

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

---

1 Committee/Subcommittee hearing bill: Insurance & Banking  
 2 Subcommittee

3 Representative LaMarca offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 1996-2042 and insert:

7 Section 57. Paragraph (d) of subsection (2) and paragraphs  
 8 (b), (c), and (e) of subsection (3) of section 766.105, Florida  
 9 Statutes, are amended, and paragraph (i) is added to subsection  
 10 (3) and subsection (4) is added to that section, to read:

11 766.105 Florida Patient's Compensation Fund.—

12 (2) COVERAGE.—

13 (d)1. Any health care provider who participates in the  
 14 fund and who does not meet the provisions of paragraph (b) shall  
 15 not be covered by the fund.

Amendment No. 2

16           2. Annually, the Agency for Health Care Administration  
17 shall require documentation by each hospital that such hospital  
18 is in compliance, and will remain in compliance, with the  
19 provisions of this section. ~~The agency shall review the~~  
20 ~~documentation and then deliver the documentation to the board of~~  
21 ~~governors. At least 60 days before the time a license will be~~  
22 ~~issued or renewed, the agency shall request from the board of~~  
23 ~~governors a certification that each hospital is in compliance~~  
24 ~~with the provisions of this section. The board of governors~~  
25 ~~shall not be liable under the law for any erroneous~~  
26 ~~certification. The agency may not issue or renew the license of~~  
27 ~~any hospital which has not been certified by the board of~~  
28 ~~governors. The license of any hospital that fails to remain in~~  
29 ~~compliance or fails to provide such documentation shall be~~  
30 ~~revoked or suspended by the agency.~~

31           (3) THE FUND.—

32           (b) Fund administration and operation.—

33           1. The fund shall operate subject to the supervision and  
34 approval of the Chief Financial Officer or his or her designee ~~a~~  
35 ~~board of governors consisting of a representative of the~~  
36 ~~insurance industry appointed by the Chief Financial Officer, an~~  
37 ~~attorney appointed by The Florida Bar, a representative of~~  
38 ~~physicians appointed by the Florida Medical Association, a~~  
39 ~~representative of physicians' insurance appointed by the Chief~~  
40 ~~Financial Officer, a representative of physicians' self-~~

388065 - h0959Line1996.docx

Published On: 1/18/2022 7:12:49 PM

## Amendment No. 2

41 ~~insurance appointed by the Chief Financial Officer, two~~  
42 ~~representatives of hospitals appointed by the Florida Hospital~~  
43 ~~Association, a representative of hospital insurance appointed by~~  
44 ~~the Chief Financial Officer, a representative of hospital self-~~  
45 ~~insurance appointed by the Chief Financial Officer, a~~  
46 ~~representative of the osteopathic physicians' or podiatric~~  
47 ~~physicians' insurance or self-insurance appointed by the Chief~~  
48 ~~Financial Officer, and a representative of the general public~~  
49 ~~appointed by the Chief Financial Officer. The board of governors~~  
50 ~~shall, during the first meeting after June 30 of each year,~~  
51 ~~choose one of its members to serve as chair of the board and~~  
52 ~~another member to serve as vice chair of the board. The members~~  
53 ~~of the board shall be appointed to serve terms of 4 years,~~  
54 ~~except that the initial appointments of a representative of the~~  
55 ~~general public by the Chief Financial Officer, an attorney by~~  
56 ~~The Florida Bar, a representative of physicians by the Florida~~  
57 ~~Medical Association, and one of the two representatives of the~~  
58 ~~Florida Hospital Association shall be for terms of 3 years;~~  
59 ~~thereafter, such representatives shall be appointed for terms of~~  
60 ~~4 years. Subsequent to initial appointments for 4-year terms,~~  
61 ~~the representative of the osteopathic physicians' or podiatric~~  
62 ~~physicians' insurance or self-insurance appointed by the Chief~~  
63 ~~Financial Officer and the representative of hospital self-~~  
64 ~~insurance appointed by the Chief Financial Officer shall be~~  
65 ~~appointed for 2-year terms; thereafter, such representatives~~

388065 - h0959Line1996.docx

Published On: 1/18/2022 7:12:49 PM

## Amendment No. 2

66 ~~shall be appointed for terms of 4 years. Each appointed member~~  
67 ~~may designate in writing to the chair an alternate to act in the~~  
68 ~~member's absence or incapacity. A member of the board, or the~~  
69 ~~member's alternate, may be reimbursed from the assets of the~~  
70 ~~fund for expenses incurred by him or her as a member, or~~  
71 ~~alternate member, of the board and for committee work, but he or~~  
72 ~~she may not otherwise be compensated by the fund for his or her~~  
73 ~~service as a board member or alternate.~~

74 2. There shall be no liability on the part of, and no  
75 cause of action of any nature shall arise against, the fund or  
76 its agents or employees, professional advisers or consultants,  
77 the Chief Financial Officer or his or her designee ~~members of~~  
78 ~~the board of governors or their alternates,~~ or the Department of  
79 Financial Services or the Office of Insurance Regulation of the  
80 Financial Services Commission or their representatives for any  
81 action taken by them in the performance of their powers and  
82 duties pursuant to this section.

83 (c) Powers of the fund.—The fund has the power to:

84 1. Sue and be sued, and appear and defend, in all actions  
85 and proceedings in its name to the same extent as a natural  
86 person.

87 2. Adopt, change, amend, and repeal a plan of operation,  
88 not inconsistent with law, for the regulation and administration  
89 of the affairs of the fund. The plan and any changes thereto  
90 shall be filed with the Office of Insurance Regulation of the

## Amendment No. 2

91 Financial Services Commission and are all subject to its  
92 approval before implementation by the fund. All fund members,  
93 board members, and employees shall comply with the plan of  
94 operation.

95 3. Have and exercise all powers necessary or convenient to  
96 effect any or all of the purposes for which the fund is created.

97 4. Enter into such contracts as are necessary or proper to  
98 carry out the provisions and purposes of this section.

99 5. Employ or retain such persons as are necessary to  
100 perform the administrative and financial transactions and  
101 responsibilities of the fund and to perform other necessary or  
102 proper functions unless prohibited by law.

103 6. Take such legal action as may be necessary to avoid  
104 payment of improper claims.

105 7. Indemnify any ~~employee, agent, member of the board of~~  
106 ~~governors or his or her alternate, or~~ person acting on behalf of  
107 the fund in an official capacity, for expenses, including  
108 attorney's fees, judgments, fines, and amounts paid in  
109 settlement actually and reasonably incurred by him or her in  
110 connection with any action, suit, or proceeding, including any  
111 appeal thereof, arising out of his or her capacity in acting on  
112 behalf of the fund, if he or she acted in good faith and in a  
113 manner he or she reasonably believed to be in, or not opposed  
114 to, the best interests of the fund and, with respect to any

## Amendment No. 2

115 criminal action or proceeding, he or she had reasonable cause to  
116 believe his or her conduct was lawful.

117 (e) Fund accounting and audit.-

118 1. Money shall be withdrawn from the fund only upon a  
119 voucher as authorized by the Chief Financial Officer or his or  
120 her designee ~~board of governors~~.

121 2. All books, records, and audits of the fund shall be  
122 open for reasonable inspection to the general public, except  
123 that a claim file in possession of the fund, fund members, and  
124 their insurers is confidential and exempt from the provisions of  
125 s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
126 until termination of litigation or settlement of the claim,  
127 although medical records and other portions of the claim file  
128 may remain confidential and exempt as otherwise provided by law.  
129 Any book, record, document, audit, or asset acquired by,  
130 prepared for, or paid for by the fund is subject to the  
131 authority of the Chief Financial Officer or his or her designee  
132 ~~board of governors~~, which shall be responsible therefor.

133 3. Persons authorized to receive deposits, issue vouchers,  
134 or withdraw or otherwise disburse any fund moneys shall post a  
135 blanket fidelity bond in an amount reasonably sufficient to  
136 protect fund assets. The cost of such bond shall be paid from  
137 the fund.

138 4. Annually, the fund shall furnish, upon request, audited  
139 financial reports to any fund participant and to the Office of

## Amendment No. 2

140 Insurance Regulation and the Joint Legislative Auditing  
141 Committee. The reports shall be prepared in accordance with  
142 accepted accounting procedures and shall include income and such  
143 other information as may be required by the Office of Insurance  
144 Regulation or the Joint Legislative Auditing Committee.

145 5. Any money held in the fund shall be invested in  
146 interest-bearing investments ~~by the board of governors of the~~  
147 ~~fund as administrator~~. However, in no case may any such money be  
148 invested in the stock of any insurer participating in the Joint  
149 Underwriting Association authorized by s. 627.351(4) or in the  
150 parent company of, or company owning a controlling interest in,  
151 such insurer. All income derived from such investments shall be  
152 credited to the fund.

153 6. Any health care provider participating in the fund may  
154 withdraw from such participation only at the end of a fiscal  
155 year; however, such health care provider shall remain subject to  
156 any assessment or any refund pertaining to any year in which  
157 such member participated in the fund.

158 (i) Dissolution of the fund.—The fund shall operate  
159 subject to the supervision of the Chief Financial Officer or his  
160 or her designee, pursuant to the policies and procedures and  
161 under the auspices of the Department of Financial Services'  
162 Division of Rehabilitation and Liquidation, until the department  
163 executes a legal dissolution of the fund on or before December

Amendment No. 2

164 31, 2023. Before the legal dissolution of the fund, the  
165 Department of Financial Services must:  
166 1. Obtain all existing records and retain necessary  
167 records of the fund pursuant to law.  
168 2. Identify all remaining property held by the fund and  
169 attempt to return such property to its owners and, for property  
170 that cannot be returned to the owner, transfer such property to  
171 the Department of Financial Services' Division of Unclaimed  
172 Property.  
173 3. Make a final accounting of the finances of the fund.  
174 4. Ensure that the fund has met all its obligations  
175 pursuant to structured settlements, annuities, or other  
176 instruments established to pay covered claims and, if the fund  
177 has not done so, attempt to meet such obligations before final  
178 and complete dissolution of the fund.  
179 5. Sell or otherwise dispose of all physical assets of the  
180 fund.  
181 6. Execute a legal dissolution of the fund.  
182 7. Transfer any remaining money or assets of the fund to  
183 the Chief Financial Officer for deposit in the General Revenue  
184 Fund.  
185 (4) REPEAL.—This section is repealed January 1, 2024.  
186 Section 58. Paragraph (b) of subsection (1) of section  
187 945.6041, Florida Statutes, is amended to read:  
188 945.6041 Inmate medical services.—

388065 - h0959Line1996.docx

Published On: 1/18/2022 7:12:49 PM



Amendment No. 2

- 189 (1) As used in this section, the term:
- 190 (b) "Health care provider" means:
- 191 1. A hospital licensed under chapter 395.
- 192 2. A physician or physician assistant licensed under
- 193 chapter 458.
- 194 3. An osteopathic physician or physician assistant
- 195 licensed under chapter 459.
- 196 4. A podiatric physician licensed under chapter 461.
- 197 5. A health maintenance organization certificated under
- 198 part I of chapter 641.
- 199 6. An ambulatory surgical center licensed under chapter
- 200 395.
- 201 7. A professional association, partnership, corporation,
- 202 joint venture, or other association established by the
- 203 individuals set forth in subparagraphs 2., 3., and 4. for
- 204 professional activity.
- 205 8. Other medical facility.
- 206 a. As used in this subparagraph, the term "other medical
- 207 facility" means:
- 208 (I) A facility the primary purpose of which is to provide
- 209 human medical diagnostic services, or a facility providing
- 210 nonsurgical human medical treatment which discharges patients on
- 211 the same working day that the patients are admitted; and
- 212 (II) A facility that is not part of a hospital.

Amendment No. 2

213 b. The term does not include a facility existing for the  
214 primary purpose of performing terminations of pregnancy, or an  
215 office maintained by a physician or dentist for the practice of  
216 medicine has the same meaning as provided in s. 766.105.

217 Section 59. Paragraph (a) of subsection (1) of section  
218 985.6441, Florida Statutes, is amended to read:

219 985.6441 Health care services.—

220 (1) As used in this section, the term:

221 (a) "Health care provider" means:

222 1. A hospital licensed under chapter 395.

223 2. A physician or physician assistant licensed under  
224 chapter 458.

225 3. An osteopathic physician or physician assistant  
226 licensed under chapter 459.

227 4. A podiatric physician licensed under chapter 461.

228 5. A health maintenance organization certificated under  
229 part I of chapter 641.

230 6. An ambulatory surgical center licensed under chapter  
231 395.

232 7. A professional association, partnership, corporation,  
233 joint venture, or other association established by the  
234 individuals set forth in subparagraphs 2., 3., and 4. for  
235 professional activity

236 8. Other medical facility.

Amendment No. 2

237 a. As used in this subparagraph, the term "other medical  
238 facility" means:

239 (I) A facility the primary purpose of which is to provide  
240 human medical diagnostic services, or a facility providing  
241 nonsurgical human medical treatment which discharges patients on  
242 the same working day that the patients are admitted; and

243 (II) A facility that is not part of a hospital.

244 b. The term does not include a facility existing for the  
245 primary purpose of performing terminations of pregnancy, or an  
246 office maintained by a physician or dentist for the practice of  
247 medicine has the same meaning as provided in s. 766.105.

248 Section 60. 395.1061, Florida Statutes, is created to  
249 read:

250 395.1061 Professional liability coverage.-

251 (1) As used in this section, the term:

252 (a) "Committee" means a committee or board of a hospital  
253 established to make recommendations, policies, or decisions  
254 regarding patient institutional utilization, patient treatment,  
255 or institutional staff privileges or to perform other  
256 administrative or professional purposes or functions.

257 (b) "Covered individuals" means the officers; trustees;  
258 volunteer workers; trainees; committee members, including  
259 physicians, osteopathic physicians, podiatric physicians, and  
260 dentists; and employees of the hospital other than employed  
261 physicians licensed under chapter 458, physician assistants

Amendment No. 2

262 licensed under chapter 458, osteopathic physicians licensed  
263 under chapter 459, dentists licensed under chapter 466, and  
264 podiatric physicians licensed under chapter 461. However, with  
265 respect to a hospital, the term also includes: house physicians,  
266 interns, employed physician residents in a resident training  
267 program, and physicians performing purely administrative duties  
268 for the hospital instead of treating patients. This coverage  
269 applies to the hospital and those included in the definition of  
270 health care provider at s. 985.6441(1) (a), F.S.

271 (c) "Hospital system" means two or more hospitals  
272 associated by common ownership or corporate affiliation.

273 (d) "House physician" means any physician, osteopathic  
274 physician, podiatric physician, or dentist at a hospital,  
275 except:

276 1. The physician, osteopathic physician, podiatric  
277 physician, or dentist who has staff privileges at a hospital,  
278 provides emergency room services, or performs a medical or  
279 dental service for a fee; or

280 2. An anesthesiologist, pathologist, or radiologist.

281 (e) "Occurrence" means an accident or incident, including  
282 continuous or repeated exposure to certain harmful conditions,  
283 which results in patient injuries

284 (f) "Per claim" means all claims per patient arising out  
285 of an occurrence.

## Amendment No. 2

286       (2) Each hospital, unless exempted under paragraph (3) (b),  
287 must demonstrate financial responsibility for maintaining  
288 professional liability coverage to pay claims and costs  
289 ancillary thereto arising out of the rendering of or failure to  
290 render medical care or services and for bodily injury or  
291 property damage to the person or property of any patient arising  
292 out of the activities of the hospital or arising out of the  
293 activities of covered individuals, to the satisfaction of the  
294 Agency for Health Care Administration, by meeting one of the  
295 following requirements:

296       (a) Establish an escrow account in an amount equivalent to  
297 \$10,000 per claim for each hospital bed in such hospital, not to  
298 exceed a \$2.5 million annual aggregate.

299       (b) Obtain professional liability coverage in an amount  
300 equivalent to \$10,000 or more per claim for each bed in such  
301 hospital from a private insurer, from the Joint Underwriting  
302 Association established under s. 627.351(4), or through a plan  
303 of self-insurance as provided in s. 627.357. However, no  
304 hospital may be required to obtain such coverage in an amount  
305 exceeding a \$2.5 million annual aggregate.

306       (3) (a) Each hospital, unless exempted under paragraph (b),  
307 shall provide evidence of compliance and remain in continuous  
308 compliance with the professional liability coverage provisions  
309 of this section. The Agency for Health Care Administration may  
310 not issue or renew the license of any hospital that does not

Amendment No. 2

311 provide evidence of compliance or that provides evidence of  
312 insufficient coverage.

313 (b) Any hospital operated by an agency, subdivision, or  
314 instrumentality of the state is exempt from the provisions of  
315 this section.

316 (4) A hospital system may meet the professional liability  
317 coverage requirement with an escrow account, insurance, or self-  
318 insurance policies if the \$10,000 per claim and \$2.5 million  
319 annual aggregate is met for each hospital in the hospital  
320 system.

321

322

-----  
**T I T L E A M E N D M E N T**

323

Remove lines 177-184 and insert:

324

amending s. 766.105, F.S.; deleting certain provisions relating  
326 to the Agency for Health Care Administration; requiring that the  
327 Florida Patient's Compensation Fund be subject to the  
328 supervision and approval of the Chief Financial Officer rather  
329 than a board of governors and be dissolved on or before a  
330 specified date; deleting certain provisions relating to the  
331 board of governors; providing duties of the department before  
332 the legal dissolution of the fund; requiring that provisions  
333 relating to the fund be repealed on a specified date; amending  
334 ss. 945.6041 and 985.6441, F.S.; conforming provisions to  
335 changes made by the act; creating s. 395.1061, F.S.; providing

388065 - h0959Line1996.docx

Published On: 1/18/2022 7:12:49 PM

Amendment No. 2

336 | definitions; requiring certain hospitals and hospital systems to  
337 | demonstrate financial responsibility for maintaining  
338 | professional liability coverage; prohibiting the agency from  
339 | issuing or renewing licenses of hospitals under certain  
340 | circumstances; providing exemptions from professional liability  
341 | coverage requirements; transferring the Stop  
342 |