practice (Minor Surgery-No Obstetrics):
717 $5,300.
718 (o) Family General Practice (Restricted Major Surgery-No
719 Obstetrics): $9,100.
720 (p) Gastroenterology: $6,100.
721 (q) General Surgery (All Other): $17,600.
722 (r) General Surgery (Bariatric): $17,600.
723 (s) Gynecology (Major Surgery): $5,300.
724 (t) Hematology: $5,300.
725 (u) Hospitalist (General Surgery): $17,600.
726 (v) Infectious Disease: $5,300.
727 (w) Internal Medicine: $4,400.
728 (x) Nephrology: $2,700.

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729 (y) Neurology: $5,300.
730 (z) Neurosurgery: $21,900.
731 (aa) Nuclear Medicine: $3,000.
732 (bb) Obstetrics & Gynecology (All Other): $17,600.
733 (cc) Occupational Medicine: $3,000.
734 (dd) Oncology: $5,300.
735 (ee) Ophthalmology (Minor Surgery): $4,000.
736 (ff) Orthopedic Surgery (No Spinal): $10,600.
737 (gg) Orthopedic Surgery (With Spinal): $12,900.
738 (hh) Otolaryngology (Major With No Facial Plastic): $5,300.
739 (ii) Pathology: $4,000.
740 (jj) Pediatrics: $2,700.
741 (kk) Physical Medicine & Rehabilitation: $2,100.
742 (ll) Physical Medicine & Rehabilitation-Pain Management
743 (Minor Procedures): $5,300.
744 (mm) Physical Medicine & Rehabilitation-Pain Management
745 (Major Procedures): $5,300.
746 (nn) Plastic Surgery: $8,400.
747 (oo) Psychiatry: $2,100.
748 (pp) Pulmonary Medicine: $6,100.
749 (qq) Rheumatology: $3,000.
750 (rr) Thoracic/Cardiovascular Surgery: $15,200.
751 (ss) Urology: $5,300.
752 (2) The contribution determined under this section is
753 payable by each participating provider upon notice delivered on
754 or after July 1 of the following fiscal year. Each participating
755 provider shall pay the contribution amount within 30 days after
756 the date the notice is delivered to the provider. If the
757 provider fails to pay the contribution determined under this

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758 section within 30 days after such notice, the board shall notify
759 the provider by certified or registered mail that the provider's
760 license will not be renewed if the contribution is not paid
761 within 60 days after the date of the original notice, unless the
762 provider opts out of participation in the system.
763 (3) Upon notification by the system that a provider has not
764 opted out of participation pursuant to subsection (5) and has
765 failed to pay the contribution amount determined under this
766 section within 60 days after receipt of the original notice, the
767 department may not renew the provider's license until the
768 contribution is paid in full.
769 (4) All amounts collected under this section shall be
770 deposited with the Patient Compensation System. The funds
771 collected by the system and any income therefrom shall be
772 disbursed only for the payment of awards under this part and for
773 the payment of the reasonable expenses of administering the
774 system. Funds held on behalf of the plan are funds of the state.
775 The system may only invest plan funds in the investments and
776 securities described in s. 215.47, and shall be subject to the
777 limitations on investments contained in that section. All income
778 derived from such investments shall be credited to the system.
779 The State Board of Administration may invest and reinvest funds
780 held on behalf of the system in accordance with the trust
781 agreement approved by the system and the State Board of
782 Administration and ss. 215.44-215.53.
783 (5) A provider may elect to opt out of participation in the
784 Patient Compensation System. The election to opt out must be
785 made in writing at least 15 days before the due date of the
786 contribution required under this section. A provider who opts

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787 out may subsequently elect to participate in the system by
788 paying the appropriate contribution amount for the current
789 fiscal year. However, any medical malpractice claim filed while
790 the provider was not participating in the system shall be
791 adjudicated pursuant to parts I through III of this chapter.
792 Section 12. Section 766.410, Florida Statutes, is created
793 to read:
794 766.410 Notice to patients of participation in the Patient
795 Compensation System; exception.—
796 (1) Each participating provider shall provide notice to
797 patients that the provider is participating in the Patient
798 Compensation System. Such notice shall be provided on a form
799 furnished by the Patient Compensation System and shall include a
800 concise explanation of a patient's rights and benefits under the
801 system.
802 (2) Notice is not required to be given to a patient when
803 the patient has an emergency medical condition as defined in s.
804 395.002(8)(b) or when notice is not practicable.
805 Section 13. Section 766.411, Florida Statutes, is created
806 to read:
807 766.411 Annual report.—The board shall annually, beginning
808 October 1, 2018, submit to the Governor, the President of the
809 Senate, and the Speaker of the House of Representatives a report
810 that describes the filing and disposition of applications in the
811 preceding fiscal year. The report shall include, in the
812 aggregate, the number of applications, the disposition of such
813 applications, and the compensation awarded.
814 Section 14. Sections 766.401-766.411, Florida Statutes, as
815 created by this act, apply to medical incidents that occur on or

816 after July 1, 2017.
817 Section 15. If any provision of this act or its application
818 to any person or circumstance is held invalid, the invalidity
819 does not affect other provisions or applications of the act
820 which may be given effect without the invalid provision or
821 application, and to this end the provisions of this act are
822 severable.
823 Section 16. Except as otherwise expressly provided in this
824 act, this act shall take effect July 1, 2016.

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