

THE FLORIDA SENATE
2021 SUMMARY OF LEGISLATION PASSED
Committee on Banking and Insurance

CS/CS/SB 1786 — Florida Birth-Related Neurological Injury Compensation Plan

by Appropriations Committee; Health Policy Committee; and Senators Burgess and Book

In 1988, the Legislature created the Florida Birth-Related Neurological Injury Compensation Plan (plan) to provide limited recovery, irrespective of fault, for infants who have sustained a birth-related neurological injury. If an infant suffers such an injury, and the physician participates in the Florida Birth-Related Neurological Injury Compensation Association (NICA), and delivers obstetrical services in connection with the birth, then an administrative award for a compensable injury is the infant's sole and exclusive remedy for the injury, with exceptions. Compensation under the plan includes actual expenses for medically necessary and reasonable care, including long-term medical care, transportation, special equipment, and other services for the lifetime of the child. The plan is administered by NICA. The bill provides the following changes to the plan and NICA:

Benefits

- Increases the maximum award to parents or legal guardians of an infant who has sustained a birth-related neurological injury from \$100,000 to \$250,000 for pending petitions or claims filed on or after January 1, 2021. This provision applies retroactively to claims filed before January 1, 2021, to provide a payment to current plan members sufficient to bring the payment up to \$250,000 by July 1, 2021. Thereafter, the \$250,000 limit on the maximum award increases by three percent annually.
- Increases the death benefit from \$10,000 to \$50,000. Parents or legal guardians of a child that died since the inception of the plan must receive a retroactive payment in an amount to bring the total award paid to the parents or legal guardian to \$50,000 by July 1, 2021.
- Provides up to \$10,000 in annual psychotherapeutic services for immediate family members who reside with the plan participant.
- Specifies benefits for transportation, including providing parents or legal guardians with a reliable method of transportation for the care of the child or reimbursing the cost of upgrading an existing vehicle to accommodate the child's needs when it becomes medically necessary for wheelchair transportation. The plan must replace any vans purchased by the plan every 7 years or 150,000 miles, whichever comes first.
- Authorizes housing assistance of up to \$100,000 for the life of the child, including home construction and modifications.
- Provides that the parents or legal guardians of a plan participant may file a petition with the Division of Administrative Hearings to dispute the amount of actual expenses reimbursed or a denial of reimbursement.
- Directs NICA to furnish by mail or electronically a list of expenses compensable under the plan to each parent or legal guardian of a plan participant.

Governance of NICA

- Directs NICA to administer the plan in a manner that promotes and protects the health and best interests of children with birth-related neurological injuries.

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- Creates code of ethics for specified staff and the board of directors of NICA.
- Increases members on the board of directors from five to seven members by adding a parent or a legal guardian representative of a plan participant and a representative of an advocacy organization for children with disabilities, and authorizes the Chief Financial Officer (CFO) or Governor to remove a director for cause.
- Prohibits the appointment of a participating physician to the board who is named in a pending petition for a claim and prohibits an appointed director who is a participating physician from voting on any board matter related to a claim accepted for an award for compensation if the physician is named in the petition for the claim.
- Limits the term a member of the board may serve to no more than six consecutive years and prohibits the citizen representative on the board from having an affiliation with any one of the groups providing lists of names to the CFO for consideration as a board member.
- Clarifies that board meetings are subject to public meeting requirements of s. 286.011, F.S., and requires advance notice of board meetings, with exceptions, and the posting of information relating to such meetings on NICA's website.

Studies and Reports

- Requires the Auditor General to conduct an operational audit of NICA once every three years. The Auditor General must complete the first audit report by August 15, 2021.
- Requires NICA to report by November 1, 2021, and by November 1 thereafter, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the CFO regarding claims, reimbursement, and other information.
- Directs NICA to publish an annual report on its website January 1, 2022, and every January 1, thereafter that includes information about the board members and employees, staff compensation, a summary of reimbursement disputes and resolutions, a list of expenses for attorney and lobbying fees, and other expenses to oppose each plan claim.
- Directs the Agency for Health Care Administration (agency) to review its third-party liability functions and rights under Medicaid, relative to the plan, and include in its review the extent and value of liabilities owed by the plan as a third-party benefit provider. Based on its findings, the agency must provide recommendations regarding the development of policies and procedures to ensure implementation of agency functions and rights to the primacy of the plan's third-party benefits payable and recoveries due to the agency under Medicaid. The agency is required to submit a report to the President of the Senate, the Speaker of the House of Representatives, and the CFO of its findings regarding the extent and value of the liabilities owed by the plan by November 1, 2021.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 40-0; House 117-0