CHAMBER ACTION

1 The Health & Families Council recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to medical malpractice insurance; creating
7 the Enterprise Act for Patient Protection and Provider
8 Liability; providing legislative findings; amending s.
9 458.320, F.S.; exempting certain physicians who perform
10 surgery in certain patient safety facilities from the
11 requirement to establish financial responsibility;
12 requiring a licensed physician who is covered for medical
13 negligence claims by a hospital that assumes liability
14 under the act to prominently post notice or provide a
15 written statement to patients; requiring a licensed
16 physician who meets certain requirements for payment or
17 settlement of a medical malpractice claim and who is
18 covered for medical negligence claims by a hospital that
19 assumes liability under the act to prominently post notice
20 or provide a written statement to patients; amending s.
21 459.0085, F.S.; exempting certain osteopathic physicians
22 who perform surgery in certain patient safety facilities
23 from the requirement to establish financial

24 responsibility; requiring a licensed osteopathic physician
25 who is covered for medical negligence claims by a hospital
26 that assumes liability under the act to prominently post
27 notice or provide a written statement to patients;
28 requiring a licensee of osteopathic medicine who meets
29 certain requirements for payment or settlement of a
30 medical malpractice claim and who is covered for medical
31 negligence claims by a hospital that assumes liability
32 under the act to prominently post notice or provide a
33 written statement to patients; creating s. 627.41485,
34 F.S.; authorizing insurers to offer liability insurance
35 coverage to physicians which has an exclusion for certain
36 acts of medical negligence under certain conditions;
37 authorizing the Department of Financial Services to adopt
38 rules; amending s. 766.316, F.S.; requiring hospitals that
39 assume liability for affected physicians under the act to
40 provide notice to obstetrical patients regarding the
41 limited no-fault alternative to birth-related neurological
42 injuries; amending s. 766.110, F.S.; requiring hospitals
43 that assume liability for acts of medical negligence under
44 the act to carry insurance; requiring the hospital's
45 policy regarding medical liability insurance to satisfy
46 certain statutory financial responsibility requirements;
47 authorizing an insurer who is authorized to write casualty
48 insurance to write such coverage; authorizing certain
49 hospitals to indemnify certain medical staff for legal
50 liability of loss, damages, or expenses arising from
51 medical negligence within hospital premises; requiring a

52 hospital to acquire a policy of professional liability
53 insurance or a fund for malpractice coverage; requiring an
54 annual certified financial statement to the Agency for
55 Health Care Administration; authorizing certain hospitals
56 to charge physicians a fee for malpractice coverage;
57 preserving a hospital's ability to indemnify certain
58 medical staff members; amending s. 766.118, F.S.;
59 providing a cap on noneconomic damages for eligible
60 hospitals meeting certain patient safety measures;
61 creating s. 766.401, F.S.; providing definitions; creating
62 s. 766.402, F.S.; authorizing an eligible hospital to
63 petition the Agency for Health Care Administration to
64 enter an order certifying the hospital as a patient safety
65 facility; providing requirements for certification as a
66 patient safety facility; creating s. 766.403, F.S.;
67 providing requirements for a hospital to demonstrate that
68 it is engaged in a common enterprise for the care and
69 treatment of patients; specifying required patient safety
70 measures; prohibiting a report or document generated under
71 the act from being admissible or discoverable as evidence;
72 creating s. 766.404, F.S.; authorizing the agency to enter
73 an order certifying a hospital as a patient safety
74 facility and providing that the hospital bears liability
75 for acts of medical negligence by certain physicians and
76 practitioners; specifying a licensed facility as bearing
77 sole and exclusive liability for medical negligence by
78 certain physicians and practitioners under certain
79 circumstances in actions for personal injury or wrongful

80 death; providing that certain persons or entities are not
81 liable for medically negligent acts occurring in a
82 certified patient safety facility; requiring that an
83 affected practitioner prominently post notice regarding
84 exemption from personal liability; requiring an affected
85 physician who is covered by an enterprise plan in a
86 licensed facility that receives sovereign immunity to
87 prominently post notice regarding exemption from personal
88 liability; providing that an agency order certifying
89 approval of an enterprise plan is evidence of a hospital's
90 compliance with applicable patient safety requirements;
91 providing circumstances in which notice is not required;
92 providing that the order certifying approval of an
93 enterprise plan applies prospectively to causes of action
94 for medical negligence; authorizing the agency to conduct
95 onsite examinations of a licensed facility; providing
96 circumstances under which the agency may revoke its order
97 certifying approval of an enterprise plan; providing that
98 an employee or agent of a certified patient safety
99 facility may not be joined as a defendant in an action for
100 medical negligence; requiring an affected practitioner to
101 cooperate in good faith in an investigation of a claim for
102 medical malpractice; providing a cause of action for
103 failure of a physician to act in good faith; providing
104 that strict liability or liability without fault is not
105 imposed for medical incidents that occur in the affected
106 facility; providing requirements that a claimant must
107 prove to demonstrate medical negligence by an employee,

108 agent, or medical staff of a licensed facility; providing
109 that the act does not create an independent cause of
110 action or waive sovereign immunity; creating s. 766.405,
111 F.S.; requiring an eligible hospital to execute an
112 enterprise plan; requiring certain conditions to be
113 contained within an enterprise plan; creating s. 766.406,
114 F.S.; requiring a certified patient safety facility to
115 report medical incidents occurring on its premises and
116 adverse findings of medical negligence to the Department
117 of Health; requiring certified patient safety facilities
118 to perform certain peer review functions; creating s.
119 766.407, F.S.; providing that an enterprise plan may
120 provide clinical privileges to certain persons; requiring
121 certain organizations to share in the cost of omnibus
122 medical liability insurance premiums subject to certain
123 conditions; authorizing a licensed facility to impose a
124 reasonable assessment against an affected practitioner who
125 commits medical negligence; providing for the revocation
126 of clinical privileges for failure to pay the assessment;
127 exempting certain employees and agents from such
128 assessments; creating s. 766.408, F.S.; requiring a
129 certified patient safety facility to submit an annual
130 report to the agency and the Legislature; providing
131 requirements for the annual report; providing that the
132 annual report may include certain information from the
133 Office of Insurance Regulation within the Department of
134 Financial Services; providing that the annual report is
135 subject to public records requirements, but is not

136 admissible as evidence in a legal proceeding; creating s.
137 766.409, F.S.; authorizing certain teaching hospitals and
138 eligible hospitals to petition the agency for
139 certification; providing criteria for determining
140 noneconomic, economic, and future economic damages
141 recoverable in actions arising from medical negligence;
142 providing for application of limitations on damages for
143 eligible hospitals that are certified for compliance with
144 certain patient safety measures; authorizing the agency to
145 conduct onsite examinations of certified eligible
146 hospitals; authorizing the agency to revoke its order
147 certifying approval of an enterprise plan; providing that
148 an agency order certifying approval of an enterprise plan
149 is evidence of a hospital's compliance with applicable
150 patient safety requirements; providing that evidence of
151 noncompliance is inadmissible in any action for medical
152 malpractice; providing that entry of the agency's order
153 does not impose enterprise liability on the licensed
154 facility for acts or omissions of medical negligence;
155 providing that a hospital may not be approved for
156 certification for both enterprise liability and
157 limitations on damages; creating s. 766.410, F.S.;
158 providing rulemaking authority; amending s. 768.28, F.S.;
159 providing limitations on payment of a claim or judgment
160 for an action for medical negligence within a certified
161 patient safety facility that is covered by sovereign
162 immunity; providing definitions; providing that a
163 certified patient safety facility is an agent of a state

164 university board of trustees to the extent that the
165 licensed facility is solely liable for acts of medical
166 negligence of physicians providing health care services
167 within the licensed facility; specifying that certain
168 certified patient safety facilities are agents of a state
169 university board of trustees under certain circumstances;
170 authorizing licensed facilities to secure limits of
171 liability protection from certain self-insurance programs;
172 providing requirements for commencing an action for
173 certain medical negligence; providing procedures;
174 providing limitations; providing for severability;
175 providing for broad statutory view of the act; providing
176 for self-execution of the act; providing an effective
177 date.
178
179 Be It Enacted by the Legislature of the State of Florida:
180
181 Section 1. Popular name.--This act may be cited as the
182 "Enterprise Act for Patient Protection and Provider Liability."
183 Section 2. Legislative findings.--
184 (1) The Legislature finds that this state is in the midst
185 of a prolonged medical malpractice insurance crisis that has
186 serious adverse effects on patients, practitioners, licensed
187 healthcare facilities, and all residents of this state.
188 (2) The Legislature finds that hospitals are central
189 components of the modern health care delivery system.
190 (3) The Legislature finds that many of the most serious
191 incidents of medical negligence occur in hospitals, where the

192 most seriously ill patients are treated, and where surgical
193 procedures are performed.
194 (4) The Legislature finds that modern hospitals are
195 complex organizations, that medical care and treatment in
196 hospitals is a complex process, and that, increasingly, medical
197 care and treatment in hospitals is a common enterprise involving
198 an array of responsible employees, agents, and other persons,
199 such as physicians, who are authorized to exercise clinical
200 privileges within the premises.
201 (5) The Legislature finds that an increasing number of
202 medical incidents in hospitals involve a combination of acts and
203 omissions by employees, agents, and other persons, such as
204 physicians, who are authorized to exercise clinical privileges
205 within the premises.
206 (6) The Legislature finds that the medical malpractice
207 insurance crisis in this state can be alleviated by the adoption
208 of innovative approaches for patient protection in hospitals
209 which can lead to a reduction in medical errors.
210 (7) The Legislature finds statutory incentives are
211 necessary to facilitate innovative approaches for patient
212 protection in hospitals.
213 (8) The Legislature finds that an enterprise approach to
214 patient protection and provider liability in hospitals will lead
215 to a reduction in the frequency and severity of incidents of
216 medical malpractice in hospitals.
217 (9) The Legislature finds that a reduction in the
218 frequency and severity of incidents of medical malpractice in

219 hospitals will reduce attorney's fees and other expenses
220 inherent in the medical liability system.
221 (10) The Legislature finds that making high-quality health
222 care available to the residents of this state is an overwhelming
223 public necessity.
224 (11) The Legislature finds that medical education in this
225 state is an overwhelming public necessity.
226 (12) The Legislature finds that statutory teaching
227 hospitals and hospitals owned by and operated by universities
228 that maintain accredited medical schools are essential for high-
229 quality medical care and medical education in this state.
230 (13) The Legislature finds that the critical mission of
231 statutory teaching hospitals and hospitals owned and operated by
232 universities that maintain accredited medical schools is
233 severely undermined by the ongoing medical malpractice crisis.
234 (14) The Legislature finds that statutory teaching
235 hospitals and hospitals owned and operated by universities that
236 maintain accredited medical schools are appropriate health care
237 facilities for the implementation of innovative approaches to
238 patient protection and provider liability.
239 (15) The Legislature finds an overwhelming public
240 necessity to impose reasonable limitations on actions for
241 medical malpractice against statutory teaching hospitals and
242 hospitals that are owned and operated by universities that
243 maintain accredited medical schools, in furtherance of the
244 critical public interest in promoting access to high-quality
245 medical care, medical education, and innovative approaches to
246 patient protection.

247 (16) The Legislature finds an overwhelming public
248 necessity for statutory teaching hospitals and hospitals owned
249 and operated by universities that maintain accredited medical
250 schools to implement innovative measures for patient protection
251 and provider liability in order to generate empirical data for
252 state policymakers on the effectiveness of these measures. Such
253 data may lead to broader application of these measures in a
254 wider array of hospitals after a reasonable period of evaluation
255 and review.
256 (17) The Legislature finds an overwhelming public
257 necessity to promote the academic mission of statutory teaching
258 hospitals and hospitals owned and operated by universities that
259 maintain accredited medical schools. Furthermore, the
260 Legislature finds that the academic mission of these medical
261 facilities is materially enhanced by statutory authority for the
262 implementation of innovative approaches to patient protection
263 and provider liability. Such approaches can be carefully studied
264 and learned by medical students, medical school faculty, and
265 affiliated physicians in appropriate clinical settings, thereby
266 enlarging the body of knowledge concerning patient protection
267 and provider liability which is essential for advancement of
268 patient safety, reduction of expenses inherent in the medical
269 liability system, and curtailment of the medical malpractice
270 insurance crisis in this state.
271 Section 3. Subsection (2) and paragraphs (f) and (g) of
272 subsection (5) of section 458.320, Florida Statutes, are amended
273 to read:
274 458.320 Financial responsibility.--

275 (2) Physicians who perform surgery in an ambulatory
276 surgical center licensed under chapter 395 and, as a continuing
277 condition of hospital staff privileges, physicians who have
278 staff privileges must also establish financial responsibility by
279 one of the following methods:
280 (a) Establishing and maintaining an escrow account
281 consisting of cash or assets eligible for deposit in accordance
282 with s. 625.52 in the per claim amounts specified in paragraph
283 (b). The required escrow amount set forth in this paragraph may
284 not be used for litigation costs or attorney's fees for the
285 defense of any medical malpractice claim.
286 (b) Obtaining and maintaining professional liability
287 coverage in an amount not less than $250,000 per claim, with a
288 minimum annual aggregate of not less than $750,000 from an
289 authorized insurer as defined under s. 624.09, from a surplus
290 lines insurer as defined under s. 626.914(2), from a risk
291 retention group as defined under s. 627.942, from the Joint
292 Underwriting Association established under s. 627.351(4),
293 through a plan of self-insurance as provided in s. 627.357, or
294 through a plan of self-insurance which meets the conditions
295 specified for satisfying financial responsibility in s. 766.110.
296 The required coverage amount set forth in this paragraph may not
297 be used for litigation costs or attorney's fees for the defense
298 of any medical malpractice claim.
299 (c) Obtaining and maintaining an unexpired irrevocable
300 letter of credit, established pursuant to chapter 675, in an
301 amount not less than $250,000 per claim, with a minimum
302 aggregate availability of credit of not less than $750,000. The

303 letter of credit must be payable to the physician as beneficiary
304 upon presentment of a final judgment indicating liability and
305 awarding damages to be paid by the physician or upon presentment
306 of a settlement agreement signed by all parties to such
307 agreement when such final judgment or settlement is a result of
308 a claim arising out of the rendering of, or the failure to
309 render, medical care and services. The letter of credit may not
310 be used for litigation costs or attorney's fees for the defense
311 of any medical malpractice claim. The letter of credit must be
312 nonassignable and nontransferable. The letter of credit must be
313 issued by any bank or savings association organized and existing
314 under the laws of this state or any bank or savings association
315 organized under the laws of the United States which has its
316 principal place of business in this state or has a branch office
317 that is authorized under the laws of this state or of the United
318 States to receive deposits in this state.
319
320 This subsection shall be inclusive of the coverage in subsection
321 (1). A physician who only performs surgery or who has only
322 clinical privileges or admitting privileges in one or more
323 certified patient safety facilities, which health care facility
324 or facilities are legally liable for medical negligence of
325 affected practitioners, pursuant to the Enterprise Act for
326 Patient Protection and Provider Liability, inclusive of ss.
327 766.401-766.409, is exempt from the requirements of this
328 subsection.
329 (5) The requirements of subsections (1), (2), and (3) do
330 not apply to:

331 (f) Any person holding an active license under this
332 chapter who meets all of the following criteria:
333 1. The licensee has held an active license to practice in
334 this state or another state or some combination thereof for more
335 than 15 years.
336 2. The licensee has either retired from the practice of
337 medicine or maintains a part-time practice of no more than 1,000
338 patient contact hours per year.
339 3. The licensee has had no more than two claims for
340 medical malpractice resulting in an indemnity exceeding $25,000
341 within the previous 5-year period.
342 4. The licensee has not been convicted of, or pled guilty
343 or nolo contendere to, any criminal violation specified in this
344 chapter or the medical practice act of any other state.
345 5. The licensee has not been subject within the last 10
346 years of practice to license revocation or suspension for any
347 period of time; probation for a period of 3 years or longer; or
348 a fine of $500 or more for a violation of this chapter or the
349 medical practice act of another jurisdiction. The regulatory
350 agency's acceptance of a physician's relinquishment of a
351 license, stipulation, consent order, or other settlement,
352 offered in response to or in anticipation of the filing of
353 administrative charges against the physician's license,
354 constitutes action against the physician's license for the
355 purposes of this paragraph.
356 6. The licensee has submitted a form supplying necessary
357 information as required by the department and an affidavit
358 affirming compliance with this paragraph.

359 7. The licensee must submit biennially to the department
360 certification stating compliance with the provisions of this
361 paragraph. The licensee must, upon request, demonstrate to the
362 department information verifying compliance with this paragraph.
363
364 A licensee who meets the requirements of this paragraph must
365 post notice in the form of a sign prominently displayed in the
366 reception area and clearly noticeable by all patients or provide
367 a written statement to any person to whom medical services are
368 being provided. The sign or statement must read as follows:
369 "Under Florida law, physicians are generally required to carry
370 medical malpractice insurance or otherwise demonstrate financial
371 responsibility to cover potential claims for medical
372 malpractice. However, certain part-time physicians who meet
373 state requirements are exempt from the financial responsibility
374 law. YOUR DOCTOR MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO
375 CARRY MEDICAL MALPRACTICE INSURANCE. This notice is provided
376 pursuant to Florida law." In addition, a licensee who is covered
377 for claims of medical negligence arising from care and treatment
378 of patients in a hospital that assumes sole and exclusive
379 liability for all such claims pursuant to the Enterprise Act for
380 Patient Protection and Provider Liability, inclusive of ss.
381 766.401-766.409, shall post notice in the form of a sign
382 prominently displayed in the reception area and clearly
383 noticeable by all patients or provide a written statement to any
384 person for whom the physician may provide medical care and
385 treatment in any such hospital in accordance with the
386 requirements of s. 766.404.

387 (g) Any person holding an active license under this
388 chapter who agrees to meet all of the following criteria:
389 1. Upon the entry of an adverse final judgment arising
390 from a medical malpractice arbitration award, from a claim of
391 medical malpractice either in contract or tort, or from
392 noncompliance with the terms of a settlement agreement arising
393 from a claim of medical malpractice either in contract or tort,
394 the licensee shall pay the judgment creditor the lesser of the
395 entire amount of the judgment with all accrued interest or
396 either $100,000, if the physician is licensed pursuant to this
397 chapter but does not maintain hospital staff privileges, or
398 $250,000, if the physician is licensed pursuant to this chapter
399 and maintains hospital staff privileges, within 60 days after
400 the date such judgment became final and subject to execution,
401 unless otherwise mutually agreed to in writing by the parties.
402 Such adverse final judgment shall include any cross-claim,
403 counterclaim, or claim for indemnity or contribution arising
404 from the claim of medical malpractice. Upon notification of the
405 existence of an unsatisfied judgment or payment pursuant to this
406 subparagraph, the department shall notify the licensee by
407 certified mail that he or she shall be subject to disciplinary
408 action unless, within 30 days from the date of mailing, he or
409 she either:
410 a. Shows proof that the unsatisfied judgment has been paid
411 in the amount specified in this subparagraph; or
412 b. Furnishes the department with a copy of a timely filed
413 notice of appeal and either:

414 (I) A copy of a supersedeas bond properly posted in the
415 amount required by law; or
416 (II) An order from a court of competent jurisdiction
417 staying execution on the final judgment pending disposition of
418 the appeal.
419 2. The Department of Health shall issue an emergency order
420 suspending the license of any licensee who, after 30 days
421 following receipt of a notice from the Department of Health, has
422 failed to: satisfy a medical malpractice claim against him or
423 her; furnish the Department of Health a copy of a timely filed
424 notice of appeal; furnish the Department of Health a copy of a
425 supersedeas bond properly posted in the amount required by law;
426 or furnish the Department of Health an order from a court of
427 competent jurisdiction staying execution on the final judgment
428 pending disposition of the appeal.
429 3. Upon the next meeting of the probable cause panel of
430 the board following 30 days after the date of mailing the notice
431 of disciplinary action to the licensee, the panel shall make a
432 determination of whether probable cause exists to take
433 disciplinary action against the licensee pursuant to
434 subparagraph 1.
435 4. If the board determines that the factual requirements
436 of subparagraph 1. are met, it shall take disciplinary action as
437 it deems appropriate against the licensee. Such disciplinary
438 action shall include, at a minimum, probation of the license
439 with the restriction that the licensee must make payments to the
440 judgment creditor on a schedule determined by the board to be
441 reasonable and within the financial capability of the physician.

442 Notwithstanding any other disciplinary penalty imposed, the
443 disciplinary penalty may include suspension of the license for a
444 period not to exceed 5 years. In the event that an agreement to
445 satisfy a judgment has been met, the board shall remove any
446 restriction on the license.
447 5. The licensee has completed a form supplying necessary
448 information as required by the department.
449
450 A licensee who meets the requirements of this paragraph shall be
451 required either to post notice in the form of a sign prominently
452 displayed in the reception area and clearly noticeable by all
453 patients or to provide a written statement to any person to whom
454 medical services are being provided. Such sign or statement
455 shall state: "Under Florida law, physicians are generally
456 required to carry medical malpractice insurance or otherwise
457 demonstrate financial responsibility to cover potential claims
458 for medical malpractice. YOUR DOCTOR HAS DECIDED NOT TO CARRY
459 MEDICAL MALPRACTICE INSURANCE. This is permitted under Florida
460 law subject to certain conditions. Florida law imposes penalties
461 against noninsured physicians who fail to satisfy adverse
462 judgments arising from claims of medical malpractice. This
463 notice is provided pursuant to Florida law." In addition, a
464 licensee who meets the requirements of this paragraph and who is
465 covered for claims of medical negligence arising from care and
466 treatment of patients in a hospital that assumes sole and
467 exclusive liability for all such claims pursuant to the
468 Enterprise Act for Patient Protection and Provider Liability,
469 inclusive of ss. 766.401-766.409, shall post notice in the form

470 of a sign prominently displayed in the reception area and
471 clearly noticeable by all patients or provide a written
472 statement to any person for whom the physician may provide
473 medical care and treatment in any such hospital. The sign or
474 statement must adhere to the requirements of s. 766.404.
475 Section 4. Subsection (2) and paragraphs (f) and (g) of
476 subsection (5) of section 459.0085, Florida Statutes, are
477 amended to read:
478 459.0085 Financial responsibility.--
479 (2) Osteopathic physicians who perform surgery in an
480 ambulatory surgical center licensed under chapter 395 and, as a
481 continuing condition of hospital staff privileges, osteopathic
482 physicians who have staff privileges must also establish
483 financial responsibility by one of the following methods:
484 (a) Establishing and maintaining an escrow account
485 consisting of cash or assets eligible for deposit in accordance
486 with s. 625.52 in the per-claim amounts specified in paragraph
487 (b). The required escrow amount set forth in this paragraph may
488 not be used for litigation costs or attorney's fees for the
489 defense of any medical malpractice claim.
490 (b) Obtaining and maintaining professional liability
491 coverage in an amount not less than $250,000 per claim, with a
492 minimum annual aggregate of not less than $750,000 from an
493 authorized insurer as defined under s. 624.09, from a surplus
494 lines insurer as defined under s. 626.914(2), from a risk
495 retention group as defined under s. 627.942, from the Joint
496 Underwriting Association established under s. 627.351(4),
497 through a plan of self-insurance as provided in s. 627.357, or

498 through a plan of self-insurance that meets the conditions
499 specified for satisfying financial responsibility in s. 766.110.
500 The required coverage amount set forth in this paragraph may not
501 be used for litigation costs or attorney's fees for the defense
502 of any medical malpractice claim.
503 (c) Obtaining and maintaining an unexpired, irrevocable
504 letter of credit, established pursuant to chapter 675, in an
505 amount not less than $250,000 per claim, with a minimum
506 aggregate availability of credit of not less than $750,000. The
507 letter of credit must be payable to the osteopathic physician as
508 beneficiary upon presentment of a final judgment indicating
509 liability and awarding damages to be paid by the osteopathic
510 physician or upon presentment of a settlement agreement signed
511 by all parties to such agreement when such final judgment or
512 settlement is a result of a claim arising out of the rendering
513 of, or the failure to render, medical care and services. The
514 letter of credit may not be used for litigation costs or
515 attorney's fees for the defense of any medical malpractice
516 claim. The letter of credit must be nonassignable and
517 nontransferable. The letter of credit must be issued by any bank
518 or savings association organized and existing under the laws of
519 this state or any bank or savings association organized under
520 the laws of the United States which has its principal place of
521 business in this state or has a branch office that is authorized
522 under the laws of this state or of the United States to receive
523 deposits in this state.
524

525 This subsection shall be inclusive of the coverage in subsection
526 (1). An osteopathic physician who only performs surgery or who
527 has only clinical privileges or admitting privileges in one or
528 more certified patient safety facilities, which health care
529 facility or facilities are legally liable for medical negligence
530 of affected practitioners, pursuant to the Enterprise Act for
531 Patient Protection and Provider Liability, inclusive of ss.
532 766.401-766.409, is exempt from the requirements of this
533 subsection.
534 (5) The requirements of subsections (1), (2), and (3) do
535 not apply to:
536 (f) Any person holding an active license under this
537 chapter who meets all of the following criteria:
538 1. The licensee has held an active license to practice in
539 this state or another state or some combination thereof for more
540 than 15 years.
541 2. The licensee has either retired from the practice of
542 osteopathic medicine or maintains a part-time practice of
543 osteopathic medicine of no more than 1,000 patient contact hours
544 per year.
545 3. The licensee has had no more than two claims for
546 medical malpractice resulting in an indemnity exceeding $25,000
547 within the previous 5-year period.
548 4. The licensee has not been convicted of, or pled guilty
549 or nolo contendere to, any criminal violation specified in this
550 chapter or the practice act of any other state.
551 5. The licensee has not been subject within the last 10
552 years of practice to license revocation or suspension for any

553 period of time, probation for a period of 3 years or longer, or
554 a fine of $500 or more for a violation of this chapter or the
555 medical practice act of another jurisdiction. The regulatory
556 agency's acceptance of an osteopathic physician's relinquishment
557 of a license, stipulation, consent order, or other settlement,
558 offered in response to or in anticipation of the filing of
559 administrative charges against the osteopathic physician's
560 license, constitutes action against the physician's license for
561 the purposes of this paragraph.
562 6. The licensee has submitted a form supplying necessary
563 information as required by the department and an affidavit
564 affirming compliance with this paragraph.
565 7. The licensee must submit biennially to the department a
566 certification stating compliance with this paragraph. The
567 licensee must, upon request, demonstrate to the department
568 information verifying compliance with this paragraph.
569
570 A licensee who meets the requirements of this paragraph must
571 post notice in the form of a sign prominently displayed in the
572 reception area and clearly noticeable by all patients or provide
573 a written statement to any person to whom medical services are
574 being provided. The sign or statement must read as follows:
575 "Under Florida law, osteopathic physicians are generally
576 required to carry medical malpractice insurance or otherwise
577 demonstrate financial responsibility to cover potential claims
578 for medical malpractice. However, certain part-time osteopathic
579 physicians who meet state requirements are exempt from the
580 financial responsibility law. YOUR OSTEOPATHIC PHYSICIAN MEETS

581 THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL
582 MALPRACTICE INSURANCE. This notice is provided pursuant to
583 Florida law." In addition, a licensee who is covered for claims
584 of medical negligence arising from care and treatment of
585 patients in a hospital that assumes sole and exclusive liability
586 for all such claims pursuant to the Enterprise Act for Patient
587 Protection and Provider Liability, inclusive of ss. 766.401-
588 766.409, shall post notice in the form of a sign prominently
589 displayed in the reception area and clearly noticeable by all
590 patients or provide a written statement to any person for whom
591 the osteopathic physician may provide medical care and treatment
592 in any such hospital in accordance with the requirements of s.
593 766.404.
594 (g) Any person holding an active license under this
595 chapter who agrees to meet all of the following criteria.
596 1. Upon the entry of an adverse final judgment arising
597 from a medical malpractice arbitration award, from a claim of
598 medical malpractice either in contract or tort, or from
599 noncompliance with the terms of a settlement agreement arising
600 from a claim of medical malpractice either in contract or tort,
601 the licensee shall pay the judgment creditor the lesser of the
602 entire amount of the judgment with all accrued interest or
603 either $100,000, if the osteopathic physician is licensed
604 pursuant to this chapter but does not maintain hospital staff
605 privileges, or $250,000, if the osteopathic physician is
606 licensed pursuant to this chapter and maintains hospital staff
607 privileges, within 60 days after the date such judgment became
608 final and subject to execution, unless otherwise mutually agreed

609 to in writing by the parties. Such adverse final judgment shall
610 include any cross-claim, counterclaim, or claim for indemnity or
611 contribution arising from the claim of medical malpractice. Upon
612 notification of the existence of an unsatisfied judgment or
613 payment pursuant to this subparagraph, the department shall
614 notify the licensee by certified mail that he or she shall be
615 subject to disciplinary action unless, within 30 days from the
616 date of mailing, the licensee either:
617 a. Shows proof that the unsatisfied judgment has been paid
618 in the amount specified in this subparagraph; or
619 b. Furnishes the department with a copy of a timely filed
620 notice of appeal and either:
621 (I) A copy of a supersedeas bond properly posted in the
622 amount required by law; or
623 (II) An order from a court of competent jurisdiction
624 staying execution on the final judgment, pending disposition of
625 the appeal.
626 2. The Department of Health shall issue an emergency order
627 suspending the license of any licensee who, after 30 days
628 following receipt of a notice from the Department of Health, has
629 failed to: satisfy a medical malpractice claim against him or
630 her; furnish the Department of Health a copy of a timely filed
631 notice of appeal; furnish the Department of Health a copy of a
632 supersedeas bond properly posted in the amount required by law;
633 or furnish the Department of Health an order from a court of
634 competent jurisdiction staying execution on the final judgment
635 pending disposition of the appeal.

636 3. Upon the next meeting of the probable cause panel of
637 the board following 30 days after the date of mailing the notice
638 of disciplinary action to the licensee, the panel shall make a
639 determination of whether probable cause exists to take
640 disciplinary action against the licensee pursuant to
641 subparagraph 1.
642 4. If the board determines that the factual requirements
643 of subparagraph 1. are met, it shall take disciplinary action as
644 it deems appropriate against the licensee. Such disciplinary
645 action shall include, at a minimum, probation of the license
646 with the restriction that the licensee must make payments to the
647 judgment creditor on a schedule determined by the board to be
648 reasonable and within the financial capability of the
649 osteopathic physician. Notwithstanding any other disciplinary
650 penalty imposed, the disciplinary penalty may include suspension
651 of the license for a period not to exceed 5 years. In the event
652 that an agreement to satisfy a judgment has been met, the board
653 shall remove any restriction on the license.
654 5. The licensee has completed a form supplying necessary
655 information as required by the department.
656
657 A licensee who meets the requirements of this paragraph shall be
658 required either to post notice in the form of a sign prominently
659 displayed in the reception area and clearly noticeable by all
660 patients or to provide a written statement to any person to whom
661 medical services are being provided. Such sign or statement
662 shall state: "Under Florida law, osteopathic physicians are
663 generally required to carry medical malpractice insurance or

664 otherwise demonstrate financial responsibility to cover
665 potential claims for medical malpractice. YOUR OSTEOPATHIC
666 PHYSICIAN HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE
667 INSURANCE. This is permitted under Florida law subject to
668 certain conditions. Florida law imposes strict penalties against
669 noninsured osteopathic physicians who fail to satisfy adverse
670 judgments arising from claims of medical malpractice. This
671 notice is provided pursuant to Florida law." In addition, a
672 licensee who meets the requirements of this paragraph and who is
673 covered for claims of medical negligence arising from care and
674 treatment of patients in a hospital that assumes sole and
675 exclusive liability for all such claims pursuant to an
676 enterprise plan for patient protection and provider liability
677 under ss. 766.401-766.409, shall post notice in the form of a
678 sign prominently displayed in the reception area and clearly
679 noticeable by all patients or provide a written statement to any
680 person for whom the osteopathic physician may provide medical
681 care and treatment in any such hospital. The sign or statement
682 must adhere to the requirements of s. 766.404.
683 Section 5. Section 627.41485, Florida Statutes, is created
684 to read:
685 627.41485 Medical malpractice insurers; optional coverage
686 exclusion for insureds who are covered by an enterprise plan for
687 patient protection and provider liability.--
688 (1) An insurer issuing policies of professional liability
689 coverage for claims arising out of the rendering of, or the
690 failure to render, medical care or services may make available
691 to physicians licensed under chapter 458 and to osteopathic

692 physicians licensed under chapter 459 coverage having an
693 appropriate exclusion for acts of medical negligence occurring
694 within:
695 (a) A certified patient safety facility that bears sole
696 and exclusive liability for acts of medical negligence pursuant
697 to the Enterprise Act for Patient Protection and Provider
698 Liability, inclusive of ss. 766.401-766.409, subject to the
699 usual underwriting standards; or
700 (b) A statutory teaching hospital that has agreed to
701 indemnify the physician or osteopathic physician for legal
702 liability pursuant to s. 766.110(2)(c), subject to the usual
703 underwriting standards.
704 (2) The Department of Financial Services may adopt rules
705 to administer this section.
706 Section 6. Section 766.316, Florida Statutes, is amended
707 to read:
708 766.316 Notice to obstetrical patients of participation in
709 the plan.--Each hospital with a participating physician on its
710 staff, each hospital that assumes liability for affected
711 physicians pursuant to the Enterprise Act for Patient Protection
712 and Provider Liability, inclusive of ss. 766.401-766.409, and
713 each participating physician, other than residents, assistant
714 residents, and interns deemed to be participating physicians
715 under s. 766.314(4)(c), under the Florida Birth-Related
716 Neurological Injury Compensation Plan shall provide notice to
717 the obstetrical patients as to the limited no-fault alternative
718 for birth-related neurological injuries. Such notice shall be
719 provided on forms furnished by the association and shall include

720 a clear and concise explanation of a patient's rights and
721 limitations under the plan. The hospital or the participating
722 physician may elect to have the patient sign a form
723 acknowledging receipt of the notice form. Signature of the
724 patient acknowledging receipt of the notice form raises a
725 rebuttable presumption that the notice requirements of this
726 section have been met. Notice need not be given to a patient
727 when the patient has an emergency medical condition as defined
728 in s. 395.002(9)(b) or when notice is not practicable.
729 Section 7. Subsection (2) of section 766.110, Florida
730 Statutes, is amended to read:
731 766.110 Liability of health care facilities.--
732 (2)(a) Every hospital licensed under chapter 395 may carry
733 liability insurance or adequately insure itself in an amount of
734 not less than $1.5 million per claim, $5 million annual
735 aggregate to cover all medical injuries to patients resulting
736 from negligent acts or omissions on the part of those members of
737 its medical staff who are covered thereby in furtherance of the
738 requirements of ss. 458.320 and 459.0085. Self-insurance
739 coverage extended hereunder to a member of a hospital's medical
740 staff meets the financial responsibility requirements of ss.
741 458.320 and 459.0085 if the physician's coverage limits are not
742 less than the minimum limits established in ss. 458.320 and
743 459.0085 and the hospital is a verified trauma center that has
744 extended self-insurance coverage continuously to members of its
745 medical staff for activities both inside and outside of the
746 hospital. Any insurer authorized to write casualty insurance may
747 make available, but is ~~shall~~ not ~~be~~ required to write, such

748 coverage. The hospital may assess on an equitable and pro rata
749 basis the following professional health care providers for a
750 portion of the total hospital insurance cost for this coverage:
751 physicians licensed under chapter 458, osteopathic physicians
752 licensed under chapter 459, podiatric physicians licensed under
753 chapter 461, dentists licensed under chapter 466, and nurses
754 licensed under part I of chapter 464. The hospital may provide
755 for a deductible amount to be applied against any individual
756 health care provider found liable in a law suit in tort or for
757 breach of contract. The legislative intent in providing for the
758 deductible to be applied to individual health care providers
759 found negligent or in breach of contract is to instill in each
760 individual health care provider the incentive to avoid the risk
761 of injury to the fullest extent and ensure that the citizens of
762 this state receive the highest quality health care obtainable.
763 (b) Except with regard to hospitals that receive sovereign
764 immunity under s. 768.28, each hospital licensed under chapter
765 395 which assumes sole and exclusive liability for acts of
766 medical negligence by affected providers pursuant to the
767 Enterprise Act for Patient Protection and Provider Liability,
768 inclusive of ss. 766.401-766.409, shall carry liability
769 insurance or adequately insure itself in an amount not less than
770 $2.5 million per claim, $7.5 million annual aggregate to cover
771 all medical injuries to patients resulting from negligent acts
772 or omissions on the part of affected physicians and
773 practitioners who are covered by an enterprise plan for patient
774 protection and provider liability. The hospital's policy of
775 medical liability insurance or self-insurance must satisfy the

776 financial responsibility requirements of ss. 458.320(2) and
777 459.0085(2) for affected providers. Any authorized insurer as
778 defined in s. 626.914(2), risk retention group as defined in s.
779 627.942, or joint underwriting association established under s.
780 627.351(4) that has authority to write casualty insurance may
781 make available, but is not required to write, such coverage.
782 (c) Notwithstanding any provision in the Insurance Code to
783 the contrary, a statutory teaching hospital, as defined in s.
784 408.07, other than a hospital that receives sovereign immunity
785 under s. 768.28, which complies with the patient safety measures
786 specified in s. 766.403 and all other requirements of s.
787 766.409, including approval by the Agency for Health Care
788 Administration, may agree to indemnify some or all members of
789 its medical staff, including, but not limited to, physicians
790 having clinical privileges who are not employees or agents of
791 the hospital and any organization, association, or group of
792 persons liable for the negligent acts of such physicians,
793 whether incorporated or unincorporated, and some or all medical,
794 nursing, or allied health students affiliated with the hospital,
795 collectively known as covered persons, other than persons exempt
796 from liability due to sovereign immunity under s. 768.28, for
797 legal liability of such covered persons for loss, damages, or
798 expense arising out of medical negligence within the hospital
799 premises, as defined in s. 766.401, thereby providing limited
800 malpractice coverage for such covered persons. Any hospital that
801 agrees to provide malpractice coverage for covered persons under
802 this section shall acquire an appropriate policy of professional
803 liability insurance or establish and maintain a fund from which

804 such malpractice coverage is provided, in accordance with usual
805 underwriting standards. Such insurance or fund may be separate
806 and apart from any insurance or fund maintained by or on behalf
807 of the hospital or combined in a single policy of insurance or a
808 fund maintained by or on behalf of the hospital. Any hospital
809 that provides malpractice coverage to covered persons as defined
810 in this paragraph through a fund providing any such malpractice
811 coverage, shall annually provide a certified financial statement
812 containing actuarial projections as to the soundness of reserves
813 to the Agency for Health Care Administration. The indemnity
814 agreements or malpractice coverage provided by this section
815 shall be in amounts that, at a minimum, meet the financial
816 responsibility requirements of ss. 458.320 and 459.0085 for
817 affected providers. Any such indemnity agreement or malpractice
818 coverage in such amounts satisfies the financial responsibility
819 requirements of ss. 458.320 and 459.0085 for affected providers.
820 Any statutory teaching hospital that agrees to indemnify
821 physicians or other covered persons for medical negligence on
822 the premises pursuant to this section may charge such physicians
823 or other covered persons a reasonable fee for malpractice
824 coverage, notwithstanding any provision in the Insurance Code to
825 the contrary. Such fee shall be based on appropriate actuarial
826 criteria. This paragraph does not constitute a waiver of
827 sovereign immunity under s. 768.28. Nothing in this subsection
828 impairs a hospital's ability to indemnify member of its medical
829 staff to the extent such indemnification is allowed by law.
830 Section 8. Subsections (6) and (7) of section 766.118,
831 Florida Statutes, are renumbered as subsections (7) and (8),

832 respectively, and new subsection (6) is added to said section,
833 to read:
834 766.118 Determination of noneconomic damages.--
835 (6) LIMITATION ON NONECONOMIC DAMAGES FOR NEGLIGENCE OF
836 CERTAIN HOSPITALS.--A hospital that has received an order from
837 the Agency for Health Care Administration pursuant to s. 766.410
838 certifying that the facility complies with patient safety
839 measures specified in s. 766.403 shall be liable for no more
840 than $500,000 in noneconomic damages, regardless of the number
841 of claimants or theory of liability, including vicarious
842 liability, and notwithstanding any other provisions of this
843 section.
844 Section 9. Section 766.401, Florida Statutes, is created
845 to read:
846 766.401 Definitions.--As used in this section and ss.
847 766.402-766.409, the term:
848 (1) "Affected facility" means a certified patient safety
849 facility.
850 (2) "Affected patient" means a patient of a certified
851 patient safety facility.
852 (3) "Affected physician" means a medical staff member who
853 is covered by an enterprise plan for patient protection and
854 provider liability in a certified patient safety facility.
855 (4) "Affected practitioner" means any person, including a
856 physician, who is credentialed by the eligible hospital to
857 provide health care services who is covered by an enterprise
858 plan for patient protection and provider liability in a
859 certified patient safety facility.

860 (5) "Agency" means the Agency for Health Care
861 Administration.
862 (6) "Certified patient safety facility" means any eligible
863 hospital that, in accordance with agency order, is solely and
864 exclusively liable for the medical negligence within the
865 licensed facility by affected physicians and practitioners who
866 are employees or agents of an accredited medical school or who
867 are employees or agents of the hospital.
868 (7) "Clinical privileges" means the privileges granted to
869 a physician or other licensed health care practitioner to render
870 patient care services in a hospital.
871 (8) "Eligible hospital" or "licensed facility" means:
872 (a) A statutory teaching hospital as defined by s. 408.07,
873 which maintains at least seven different accredited graduate
874 medical education programs and has 100 or more full-time
875 equivalent resident physicians; or
876 (b) A hospital licensed in accordance with chapter 395
877 which is wholly owned by a university based in this state which
878 maintains an accredited medical school.
879 (9) "Employee or agent of an accredited medical school"
880 means any physician or practitioner who is a full-time employee
881 or agent of the accredited medical school or who devotes his or
882 her entire paid professional effort to the accredited medical
883 school.
884 (10) "Enterprise plan" means a document adopted by the
885 governing board of an eligible hospital and the executive
886 committee of the medical staff of the eligible hospital, however
887 defined, or the board of trustees of a state university,

888 manifesting concurrence and setting forth certain rights,
889 duties, privileges, obligations, and responsibilities of the
890 health care facility and its medical staff, or its affiliated
891 medical school, in furtherance of seeking and maintaining status
892 as a certified patient safety facility.
893 (11) "Health care provider" or "provider" means:
894 (a) An eligible hospital.
895 (b) A physician or physician assistant licensed under
896 chapter 458.
897 (c) An osteopathic physician or osteopathic physician
898 assistant licensed under chapter 459.
899 (d) A registered nurse, nurse midwife, licensed practical
900 nurse, or advanced registered nurse practitioner licensed or
901 registered under part I of chapter 464 or any facility that
902 employs nurses licensed or registered under part I of chapter
903 464 to supply all or part of the care delivered by that
904 facility.
905 (e) A health care professional association and its
906 employees or a corporate medical group and its employees.
907 (f) Any other medical facility the primary purpose of
908 which is to deliver human medical diagnostic services or which
909 delivers nonsurgical human medical treatment, including an
910 office maintained by a provider.
911 (g) A free clinic that delivers only medical diagnostic
912 services or nonsurgical medical treatment free of charge to all
913 low-income recipients.
914 (h) Any other health care professional, practitioner, or
915 provider, including a student enrolled in an accredited program

916 that prepares the student for licensure as any one of the
917 professionals listed in this subsection.
918
919 The term includes any person, organization, or entity that is
920 vicariously liable under the theory of respondent superior or
921 any other theory of legal liability for medical negligence
922 committed by any licensed professional listed in this
923 subsection. The term also includes any nonprofit corporation
924 qualified as exempt from federal income taxation under s. 501(a)
925 of the Internal Revenue Code, and described in s. 501(c) of the
926 Internal Revenue Code, including any university or medical
927 school that employs licensed professionals listed in this
928 subsection or that delivers health care services provided by
929 licensed professionals listed in this subsection, any federally
930 funded community health center, and any volunteer corporation or
931 volunteer health care provider that delivers health care
932 services.
933 (12) "Health care practitioner" or "practitioner" means
934 any person, entity, or organization identified in subsection
935 (9), except for a hospital.
936 (13) "Medical incident" or "adverse incident" has the same
937 meaning as provided in ss. 381.0271, 395.0197, 458.351, and
938 459.026.
939 (14) "Medical negligence" means medical malpractice,
940 whether grounded in tort or in contract, arising out of the
941 rendering of or failure to render medical care or services.
942 (15) "Medical staff" means a physician licensed under
943 chapter 458 or chapter 459 having clinical privileges and active

944 status in a licensed facility. The term includes any affected
945 physician.
946 (16) "Person" means any individual, partnership,
947 corporation, association, or governmental unit.
948 (17) "Premises" means those buildings, beds, and equipment
949 located at the address of the licensed facility and all other
950 buildings, beds, and equipment for the provision of hospital,
951 ambulatory surgical, mobile surgical care, primary care, or
952 comprehensive health care under the dominion and control of the
953 licensee, including offices and locations where the licensed
954 facility provides medical care and treatment to affected
955 patients.
956 (18) "Statutory teaching hospital" or "teaching hospital"
957 has the same meaning as provided in s. 408.07.
958 (19) "Within the licensed facility" or "within the
959 premise" means anywhere on the premises of the licensed facility
960 or the premises of any office, clinic, or ancillary facility
961 that is owned or leased or controlled by the licensed facility.
962 Section 10. Section 766.402, Florida Statutes, is created
963 to read:
964 766.402 Agency approval of enterprise plans for patient
965 protection and provider liability.--
966 (1) An eligible hospital in conjunction with the executive
967 committee of its medical staff or the board of trustees of a
968 state university, if applicable, that has adopted an enterprise
969 plan may petition the agency to enter an order certifying
970 approval of the hospital as a certified patient safety facility.

971 (2) In accordance with chapter 120, the agency shall enter
972 an order certifying approval of the certified patient safety
973 facility upon a showing that, in furtherance of an enterprise
974 approach to patient protection and provider liability:
975 (a) The petitioners have established enterprise-wide
976 safety measures for the care and treatment of patients.
977 (b) The petitioners satisfy requirements for patient
978 protection measures, as specified in s. 766.403.
979 (c) The petitioners acknowledge and agree to enterprise
980 liability for medical negligence within the premises, as
981 specified in s. 766.404.
982 (d) The petitioners have adopted an enterprise plan, as
983 specified in s. 766.405.
984 (e) The petitioners satisfy requirements for professional
985 accountability of affected practitioners, as specified in s.
986 766.406.
987 (f) The petitioners satisfy requirements for financial
988 accountability of affected practitioners, as specified in s.
989 766.407.
990 (g) The petitioners satisfy all other requirements of ss.
991 766.401-766.409.
992 Section 11. Section 766.403, Florida Statutes, is created
993 to read:
994 766.403 Enterprise-wide patient safety measures.--
995 (1) In order to satisfy the requirements of s.
996 766.402(2)(a) or s. 766.409, the licensed facility shall:
997 (a) Have in place a process, either through the facility's
998 patient safety committee or a similar body, for coordinating the

999 quality control, risk management, and patient relations
1000 functions of the facility and for reporting to the facility's
1001 governing board at least quarterly regarding such efforts.
1002 (b) Establish within the facility a system for reporting
1003 near misses and agree to submit any information collected to the
1004 Florida Patient Safety Corporation. Such information must be
1005 submitted by the facility and made available by the Patient
1006 Safety Corporation in accordance with s. 381.0271(7).
1007 (c) Design and make available to facility staff, including
1008 medical staff, a patient safety curriculum that provides lecture
1009 and web-based training on recognized patient safety principles,
1010 which may include communication skills training, team
1011 performance assessment and training, risk prevention strategies,
1012 and best practices and evidence based medicine. The licensed
1013 facility shall report annually to the agency the programs
1014 presented.
1015 (d) Implement a program to identify health care providers
1016 on the facility's staff who may be eligible for an early-
1017 intervention program providing additional skills assessment and
1018 training and offer such training to the staff on a voluntary and
1019 confidential basis with established mechanisms to assess program
1020 performance and results.
1021 (e) Implement a simulation-based program for skills
1022 assessment, training, and retraining of a facility's staff in
1023 those tasks and activities that the agency identifies by rule.
1024 (f) Designate a patient advocate who coordinates with
1025 members of the medical staff and the facility's chief medical
1026 officer regarding disclosure of medical incidents to patients.

1027 In addition, the patient advocate shall establish an advisory
1028 panel, consisting of providers, patients or their families, and
1029 other health care consumer or consumer groups to review general
1030 patient safety concerns and other issues related to relations
1031 among and between patients and providers and to identify areas
1032 where additional education and program development may be
1033 appropriate.
1034 (g) Establish a procedure to biennially review the
1035 facility's patient safety program and its compliance with the
1036 requirements of this section. Such review shall be conducted by
1037 an independent patient safety organization as defined in s.
1038 766.1016(1) or other professional organization approved by the
1039 agency. The organization performing the review shall prepare a
1040 written report with detailed findings and recommendations. The
1041 report shall be forwarded to the facility's risk manager or
1042 patient safety officer, who may make written comments in
1043 response thereto. The report and any written comments shall be
1044 presented to the governing board of the licensed facility. A
1045 copy of the report and any of the facilities' responses to the
1046 findings and recommendations shall be provided to the agency
1047 within 60 days after the date that the governing board reviewed
1048 the report. The report is confidential and exempt from
1049 production or discovery in any civil action. Likewise, the
1050 report, and the information contained therein, is not admissible
1051 as evidence for any purpose in any action for medical
1052 negligence.
1053 (h) Establish a system for the trending and tracking of
1054 quality and patient safety indicators that the agency may

1055 identify by rule, and a method for review of the data at least
1056 semiannually by the facility's patient safety committee.
1057 (i) Provide assistance to affected physicians, upon
1058 request, regarding implementation and evaluation of individual
1059 risk-management, patient-safety, and incident-reporting systems
1060 in clinical settings outside the premises of the licensed
1061 facility. Provision of such assistance may not be the basis for
1062 finding or imposing any liability on the licensed facility for
1063 acts or omissions of the affected physicians in clinical
1064 settings outside the premises of the licensed facility.
1065 (2) This section does not constitute an applicable
1066 standard of care in any action for medical negligence or
1067 otherwise create a private right of action, and evidence of
1068 noncompliance with this section is not admissible for any
1069 purpose in any action for medical negligence against an affected
1070 facility or any other health care provider.
1071 (3) This section does not prohibit the licensed facility
1072 from implementing other measures for promoting patient safety
1073 within the premises. This section does not relieve the licensed
1074 facility from the duty to implement any other patient safety
1075 measure that is required by state law. The Legislature intends
1076 that the patient safety measures specified in this section are
1077 in addition to all other patient safety measures required by
1078 state law, federal law, and applicable accreditation standards
1079 for licensed facilities.
1080 (4) A review, report, or other document created, produced,
1081 delivered, or discussed pursuant to this section is not
1082 discoverable or admissible as evidence in any legal action.

1083 Section 12. Section 766.404, Florida Statutes, is created
1084 to read:
1085 766.404 Enterprise liability in certain health care
1086 facilities.--
1087 (1) Subject to the requirements of ss. 766.401-766.409,
1088 the agency may enter an order certifying the petitioner-hospital
1089 as a certified patient safety facility and providing that the
1090 hospital bears sole and exclusive liability for any and all acts
1091 of medical negligence within the licensed facility by affected
1092 physicians and affected practitioners who are employees or
1093 agents of the accredited medical school or employees or agents
1094 of the hospital when such medical negligence causes damage to
1095 affected patients.
1096 (2) In any action for personal injury or wrongful death,
1097 whether in contract or tort or predicated upon a statutory cause
1098 of action, arising out of medical negligence within the premises
1099 resulting in damages to a patient of a certified patient safety
1100 facility, the licensed facility bears sole and exclusive
1101 liability for medical negligence by affected physicians and
1102 affected practitioners who, when the act of medical negligence
1103 occurred, were employees or agents of the accredited medical
1104 school or employees or agents of the hospital. Any such affected
1105 physician or affected practitioner may not be named as defendant
1106 in any such action. This subsection does not impose liability or
1107 confer immunity on any other provider, person, organization, or
1108 entity for acts of medical malpractice committed on any person
1109 in clinical settings other than the premises of the affected
1110 facility.

1111 (3) An affected practitioner shall post an applicable
1112 notice or provide an appropriate written statement as follows:
1113 (a) An affected practitioner shall post notice in the form
1114 of a sign prominently displayed in the reception area and
1115 clearly noticeable by all patients or provide a written
1116 statement to any person to whom medical services are being
1117 provided. The sign or statement must read as follows: "In
1118 general, physicians in the State of Florida are personally
1119 liable for acts of medical negligence, subject to certain
1120 limitations. However, physicians who perform medical services
1121 within a certified patient safety facility are exempt from
1122 personal liability because the licensed hospital bears sole and
1123 exclusive liability for acts of medical negligence within the
1124 health care facility pursuant to an administrative order of the
1125 Agency for Health Care Administration entered in accordance with
1126 the Enterprise Act for Patient Protection and Provider
1127 Liability. YOUR DOCTOR HOLDS CLINICAL STAFF PRIVILEGES IN A
1128 CERTIFIED PATIENT SAFETY FACILITY. UNDER FLORIDA LAW, ANY CLAIM
1129 FOR MEDICAL NEGLIGENCE WITHIN THE HEALTH CARE FACILITY MUST BE
1130 INITIATED AGAINST THE HOSPITAL AND NOT AGAINST YOUR DOCTOR,
1131 BECAUSE THE HOSPITAL IS SOLELY RESPONSIBLE FOR ALL ACTS OF
1132 PROFESSIONAL NEGLIGENCE WITHIN THE PREMISES. THIS PROVISION DOES
1133 NOT AFFECT YOUR PHYSICIAN'S LIABILITY FOR ACTS OF MEDICAL
1134 NEGLIGENCE IN OTHER CLINICAL SETTINGS. IF YOU DO NOT UNDERSTAND,
1135 PLEASE DISCUSS WITH YOUR DOCTOR BEFORE YOUR CONSULTATION. This
1136 notice is provided pursuant to Florida law."
1137 (b) If an affected practitioner is covered by an
1138 enterprise plan for patient protection and provider liability in

1139 one or more licensed facilities that receive sovereign immunity,
1140 and one or more other licensed facilities, the affected
1141 practitioner shall post notice in the form of a sign prominently
1142 displayed in the reception area and clearly noticeable by all
1143 patients or provide a written statement to any person to whom
1144 medical services are being provided. The sign or statement must
1145 read as follows: "In general, physicians in the state of Florida
1146 are personally liable for acts of medical negligence, subject to
1147 certain limitations such as sovereign immunity. However,
1148 physicians who perform medical services within a certified
1149 patient safety facility are exempt from personal liability
1150 because the licensed hospital bears sole and exclusive liability
1151 for acts of medical negligence within the affected facility
1152 pursuant to an administrative order of the Agency for Health
1153 Care Administration entered in accordance with the Enterprise
1154 Act for Patient Protection and Provider Liability. YOUR DOCTOR
1155 HOLDS CLINICAL STAFF PRIVILEGES IN ONE OR MORE CERTIFIED PATIENT
1156 SAFETY FACILITIES. AT LEAST ONE OF THESE HOSPITALS IS SUBJECT TO
1157 SOVEREIGN IMMUNITY. UNDER FLORIDA LAW, ANY CLAIM FOR MEDICAL
1158 NEGLIGENCE WITHIN THE HEALTH CARE FACILITY MUST BE INITIATED
1159 AGAINST THE HOSPITAL AND NOT AGAINST YOUR DOCTOR, BECAUSE THE
1160 HOSPITAL IS SOLELY RESPONSIBLE FOR ALL ACTS OF PROFESSIONAL
1161 NEGLIGENCE WITHIN THE PREMISES. MOREOVER, RECOVERY AGAINST THE
1162 HOSPITAL MAY BE LIMITED, DUE TO FLORIDA'S SOVEREIGN IMMUNITY
1163 LAW. THESE PROVISIONS DO NOT AFFECT YOUR PHYSICIAN'S LIABILITY
1164 FOR ACTS OF MEDICAL NEGLIGENCE IN OTHER CLINICAL SETTINGS. IF
1165 YOU DO NOT UNDERSTAND, PLEASE DISCUSS WITH YOUR DOCTOR BEFORE

1166 YOUR CONSULTATION. This notice is provided pursuant to Florida
1167 law."
1168 (c) Notice need not be given to a patient when:
1169 1. The patient has an emergency medical condition as
1170 defined in s. 395.002;
1171 2. The practitioner is an employee or agent of a
1172 governmental entity and is immune from liability and suit under
1173 s. 768.28; or
1174 3. Notice is not practicable.
1175 (d) This subsection is directory in nature. An agency
1176 order certifying approval of an enterprise plan for patient
1177 protection and provider liability shall, as a matter of law,
1178 constitute conclusive evidence that the hospital complies with
1179 all applicable patient safety requirements of s. 766.403 and all
1180 other requirements of ss. 766.401-766.409. Evidence of
1181 noncompliance with s. 766.403 or any other provision of ss.
1182 766.401-766.409 may not be admissible for any purpose in any
1183 action for medical malpractice. Failure to comply with the
1184 requirements of this subsection does not affect the liabilities
1185 or immunities conferred by ss. 766.401-766.409. This subsection
1186 does not give rise to an independent cause of action for
1187 damages.
1188 (4) The agency order certifying approval of an enterprise
1189 plan for patient protection and provider liability applies
1190 prospectively to causes of action for medical negligence that
1191 arise on or after the effective date of the order.
1192 (5) Upon entry of an order approving the petition, the
1193 agency may conduct onsite examinations of the licensed facility

1194 to assure continued compliance with the terms and conditions of
1195 the order.
1196 (6) The agency order certifying approval of an enterprise
1197 plan for patient protection remains in effect until revoked. The
1198 agency shall revoke the order upon the unilateral request of the
1199 licensed facility, the executive committee of the medical staff,
1200 or the affiliated medical school, whichever is applicable. The
1201 agency may revoke the order upon reasonable notice to the
1202 affected facility that it fails to comply with material
1203 requirements of ss. 766.401-766.409 or material conditions of
1204 the order certifying approval of the enterprise plan and further
1205 upon a determination that the licensed facility has failed to
1206 cure stated deficiencies upon reasonable notice. An
1207 administrative order revoking approval of an enterprise plan for
1208 patient protection and provider liability terminates the plan on
1209 January 1 of the year following entry of the order or 6 months
1210 after entry of the order, whichever is longer. Revocation of an
1211 agency order certifying approval of an enterprise plan for
1212 patient protection and provider liability applies prospectively
1213 to causes of action for medical negligence which arise on or
1214 after the effective date of the termination.
1215 (7) This section does not exempt a licensed facility from
1216 liability for acts of medical negligence committed by employees
1217 and agents thereof; although employees and agents of a certified
1218 patient safety facility may not be joined as defendants in any
1219 action for medical negligence because the licensed facility
1220 bears sole and exclusive liability for acts of medical
1221 negligence within the premises of the licensed facility,

1222 including acts of medical negligence by such employees and
1223 agents.
1224 (8) Affected practitioners shall cooperate in good faith
1225 with an affected facility in the investigation and defense of
1226 any claim for medical negligence. An affected facility shall
1227 have a cause of action for damages against an affected
1228 practitioner for bad faith refusal to cooperate in the
1229 investigation and defense of any claim of medical malpractice
1230 against the licensed facility.
1231 (9) Sections 766.401-766.409 do not impose strict
1232 liability or liability without fault for medical incidents that
1233 occur within an affected facility. To maintain a cause of action
1234 against an affected facility pursuant to ss. 766.401-766.409,
1235 the claimant must allege and prove that an employee or agent of
1236 the licensed facility, or an affected practitioner who is
1237 covered by an approved enterprise plan for patient protection
1238 and provider liability, committed medical negligence within the
1239 premises of the licensed facility which constitutes medical
1240 negligence under state law, even though an active tortfeasor is
1241 not named or joined as a party defendant in the lawsuit.
1242 (10) Sections 766.401-766.409 do not create an independent
1243 cause of action against any health care provider and do not
1244 impose enterprise liability on any health care provider, except
1245 as expressly provided, and may not be construed to support any
1246 cause of action other than an action for medical negligence as
1247 expressly provided against any person, organization, or entity.
1248 (11) Sections 766.401-766.409 do not waive sovereign
1249 immunity, except as expressly provided in s. 768.28.

1250 Section 13. Section 766.405, Florida Statutes, is created
1251 to read:
1252 766.405 Enterprise plans.--
1253 (1) It is the intent of the Legislature that enterprise
1254 plans for patient protection are elective and not mandatory for
1255 eligible hospitals. It is further the intent of the Legislature
1256 that the medical staff or affiliated medical school of an
1257 eligible hospital must concur with the development and
1258 implementation of an enterprise plan for patient protection and
1259 provider liability. It is further the intent of the Legislature
1260 that the licensed facility and medical staff or affiliated
1261 medical school be accorded wide latitude in formulating
1262 enterprise plans consistent with the underlying purpose of ss.
1263 766.401-766.409 to encourage innovative, systemic measures for
1264 patient protection and quality assurance in licensed facilities,
1265 especially in clinical settings where surgery is performed.
1266 Adoption of an enterprise plan is a necessary condition for
1267 agency approval of an enterprise plan for a certified patient
1268 safety facility.
1269 (2) An eligible hospital and the executive committee of
1270 its medical staff of the board of trustees of a state
1271 university, if applicable, shall adopt an enterprise plan as a
1272 necessary condition to agency approval of a certified patient
1273 safety facility. An affirmative vote of approval by the
1274 regularly constituted executive committee of the medical staff,
1275 however named or constituted, is sufficient to manifest approval
1276 by the medical staff of the enterprise plan. Once approved,
1277 affected practitioners are subject to the enterprise plan. The

CODING: Words stricken are deletions; words underlined are additions.

1278 plan may be conditioned on agency approval of an enterprise plan
1279 for patient protection and provider liability for the affected
1280 facility. The enterprise plan shall be limited to affected
1281 physicians and affected practitioners who are employees or
1282 agents of an accredited medical school or who are employees or
1283 agents of the hospital. At a minimum, the enterprise plan must
1284 contain provisions covering:
1285 (a) Compliance with a patient protection plan.
1286 (b) Internal review of medical incidents.
1287 (c) Timely reporting of medical incidents to state
1288 agencies.
1289 (d) Professional accountability of affected practitioners.
1290 (e) Financial accountability of affected practitioners.
1291 (3) This section does not prohibit a patient safety
1292 facility from including other provisions in the enterprise plan,
1293 in a separate agreement, as a condition of staff privileges, or
1294 by way of contract with an organization providing medical staff
1295 for the licensed facility.
1296 (4) This section does not limit the power of any licensed
1297 facility to enter into other agreements with members of its
1298 medical staff or otherwise to impose restrictions, requirements,
1299 or conditions on clinical privileges, as authorized by law.
1300 (5) If multiple campuses of a licensed facility share a
1301 license, the enterprise plan may be limited to the primary
1302 campus or the campus with the largest number of beds and, if
1303 applicable, associated outpatient ancillary facilities. If the
1304 enterprise plan is so limited, the plan must specify the campus

1305 and, if applicable, the ancillary facilities that will
1306 constitute the enterprise.
1307 Section 14. Section 766.406, Florida Statutes, is created
1308 to read:
1309 766.406 Professional accountability of affected
1310 practitioners.--
1311 (1) A certified patient safety facility shall report
1312 medical incidents occurring in the affected facility to the
1313 Department of Health, in accordance with s. 395.0197.
1314 (2) A certified patient safety facility shall report
1315 adverse findings of medical negligence or failure to adhere to
1316 applicable standards of professional responsibility by affected
1317 practitioners to the Department of Health.
1318 (3) A certified patient safety facility shall continue to
1319 perform all peer review functions pursuant to s. 395.0193.
1320 Section 15. Section 766.407, Florida Statutes, is created
1321 to read:
1322 766.407 Financial accountability of affected
1323 practitioners.--
1324 (1) An enterprise plan may provide that any affected
1325 member of the medical staff or any affected practitioner having
1326 clinical privileges, other than an employee of the licensed
1327 facility, and any organization that contracts with the licensed
1328 facility to provide practitioners to treat patients within the
1329 licensed facility, shall share equitably in the cost of omnibus
1330 medical liability insurance premiums covering the certified
1331 patient safety facility, similar self-insurance expense, or
1332 other expenses reasonably related to risk management and

1333 adjustment of claims of medical negligence. This subsection does
1334 not permit a licensed facility and any affected practitioner to
1335 agree on charges for an equitable share of medical liability
1336 expense based on the number of patients admitted to the hospital
1337 by individual practitioners, patient revenue for the licensed
1338 facility generated by individual practitioners, or overall
1339 profit or loss sustained by the certified patient safety
1340 facility in a given fiscal period.
1341 (2) Pursuant to an enterprise plan for patient protection
1342 and provider liability, a licensed facility may impose a
1343 reasonable assessment against an affected practitioner that
1344 commits medical negligence resulting in injury and damages to an
1345 affected patient of the health care facility, upon a
1346 determination of failure to adhere to acceptable standards of
1347 professional responsibility by an internal peer review
1348 committee. A schedule of assessments, criteria for the levying
1349 of assessments, procedures for levying assessments, and due
1350 process rights of an affected practitioner must be agreed to by
1351 the executive committee of the medical staff or affiliated
1352 medical school, as applicable, and the licensed facility. The
1353 legislative intent in providing for assessments against an
1354 affected physician is to instill in each individual health care
1355 practitioner the incentive to avoid the risk of injury to the
1356 fullest extent and ensure that the residents of this state
1357 receive the highest quality health care obtainable. Failure to
1358 pay an assessment constitutes grounds for suspension of clinical
1359 privileges by the licensed facility. Assessments may be enforced
1360 as bona fide debts in a court of law. The licensed facility may

1361 exempt its employees and agents from all such assessments.
1362 Employees and agents of the state, its agencies, and
1363 subdivisions, as defined by s. 768.28, are exempt from all such
1364 assessments.
1365 (3) An assessment levied pursuant to this section is not
1366 discoverable or admissible as evidence in any legal action.
1367 Section 16. Section 766.408, Florida Statutes, is created
1368 to read:
1369 766.408 Data collection and reports.--
1370 (1) Each certified patient safety facility shall submit an
1371 annual report to the agency containing information and data
1372 reasonably required by the agency to evaluate performance and
1373 effectiveness of the facility's enterprise plan for patient
1374 protection and provider liability. However, information may not
1375 be submitted or disclosed in violation of any patient's right to
1376 privacy under state or federal law.
1377 (2) The agency shall aggregate information and data
1378 submitted by all affected facilities and each year, on or before
1379 March 1, the agency shall submit a report to the Legislature
1380 that evaluates the performance and effectiveness of the
1381 enterprise approach to patient safety and provider liability in
1382 certified patient safety facilities, which reports must include,
1383 but are not limited to, pertinent data on:
1384 (a) The number and names of affected facilities;
1385 (b) The number and types of patient protection measures
1386 currently in effect in these facilities;
1387 (c) The number of affected practitioners;
1388 (d) The number of affected patients;

1389 (e) The number of surgical procedures by affected
1390 practitioners on affected patients;
1391 (f) The number of medical incidents, claims of medical
1392 malpractice, and claims resulting in indemnity;
1393 (g) The average time for resolution of contested and
1394 uncontested claims of medical malpractice;
1395 (h) The percentage of claims that result in civil trials;
1396 (i) The percentage of civil trials resulting in adverse
1397 judgments against affected facilities;
1398 (j) The number and average size of an indemnity paid to
1399 claimants;
1400 (k) The number and average size of assessments imposed on
1401 affected practitioners;
1402 (l) The estimated liability expense, inclusive of medical
1403 liability insurance premiums; and
1404 (m) The percentage of medical liability expense, inclusive
1405 of medical liability insurance premiums, which is borne by
1406 affected practitioners in affected health care facilities.
1407
1408 Such reports to the Legislature may also include other
1409 information and data that the agency deems appropriate to gauge
1410 the cost and benefit of enterprise plans for patient protection
1411 and provider liability.
1412 (3) The agency's annual report to the Legislature may
1413 include relevant information and data obtained from the Office
1414 of Insurance Regulation within the Department of Financial
1415 Services on the availability and affordability of enterprise-
1416 wide medical liability insurance coverage for affected

1417 facilities and the availability and affordability of insurance
1418 policies for individual practitioners which contain coverage
1419 exclusions for acts of medical negligence in certified patient
1420 safety facilities. The Office of Insurance Regulation within the
1421 Department of Financial Services shall cooperate with the agency
1422 in the reporting of information and data specified in this
1423 subsection.
1424 (4) Reports submitted to the agency by affected facilities
1425 pursuant to this section are public records under chapter 199.
1426 However, these reports, and the information contained therein,
1427 are not admissible as evidence in a court of law in any action.
1428 Section 17. Section 766.409, Florida Statutes, is created
1429 to read:
1430 766.409 Damages in malpractice actions against certain
1431 hospitals that meet patient safety requirements; agency approval
1432 of patient safety measures.--
1433 (1) In recognition of their essential role in training
1434 future health care providers and in providing innovative medical
1435 care for this state's residents, in recognition of their
1436 commitment to treating indigent patients, and further in
1437 recognition that all teaching hospitals, as defined in s.
1438 408.07, both public and private, and hospitals licensed under
1439 chapter 395 which are owned and operated by a university that
1440 maintains an accredited medical school, collectively defined as
1441 eligible hospitals in s. 766.401(8), provide benefits to the
1442 residents of this state through their roles in improving the
1443 quality of medical care, training health care providers, and
1444 caring for indigent patients, the limits of liability for

1445 medical malpractice arising out of the rendering of, or the
1446 failure to render, medical care by all such hospitals, shall be
1447 determined in accordance with the requirements of this section.
1448 (2) Except as otherwise provided in subsections (9) and
1449 (10), any eligible hospital may petition the agency to enter an
1450 order certifying that the licensed facility complies with
1451 patient safety measures specified in s. 766.403.
1452 (3) In accordance with chapter 120, the agency shall enter
1453 an order approving the petition upon a showing that the eligible
1454 hospital complies with the patient safety measures specified in
1455 s. 766.403. Upon entry of an order, and for the entire period of
1456 time that the order remains in effect, the damages recoverable
1457 from the eligible hospital covered by the order and its
1458 employees and agents in actions arising from medical negligence
1459 shall be determined in accordance with the following provisions:
1460 (a) Noneconomic damages shall be limited to a maximum of
1461 $500,000, regardless of the number of claimants or the theory of
1462 liability, in accordance with s. 766.118(6).
1463 (b) Awards of economic damages shall be offset by payments
1464 from collateral sources, as defined by s. 766.202(2), and any
1465 set-offs available under ss. 46.015 and 768.041. Awards for
1466 future economic losses shall be offset by future collateral
1467 source payments.
1468 (c) Awards of future economic damages, after being offset
1469 by collateral sources, shall, at the option of the eligible
1470 hospital, be reduced by the court to present value or paid by
1471 means of periodic payments in the form of annuities or
1472 reversionary trusts. Payment for damages awarded to compensate a

1473 claimant for future medical and rehabilitation expenses or loss
1474 of future earning capacity when the claimant does not have a
1475 spouse, lineal descendants, or a surviving parent, shall be paid
1476 for the life of the claimant or for so long as the condition for
1477 which the award was made persists, whichever is shorter, without
1478 regard to the number of years awarded by the trier of fact, at
1479 which time the obligation to make such payments terminates. An
1480 eligible hospital seeking to cause future payments to be
1481 terminated pursuant to this provision shall be liable for the
1482 reasonable attorney's fees incurred by a claimant or the
1483 claimant's representative in responding to a petition seeking
1484 such relief. A company that underwrites an annuity to pay future
1485 economic damages shall have rating of "A" or higher by A.M. Best
1486 Company. The terms of the reversionary instrument used to
1487 periodically pay future economic damages must be approved by the
1488 court; such approval may not be unreasonably withheld.
1489 (4) The limitations on damages in subsection (3) apply
1490 prospectively to causes of action for medical negligence that
1491 arise on or after the effective date of the order.
1492 (5) Upon entry of an order approving the petition, the
1493 agency may conduct onsite examinations of the licensed facility
1494 to assure continued compliance with terms and conditions of the
1495 order.
1496 (6) The agency order certifying approval of a petition
1497 under this section remains in effect until revoked. The agency
1498 may revoke the order upon reasonable notice to the affected
1499 hospital that it fails to comply with material requirements of
1500 ss. 766.401-766.409 or material conditions of the order

1501 certifying compliance with required patient safety measures and
1502 that the hospital has failed to cure stated deficiencies upon
1503 reasonable notice. Revocation of an agency order certifying
1504 approval of an enterprise plan for patient protection and
1505 provider liability applies prospectively to causes of action for
1506 medical negligence that arise on or after the effective date of
1507 the order of revocation.
1508 (7) An agency order certifying approval of a petition
1509 under this section shall, as a matter of law, constitute
1510 conclusive evidence that the hospital complies with all
1511 applicable patient safety requirements of s. 766.403. A
1512 hospital's noncompliance with the requirements of s. 766.403 may
1513 not affect the limitations on damages conferred by this section.
1514 Evidence of noncompliance with s. 766.403 may not be admissible
1515 for any purpose in any action for medical malpractice. This
1516 section, or any portion thereof, may not give rise to an
1517 independent cause of action for damages against any hospital.
1518 (8) The entry of an agency order pursuant to this section
1519 does not impose enterprise liability, or sole and exclusive
1520 liability, on the licensed facility for acts or omissions of
1521 medical negligence within the premises.
1522 (9) An eligible hospital may petition the agency for an
1523 order pursuant to this section or an order pursuant to s.
1524 766.404. However, a hospital may not be approved for both
1525 enterprise liability under s. 766.404 and the limitations on
1526 damages under this section.
1527 (10) This section may not apply to hospitals that are
1528 subject to sovereign immunity under s. 768.28.

1529 Section 18. Section 766.410, Florida Statutes, is created
1530 to read:
1531 766.410 Rulemaking authority.--The agency may adopt rules
1532 to administer ss. 766.401-766.409.
1533 Section 19. Subsections (5) and (12) of section 768.28,
1534 Florida Statutes, are amended to read:
1535 768.28 Waiver of sovereign immunity in tort actions;
1536 recovery limits; limitation on attorney fees; statute of
1537 limitations; exclusions; indemnification; risk management
1538 programs.--
1539 (5)(a) The state and its agencies and subdivisions shall
1540 be liable for tort claims in the same manner and to the same
1541 extent as a private individual under like circumstances, but
1542 liability does ~~shall~~ not include punitive damages or interest
1543 for the period before judgment.
1544 (b) Except as provided in paragraph (c), neither the state
1545 or ~~nor~~ its agencies or subdivisions are ~~shall be~~ liable to pay a
1546 claim or a judgment by any one person which exceeds the sum of
1547 $100,000 or any claim or judgment, or portions thereof, which,
1548 when totaled with all other claims or judgments paid by the
1549 state or its agencies or subdivisions arising out of the same
1550 incident or occurrence, exceeds the sum of $200,000. However, a
1551 judgment or judgments may be claimed and rendered in excess of
1552 these amounts and may be settled and paid pursuant to this act
1553 up to $100,000 or $200,000, as the case may be; and that portion
1554 of the judgment that exceeds these amounts may be reported to
1555 the Legislature, but may be paid in part or in whole only by
1556 further act of the Legislature. Notwithstanding the limited

1557 waiver of sovereign immunity provided herein, the state or an
1558 agency or subdivision thereof may agree, within the limits of
1559 insurance coverage provided, to settle a claim made or a
1560 judgment rendered against it without further action by the
1561 Legislature, but the state or agency or subdivision thereof
1562 shall not be deemed to have waived any defense of sovereign
1563 immunity or to have increased the limits of its liability as a
1564 result of its obtaining insurance coverage for tortious acts in
1565 excess of the $100,000 or $200,000 waiver provided above. The
1566 limitations of liability set forth in this subsection shall
1567 apply to the state and its agencies and subdivisions whether or
1568 not the state or its agencies or subdivisions possessed
1569 sovereign immunity before July 1, 1974.
1570 (c) In any action for medical negligence within a
1571 certified patient safety facility that is covered by sovereign
1572 immunity, given that the licensed health care facility bears
1573 sole and exclusive liability for acts of medical negligence
1574 pursuant to the Enterprise Act for Patient Protection and
1575 Provider Liability, inclusive of ss. 766.401-766.409, neither
1576 the state or its agencies or subdivisions are liable to pay a
1577 claim or a judgment by any one person which exceeds the sum of
1578 $150,000 or any claim or judgment, or portions thereof, which,
1579 when totaled with all other claims or judgments paid by the
1580 state or its agencies or subdivisions arising out of the same
1581 incident or occurrence, exceeds the sum of $300,000. However, a
1582 judgment may be claimed and rendered in excess of these amounts
1583 and may be settled and paid up to $150,000 or $300,000, as the
1584 case may be. That portion of the judgment which exceeds these

1585 amounts may be reported to the Legislature, but may be paid in
1586 part or in whole only by further act of the Legislature.
1587 Notwithstanding the limited waiver of sovereign immunity
1588 provided in this paragraph, the state or an agency or
1589 subdivision thereof may agree, within the limits of insurance or
1590 self-insurance coverage provided, to settle a claim made or a
1591 judgment rendered against it without further action by the
1592 Legislature, but the state or agency or subdivision thereof does
1593 not waive any defense of sovereign immunity or increase limits
1594 of its liability as a result of its obtaining insurance coverage
1595 or providing for self-insurance to cover claims for medical
1596 negligence in excess of the $150,000 waiver or the $300,000
1597 waiver provided in this paragraph. The limitations of liability
1598 set forth in this paragraph apply to the state and its agencies
1599 and subdivisions whether or not the state or its agencies or
1600 subdivisions possessed sovereign immunity before July 1, 1974.
1601 (12)(a) A health care practitioner, as defined in s.
1602 456.001(4), who has contractually agreed to act as an agent of a
1603 state university board of trustees to provide medical services
1604 to a student athlete for participation in or as a result of
1605 intercollegiate athletics, to include team practices, training,
1606 and competitions, is ~~shall be considered~~ an agent of the
1607 respective state university board of trustees, for the purposes
1608 of this section, while acting within the scope of and pursuant
1609 to guidelines established in that contract. The contracts shall
1610 provide for the indemnification of the state by the agent for
1611 any liabilities incurred up to the limits set out in this
1612 chapter.

1613 (b) This subsection shall not be construed as designating
1614 persons providing contracted health care services to athletes as
1615 employees or agents of a state university board of trustees for
1616 the purposes of chapter 440.
1617 (c)1. For purposes of this subsection, the terms
1618 "certified patient safety facility," "medical staff," and
1619 "medical negligence" have the same meanings as provided in s.
1620 766.401.
1621 2. A certified patient safety facility, wherein a minimum
1622 of 90 percent of the members of the medical staff consist of
1623 physicians are employees or agents of a state university, is an
1624 agent of the respective state university board of trustees for
1625 purposes of this section to the extent that the licensed
1626 facility, in accordance with an enterprise plan for patient
1627 protection and provider liability, inclusive of ss. 766.401-
1628 766.409, approved by the Agency for Health Care Administration,
1629 is solely and exclusively liable for acts of medical negligence
1630 of physicians providing health care services within the licensed
1631 facility.
1632 3. A certified patient safety facility that has been found
1633 to be an agent of the state for other purposes and has adopted
1634 an enterprise plan for patient protection and provider liability
1635 for the sole and exclusive liability for acts of medical
1636 negligence of affected practitioners who are employees and
1637 agents of the affiliated state university board of trustees and
1638 its own hospital employees and agents, inclusive of ss. 766.401-
1639 766.409, approved by the Agency for Health Care Administration,

1640 is an agent of the respective state university board of trustees
1641 for purposes of this subsection only.
1642 4. Subject to the acceptance of the Board of Governors and
1643 a state university board of trustees, a licensed facility as
1644 described by this subsection may secure the limits of liability
1645 protection described in paragraph (c) from a self insurance
1646 program created pursuant to s. 1004.24.
1647 5. A notice of intent to commence an action for medical
1648 negligence arising from the care or treatment of a patient in a
1649 certified patient safety facility subject to the provisions of
1650 this subsection shall be sent to the licensed facility as the
1651 statutory agent created pursuant to an enterprise plan of the
1652 related board of trustees of a state university for the limited
1653 purposes of administering an enterprise plan for patient
1654 protection and provider liability. A complaint alleging medical
1655 negligence resulting in damages to a patient in a certified
1656 patient safety facility subject to the provisions of this
1657 paragraph shall be commenced against the applicable board of
1658 trustees of a state university on the relation of the licensed
1659 facility, and the doctrines of res judicata and collateral
1660 estoppel shall apply. The complaint shall be served on the
1661 licensed facility. Any notice of intent mailed to the licensed
1662 facility, any legal process served on the licensed facility, and
1663 any other notice, paper, or pleading that is served, sent, or
1664 delivered to the licensed facility pertaining to a claim of
1665 medical negligence shall have the same legal force and effect as
1666 mailing, service, or delivery to a duly authorized agent of the
1667 board of trustees of the respective state university,

1668 notwithstanding any provision of the laws of this state to the
1669 contrary. Upon receipt of any such notice of intent, complaint
1670 for damages, or other notice, paper, or pleading pertaining to a
1671 claim of medical negligence, a licensed facility subject to the
1672 provisions of this paragraph shall give timely notice to the
1673 related board of trustees of the state university, although
1674 failure to give timely notice does not affect the legal
1675 sufficiency of the notice of intent, service of process, or
1676 other notice, paper, or pleading. A final judgment or binding
1677 arbitration award against the board of trustees of a state
1678 university on the relation of a licensed facility, arising from
1679 a claim of medical negligence resulting in damages to a patient
1680 in a certified patient safety facility subject to the provisions
1681 of this paragraph, may be enforced in the same manner, and is
1682 subject to the same limitations on enforcement or recovery, as
1683 any final judgment for damages or binding arbitration award
1684 against the board of trustees of a state university,
1685 notwithstanding any provision of the laws of this state to the
1686 contrary. Any settlement agreement executed by the board of
1687 trustees of a state university on the relation of a licensed
1688 facility, arising from a claim of medical negligence resulting
1689 in damages to a patient in a certified patient safety facility
1690 subject to the provisions of this paragraph, may be enforced in
1691 the same manner and is subject to the same limitations as a
1692 settlement agreement executed by an authorized agent of the
1693 board of trustees. The board of trustees of a state university
1694 may make payment to a claimant in whole or in part of any
1695 portion of a final judgment or binding arbitration award against

1696 the board of trustees of a state university on the relation of a
1697 licensed facility, and any portion of a settlement of a claim
1698 for medical negligence arising from a certified patient safety
1699 facility subject to the provisions of this paragraph, which
1700 exceeds the amounts of the limited waiver of sovereign immunity
1701 specified in paragraph (5)(c), only as provided in that
1702 paragraph.
1703 Section 20. If any provision of this act or its
1704 application to any person or circumstance is held invalid, the
1705 invalidity does not affect other provisions or applications of
1706 the act which can be given effect without the invalid provision
1707 or application, and to this end, the provisions of this act are
1708 severable.
1709 Section 21. If a conflict between any provision of this
1710 act and s. 456.052, s. 456.053, s. 456.054, s. 458.331, s.
1711 459.015, or s. 817.505, Florida Statutes, the provisions of this
1712 act shall govern. The provisions of this act should be broadly
1713 construed in furtherance of the overriding legislative intent to
1714 facilitate innovative approaches for patient protection and
1715 provider liability in eligible hospitals.
1716 Section 22. It is the intention of the Legislature that
1717 the provisions of this act are self-executing.
1718 Section 23. This act shall take effect upon becoming a
1719 law.